



Marine
Management
Organisation

Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

1. Date application made to MMO	26 November 2021 (updated February 2023)
2. Name of primary contact	Ashfords LLP
3. Contact details of primary contact	Lara Moore, Ashfords LLP 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	Portsmouth City Council
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

<p>opinion was issued by MMO</p>	
<p>d. If screened in, date when scoping opinion was issued by MMO</p>	<p>N/A</p>
<p>e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO</p>	<p>N/A</p>
<p>7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.</p>	<p>The Order modernises and consolidates the statutory harbour powers applying in relation to Portsmouth International Port and the Camber.</p> <p>Prior to this Order, there were two main separate statutory undertakings and a number of miscellaneous pieces of local legislation that together form the port known as Portsmouth International Port. In addition there is a separate statutory undertaking in respect of Camber Docks. Each undertaking is governed by its own local legislation and although the provisions are similar, they are complex and in places unclear. The Council is the statutory harbour authority for all of the undertakings. It is therefore considered conducive to the efficient and economical operation, maintenance, management and improvement of each undertaking and therefore Portsmouth International Port and the Camber as a whole if the majority of the existing statutory harbour legislation is repealed and that Portsmouth International Port and the Camber are managed primarily under the proposed HRO and therefore the same statutory provisions with a central reserve fund.</p> <p>The Order also confers a full suite of modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of Portsmouth International Port and the Camber. The provisions cover a range of matters including advisory bodies, charges and other financial provisions, appropriation, development and disposal of land, dredging, control of repairs and works, byelaws, bunkering, moorings, removal of vessels, vehicles, and wrecks. In particular, the Order would confer modern powers on the Council to give general directions to vessels, persons and vehicles using Portsmouth International Port and the Camber, together with powers exercisable by the harbour master appointed by the Council to give special directions to vessels. These powers are required to support the effective management of the Port as recommended in the Port Marine Safety Code and, in relation to vehicles and port operations ashore, are</p>

	<p>consistent with the powers in section 14(3) relating to penal provisions and 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.</p>
<p>8. Location (coordinates must be provided in WGS84 format if this is a works order)</p>	<p>Portsmouth International Port and the Camber (Portsmouth).</p>
<p>9. State the title of all relevant charts/maps/plans included with application (if appropriate)</p>	<p>Plans of the current limits of each of the undertakings, including the port premises have been deposited with this Order. The plans are:</p> <ol style="list-style-type: none"> 1. The Portsmouth International Port Limits Plan 2. The Portsmouth International Port Premises Plan 3. The Camber Port Limits Plan 4. The Camber Port Premises Plan
<p>10. State the legislation relevant to the Harbour Authority and included with this application (if appropriate)</p>	<p><u>Camber Docks</u></p> <ol style="list-style-type: none"> 1. An Act for Enlarging the Town Quay of the Borough of Portsmouth, and for improving that Portion of the Harbour of Portsmouth called the Camber (1839) 2. Portsmouth Docks Act 1859 3. Portsmouth Camber Quays Act 1868 4. The Landport Wharf Act 1883 5. Portsmouth Camber Quays Order 1898 6. Portsmouth Camber Dock and Flathouse Wharf Order 1911 7. Portsmouth Corporation Act 1959 8. Portsmouth Camber Dock and Flathouse Wharf Order 1990 9. The Portsmouth (Camber Dock) Harbour Revision Order 1995 <p><u>Portsmouth International Port</u></p> <ol style="list-style-type: none"> 10. Portsmouth Camber Dock and Flathouse Wharf Order 1911 11. Portsmouth Corporation Act 1959 12. The Portsmouth Mile End Quay Revision Order 1966 13. The Portsmouth Mile End Quay Revision Order 1973 14. Mile End Gardens Portsmouth Act 1978 15. The Portsmouth Mile End Quay Revision Order 1981 16. The Portsmouth Mile End Quay Harbour Revision Order 1988

	<p>17. Portsmouth Camber Dock and Flathouse Wharf Order 1990 18. Portsmouth Flathouse Quay Harbour Revision Order 1990 19. The Portsmouth Mile End Quay Harbour Revision Order 1991 20. The Portsmouth Mile End (Albert Johnson Quay) Harbour Revision Order 1992 21. The Portsmouth Mile End Quay (Berth No 2 Extension) Harbour Revision Order 1993 22. The Portsmouth Mile End Quay (Continental Ferry Port Phase 7) Harbour Revision Order 1994 23. The Portsmouth Mile End Quay (Continental Ferry Port) Harbour Revision Order 1999 24. Portsmouth (Tall Ships Berth) Harbour Revision Order 2000 25. Portsmouth (Millennium Waterbus Landing Stages) Harbour Revision Order 2000 26. The Portsmouth (Continental Ferry Port Berth 2 Extension) Harbour Revision Order 2011</p> <p>In addition, we attach the following Pilotage Orders which require amendment due to the repeal of much of the legislation listed above:</p> <p>27. Portsmouth (Pilotage) Harbour Revision Order 1988 28. Portsmouth (Pilotage) Harbour Revision Order 1992</p>
<p>11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.</p>	<p>N/A</p>
<p>12. Have you included the required fee for your application?</p>	<p>Sent by BACS with reference HRO/2021/00009.</p>

Table 3: Statutory Harbour Authority background

Portsmouth International Port and the Camber ("the Port") is a Municipal Port made up of three statutory undertakings and a number of miscellaneous pieces of local legislation. The Council, as the Statutory Harbour Authority is governed by the local legislation applying to each of the undertakings are set out above. The Council is responsible for the administration, maintenance and improvement of the Port which is more fully described below.

The Port is located in two areas as shown on the plans deposited with the Order. As shown on the deposited plans, the area of water currently within the jurisdiction of the Council is relatively small. This is because the Port is situated within the Dockyard Port of Portsmouth and the jurisdiction of the Council overlaps with the jurisdiction of the King's Harbour Master for the Dockyard Port of Portsmouth. In the event of any conflict between any directions given by the harbour master of the Council and any directions given by the King's Harbour Master, the directions given by the King's Harbour Master prevail.

The Council's 'dry' real estate which forms part of the port premises at Portsmouth International Port largely consists of car lanes and storage for freight vehicles, RoRo (roll on, roll off) and a passenger terminal, cargo terminal, dedicated warehousing, storage areas and a container park for mix and bulk cargoes in addition to office space and a border control post. At Camber docks the port premises largely consist of a quay area for leisure, small commercial operations and fishing activity and Ocean Racing Teams

Within the Port there are 8 berths for commercial vessels in PIP with circa 900,000 tonnes of cargo shipped and unshipped through the Port annually. In the Camber a further 8 berths are available.

The main cargoes shipped through the Portsmouth International Port include RoRo freight (Europe and Portsmouth), cargo to the Channel Islands and dry produce. The Cargo terminal primarily handles fruit, aggregates and green energy. In addition 9 ferries operate from the Port carrying approx. 2 million passengers annually. The Port also receives circa 45 calls from cruise ships per year and it is the home port to 3 cruise ships.

The Port has a resident fleet of 30 leisure vessels. The Port supports a large number of marine-related businesses, providing jobs and making a valuable contribution to the local economy.

In managing Portsmouth International Port and the Camber, the Council strives to observe industry standards set out in Government guidelines. The Council 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 Council's constitution.

Table 3a: Need and justification for order

General

The Order would consolidate and modernise existing local statutory harbour legislation in respect of Portsmouth International Port and the Camber and confer further modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of the Port. Nearly all of the current local legislation relating to the current undertakings is repealed under the proposed Order, meaning that in the future all areas of the Port will be governed by nearly identical statutory provisions, which will significantly improve the efficient and economic operation and management of the Port. The local statutory provisions being retained are set out in Schedule 3 of the Order.

The Order clearly defines the port limits and shows them on the deposited Port Limits plans, which in respect of some areas of the Port are currently unclear.

Port Marine Safety Code

As the harbour authority for the current undertakings, the Port Marine Safety Code (November 2016) published by the Department for Transport (“the Code”) applies to the Council 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.”

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 Council is seeking to obtain modern powers of General Direction (covering vessels, persons and vehicles) to enable them to have a single set of General Directions covering the whole Port. Currently the Council does not have powers of General Direction or Harbour Direction in respect of the Port.

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 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"

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 Council considered conducive to the efficient and economical operation, improvement, maintenance, or management of the Port. Its current powers are complex and fragmented, and although similar, the powers of each undertaking are different, which makes management of the Port less efficient and economic that it would be under the proposed Order.

The modernised and additional powers include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include the Shoreham Port Authority Harbour Revision Order 2021, Weymouth Harbour Revision Order 2021, Fowey Harbour Revision Order 2021, Dart Harbour and Navigation Harbour Revision Order 2021, Portland Harbour Revision Order 1997, the Poole Harbour Revision Order 2012, the Cowes Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014. They include common types of statutory harbour powers, such as the power to borrow, powers to dispose of and develop land, powers associated with charges (including deposits and liens associated with charges) and miscellaneous powers including a power of general direction, a power to dredge, powers related to the removal of wrecks and other obstructions and various powers related to commercial activities.

An explanation of, and the need for, each substantive article in the Order is set out in the table below. Some examples of how the powers may be exercised are also described below. These examples are not intended to be exhaustive of the ways in which the powers may lawfully be exercised.

Articles 1 of the Order is not dealt with below since it is ancillary to the substantive provisions of the Order.

Table 2b: Justification for inclusion of provisions

Article in HRO	Summary of Provision	Requirement for provision
<p style="text-align: center;">2</p> <p>Interpretation</p>	<p>This article contains definitions which apply throughout the Order and a number of other provisions assisting with the interpretation of and clarification of scope of the Order.</p>	<p>The definitions are found within paragraph (1) of the article.</p> <p>Paragraph (2) provides that all points, distances etc. in the Order should be construed as if the word “or thereabouts” had been inserted after them.</p> <p>Paragraph (3) expressly sets out that ‘harbour premises’ (as defined in the Order) are deemed to be ‘operational land’ for the purposes of the Town and Country Planning Act 1990.</p> <p>Article 2 is required to enable the Order and its effect to be properly interpreted.</p>
<p style="text-align: center;">3</p> <p>Incorporation of the Harbours, Docks and Piers Clauses Act 1847</p>	<p>This article incorporates the Harbours, Docks and Piers Clauses Act 1847 except in relation to the sections listed as being excepted. Those sections included predominantly relate to:</p> <ul style="list-style-type: none"> a) Interpretation (sections 1-5). b) Rates (sections 27 and 33). c) Collection of rates (sections 34 – 41 and 43 - 46). d) Harbour, dock and pier master (sections 51 - 65). e) Discharge of cargoes and removal of goods (section 68). f) Protection of the harbour, dock and pier (sections 69, 72 - 76). i) Harbour and dock police (sections 79 – 80). j) Meters and weighers (sections 81 – 82). k) Byelaws (sections 83). l) Recovery of damages and penalties (sections 94 – 95). 	<p>This is an incorporation clauses of the Harbours, Docks and Piers Clauses Act 1847. This is required to incorporate the 1874 Act into the Order and the local legislation which will remain in force, and cause any existing incorporation to cease to have effect from the date of the Order.</p>

<p style="text-align: center;">4</p> <p>Port Jurisdiction</p>	<p>Article 4 provides that the Council shall exercise jurisdiction as a harbour authority, and the powers of the harbour master shall be exercisable within the port limits (comprising the port limits below mean high water springs and the port premises).</p> <p>The limits for Portsmouth International Port and the Camber are described in paragraphs (2) and (3). Together, they form the port limits of the Port.</p> <p>The Council's area of jurisdiction below mean high water spring tides is fixed under the Order and shown on the Port Limits plans. In respect of the Port Premises (land, roads etc) outside the area shown on the Port Limits plans, the areas forming part of the Port Premises at the date of the application for the Order are shown on the Port Premises Plans deposited with the Order. In the event of any future alteration to the extent of the Port Premises (because the Council buys, sells etc. land), the Order requires the Council to publish an updated plan on the port website and to display one in the Port Office within 30 days of the alteration. The Council's byelaw and general direction enforcement powers can be exercised over the entire area of jurisdiction (port limits below mean high water springs and the port premises).</p>	<p>Due to the proposed repeal of the majority of current statutory harbour legislation it is important that the Council's jurisdiction as Statutory Harbour Authority is clearly set out in this article. The current limits are not entirely clear in respect of some parts of the Port due to the complex existing local legislation. Therefore it is conducive to the efficient and economic management of the port to express them clearly in the Order and to deposit plans of each area with the Order (see the four plans deposited with the Order).</p> <p>The clarified harbour limits are important to secure the management of the Port in an efficient and economical manner because they remove the uncertainty over which land (including land covered by water) forms part of the current harbour undertaking.</p> <p>This article is authorised by paragraph 6 of Schedule 2 to the 1964 Act, as follows:</p> <p><i>“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 for limited purposes) such limits as previously settled.”</i></p>
<p style="text-align: center;">5</p> <p>General Functions</p>	<p>This article provides that Council may take such steps as it may consider necessary or desirable from time to time for the operation, maintenance, management and improvement of the Port and its facilities.</p>	<p>Article 5 is required as it authorises the Council to improve maintain, regulate, manage, mark and light the port and provide port facilities; carry out various activities related to works, structures and equipment at the port (including the port premises) and do all other things which in its opinion are expedient to facilitate the proper operation, improvement or development of the undertaking, including purchase of land.</p>

		<p>The definition of port facilities highlights the importance of the shipping, fishing, leisure, recreational and tourism industries to the future viability of the port.</p> <p>Article 5 is authorised by paragraph 3 of Schedule 2 of the 1964 Act:</p> <p><i>"Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of- (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".</i></p> <p>In respect of the undertakings that together form the Port, the current local legislation relating to the Port does not include a general statement of the Council's statutory functions. In addition, the majority of this legislation will be repealed under the provisions of the Order and it is considered that in the interests of clarity it is desirable that the Council's powers to carry out the matters set out in article 5 should be set out expressly, rather than relying on implied powers.</p>
<p>6 Advisory bodies</p>	<p>This article covers the establishment of an external advisory body with an independent chairperson.</p>	<p>Article 6 is required because it puts on a statutory basis the establishment and continuance of an advisory group or groups for the harbour and its administration.</p> <p>Importantly it also requires the Council to consult the advisory group on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the Port and its navigation. This is in line with the requirement set out by section 14(2)(b) of the 1964 Act to secure the management of the Port <i>"In an efficient... manner or of facilitating the efficient and economic transport of goods or passengers by sea."</i></p>

<p style="text-align: center;">7 Application of finances</p>	<p>This article provides that the Council shall apply the harbour revenue in a manner following and not otherwise-</p> <p>(a) first in payment of the working and establishment expenses and costs of maintenance of the port;</p> <p>(b) secondly in payment of the interest on any moneys borrowed by the Council for the port under any statutory borrowing power;</p> <p>(c) thirdly in payment of all other expenses properly chargeable to port revenue;</p> <p>(d) fourthly to an account established as a reserve fund for the port; and</p> <p>(e) fifthly any surplus may be transferred to the Council's general fund.</p>	<p>Although some of the benefits of surplus funds being ring fenced for the benefit of the harbour undertaking are highlighted in paragraph 4.19 of the Ports Good Governance Guidance (March 2018), the existing statutory local legislation is either silent as to the application of funds or expressly permits transfer of surplus funds to the borough fund of the Council.</p> <p>The Council has successfully managed the Port for decades, ensuring substantial investment in it. During this time, the Port has generated sufficient surplus to both properly fund it and allow for transfer of funds annually to the general fund of the Council, supporting vital Council services. Article 7 of the Order therefore maintains the current position.</p> <p>Article 7 is authorised by paragraph 13 of Schedule 2 of the Harbours Act 1964:</p> <p style="text-align: center;"><i>“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”</i></p>
<p style="text-align: center;">8 Reserve fund</p>	<p>This article provides that the Council shall establish and maintain a general reserve fund for the port and carry to such a fund any part of the port revenue as is available for the purpose.</p>	<p>This article is required because It is an essential part of prudent financial management that the Council should have the power to maintain a reserve fund to enable the Council to plan for future expenditure across the port in an economic and efficient manner.</p> <p>Article 8 is authorised by paragraph 13 of Schedule 2 of The 1964 Act:</p> <p style="text-align: center;"><i>“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”</i></p>
<p style="text-align: center;">9 Borrowing 10</p>	<p>These articles provides that the Council may borrow such sums of money as it thinks necessary for the purpose of meeting its obligations in carrying out its functions and that it may secure such borrowing against its port assets and/or</p>	<p>These articles are required as they reflect modern statutory harbour borrowing powers, such as article 9 of the proposed HRO which can be seen in the powers conferred by article 9 of the Weymouth Harbour Revision Order 2021.</p>

<p>Temporary borrowing</p>	<p>revenues, and includes a power to borrow temporarily by way of overdraft or otherwise.</p>	<p>There is no need to place a limit on the amount of money which can be borrowed by the Council, because, in reality its borrowings will be limited by the amount a lender is prepared to loan them. In addition, the unlimited borrowing power will avoid the requirement for an Order at a future date to extend the borrowing powers as the value of money decreases as a result of inflation.</p> <p>This article is authorised under paragraph 10 of Schedule 2 of the 1964 Act, as follows:</p> <p><i>“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.”</i></p>
<p>11 Aids to navigation</p>	<p>This article provides that the Council may, with the approval of Trinity House, erect, place, alter, discontinue or remove any aids to navigation in any place adjacent to the port (subject to obtaining the necessary interest in or over land).</p>	<p>This power is important for enabling the Council to meet its navigational safety duties and is therefore consistent with section 14(2)(b) of the 1964 Act to secure the management of the harbour <i>“In an efficient... manner or of facilitating the efficient and economic transport of goods or passengers by sea.”</i></p>
<p>12 Repair of Landing places etc</p>	<p>This article provides that the Council may by notice require the owner or occupier of any landing place, jetty, embankment or structure or other work in the port or on land immediately joining the waters of the port to repair it, within a reasonable time, to their reasonable satisfaction, if it is a danger to persons or vessels using the port or a hindrance to navigation of the port. The provision provides for a level 4 fine for non-compliance (on summary conviction) and a power for the Council to carry out the works and recover the cost from the person on whom the notice was served. There is right of appeal.</p>	<p>This power is important for assisting the Council in meeting its duties with regard to navigational safety and the safety of port users. Due to the potential safety implications of failure to comply, a level 4 fine is justified. Similar provisions can be found in article 38 of the Weymouth Harbour Revision Order 2021.</p> <p>This article relates to navigational safety in that it applies to features which are dangerous to persons or vessels using the Port or a hindrance to the navigation of the Port and is therefore desirable in the interests of securing the improvement, maintenance or management of the Port in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p>
<p>13 Restriction of works and</p>	<p>These articles provide the Council with modern powers regarding works and dredging carried out by third parties within the port limits. The</p>	<p>The provisions are important to enable the Council to comply with its duties related to navigational safety and in respect of the environment (in particular s48A 1964 Act). As such the level 4 fine in article 13 and</p>

<p>dredging</p> <p>14 Control of certain operations and works of statutory undertakers</p> <p>15 Licencing of works</p> <p>16 Licence to dredge</p> <p>17 Appeals in respect of works or dredging licences</p>	<p>provisions include requirements to obtain a licence from the Council prior to the undertaking of any works or dredging within the Port.</p>	<p>the level 3 fines in articles 14 and 18 for breach are considered appropriate and proportionate.</p> <p>Similar provisions can be found in articles 8-10 of the Watchet Harbour Revision Order 2000 and article 7 of the Port of Tyne Harbour Revision Order 2001.</p> <p>The restriction in article 13 does not apply to any operations or works authorised by, or carried out under the authority of the King's Harbour Master.</p> <p>Under article 16, approval of the King's Harbour Master is required before depositing any dredged material within the Port below the line of mean high water spring tides.</p> <p>With regard to these provisions generally, paragraph 17 of Schedule 2 provides that a Harbour Revision Order may include provision for:</p> <p><i>“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.”</i></p> <p>And, as such, it is considered that these articles are justified.</p>
<p>18 Obstruction of works</p>	<p>This article provides that any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of, or in construction of any works authorised by any enactment, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purposes of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale</p>	<p>The Council must be able to enforce against those who may interfere with works as described in this article to allow it to meet its duties as to safety. This HRO provides for (as described immediately above) the power of the Council to licence works and as such the Council must be able to secure said works and protect them from unauthorised obstruction or other interference. As such, a level 3 fine on the standard scale is considered justified. Such enforcement powers are desirable in the interests of securing the safe and efficient management of the Port, and will assist the Council in compliance with the Port Marine Safety Code to comply with the duties they are subject to under local and national legislation.</p>

<p>19 Parking places</p>	<p>This article provides that the Council may provide parking spaces and connected works within the port.</p>	<p>This power has been expressly included because the Port contains a number of car parks which form part of the undertaking.</p> <p>Similar provisions can be found in some of the existing legislation that applies to the Portsmouth International Port (repealed under the proposed Harbour Revision Order) and article 20 Penzance Harbour Revision Order 2009.</p> <p>With regard to the provision of parking, Paragraph 17 of Schedule 2 of the 1964 Act provides that a Harbour Revision Order may include provision for:</p> <p><i>“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.”</i></p> <p>And, as such, it is considered that this article is justified.</p>
<p>20 Removal of vehicles and vessels</p>	<p>This article authorises the Council to remove vehicles and vessels from the port that have been left in a place where they will or are likely to interfere with the use of the port or in any part of it where parking is prohibited.</p>	<p>This power is important in assisting the Council in managing efficiently traffic within the Port and ensuring compliance with the Open Port Duty (in relation to vessels). Similar provisions can be found in some of the existing legislation that applies to Portsmouth International Port (repealed under the proposed Harbour Revision Order) and in article 22 Folkestone Harbour Revision Order 2017 and article 21 Penzance Harbour Revision Order 2009.</p> <p>This article is also desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act as the Council must be able to remove vehicles and vessels that contradict a prohibition notice (which must be conspicuously placed where appropriate) or that otherwise cause an obstruction or interfere with the use of the port. It would not be consistent with section 14(2)(b) of the 1964 Act if the Council were not afforded this express power.</p>

		<p>The article also provides the Council with the “lawful authority” required under section 52(1) of Part 4 Chapter 2 of the Protection of Freedom Act 2012, to remove vehicles, as the Council ought not commit an offence if it removes vehicles in such circumstances, for the reasons set out above.</p> <p>Finally, it is considered that the interests of people who aren’t the Council and otherwise entitled to remove said vehicles are sufficiently safeguarded by the provisions of 20(2) – (7).</p>
<p>21 Byelaws</p>	<p>This article provides the Council with the power to make byelaws in a range of circumstances (set out in Schedule 1) in addition to the purposes in s83 of the Harbours, Docks and Piers Clauses Act 1847 and is in line with the modern practice of setting out a wide range of matters upon which the Council will have the power to make byelaws.</p>	<p>The power in this article incorporates the purposes in s83 of the Harbours, Docks and Piers Clauses Act 1847 and is in line with the modern practice of setting out a wide range of matters (contained in Schedule 1) upon which the Council will have the power to make Byelaws.</p> <p>The alternative practice is to set out a more general range of byelaw making powers and rely on the width of the wording of the provision to cover the full range of matters set out in Schedule 1. However, setting out the detail in this way reduces the scope for challenging any prosecution on the basis that the byelaw in question is outside the range of matters for which the Statutory Harbour Authority has the power to make byelaws. This leads to increased costs and delays in prosecutions and therefore the more modern approach is to set out expressly a wider range of byelaw making powers.</p> <p>A similar approach can be found in article 20 and Schedule 1 of the Weymouth Harbour Revision Order 2021.</p> <p>Historically, there has been little need to initiate any prosecutions at the Port for breach of byelaws as port users have complied with the instructions of the harbour master. Nevertheless, to comply with the Port Marine Safety Code (PMSC) and to meet its other duties (including navigational safety), it is important that the Council have modern and comprehensive byelaw making powers. It is anticipated that the current byelaws in place at the port will be reviewed and it is likely that they will be repealed and replaced with General Directions following grant of the</p>

		<p>Order. However, it is important that the Council retains wide byelaw making powers in case it needs to introduce new byelaws in the future in respect of a risk not covered by the modernised power of General Direction sought below.</p> <p>The power to make byelaws is authorised by paragraph 4 of Schedule 2 of the 1964 Act:</p> <p><i>“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.”</i></p>
<p>22 Confirmation of Byelaws</p>	<p>This article sets out the procedure by which byelaws made under the Order shall be confirmed under the Local Government Act 1972.</p>	<p>This provision is incidental to the power to make byelaws as described above and is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner.</p> <p>A similar provision can be found in article 25 of the Folkestone Harbour Revision Order 2017</p>
<p>23 Power to make general directions as to use of the port, etc</p> <p>24 Procedure for giving, amending or revoking general directions</p> <p>25</p>	<p>These articles provide the Council with modern powers of General Direction and extend the standard power to cover vehicles and directions given for the ease, convenience or safety of port operations ashore (as defined under the Order). They also set out the consequences of failing to comply with a General Direction.</p> <p>These powers are required to support the effective management of the Port as recommended in the Port Marine Safety Code and, in relation to vehicles and port operations ashore, are consistent with the powers in section 14(3) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of</p>	<p>The Port Marine Safety Code, advises at paragraph 2.5 of Chapter 2 that:</p> <p><i>“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.”</i></p> <p>The Council does not have existing powers of General Direction or Harbour Direction. The process for keeping General Directions up to date is far more time and cost efficient than the byelaw making process, and due to the inclusion of the King’s Harbour Master and the Portsmouth International Port User Group as ‘designated consultees’ it contains a strong local consultation requirement.</p>

<p>Publication of general directions</p> <p>27 Priority of directions</p> <p>28 Failure to comply with directions</p> <p>29 Enforcement of directions</p>	<p>Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the harbour.</p>	<p>Therefore, in line with the Port Marine Safety Code, the Council is applying for a modernised power of General Direction that will enable the Council to repeal its existing byelaws and instead have in place a single set of General Directions. In line with best practice, article 24 of the proposed order provides a statutory right for ‘designated consultees’ to be consulted about proposed General Directions (see article 24(1)(a) and (c)).</p> <p>As stated above, the King’s Harbour Master and the Portsmouth International Port User Group will be a ‘designated consultee’ within article 24(1)(a) alongside the Chamber of Shipping and the Royal Yachting Association. In addition article 27 of the Order maintains the priority of directions given by the King’s Harbour Master over those given by the Council or its harbour master.</p> <p>The proposed harbour revision order itself, only grants the power to make General Directions. General Directions can be made over the entirety of the port limits (which, as explained under article 4 above include the port premises). Any future exercise of this power will be exercised in accordance with article 24. This means that representations received from the designated consultees will be considered by the Council 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 24. The process contained in article 24 is likely to be acceptable to the Royal Yachting Association as a similar adjudication process is contained within the Shoreham Port Authority Revision Order 2021, Fowey Harbour Revision Order 2021 and the Dart Harbour and Navigation Order 2021.</p> <p>In terms of the precise scope of General Directions, it will be seen that article 23(1) would allow the Council to give or amend directions for the purposes of promoting or securing directions for the “<i>ease, convenience or safety of navigation, the safety of persons, the protection of property, flora or fauna, and the ease, convenience or safety of port operations ashore within the port</i>”.</p>
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		<p>paragraph 16A:</p> <p><i>“Imposing or conferring on the authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features.”</i></p>
<p>26 Special directions</p> <p>27 Priority of directions</p> <p>28 Failure to comply with directions</p> <p>29 Enforcement of directions</p>	<p>These articles provide the Council’s harbour master with modern powers of Special Direction and set out the level of fine (article 28 – see above).</p>	<p>The Council already has powers of special direction and the power to move vessels who do not comply with certain directions under sections 52 and 58 of the Harbours, Docks and Piers Clauses Act 1847 respectively as incorporated by section 4(1) of the 1971 Act. Nevertheless, it is considered conducive to the management of the port in an efficient and economical manner for the Council to be provided with a modern express power as set out under the Order.</p> <p>These articles are authorised by Schedule 2 to the 1964 Act include, in particular:</p> <p>paragraph 3:</p> <p><i>Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—</i></p> <p><i>(a)improving, maintaining or managing the harbour;</i></p> <p><i>(b)marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or</i></p> <p><i>(c)regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.</i></p> <p>paragraph 4:</p> <p><i>“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”.</i></p>

<p>27 Priority of Directions</p>	<p>This article provides that if there is any conflict between a direction given by the King's Harbour Master and a direction given by the harbour master of the Council, the direction of the King's Harbour Master will prevail.</p>	<p>This article is required, because as already stated the Port is situated within the Dockyard Port of Portsmouth. It is also reflective of provisions contained in some of the existing local legislation applying to the Port, which is being repealed under the Order.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner.</p>
<p>30 Master's responsibility in relation to directions</p>	<p>This article preserves the responsibility of the Master of a vessel to the Master's vessel, persons on board it, its cargo and any other persons or property.</p>	<p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner.</p>
<p>31 Saving for existing directions, byelaws etc</p>	<p>This article provides a standard saving for existing byelaws, directions etc.</p>	<p>This is a standard provision required to ensure that the provisions of the Order do not affect the status of existing byelaws, directions etc following the coming into force of this Order.</p> <p>Due to the proposed repeal of the majority of the local legislation currently in force in respect of the Port, it is necessary to include a saving provision for existing byelaws directions etc to ensure that they do stay in force. They will then remain in force until replaced in the future.</p> <p>This provision is incidental to the power to make byelaws and general directions that are being introduced under the provisions of the HRO, and is therefore consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner.</p>
<p>32 Charges other than ship passenger and goods dues</p>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 of the 1964 Act, the Council may demand, take and recover reasonable charges in respect of all vessels. It also states that charges may be made in respect of a variety of other floating platforms etc. so that no dispute will arise as to whether such</p>	<p>The articles contained within Part 5 of the Order (Charges) set out the Council's powers with respect to charges it may levy. They are reflective of modern statutory harbour powers relating to charges and conducive to the improvement, maintenance or management of the port in an efficient and economical manner. A similar suite of powers conferred by articles 31 – 41 has been conferred in articles 10 -19 of the Weymouth Harbour Revision Order 2021.</p>

	<p>structures fall within the definition of vessel contained within the Order.</p>	<p>This article is important as it is important to future viability that all users of the Port contribute to the cost of the management and maintenance of the Port. It would be detrimental to the improvement, maintenance or management of the Port in an efficient and economical manner if charging powers did not to exist in respect of one type of vessel or floating structure using the Port. This article is also important because the Order provides for the existing charging provisions in current local statutory harbour legislation to be repealed.</p> <p>This article is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p><i>“empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p>
<p>33 Charges for services or facilities</p>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 of the 1964 Act, the Council may demand, take and recover reasonable charges for services and facilities provided by it.</p>	<p>This provision is common as it is required for a Port to be managed economically and efficiently.</p> <p>This article is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p><i>“empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p> <p>This is pursuant to securing the improvement, maintenance and management of the harbour in an efficient and economical manner.</p>
<p>34 Payment of charges</p>	<p>This article provides that charges are payable before the vessel or goods against which they are payable are removed from the port (including the port premises), and that if payment is not made by the time it falls due, that the Council may refuse entry to the port to the vessel or goods (and any other vessels or goods owned by the owner or master) until such time as the charges have been</p>	<p>This article is included to ensure that the payment of charges authorised to be levied are consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner. For these purposes, it is essential that the HRO is clear as to when charges must be paid and from whom charges must be taken. It would be counter-productive to exclude such a provision from the HRO as this</p>

	<p>paid. It also sets out who charges are payable by and who they can be recovered from and when.</p>	<p>would negatively impact the Council's ability to efficient and economically manage the harbour.</p> <p>Furthermore, this article is authorised by paragraph 12 of Schedule 2 of the 1964 Act in that is secures:</p> <p><i>"... 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."</i></p> <p>Subsection (5) in particular is required as it is important for the Council to be able to secure the charges due to the Council. The ability to refuse entry, detain or remove vessels or goods is necessary as a deterrent against avoiding charges that are due, until such time as those charges are paid. It would otherwise become very difficult for the Council to recover the charges. Additionally, this article is required for effective enforcement as it provide for enforcement to take place after goods or Vessels have left the Port. On this basis, subsection (5) is consisted with section 14(2)(b) and Schedule 2, paragraph 12 of the 1964 Act set out above.</p>
<p>35 Compounding arrangements and rebates</p>	<p>This article provides the Council with a power to confer exemptions from dues, allow rebates or make compositions with any person with respect to charges. In addition, it provides that the Council does not have to include on its list of ship, passenger and goods dues kept at the port office, charges which have been reduced by a rebate or a compounding arrangement in respect of a due included on the list.</p>	<p>This article is important to enable the Council to act in a commercial manner when entering into arrangements with customers, thereby managing the harbour in an efficient and economical manner. This would be extremely difficult if the Port was required to publish commercially sensitive information.</p> <p>The great majority of ports operate on a commercial basis, in competition with each other (domestically and abroad) and in some cases with other modes of transport. This is recognised by the Ports Good Governance guidance at paragraph 1.15. The commercial relationship formed with port stakeholders in particular is also recognised at paragraph 2.10 and 2.11, and paragraph 2.28 specifically states:</p> <p><i>"All SHAs are encouraged to consider meeting the reasonable requests for information from stakeholders, where practical. This does not mean that SHAs should be expected to make available information that is commercially or otherwise sensitive..."</i></p>

		<p>On this basis, it is considered that this article is consistent and with the Ports Good Governance Guidance and is therefore justified.</p> <p>A similar article can be found in, for example, the recent Weymouth Harbour Revision Order 2021.</p>
<p>36 Deposit for charges</p>	<p>This article provides that the Council may require from a person who incurs or is about to incur a charge with them, a reasonable deposit or guarantee. It also provides the Council with the power to detain a relevant vessel or goods until the deposit has been paid or the required guarantee made.</p>	<p>It is essential for the economic management of the Port to be able to secure the reasonable charges due to it by virtue of their charging powers under the local legislation applying to the Port, the 1964 Act or otherwise. Should it become apparent that such a guarantee is not going to be provided by the person from whom it is due, then until such guarantee is received the SHA need to be able to secure the interests of the Port by removing the relevant vessel or goods from the Port or refuse entry.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner.</p> <p>Furthermore, this article is authorised by paragraph 12 of Schedule 2 of the 1964 Act in that it secures the efficient collections of charges levied by the SHA:</p> <p><i>“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.”</i></p>
<p>37 Liens for charges</p>	<p>This article provides for a right of lien over goods in the possession or custody respectively of a person collecting charges on behalf of the Council or, a wharfinger or carrier, who has paid or given security for charges on those goods.</p>	<p>This is a standard provision included to secure the financial interests of those who by agreement with the SHA collect charges on its behalf, by securing said interest against goods in their possession. As that person will not themselves be liable for the payment of charges, this provision is required to secure debts owed.</p>
<p>38</p>	<p>This article provides that a vessel may be prevented from using a landing place supplied by</p>	<p>It is essential for the economic management of the Port for the Council to be able to secure the reasonable charges due to it by virtue of their charging powers under the local legislation applying to the harbour, the</p>

<p>Refusal to pay charges for landing places, etc.</p>	<p>the Council, if the master of the vessel refuses to pay the related charges.</p>	<p>1964 Act or otherwise. Therefore, the Council must be able to prevent vessels from sailing or using facilities at the harbour (such as a landing place or mooring) in the event that the master of a vessel refuses to pay the reasonable charge required, as authorised under the HRO.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the Order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner. Furthermore, this article is authorised by paragraph 12 of Schedule 2 of the 1964 Act in that it promotes securing the efficient collections of charges levied by the Council:</p> <p><i>“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.”</i></p>
<p>39 Exemptions from harbour dues</p>	<p>This article provides for an exemption for harbour dues for certain vessels, persons and government departments (or their current equivalent).</p>	<p>This article is similar to other modern provisions providing for an exemption for harbour dues for certain vessels, persons and government departments (or their current equivalent) whilst in the exercise of their core duties.</p> <p>This article is authorised by paragraph 14 of Schedule 2 to the 1964 Act, as follows:</p> <p><i>“Varying or extinguishing any exemption from charges levied by the authority at the harbour or any other right or privilege enjoyed thereat.”</i></p>
<p>40 Recovery of charges</p>	<p>This article provides that in addition to any other powers of recovery available to it, the Council may recover any charges payable to it as a debt in Court.</p>	<p>It is essential for the economic management of the Port to be able to secure the reasonable charges due to them by virtue of charging powers under the local legislation applying to the Port, the 1847 Act incorporated with the Order or otherwise. Therefore, the Council must be able to rely on the resources of the Court to assist in securing any debts owed to them should their existing powers of recovery be insufficient to secure the debt.</p>

		<p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner.</p>
<p>41 Harbour master may prevent sailing of vessels</p>	<p>This article provides that the Harbour Master may prevent the removal or sailing from the harbour of any vessel until evidence is produced that any charges payable in respect of the vessel, its passengers or goods have been paid.</p>	<p>It is essential for the economic management of the Port for the Council to be able to secure the reasonable charges due to them in relation to:</p> <ul style="list-style-type: none"> - the vessel; - passengers on the vessel; and - goods imported, exported or carried on the vessel. <p>by virtue its powers under the local legislation applying to the Port or otherwise. Therefore, the harbour master is required to have an express power to prevent the sailing and / or removal of a vessel from the Port until such a time as the charges payable have been paid. Should such a vessel be able to leave the Port without having paid the charges due, it would become difficult for the Council to recover said charges and therefore be detrimental to its ability to manage the Port in an economically efficient manner.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner.</p>
<p>42 Power to dredge</p>	<p>This article provides the Council with a power to dredge.</p>	<p>The power to dredge is a standard statutory harbour power. Presently the Council has the power to dredge in the Port and approach channels (subject to the prior consent of the King's Harbour Master) under the local acts applying to it. However, almost all of these powers are being repealed under the proposed Order and replaced with a single, clear and modern power to dredge of the entirety of the "port" as defined in article 2.</p> <p>Dredging is required at Portsmouth International Port and the Camber on a regular basis. It is anticipated that this will continue in the future. It is therefore important that following the HRO coming into force and most</p>

		<p>historic dredging provisions being repealed, the Council is provided with a modern power which applies over the entirety of the “port” (as defined under article 2 of the proposed HRO). The article maintains the requirement to obtain the consent of the King’s Harbour Master prior to dredging within the limits of the Dockyard Port of Portsmouth under paragraph (2).</p> <p>If dredging is carried out at the Port under the provision in the future, then in line with section 75 of the Marine and Coastal Access Act 2009, the Council will not need to obtain a marine licence for the dredging activity. However, if disposal to sea is required in the future, then a marine licence will be required for this disposal.</p>
<p>43 Power to lay down moorings</p> <p>44 Power to license moorings</p> <p>45 Offences as to moorings</p>	<p>These articles provide the Council with powers related to the provision, maintenance and licensing of moorings within the Port.</p>	<p>It is considered that modernised express provisions are conducive to the efficient and economical management and maintenance of the Port.</p> <p>Similar provisions are found within articles 14-17 of The Yarmouth (Isle of Wight) Harbour Revision Order 2011, articles 9-11 of The Poole Harbour Revision Order 2012, article 18 of The Watchet Harbour Revision Order 2000 and article 21 of The Burry Harbour Revision Order 2000.</p> <p>These articles provide for a level 4 fine for failure to comply with its requirements. This level of fine is required firstly to ensure that there is a sufficient level of deterrent (moorings in the Port can be used to generate income. The level of fine needs to be in excess of likely income generation) and secondly, a mooring obstructing safe navigation in the Port will constitute a navigational hazard and can interfere with the operation of the Open Port Duty. As such it is considered that a level 4 fine is justified.</p>
<p>46 Development of Land</p>	<p>This article provides that the Council may use or develop for any purpose, and deal with, any land within or in the vicinity of the Port; or form invest in and promote, or join with another person in forming, investing in and promoting a company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the Port.</p>	<p>Article 46(2) provides that a company established under paragraph 46(1)(b) may have powers to do anything necessary for the purposes of the objects for which it has been established notwithstanding that the Council would not itself themselves have the power to do that thing.</p> <p>Article 46, as far as applying to land not required for the port, is authorised by paragraph 9A of Schedule 2 of the 1964 Act:</p>

		<p><i>"Empowering the authority (alone or with others) to develop land not required for the purposes of the harbour with a view to disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land".</i></p> <p>So far as relating to port premises, it is considered this article is authorised by paragraph 17 of Schedule 2 which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out below as an integral justification this article.</p> <p>The purpose of this article is to give the Council the flexibility, subject to obtaining the necessary rights in or over land, to exploit opportunities to develop land (including harbour land) to maximise the efficient utilisation, maintenance, operation and improvement of the Port. The profits and revenues derived from the development of any land under this article would be used to provide increased financial security.</p> <p>It should be noted that the powers in this article can only be exercised if "it is conducive to the improvement, maintenance, operation or management of the port in an efficient and economical manner". This limitation brings this article within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers to those in article 45 were conferred by article 29 of the Weymouth Harbour Revision Order 2021.</p>
<p>47 Power to grant tenancies and to dispose of land</p>	<p>Paragraph (1) gives power to the Council, for the purposes of or in connection with the carrying on of the undertaking, to grant leases and other rights or interests over their land or other property forming part of the Port.</p> <p>Paragraph (3) provides that the Council may also dispose of, or grant the use or occupation for any purpose of, land or property if they consider that</p>	<p>Paragraph (1), which is needed to manage the Port, is authorised by paragraph 3(a) of Schedule 2 of the 1964 Act which relates to powers conferred for the purposes of "improving maintaining or managing the harbour."</p> <p>Paragraph (3)(a) is authorised by paragraph 9 of Schedule 2: <i>"Empowering the authority to dispose of property vested in them and held for the purposes of the Port which is no longer required for those purposes"</i>.</p>

	<p>the property is surplus to Port requirements; or it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner for the property to be held by a person other than the Council.</p>	<p>It is considered that paragraph (3)(b) is authorised by paragraph 17 of Schedule 2 which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the Port. The case for this is set out as an integral part of the need for this article. Paragraph (1) and paragraph (3)(a) are needed to enable the Council to manage the Port undertaking effectively.</p> <p>These powers are similar to the powers conferred by article 30 of the Weymouth Harbour Revision Order 2021.</p> <p>Paragraph (3)(b) would enable the Council to grant leases or transfer land or property to a subsidiary or other body. This power is needed to enable the Council to have sufficient flexibility in how to structure the undertaking in the future. The power in paragraph (3)(b) is only exercisable if “it would conduce to the improvement, maintenance, operation or management of the port in an efficient and economical manner”.</p> <p>This limitation brings paragraph (3)(b) within the powers of section 14(2)(b) of the 1964 Act.</p>
<p>48 Power to appropriate lands and works for particular uses, etc.</p>	<p>This article provides that the Council may from time to time for the purpose of or in connection with the management of the Port set apart and appropriate any part of the Port vested in, occupied or administered by the Council as part of the undertaking for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.</p>	<p>Section 33 of the Harbours, Docks and Piers Clauses Act 1847 is incorporated into the Order (the Open Port Duty) and as such the Council remain under a duty to keep the Port open for the shipping and unshipping of goods, and the embarkment and landing of passengers. Therefore, the power of this article will only ever operate insofar as it does not otherwise conflict with the duty under section 33 of the 1847 Act.</p> <p>In addition, the power under this article must only be exercised for the “purpose of or in connection with the carrying on of the port undertaking” and not for wider purposes. This article is therefore within the scope of section 14(2)(b) of the 1964 Act in that it will assist the Council in the management of the port in an efficient manner and</p>

		<p>facilitate the efficient and economic transport of goods and passengers by sea, again for port purposes only.</p>
<p>49 Other commercial activities</p>	<p>Paragraph (1)(a) provides that the Council may carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person. Paragraph (1)(b) enables the Council to form, invest in and promote, or join with another person in forming, investing in and promoting, a company for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind.</p> <p>Paragraph (2) provides that a company established under article 49(1)(b) may have powers to do anything necessary or expedient for the purposes of the objects for which it has been established notwithstanding that the Council would not itself (as harbour authority) have the power to do that thing.</p>	<p>It is considered that this article is authorised by paragraph 17 of Schedule 2 of the 1964 Act which enables a provision to be included in a Harbour Revision Order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the Port. The case for this is set out below as an integral part of the need for this article.</p> <p>Paragraph (1)(a) would assist the Council to maximise the potential of the undertaking by enabling them to carry on any business which could conveniently be carried on with the undertaking. For example, the Council could utilise and develop the skill and experience of its staff by providing services to other harbour undertakings or to carry out business activities which are incidental to running a Port.</p> <p>Paragraph (1)(b) would enable the Council to carry on such a business as part of a joint venture with another person or persons, for example enabling the Council to contribute land and/or port related expertise to the venture while the other party contributes complementary specialist business expertise. The profits and revenues derived from the business ventures under this article would be used to ensure increased financial security.</p> <p>It should be noted that the powers in this article can only be exercised if “it conduces to the improvement, maintenance, operation or management of the Port in an efficient and economical manner”. This limitation brings this article within the powers of section 14(2)(b) of the 1964 Act (set out above).</p> <p>Similar powers were conferred by article 32 of the Weymouth Harbour Revision Order 2021.</p> <p>It is considered that this article is authorised by paragraph 17 of Schedule 2 of the 1964 Act which enables a provision to be included in a harbour revision order if the object of the provision appears to the</p>

		MMO to be one the achievement of which will conduce to the efficient functioning of the Port.
50 Power to delegate functions	This article provides that the Council may delegate the performance of any of their functions to be carried out by any such company as referred to in article 49(1)(b).	<p>This article is authorised by paragraph 9B of Schedule 2 of the 1964 Act:</p> <p><i>"Empowering the authority to delegate the performance of any functions of the authority except- (a) a duty imposed on the authority by or under any enactment; (b) the making of byelaws; (c) the levying of ships, passenger and goods dues; (d) the appointment of harbour, dock and pier masters; (e) the nomination of persons to act as constables; (f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and seamarks, so far as those functions are exercisable for the purposes of the safety of navigation."</i></p> <p>The power to delegate functions is needed to enable the Council to carry out day to day activities through a subsidiary or joint venture company. The power does not apply to the key functions which cannot be delegated under paragraph 9B of Schedule 2 to the 1964 Act.</p>
51 Bunkering	This article provides the Council with powers in relation to licensing those persons carrying out commercial refuelling activities related to vessels in the Port.	<p>To comply with the environmental duties contained in s48A of the Harbours Act 1964, the Council considers that it is important that it has express powers to licence such activities so that proper risk assessments can be carried out and persons carrying out such activities can be required to comply with terms and conditions, designed to mitigate against risks associated with such activities (including environmental). Due to the fact that such operations are being carried out commercially and the potential environmental implications it is considered that a level 4 fine is justified.</p> <p>Similar powers were conferred by article 35 of the Weymouth Harbour Revision Order 2021.</p>
52 Power with respect to disposal of wrecks	This article extends the powers of the Council under section 252 to the Merchant Shipping Act 1995. In particular it extends the circumstance in which the Council may recover expenses reasonably incurred by them in exercising said	This extension of the power in section 252 to the Merchant Shipping Act is common and important if the Port is to be run in an efficient and economic manner. Similar provisions can be found in article 39 of the Weymouth Harbour Revision Order 2021.

	power from the owner of any such vessel. The provision includes notice requirements to the owner of the vessel and a period in which the vessel owner may dispose of the vessel itself.	
53 Power to deal with unserviceable vessels	This article provides that the Council may sell, break up or otherwise dispose of any vessel which is unserviceable and had been laid by or neglected in the Port or on land immediately adjoining the Port.	<p>This article applies in addition to the power under section 57 of the Harbours, Docks and Piers Clauses Act 1847 (unserviceable vessels to be altogether removed from harbour) and allows the Council to recover its costs for the exercise of removing unserviceable vehicles laid or neglected within the Port.</p> <p>This article is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p>
54 Removal of obstructions other than vessels	<p>This article provides that the Council may remove anything other than a vessel which is causing or likely to become an obstruction to, or cause interference with navigation in any part of the Port or its approaches.</p> <p>The provision deals with the recovery of costs by the Council of reasonable expenses incurred by them in relation to the exercise of the power and sale of the item(s) recovered. The provision includes notice requirements. Where the Council disposes of property the Council must display a notice in the port office and on its port website for a period of 28 days and if there is any surplus proceeds pay it to Owner if claimed within 24 months.</p>	This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of port users, and important if the Port is to be run in an efficient and economic manner. Similar provisions can be found in article 41 of the Weymouth Harbour Revision Order 2021 and article 8 of the Portland Harbour Revision Order 1997.
55	This article provides that a duly authorised officer of the Council may, on producing if so required their authority, enter and inspect a vessel or	This article will also assist in securing the improvement, maintenance or management of the harbour in an efficient and economical manner

<p>Boarding of vessels and vehicles</p>	<p>vehicle in the Port for the purposes of any enactment relating to the Port (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the Port, including the enforcement of any such enactment, byelaw or general direction.</p>	<p>or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p>
<p>56 Notices</p>	<p>This article has been included at the request of the Marine Management Organisation. It sets out how notices required under the Order are served.</p>	<p>This article is conducive to the efficient management of the Port as required under section 14(2)(b) of the 1964 Act, clearly setting out the procedural requirements for Notices required under the Order.</p>
<p>57 Savings for Trinity House</p> <p>58 Savings for the King's Harbour Master</p> <p>59 Crown Rights</p>	<p>These articles contain standard saving provisions for Trinity House, the King's Harbour Master and the Crown</p>	<p>No further justification required.</p>
<p>60 - 66 Amendments to local Acts and Orders.</p>	<p>These articles provide for the amendment of the following pieces of local legislation in the manner as follows:</p> <p>The Portsmouth Camber Dock and Flathouse Wharf Order 1911</p> <p>Because this Order will remain in force, the definition of the "Corporation" is updated to mean "Portsmouth City Council" to better reflect the modern position of the Council.</p> <p>The Portsmouth Corporation Act 1959</p>	<p>The amendments are necessary as a result of the repeals and revocations contained in article 67 and Schedule 2 of the proposed HRO and the replacement definition of the port limits contained within it.</p> <p>Article 59 is authorised by Paragraph 3 of Schedule 3 of the 1964 Act: <i>"Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—</i></p> <p><i>(a)improving, maintaining or managing the harbour;</i></p>

	<p>The definition of “vessel” is updated to the definition included in the proposed HRO for consistency.</p> <p>The Portsmouth (Pilotage) Harbour Revision Order 1988</p> <p>The definition of the “existing area of jurisdiction” is updated to reflect the modern position in accordance with the proposed HRO.</p> <p>The Portsmouth (Pilotage) Harbour Revision Order 1992</p> <p>The definition of the “existing area of jurisdiction” is updated to reflect the modern position in accordance with the proposed HRO.</p> <p>The Portsmouth (Camber Dock) Harbour Revision Order 1995</p> <p>The existing definition of “the Camber undertaking” is updated to the definition used in the proposed HRO to ensure this is consistent and accurate.</p> <p>The Portsmouth (Millennium Waterbus Landing Stage) Harbour Revision Order 2000</p> <p>The definition of “vessel” is updated to the definition included in the proposed HRO for consistency.</p> <p>The Portsmouth (Tall Ships Berth) Harbour Revision Order 2000</p>	<p><i>(b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or</i></p> <p><i>(c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.</i></p>
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	The definition of “vessel” is updated to the definition included in the proposed HRO for consistency.	
67 Schedule 3 Repeals and revocations	This article provides for the revocation of the local legislation listed in Schedule 2 from the date of the Order.	This HRO is being promoted in accordance with the Port Marine Safety Code’s recommendation for harbour authorities to review and be aware of existing powers based in local and national legislation, seeking additional powers where necessary. The repeals set out in article 67 and the accompanying Schedule are required in conjunction with this HRO to complete the process of modernising the local legislation applying to the Council, granting the suite of modern powers and duties set out above which are consistent with section 14(2)(b) of the 1964 Act and which will assist the Council in meeting it the recommendations of the Port Marine Safety Code.
<p>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:</p> <p><i>“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.”</i></p> <p>For the reasons mentioned above, 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 Portsmouth International Port and it is therefore within the scope of the 1964 Act for them to be included in the Order.</p>		

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 SOUTH MARINE PLAN</p> <p>Portsmouth International Port is situated within the South Marine Plan inshore area. The South Marine Plan was published and adopted in 2018. It is a material consideration and as such, it is considered in this Statement of Support in addition to the UK Marine Policy Statement.</p> <p>The proposed Order is a non-works HRO (i.e. it does not authorise a plan or project). Its provisions are focused on modernising and consolidating the existing statutory powers of the Council to support the efficient and economical operation, maintenance, management and improvement of the Port. This modernisation of powers relates partly to the Council’s enforcement activities. The modernisation, amends the process by which such enforcement provisions can be made, amended and repealed (General Directions instead of byelaws).</p> <p>The proposed Order also clarifies the existing port limits to removing uncertainty over the area over which the Council’s enforcement powers can be exercised. As such it is expected that the effects of the proposed Order on the South Inshore Marine Plan area will be very limited and that any effects will be positive as the proposed Order supports the economic and efficient management of the Port (including with respect to environmental considerations). 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 consolidate and modernise the Council’s powers (in part 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). The modernisation and consolidation will support the Council 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 support the vision of ensuring that the marine environment in and around the Port 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> <p>(a) Achieving a sustainable marine economy: Marine businesses are acting in a way which respects environmental limits and is socially responsible.</p>

(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.

Compliance with South Inshore and South Offshore Marine Plan

The South Inshore Marine Plan was published in July 2018. Through its modernisation and consolidation of the Council's statutory powers, enabling the efficient and economic management of the Port and the activities that take place there, the proposed Order 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.

In addition, the proposed Order 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.'*

We are not aware of any marine planning policies that the proposed Order does not accord with.

Insert other relevant plans/policy/guidance in this section	<u>Port Marine Safety Code</u> See table 3A above.
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Table 5: Any other relevant information

No formal pre-application consultation has been carried out in respect of this application.
