



Marine  
Management  
Organisation

## Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

<b>1. Date application made to MMO</b>	19 <sup>th</sup> May 2021
<b>2. Name of primary contact</b>	Dorade Law
<b>3. Contact details of primary contact</b>	Gus Lewis, Dorade Law Tel: 01803 835187 <a href="mailto:gus.lewis@doradelaw.com">gus.lewis@doradelaw.com</a>
<b>4. Address of primary contact</b>	The Workshop, Greenhay, Muckwell TQ7 2EW
<b>5. Name of Statutory Harbour Authority</b>	North Sunderland Harbour Commissioners
<b>6. Is this a Works Order?</b>	No
<b>a. Brief description of proposed works</b>	N/A
<b>b. Date when notification of intention was submitted to MMO</b>	N/A

<p><b>c. Date when EIA screening opinion was issued by MMO</b></p>	<p>N/A</p>
<p><b>d. If screened in, date when scoping opinion was issued by MMO</b></p>	<p>N/A</p>
<p><b>e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO</b></p>	<p>N/A</p>
<p><b>7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.</b></p>	<p>This Order would alter the constitution of the North Sunderland Harbour Commissioners. This Order would provide for the Commissioners to consist of a body of 9 members, with experience in relevant matters. The harbour master would hold office as of right. The appointed Commissioners would retire in rotation.</p> <p>The Order would also—</p> <p>(a) define the limits of North Sunderland Harbour by way of WGS coordinates and any other harbour premises but would also require the Commissioners to maintain an illustrative plan showing the harbour limits and harbour premises, which must be updated within 30 days of any changes;</p> <p>(b) modernise the Commissioners' powers to—</p> <ul style="list-style-type: none"> <li>(i) manage and regulate the harbour, including power to give general and special directions,</li> <li>(ii) charge ship, harbour and goods dues,</li> <li>(iii) control works and dredging, and</li> <li>(iv) borrow and use money;</li> </ul> <p>to be conducive to the efficient and economical operation, maintenance, management and improvement of the harbour.</p>

	<p>(c) make new provision about the appointment and liability of the Commissioners and the manner in which they are to conduct their business; and</p> <p>(d) amend and revoke certain statutory provisions regulating the harbour.</p> <p>These powers and the clarification of the harbour limits are required to support the effective management of the harbour, as recommended in the Port Marine Safety Code.</p>
<b>8. Location (coordinates must be provided in WGS84 format if this is a works order)</b>	Seahouses, Northumberland
<b>9. State the title of all relevant charts/maps/plans included with application (if appropriate)</b>	None
<b>10. State the legislation relevant to the Harbour Authority and included with this application (if appropriate)</b>	<p>North Sunderland Harbour Order 1931 (S.R. &amp; O. 1931/928)</p> <p>Harbour Authorities (Variation of Constitution) Order 1993 (S.I. 1993/1451)</p>
<b>11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.</b>	N/A
<b>12. Have you included the required fee for your application?</b>	Sent by bank transfer with reference HRO/2021/00001

**Table 2: Statutory Harbour Authority background**

North Sunderland Harbour (the “Harbour”) is located in the village of Seahouses, Northumberland.

The first substantial development of the Harbour started in 1786, when work began to construct a stone pier to protect and improve the facilities for the then rapidly-expanding local fishing fleet and trade in lime, coal and stone. A second substantial development began in 1886 (authorised by the North Sunderland Harbour Order 1885), extending the existing stone pier and constructing others, resulting in the harbour layout which remains today. The outer breakwater was extended in 1933 (authorised by the North Sunderland Harbour Order 1931).

Although originally developed by the trustees of the estate of Lord Crewe, Bishop of Durham, the Harbour undertaking was vested in the North Sunderland Harbour Commissioners (the “Commissioners”) in 1932 by virtue of the North Sunderland Harbour Order 1931. As a consequence, the Harbour is now what is known as a Trust Port.

The Commissioners, as the Statutory Harbour Authority, are governed by their own local legislation collectively known as the North Sunderland Harbour Orders 1931 to 1993. The Commissioners are responsible for the administration, maintenance and improvement of the Harbour which is more fully described below.

Within the Harbour there is a single pier of approximately 250 metres in length, running from the shore in a north-easterly direction, and branching off this at about 100 metres from the shore there is a stone pier of approximately 100 metres in length running initially in a south-easterly direction for 25 metres and then in an easterly direction for 75 metres. There is a second stone pier of approximately 75 metres in length, running from the shore approximately 75 metres to the south of the first pier in a north easterly direction. There is also a stone breakwater to the north east of the harbour of approximately 225 metres in length lying in a north-westerly / south-easterly orientation.

The Commissioners’ jurisdiction comprises the waters enclosed by the piers and breakwater, together with the associated shore facilities, and an additional area to seaward of the piers and breakwater. An illustration of the layout of the Harbour and the extent of the Commissioners’ jurisdiction appears in Appendix 1.

The business of the Harbour is now primarily fishing (conventional fishing vessel traffic as well as vessels used for sea-angling) and passenger embarkation and disembarkation for tourists wishing to visit the nearby Farne Islands. There are approximately 28 commercial vessels which routinely operate from or visit the Harbour and there are approximately 12 recreational vessels kept in the Harbour. The Harbour is also home to the RNLI’s Seahouses Lifeboat Station and its Shannon Class all-weather and D Class inshore lifeboats, which are both slipway-launched.

**Table 3a: Need and justification for order**

Section 14 of the Harbours Act 1964 (the “1964 Act”) confers powers on the Secretary of State, which have been delegated to the Marine Management Organisation (“MMO”) pursuant to the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674), to make an order under that section (known as a harbour revision order) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 of the 1964 Act.

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

*“satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.*

The matters set out in Schedule 2 to the 1964 Act include, in particular, at paragraph 1:

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

and at paragraph 2:

*“Regulating (in whole or to a less extent) the procedure of, or of any committee of, the authority and fixing the quorum at a meeting of, or of any committee of, the authority.”*

and at paragraph 3:

*“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.”*

and 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”.*

and at paragraph 9:

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

and at paragraph 9A:

*“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.”*

and at paragraph 10:

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

and at paragraph 11:

*“Empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than as aforesaid) levied by them at the harbour.”*

and at paragraph 12:

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

and at paragraph 16A:

*“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.”*

and at paragraph 17:

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

This 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) so prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

The application for this harbour revision 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 harbour revision order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

The proposed harbour revision order would modernise the powers of the Commissioners and be conducive to the efficient and economical operation, improvement, maintenance, or management of the Harbour. An explanation of, and the need for, each substantive article in the harbour revision order is set out in the table below.

**Table 3b: Justification for inclusion of provisions**

Article in HRO	Summary of Provision	Requirement for provision
1	<p><b>Title and commencement</b></p> <p>This article is self-explanatory.</p>	<p>Ancillary to the substantive provisions in the order.</p>
2	<p><b>Interpretation</b></p> <p>This article sets out the definitions of terms used within the order.</p>	<p>Ancillary to the substantive provisions in the order.</p> <p>The Order includes a definition of “personal watercraft” which differs from the established definition of “jet bike”. The established definition of “jet bike” was developed in light of the 1992 case of <i>Steedman v. Scofield</i>, in which it was held that a “jet ski” was not a “vessel”. The “jet ski” in question in that case was designed to have insufficient buoyancy to bear the weight of its rider. Consequently, the established definition of “jet bike” used in many harbour orders since 1992 refers to a such a craft “<i>not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods</i>”. Since 1992, however, the design of personal watercraft has evolved considerably and most personal watercraft now being manufactured <i>do</i> provide buoyancy for the carriage of persons or goods. Most new personal watercraft therefore fall outside the established definition of “jet bike” although, by virtue of their hull shape and buoyancy, they are probably “vessels” within the ordinary meaning of the word. The proposed definition of “personal watercraft” has been drawn from the Recreational Craft Regulations 2017 (S.I. 2017/737) because it offers a significantly better description of the type of watercraft intended to be covered by the expression “personal watercraft” than does the established definition of “jet bike”. Ultimately, the intention is that all such craft should be considered to be “vessels” for the purposes of this Order.</p> <p>The Order contains an explanation that “distances between points on a work are to be taken to be measured along that work”. This explanation is intended to address the situation where</p>

		<p>the work in question is not absolutely straight. The purpose of this provision is to make it clear that a distance between two points on, say, a curved breakwater is the distance measured along the curve of the breakwater rather than the distance measured directly between the two points on the breakwater.</p>
3	<p><b>Incorporation of enactments</b></p> <p>This article sets out which of the provisions in the Commissioners' Clauses Act 1847 and the Harbour, Docks and Piers Clauses Act 1847 are incorporated into the order and how they are to have effect.</p>	<p>The Commissioners' Clauses Act 1847 consolidated in one Act certain provisions usually contained in Acts with respect to the constitution and regulation of bodies of commissioners appointed for carrying on undertakings of a public nature.</p> <p>The Harbour, Docks and Piers Clauses Act 1847 consolidated in one Act certain provisions usually contained in Acts authorising the making and improving of harbours, docks, and piers.</p> <p>These two Acts were intended to assist legislators of subsequent legislation by providing precedent provisions relating to such harbour activities which are relevant, well-drafted and consistent for their use. The provisions incorporated set out crucial functions for the day-to-day running of the harbour.</p> <p>This article incorporates the relevant provisions in these two Acts so that these long-established standard provisions do not need to be replicated in the order.</p> <p>The Order incorporates section 59 of the Harbour, Docks and Piers Clauses Act 1847 which allows the harbour master to require vessels to be dismantled. This is an important provision which assists the harbour master in dealing with vessels which are laid by or neglected anywhere within the harbour and which occupy part of the harbour which might otherwise be used in connection with the harbour undertaking.</p> <p>The level of fines for each of the offences set out in these incorporated provisions is in direct conformity with those contained in numerous other harbour revision orders.</p>



		Article 3 is authorised by paragraphs 3 and 4 of Schedule 2 to the Harbours Act 1964.
4	<p><b>The Commissioners</b></p> <p>This article sets out the future composition of the Commissioners, maintaining the number of commissioners at nine but appointing the harbour master as a commissioner <i>ex officio</i>.</p>	<p>The Commissioners' current legislation provides that some commissioners are to be appointed by named appointing organisations while others are to be elected directly by electors registered in accordance with that legislation.</p> <p>This article provides for all of the commissioners to be appointed for their special knowledge, experience or ability in specified matters relevant to the management of the harbour, bringing the constitution of the Commissioners in line with the recommendations of the Department for Transport as set out in its "Ports Good Governance Guidance" published in March 2018.</p>
5	<p><b>Appointment and terms of office of Commissioners</b></p> <p>This article sets out the periods of time for which individual commissioners may hold office.</p>	<p>The Commissioners' current legislation specifies no periods of time for which appointed commissioners may hold office.</p> <p>This article provides for all of the commissioners to be appointed for three-year terms of office, other than some of the first commissioners to be appointed under the order who are to serve shorter terms, and to retire in rotation. This brings the constitution of the Commissioners in line with the recommendations of the Department for Transport as set out in its "Ports Good Governance Guidance" published in March 2018.</p>
6	<p><b>Casual vacancies</b></p> <p>This article sets out the process for filling casual vacancies as and when they occur.</p>	<p>This article is a necessary adjunct to article 5.</p>
7	<p><b>Declaration to be made by Commissioners</b></p> <p>This article sets out the requirement for commissioners to make the declaration set out in Schedule 1 to the order, prior to taking office.</p>	<p>This article modernises and expands the long-established standard equivalent declaration to be found in section 12 of the Commissioners' Clauses Act 1847, which is incorporated into the North Sunderland Harbour Order 1931 by virtue of article 6 of that order.</p>

8	<p><b>Additional Commissioners</b></p> <p>This article permits the Commissioners to appoint up to two additional commissioners, for a fixed term of up to twelve months, should the need arise.</p>	<p>This article gives the Commissioners the power to recruit commissioners with additional experience or expertise, on a short-term basis, if a particular situation arises that requires experience or expertise which is not within that of the existing commissioners.</p>
9	<p><b>Disqualification of Commissioners</b></p> <p>This article permits the Commissioners to remove an individual commissioner from office, should that commissioner not attend meetings, be declared bankrupt or be incapacitated.</p> <p>This article also permits the Commissioners to remove from office an individual commissioner who has acted in an unacceptable manner.</p>	<p>The Commissioners' current legislation only provides for individual commissioners to be removed from office by the organisation that appointed them, which makes it difficult for the Commissioners to remove an individual commissioner who acts in an unacceptable manner.</p> <p>This article gives the Commissioners the power to remove an individual commissioner who:</p> <ul style="list-style-type: none"> <li>(a) has acted in a manner which has seriously impeded or prejudiced the Commissioners in the performance of their functions;</li> <li>(b) has failed to comply with the standards (if any) specified by the Commissioners for the governance of the harbour (which standards might take the form of a code of conduct or equivalent to be adopted by the Commissioners);</li> <li>(c) has acted in a manner which may bring the Commissioners into disrepute or which is otherwise inappropriate having regard to the functions of the Commissioners; or</li> <li>(d) is otherwise unable, unwilling or unfit to discharge adequately the functions of a Commissioner.</li> </ul> <p>It is proposed that any governance standards adopted by the Commissioners will be published on their website. However, no such standards have yet been adopted so their content cannot be explained in the Statement in Support.</p>
10	<p><b>Indemnity insurance for Commissioners</b></p> <p>This article permits the Commissioners to insure themselves against personal liability arising in connection with the performance of their duties.</p>	<p>This article is a practical necessity to reassure serving and prospective commissioners.</p>

		Articles 4 to 10 are authorised by paragraph 1 of Schedule 2 to the Harbours Act 1964.
11	<p><b>Provisions applying to Commissioners</b></p> <p>This article brings Schedule 2 into effect.</p>	<p>This article enables the administrative provisions applicable to the Commissioners to be set out in a schedule to the order rather than in the body of the order itself.</p>
		Article 11 is authorised by paragraph 2 of Schedule 2 to the Harbours Act 1964.
12	<p><b>Harbour Limits</b></p> <p>This article defines the harbour limits by reference to WGS84 coordinates.</p>	<p>This provision is needed in order to ensure that the harbour limits are more accurately defined by the use of WGS84 co-ordinates and reference to mean high water spring tides.</p> <p>The order does not alter the existing seaward boundaries of the harbour limits, which remain the same as those set out in the North Sunderland Harbour Order 1931. The purpose of the new description is therefore simply to clarify the seaward boundaries of the harbour limits by reference to modern terminology.</p> <p>It is, however, recognised that it is not always practicable to plot WGS84 co-ordinates and that the map referred to in the North Sunderland Harbour Order 1931 remains a valid point of reference.</p> <p>For ease of reference, the map is available on the Commissioners' website although, in the event of a discrepancy, the description set out in article 12 will prevail.</p> <p>The article also includes within the harbour limits any harbour premises (as defined) to the extent to which they are not situated within the area defined by the WGS84 co-ordinates and the reference to mean high water spring tides. For illustration purposes, such harbour premises existing as at the date of the order are shown outlined in red on the map in Appendix 1.</p>

		Article 12 is authorised by paragraph 6 of Schedule 2 to the Harbours Act 1964.
13	<p><b>General powers</b></p> <p>This article provides that the Commissioners may take such steps from time to time as they consider necessary or desirable for the maintenance, operation, management and improvement of the harbour and its facilities.</p>	<p>Unlike that relating to many harbour authorities, the Commissioners' current legislation does not include a general statement of the Commissioners' statutory functions.</p> <p>This article authorises the Commissioners to improve, manage, regulate, mark and light the harbour and to carry out various activities related to works, structures and equipment at the harbour (including the harbour premises) and do all other things which in their opinion are in the interests of the proper operation, management, improvement or development of the harbour.</p> <p>Although more specific powers may be found elsewhere in the order and in other legislation, this article is necessary in the interests of clarity so that the Commissioners' powers to carry out the activities referred to in the article are explicit, rather than implicit.</p> <p>This provision does not obviate the need for the Commissioners to obtain a marine licence where required by the Marine and Coastal Access Act 2009.</p>
		Article 13 is authorised by paragraph 3 of Schedule 2 to the Harbours Act 1964.
14	<p><b>Power to provide boating facilities</b></p> <p>This article provides the Commissioners with a power to provide boating or marina facilities.</p>	<p>This article is necessary in the interests of clarity so that the Commissioners' powers to carry out the activities referred to in the article are explicit, rather than implicit.</p>
		Article 14 is authorised by paragraph 4 of Schedule 2 to the Harbours Act 1964.

15	<p><b>Moorings</b></p> <p>This article provides the Commissioners with powers related to the provision, maintenance and licensing of moorings within the harbour.</p>	<p>The power to provide and manage moorings is a standard statutory power conferred on harbour authorities and under North Sunderland Harbour Order 1931 the Commissioners already have the power to construct and maintain moorings in the harbour themselves.</p> <p>In order to maximise the potential use of the harbour, it is important that the Commissioners are provided with comprehensive powers to manage their own moorings and to licence others to lay moorings in the harbour.</p>
		Article 15 is authorised by paragraph 3 of Schedule 2 to the Harbours Act 1964.
16	<p><b>Obstruction of moorings</b></p> <p>This article makes it an offence for a person to obstruct, unlawfully interfere with or lay unauthorised moorings and provides the Commissioners with powers to remove and dispose of any unauthorised mooring.</p>	<p>This article is a necessary adjunct to article 15.</p> <p>The proposed seven day time period for disposal of an unauthorised mooring is consistent with the Commissioners' power of disposal under section 44 of the Harbours, Docks and Piers Clauses Act 1847 and section 252 of the Merchant Shipping Act 1995 in respect of vessels.</p> <p>The level of fine for the offences in this article is in direct conformity with those contained in numerous harbour revision orders.</p>
17	<p><b>Removal of obstructions other than vessels and vehicles</b></p> <p>This article provides that the Commissioners may remove anything other than a vessel or a vehicle) which is causing or likely to become an obstruction or impediment to the proper use of any part of the harbour.</p> <p>The provision deals with the recovery of costs by the Commissioners of reasonable expenses incurred by</p>	<p>This power is important in assisting the Commissioners in meeting their duties with regard to navigational safety and the safety of harbour users, and important if the harbour is to be run in an efficient and economic manner.</p>

	them in relation to the exercise of the power and sale of the item(s) recovered.	
18	<p><b>Power to remove goods</b></p> <p>This article provides that the Commissioners may require the owner of goods left in the harbour to remove them and, if the owner fails to do so, that the Commissioners may remove the goods themselves.</p>	<p>This power is important if the harbour is to be run in an efficient and economic manner.</p> <p>The proposed seven day time period for disposal of goods is consistent with the Commissioners' power of disposal under section 44 of the Harbours, Docks and Piers Clauses Act 1847 and section 252 of the Merchant Shipping Act 1995 in respect of vessels.</p>
19	<p><b>Power to give directions as to loading or unloading of certain goods</b></p> <p>This article provides that the Commissioners may designate any dock, wharf or other works, or any portion of it or them, for the loading and unloading of certain goods.</p>	<p>This power is important if the harbour is to be run in an efficient and economic manner.</p>
20	<p><b>Power to appropriate parts of harbour</b></p> <p>This article provides that the Commissioners may set apart and appropriate any part of the harbour premises for the exclusive or preferential use and accommodation of any particular trade, activity, person, vessel or class of vessels, or goods, subject to such terms, conditions and regulations as the Commissioners think fit.</p> <p>This power does not authorise prohibition of navigation or interference with public rights of way.</p>	<p>This power is a useful common provision enabling harbour authorities to manage the use of particular parts of their harbours and is important if the harbour is to be run in an efficient and economic manner.</p>
21	<p><b>Life-saving craft and appliances</b></p> <p>This article provides that the Commissioners may provide boats, lifebuoys, lifelines and other life-saving</p>	<p>This power is important if the harbour is to be run in a safe manner.</p>

	appliances, together with structures for their storage and safekeeping.	
		Articles 16 to 21 are authorised by paragraph 4 of Schedule 2 to the Harbours Act 1964.
22-28	<p><b>Power to give general and special directions</b></p> <p>These articles provide the Commissioners with a power to give general directions and extended powers to give special directions.</p> <p>These articles provide that general directions may be given for the purposes of:</p> <ul style="list-style-type: none"> <li>(a) the ease, convenience or safety of navigation;</li> <li>(b) the safety of persons;</li> <li>(c) the protection of property, flora or fauna;</li> <li>(d) the ease, convenience or safety of harbour operations ashore; or</li> <li>(e) the prevention or amelioration of environmental harm.</li> </ul> <p>These articles confer on the harbour master the power to give special directions, including requiring compliance with requirements in general directions, byelaws or other provisions applying to the harbour, regulating mooring or movement of a vessel, requiring the removal of a vessel in specified circumstances, regulating the loading and discharging of a vessel's cargo, fuel, water or stores, regulating the speed of a vessel, and as the use of ballast</p> <p>These articles also set out the procedure to be followed if the Commissioners propose to give, amend or revoke a general direction.</p>	<p>These powers are necessary to assist in the efficient functioning and management of the harbour in compliance with the Port Marine Safety Code. The Code itself recommends that harbour authorities secure these powers in respect of vessels.</p> <p>These powers are required in the interests of providing safe navigation for a variety of vessels within the harbour.</p> <p>These powers are also required to enable the Commissioners to regulate the use of vehicles within the harbour in a much more responsive and pragmatic way than is possible through the adoption of byelaws.</p> <p>Such powers are well now relatively common in harbour legislation and similar powers have been granted in several harbour revision orders, recent examples being the Dart Harbour and Navigation Harbour Revision Order 2021, the Fowey Harbour Revision Order 2021 and the Weymouth Harbour Revision Order 2021.</p> <p>The Commissioners wish to adopt an adjudication process in the form to be found in the three 2021 orders referred to above.</p> <p>As regards the precise scope of general directions authorised by the proposed power, in addition to directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation or the safety of persons, article 23(1) would allow the Commissioners to give or amend directions for the protection of property, flora or fauna in the harbour and the prevention or amelioration of environmental harm. Such a scope is consistent with the environmental duties</p>

	<p>These article provide that a person who fails without reasonable excuse to comply with a general or special direction shall be guilty of an offence and that it is a defence to for the person to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.</p>	<p>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>This approach has been approved by the Secretary of State in each of the three 2021 orders referred to above, as well as in several earlier orders.</p> <p>Unlike the equivalent provision to be found in the three 2021 orders referred to above, however, this provision stipulates that an offence is committed only if a person fails to comply with a direction <i>without reasonable excuse</i>. This stipulation is included to ensure consistency between the offence of failing to comply with a direction and the offence of failing to comply with a byelaw (article 29).</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
29-30	<p><b>Byelaws as to harbour</b></p> <p>These articles provide the Commissioners with the power to make byelaws for a variety of different purposes, listed in detail in the Order.</p> <p>These articles set out the procedure for confirmation by the Secretary of State of byelaws made by the Commissioners and a simplified procedure by which the Commissioners may revoke existing byelaws.</p> <p>These articles provide that the Commissioners may make it an offence for a person to fail to comply with a byelaw. It is a defence to for the person to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence or</p>	<p>These provisions are sought to update the existing harbour byelaw powers to ensure the efficient functioning of the harbour in compliance with the Port Marine Safety Code.</p> <p>Section 236 of the 1972 Act relates to byelaws made by a local authority, Greater London Authority and Transport for London so article 30 is required to make it clear that the process envisaged by section 236 also applies to harbour byelaws made under this Order.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>



	that he or she had reasonable excuse for their act or failure to act.	
		Articles 22 to 31 are authorised by paragraphs 3, 4 and 16A of Schedule 2 to the Harbours Act 1964.
31	<p><b>General rules of navigation</b></p> <p>This article provides that a master who navigates a vessel in the harbour without due care and attention or in a manner liable to injure or endanger other vessels or persons shall be guilty of an offence.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour in compliance with the Port Marine Safety Code.</p> <p>In particular, this article is necessary because section 58 (Conduct endangering ships, structures or individuals) of the Merchant Shipping Act 1995 does not apply to the non-professional skippers of unregistered vessels (see <i>R v. Goodwin</i>).</p> <p>A broader general offence is thus required under the Order to prohibit the “dangerous driving” of vessels irrespective of whether the vessel is registered or whether the skipper is professional.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
32	<p><b>Vessels adrift</b></p> <p>This article states that the owner or master of a vessel adrift in the harbour shall be guilty of an offence.</p> <p>It is a defence for the owner/master to prove that the vessel did not become adrift as the result of neglect or default on his or her part.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour in compliance with the Port Marine Safety Code.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
		Articles 31 and 32 are authorised by paragraphs 3 and 4 of Schedule 2 to the Harbours Act 1964.

33	<p><b>Power to deal with abandoned vessels</b></p> <p>This article grants the Commissioners the power to remove, sell, destroy or dispose of any vessel laid by or neglected as unseaworthy anywhere in the harbour.</p> <p>The Commissioners may retain expenses incurred in respect of the vessel out of the proceeds of the sale of any such vessel. If such proceeds are insufficient to reimburse the Commissioners (or there is no sale) the Commissioners may recover the expenses from the owner as a simple contract debt.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour in compliance with the Port Marine Safety Code.</p>
		<p>Article 33 is authorised by paragraphs 3, 4, 11 and 12 of Schedule 2 to the Harbours Act 1964.</p>
34	<p><b>Power to license tugs</b></p> <p>This article makes it an offence for a person to operate a vessel exceeding 5 tonnes gross for fee or reward for the purpose of moving or controlling the movement of any other vessel within the harbour except under and in accordance with the terms and conditions of a licence granted by Commissioners or in an emergency.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour in compliance with the Port Marine Safety Code.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
35	<p><b>Boarding of vessels</b></p> <p>This article gives an authorised officer of the Commissioners the right to board and inspect vessels on producing written authority, for the purpose of any enactment or byelaw relating to the harbour or to prevent or extinguish fire.</p> <p>This power may be exercised only if notice is given to the owner or person appearing to have charge of the vessel (except in an emergency). It is therefore compliant with powers of entry guidance.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour in compliance with the Port Marine Safety Code.</p>

36	<p><b>Obstruction of officers</b></p> <p>This article makes it an offence for a person:</p> <ul style="list-style-type: none"> <li>(a) intentionally to obstruct or threaten an officer of the Commissioners acting in performance of their functions under the order; or</li> <li>(b) without reasonable excuse to fail to comply with a requirement properly made by such an officer; or</li> <li>(c) without reasonable excuse to fail to give such an officer any information which he or she may reasonably require.</li> </ul>	<p>This article is necessary to assist in the efficient functioning and management of the harbour. It provides a necessary deterrent to promote the safety of the officers as well as to prevent the performance of their duties being hindered.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
		<p>Articles 34 to 36 are authorised by paragraphs 3 and 4 of Schedule 2 to the Harbours Act 1964.</p>
37	<p><b>Removal of vehicles</b></p> <p>This article grants the Commissioners the power to remove a vehicle left without permission:</p> <ul style="list-style-type: none"> <li>(a) in any place where it is likely to obstruct or interfere with the use of the harbour;</li> <li>(a) in any part of the harbour where parking is prohibited by notice erected by the Commissioners; or</li> <li>(b) for longer than the maximum period of time specified by the Commissioners.</li> </ul>	<p>This article is necessary to assist in the efficient functioning and management of the harbour. The quays and piers in the harbour are narrow and vehicular access to them could easily be blocked by an inappropriately-parked vehicle. Pedestrian access could also be impeded. Such a blockage could have a significant adverse impact on the proper functioning of the harbour, including the use of the harbour infrastructure for the embarking and disembarking of passengers and goods.</p> <p>The Commissioners therefore require the power to move a vehicle parked in an inappropriate place, in order to avoid such a vehicle interfering with the proper functioning of the harbour, irrespective of whether an appropriate authority exercises its powers to remove an abandoned vehicle.</p> <p>This article is consistent with the Protection of Freedoms Act 2012 because it does not authorise the Commissioners to prevent or inhibit the removal of the vehicle by a person otherwise entitled to remove it.</p>

		An equivalent provision is to be found in article 21 of the Penzance Harbour Revision Order 2009 and article 22 of the Folkestone Harbour Revision Order 2017.
38	<p><b>Parking places</b></p> <p>This article grants the Commissioners the power to provide parking facilities for vehicles.</p>	This article is necessary to assist in the efficient functioning and management of the harbour.
		Articles 37 and 38 are authorised by paragraph 4 of Schedule 2 to the Harbours Act 1964.
39	<p><b>Charges other than ship, passenger and goods dues and for services or facilities</b></p> <p>This article provides that in addition to ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Commissioners may demand, take and recover reasonable charges in respect of all vessels. It also expressly 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 structures fall within the definition of vessel contained within the order.</p> <p>This article provides that in addition to ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Commissioners may demand, take and recover reasonable charges or other consideration for services and facilities provided by them.</p>	<p>In a small harbour such as North Sunderland, it is important to future viability that all users of the harbour contribute to the cost of the management and maintenance of the harbour.</p> <p>It would be detrimental to the improvement, maintenance or management of the harbour 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 harbour (exemptions are provided in article 48).</p> <p>This article (together with its associated articles described below) is reflective of modern statutory harbour powers relating to charges and conducive to the improvement, maintenance or management of the harbour in an efficient and economical manner.</p>
40	<p><b>Payment of charges</b></p> <p>This article provides that charges are payable before the vessel or goods against which they are payable are removed from the harbour or harbour premises. It also</p>	This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner and is a necessary adjunct to article 39.

	<p>sets out who charges are payable by and who they can be recovered from and when.</p> <p>This articles provides that a vessel may be prevented from using a landing place supplied by the Commissioners if the master of the vessel refuses to pay the related charges.</p>	
41	<p><b>Refusal to pay charges for a landing place</b></p> <p>This articles provides that the harbour master may prevent a vessel from using a landing place provided by the Commissioners if the master of the vessel refuses to pay the charges for such use.</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner and is a necessary adjunct to article 39.</p>
42	<p><b>Recovery of charges</b></p> <p>This articles provides that, in addition to any other powers of recovery available to them, the Commissioners may recover any charges payable to them as a debt in Court.</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner and is a necessary adjunct to article 39.</p>
43	<p><b>Compounding arrangements and rebates</b></p> <p>This article provides the Commissioners with a power to confer exemptions from dues, allow rebates or make compositions with any person with respect to charges.</p> <p>In addition it provides that the Commissioners do not have to include on their list of ship, passenger and goods dues kept at the harbour 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 provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner and is a necessary adjunct to article 39.</p>

44	<p><b>Deposit for charges</b></p> <p>This article provides that the Commissioners may require, from a person who incurs or is about to incur a charge with them, a reasonable deposit or guarantee.</p> <p>It also provides the Commissioners with the power to detain a relevant vessel or goods until the deposit has been paid or the required guarantee given.</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner and is a necessary adjunct to article 39.</p>
45	<p><b>Liens for charges</b></p> <p>This article provides for a right to retain possession of (i.e. a “lien” over) goods in the possession or custody respectively of a person collecting charges on behalf of the Commissioners or, a wharfinger or carrier, who has paid or given security for charges on those goods.</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner and is a necessary adjunct to article 39.</p>
46	<p><b>Information for the purpose of landing charges</b></p> <p>This article provide that, where demanded by the Commissioners for the purpose of determining whether landing fees apply, the owner or master of a vessel must provide information relating to the number of persons embarking or disembarking their vessel or relating to the cargo being loaded or unloaded their vessel.</p> <p>This article also sets out details of the vessels to which it applies, time limits of the owner or master to reply, and the offence of non-compliance.</p>	<p>This provision is necessary so that the Commissioners may verify whether vessel operators are paying the correct landing fees, in order to ensure the harbour can be operated in an efficient and economical manner, and is a necessary adjunct to article 39.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
47	<p><b>Harbour master may prevent sailing of vessels</b></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</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner and is a necessary adjunct to article 39.</p>

	payable in respect of the vessel, its passengers or goods have been paid.	
48	<p><b>Exemptions from dues</b></p> <p>This article exempts from dues vessels belonging to or used by a lifeboat service in connection with the functions of that service.</p>	<p>This article is similar to other modern provisions providing for an exemption from harbour dues for certain vessels whilst in the exercise of their core duties.</p>
		<p>Articles 39 to 48 are authorised by paragraphs 11 and 12 of Schedule 2 to the Harbours Act 1964. Article 40 is also authorised by paragraphs 3 and 4 of the Schedule 2 to the Harbours Act 1964.</p>
49	<p><b>Restriction of works and dredging</b></p> <p>This article makes it an offence for a person (other than the Commissioners) to construct, alter, renew or extend any works or to dredge in the harbour without holding a licence from the Commissioners.</p> <p>This article also gives the Commissioners the power to require a person who contravenes this article to remove, abate or rectify, within a reasonable time, any work, operation or omission to which the contravention relates and to restore the site to its former condition; and if that person fails to comply with the notice, the Commissioners may carry out the works so required and may recover from that person the cost of so doing.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour and to enable the Commissioners to control works and dredging which might otherwise have an adverse impact on the operation of the harbour.</p> <p>Notwithstanding the need for a person to obtain a marine licence under the Marine &amp; Coastal Access Act 2009 to carry out works or dredging in the harbour, a person should also be required to obtain the Commissioners' permission before carrying out works or dredging in the harbour. This arrangement is common to many harbour authorities.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
50	<p><b>Control of certain operations and works of statutory undertakers</b></p> <p>This article makes it an offence for a statutory undertaker to carry out specified operations or works unless it has given notice of its intention to do so to the Commissioners and has supplied the Commissioners</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour and is similar to other modern provisions providing for the Commissioners to be able to control works within the harbour.</p> <p>The waters within the quays, piers and breakwaters of the harbour are confined and the channel giving access to the waters</p>

	<p>with such particulars as they may reasonably require, except in an emergency.</p>	<p>of the inner harbour in particular is narrow. Vessel access to the quays and piers could easily be blocked by works carried out in the harbour by a statutory undertaker. Such a blockage could have a significant adverse impact on the proper functioning of the harbour, including the use of the harbour infrastructure for the embarking and disembarking of passengers and goods.</p> <p>The Commissioners therefore need statutory undertakers to be required to notify the Commissioners of intended works and to provide the Commissioners with sufficient detail to enable the Commissioners to make appropriate arrangements to enable the continued proper functioning of the harbour during such works.</p> <p>The level of fine for the offence is in direct conformity with those contained in numerous harbour revision orders.</p>
<p>51</p>	<p><b>Licensing of works</b></p> <p>This article gives the Commissioners the power to grant, on such terms and conditions as they think fit, to any person a licence to construct, place, alter, renew or maintain any works in the harbour on, under or over tidal waters or land below the level of high water, and sets out the applicable procedures.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour and is similar to other modern provisions providing for the Commissioners to be able to control works with the harbour. It is a necessary adjunct to article 49.</p> <p>Notwithstanding the need for a person to obtain a marine licence under the Marine &amp; Coastal Access Act 2009 to carry out works in the harbour, a person should also be required to obtain the Commissioners' permission before carrying out works in the harbour. This provision is necessary to enable the Commissioners to control development within the harbour which may interfere with harbour operations.</p> <p>This provision does not obviate the need for a person to obtain statutory powers (see paragraph (10)) to carry out works. It does, however, require that person to obtain the Commissioner's permission before carrying out such works.</p>



52	<p><b>Licence to dredge</b></p> <p>This article gives the Commissioners the power to grant, on such terms and conditions as they think fit, to any person a licence to construct, place, alter, renew or maintain any works in the harbour on, under or over tidal waters or land below the level of high water, and sets out the applicable procedures.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour and is similar to other modern provisions providing for the Commissioners to be able to control dredging with the harbour. It is a necessary adjunct to article 49.</p> <p>Notwithstanding the need for a person to obtain a marine licence under the Marine &amp; Coastal Access Act 2009 to carry out dredging in the harbour, a person should also be required to obtain the Commissioners' permission before carrying out dredging in the harbour. This provision is necessary to enable the Commissioners to control development within the harbour which may interfere with harbour operations.</p> <p>This provision does not obviate the need for a person to obtain statutory powers (see paragraph (5)) to carry out dredging. It does, however, require that person to obtain the Commissioners' permission before carrying out such dredging.</p>
53	<p><b>Appeals in respect of works or dredging licences</b></p> <p>This article sets out the ground on which a person may appeal against the Commissioners' refusal to grant a works licence or a dredging licence or the terms or conditions on which the Commissioners have granted such a licence, at the procedure for doing so.</p>	<p>This article is necessary to assist in the efficient functioning and management of the harbour and is similar to other modern provisions providing for the Commissioners to be able to control dredging with the harbour. It is a necessary adjunct to article 49.</p>
		<p>Articles 49 to 53 are authorised by paragraphs 3 and 4 of Schedule 2 to the Harbours Act 1964.</p>
54	<p><b>Development of land etc.</b></p> <p>This article allows the Commissioners to develop land in the harbour, provided that it is conducive to the efficient and economic management of the harbour undertaking. In connection with such activities, the Commissioners may form companies, either by themselves or in conjunction with others</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner.</p> <p>This article would enable the Commissioners to develop its land as part of a joint venture with another person or persons, for example enabling the Commissioners to contribute land to the</p>

		venture while the other party contributes complementary specialist business expertise
55	<p><b>Power to grant tenancies and to dispose of land</b></p> <p>This article gives power to the Commissioners the power to grant licences, tenancies and leases for any term of land within the harbour, where they consider it desirable in the interests of efficient and economical management of the harbour. The Commissioners may also dispose of harbour land which it considers to be surplus to what is required for the purpose of its harbour undertaking.</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner.</p>
		Articles 54 and 55 are authorised by paragraphs 3, 4, 9 and 9A of Schedule 2 to the Harbours Act 1964.
56	<p><b>Other commercial activities</b></p> <p>This article allows the Commissioners to carry out commercial activities in the management of the harbour, provided that they are conducive to the efficient and economic management of the harbour undertaking. In connection with such activities, the Commissioners may form companies, either by themselves or in conjunction with others.</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner.</p> <p>This article would assist the Commissioners to maximise the potential of the harbour undertaking by enabling them to carry on any business which could conveniently be carried on with the harbour undertaking. For example, the Commissioners 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 harbour.</p> <p>This article would also enable the Commissioners to carry on such a business as part of a joint venture with another person or persons, for example enabling the Commissioners to contribute harbour-related expertise to the venture while the other party contributes complementary specialist business expertise.</p>

		<p>The profits and revenues derived from any business ventures carried out under this article would be used to improve and develop the harbour and ensure increased financial security.</p> <p>The powers in this article may only be exercised if doing so “is conducive to the improvement, maintenance or management of the harbour in an efficient and economical manner”.</p>
		Article 56 is authorised by paragraphs 3, 4 and 9 of Schedule 2 to the Harbours Act 1964.
57	<p><b>Borrowing powers</b></p> <p>This article gives the Commissioners the power to borrow money, by any methods they sees fit, for the purposes of meeting their obligations in carrying out their functions; and where moneys are borrowed by the Commissioners under this article, the Commissioners may, if they see fit, borrow those moneys upon the security of their assets for the time being or of their revenues or of both their assets and their revenues.</p>	<p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner.</p>
		Article 57 is authorised by paragraph 10 of Schedule 2 to the Harbours Act 1964.
58	<p><b>Reserve fund</b></p> <p>This article sets out the Commissioners’ power to establish and maintain a reserve fund and to determine the monies to be carried to the credit of that fund, its management and the application of the monies comprised in it.</p>	<p>Under North Sunderland Harbour Order 1931 the Commissioners already have the power to establish and maintain a contingency fund.</p> <p>This provision is required to update the existing harbour powers and ensure the harbour can be operated in an efficient and economical manner.</p>
59	<p><b>Crown rights</b></p> <p>This article states that nothing in the order affects prejudicially any estate, right, power (etc.) of the Crown.</p>	<p>This article provides the standard saving provision for Crown Rights.</p>

60	<p><b>Saving for Trinity House</b></p> <p>This article states that nothing in the order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.</p>	<p>This article provides the standard saving provision for Trinity House.</p>
61	<p><b>Notices</b></p> <p>This article gives details of the required form and method of service of notices.</p>	<p>This article sets out the correct method of service of documents in order clarify and achieve effective administration.</p>
62	<p><b>Amendment and repeal</b></p> <p>This article provides for the amendment of the North Sunderland Harbour Order 1931 from the date of the order.</p> <p>This article also provides for the revocation of the local legislation listed in Schedule 3 to the order from the date of the order.</p>	<p>This article is necessary to complete the process of modernisation of the Commissioners' powers as a statutory harbour authority in conjunction with the provisions of the order and the repeals set out in Schedule 3 to the order.</p> <p>The proposed amendments to article 31 (Power to dredge) of the North Sunderland Harbour Order 1931 are necessary because the drafting of that provision is unclear and it is necessary for the Commissioners to have an unequivocal power to carry out maintenance dredging to secure vessel access to all of the piers and other facilities in the harbour.</p>
		<p>Article 62 is authorised by paragraph 3 of Schedule 2 to the Harbours Act 1964.</p>
Schedule 1	<p><b>Form of Declaration by Commissioners</b></p> <p>This schedule sets out the declaration to be made by commissioners pursuant to article 7 of the order.</p>	<p>This schedule modernises and expands the long-established standard equivalent declaration to be found in section 12 of the Commissioners' Clauses Act 1847, which is incorporated into the North Sunderland Harbour Order 1931 by virtue of article 6 of that order.</p>
		<p>Schedule 1 is authorised by paragraph 1 of Schedule 2 to the Harbours Act 1964.</p>

Schedule 2	<p><b>Provisions Applying to Commissioners</b></p> <p>This schedule sets out various provisions that apply to the commissioners pursuant to article 11 of the order.</p> <p>In particular, these provisions regulate the appointment (and re-appointment) of the chair and vice-chair of the Commissioners and the proceedings of the Commissioners and committees of the Commissioners.</p>	<p>This schedule modernises and expands the long-established standard equivalent provisions to be found in the Commissioners' Clauses Act 1847, which are incorporated into the North Sunderland Harbour Order 1931 by virtue of article 6 of that order.</p>
		<p>Schedule 2 is authorised by paragraph 2 of Schedule 2 to the Harbours Act 1964.</p>
Schedule 3	<p><b>Purposes for which byelaws may be made</b></p> <p>This schedule sets out the purposes for which byelaws may be made by the Commissioners.</p>	<p>This schedule is a necessary adjunct to article 29.</p>
		<p>Schedule 3 is authorised by paragraphs 3, 4 and 16A of Schedule 2 to the Harbours Act 1964.</p>
Schedule 4	<p><b>Repeals</b></p> <p>This schedule sets out the provisions with the specified orders which will be repealed from the date of the order.</p>	<p>This schedule is necessary to identify those provisions which either are already obsolete or will become obsolete once the order is fully in force, as follows:</p> <p><u>1931 Order</u>  Articles 8-16 will be replaced by articles 4-11 and Schedules 1 and 2 of the order.</p> <p>Article 17 became obsolete one month after the coming into operation of the 1931 Order.</p> <p>Articles 40-43 were rendered obsolete by virtue of section 26 of the Harbours Act 1964.</p> <p>Articles 48-49 will be superseded by article 48 of the order.</p>

		<p>Articles 56-58 will be superseded by article 58 of the order.</p> <p>Article 59 was superseded by virtue of section 42 of the Harbours Act 1964.</p> <p>Article 60 will be superseded by article 21 of the order.</p> <p>The Schedule was rendered obsolete by virtue of section 26 of the Harbours Act 1964.</p> <p><u>1993 Order</u>  Article 4 will be rendered obsolete when articles 8-16 of the 1931 Order are replaced by articles 4-11 and Schedules 1 and 2 of the order.</p>
		<p>Schedule 4 is authorised by paragraph 3 of Schedule 2 to the Harbours Act 1964.</p>
		<p>To the extent to which the above provisions fall outwith the scope of the specified paragraphs of Schedule 2 to the Harbours Act 1964, or where no such paragraph is specified, the above provisions would be conducive to the efficient functioning of the harbour and are thus authorised by paragraph 17 of Schedule 2 to the Harbours Act 1964.</p>

**Table 4: Relevant policies, guidance and plans**

<p><b>National Policy Statement for Ports</b></p>	<p>The National Policy Statement for Ports published in January 2012 is not directly relevant to this order because this order does not contain any nationally significant infrastructure proposals.</p>
<p><b>Ports Good Governance Guidance</b></p>	<p>The Ports Good Governance Guidance published by the Department for Transport in March 2018 provides that the key corporate governance principles for trust port board appointments are:</p> <ul style="list-style-type: none"> <li>• Merit: all appointments should be made on the basis of merit, with candidates drawn from a strong and diverse field whose skills , experience and qualities meet the needs of the board;</li> <li>• Openness: the process for appointment should be open and transparent;</li> <li>• Diversity: appointments should reflect the diversity of society, and should be made taking account of the need to appoint a board which includes a balance of skills and backgrounds;</li> <li>• Fairness: the selection process should be fair and impartial and each candidate should be assessed against the same criteria for the role in question.</li> </ul> <p>The Commissioners’ current constitution does not facilitate the appointment of Commissioners in accordance with these principles, with the Commissioners currently being appointed by named appointing organisations or being elected by a single group of stakeholders.</p> <p>The proposed provisions set out in Part 2 of the order are intended to enable the Commissioners to adhere to these best practice principles in the future.</p>
<p><b>Port Marine Safety Code</b></p>	<p>The Port Marine Safety Code published by the Department for Transport in November 2016 (the “Code”) applies to the Commissioners as it does to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. The Executive Summary to the Code explains that:</p> <p><i>“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.”</i></p> <p>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 facilitate safe navigation.</p>

	<p>The proposed provisions set out in Parts 3 and 5 of the order are intended to modernise and expand the Commissioners' powers to manage the harbour efficiently and effectively and to facilitate safe navigation in the harbour.</p> <p>In particular, paragraph 2.5 of the Code states "... <i>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 Commissioners are seeking to obtain modern powers of general direction (covering vessels) to supplement the existing byelaws to enable them to manage the harbour safely and in accordance with the Code.</p>
<p><b>Guide to Good Practice on Port Marine Operations</b></p>	<p>The Guide to Good Practice on Port Marine Operations published by the Department for Transport in February 2018 recommends that:</p> <p><i>"All legislation, including byelaws and directions, should be reviewed on a regular basis, preferably annually, to ensure that it remains fit for purpose in changing circumstances. ... If the legal responsibilities cannot be discharged effectively using available powers and other measures, and that authority does not have the powers to rectify the situation, then it should seek the necessary additional powers. In addition, it is good practice to dispense with redundant or obsolete legal functions."</i></p> <p>The Commissioners have reviewed their existing legislation, which is 90 years old, and have concluded that to a large extent that legislation is no longer fit for purpose. The Commissioners have also reviewed their existing byelaws, which date from 1935, and reached a similar conclusion.</p> <p>In particular, the Commissioners have concluded that their legislation does not enable them to be sufficiently responsive to changes in the usage of the harbour and the associated risks. The Commissioners are accordingly seeking the necessary additional powers.</p> <p>The Commissioners have also concluded that some of their legal functions are redundant or obsolete and they are seeking to dispense with them.</p>
<p><b>Home Office Guidance on Powers of Entry</b></p>	<p>The Home Office Code of Practice on Powers of Entry and its associated Guidance apply to powers of entry and associated powers as specified under any Act or Statutory Instrument other than devolved powers of entry and devolved associated powers.</p> <p>The proposed order contains only one provision that would be within the scope of the Home Office Code of Practice on Powers of Entry and its associated Guidance, being article 35 (Boarding of vessels).</p> <p>This proposed power may only be exercised if reasonable notice is given to the owner or person appearing in charge of the vessel (except in an emergency) annexing a copy of the article containing the power. Article 35 is thus compliant with the Home Office Code of Practice on Powers of Entry and its associated Guidance.</p>



**Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)**

The Harbour is situated within the draft North East Marine Plan inshore area. The latest iteration of the draft North East Marine Plan for the inshore area was published for consultation in January 2020. Once published as a consultation draft, this marine plan became a material consideration and as such, although the draft North East Marine Plan has not yet been adopted, it is considered in this Statement of Support in addition to the UK Marine Policy Statement.

This harbour revision order does not authorise a project, works or other installation or scheme, or other intervention in the natural surroundings or landscape, so the effects (if any) of the proposed harbour revision order on the North East Inshore Marine Plan area will be extremely limited and any effects will be positive as the proposed harbour revision order supports the economic and efficient management of the Harbour. A brief summary of compliance is nevertheless set out below.

**Compliance with UK Marine Policy Statement**

The UK Marine Policy Statement (“MPS”) sets out (in section 2.1) that the UK vision for the marine environment is for “clean, healthy, safe, productive and biologically diverse oceans and seas”. The core purpose of the proposed harbour revision order is to modernise the Commissioners’ constitution to facilitate the appointment of Commissioners with suitable knowledge, experience or ability. This will support the Commissioners in ensuring that they meet both their environmental duties under s48A of the Harbours Act 1964 and their obligations under the Port Marine Safety Code which, in turn, will support the vision of ensuring that the marine environment in around the Harbour is kept “clean, healthy, safe, productive and biologically diverse”.

The provisions of the proposed Order also support the following high level objectives contained in the MPS:

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

**Compliance with draft North East Marine Plan**

The following policies in the draft North East Marine Plan are relevant to the proposed order:

	<b>Policy Code</b>	<b>Policy Text</b>	<b>Compliance</b>
	NE-INF-1	Appropriate land-based infrastructure which facilitates marine activity (and vice versa) should be supported.	<p>The infrastructure in the harbour provides economic and social benefits and facilitates marine businesses, such as passenger and fishing vessel operations, including those that are land-based.</p> <p>This order would facilitate the Commissioners maintaining the existing infrastructure in the intertidal area that facilitates marine activity.</p>
	NE-CO-1	Proposals that optimise the use of space and incorporate opportunities for coexistence and co-operation with existing activities will be supported.	By modernising and expanding the Commissioners' powers, this order would facilitate the Commissioners promoting the co-existence of existing and future activities in the harbour, to realise sustainable social, environmental and economic benefits and to make efficient use of the space.
	NE-PS-1	Only proposals demonstrating compatibility with current activity and future opportunity for sustainable expansion of port and harbour activities will be supported.	<p>By modernising and expanding the Commissioners' powers, this order would not restrict current port and harbour activity and would facilitate the Commissioners promoting future growth, enabling long-term strategic decisions and supporting competitive and efficient port operations.</p> <p>Although the Commissioners have no wish to grow the harbour physically, there remains a need for the harbour to be commercially viable through adaptation, change, and diversification. The Commissioners also need to ensure safe navigation both within and in the approaches to the harbour, both at the present time and into the future.</p> <p>This order would facilitate continued port maintenance and repairs, diversification and other sustainable port development which contribute to long-term economic growth and prosperity.</p>
	NE-HER-1	Proposals that demonstrate they will conserve and enhance elements contributing to the	By modernising and expanding the Commissioners' powers, this order would facilitate the Commissioners protecting local

		significance of heritage assets will be supported.	heritage assets which contribute to the character of the harbour and its tourism economy.
	NE-FISH-2	Proposals that enhance access for fishing activities should be supported.	By modernising and expanding the Commissioners' powers, this order would facilitate the Commissioners enhancing access for sustainable fishing activities and seeking to limit impacts from other marine activities on access to fishing activities, thus helping to support a prosperous, resilient and cohesive coastal community.
	NE-ACC-1	Proposals demonstrating appropriate enhanced and inclusive public access to and within the marine area, and also demonstrate the future provision of services for tourism and recreation activities, will be supported.	By modernising and expanding the Commissioners' powers, this order would facilitate the Commissioners providing appropriate and inclusive enhanced public access to the marine area, such as physical, digital, and interpretative access and signage, and removing unsuitable access arrangements.
	NE-TR-1	Proposals that promote or facilitate sustainable tourism and recreation activities, or that create appropriate opportunities to expand or diversify the current use of facilities, should be supported.	By modernising and expanding the Commissioners' powers, this order would facilitate the Commissioners promoting sustainable tourism and recreation at appropriate locations, while reducing adverse impacts on natural resources and heritage assets.
	NE-MPA-1	Proposals that support the objectives of marine protected areas and the ecological coherence of the marine protected area network will be supported.	By modernising and expanding the Commissioners' powers, particularly in relation to the protection of flora and fauna, this order would facilitate the Commissioners avoiding, minimising and mitigating adverse impacts of harbour activities on local marine protected areas.
	NE-INNS-1	Proposals that reduce the risk of introduction and/or	By modernising and expanding the Commissioners' powers, particularly in relation to the protection of flora and fauna, this

		spread of invasive non-native species should be supported.	order would facilitate the Commissioners attempting to reduce the risk and spread of non-native invasive species.
<b>Insert other relevant plans/policy/guidance in this section</b>			

**Table 5: Any other relevant information**

<p>Prior to submission of the application, the Commissioners carried out a 28 day pre-application public consultation on the proposed harbour revision order between 29<sup>th</sup> March 2021 and 25<sup>th</sup> April 2021. A copy of the proposed order was published on the Commissioner’s website and the MMO (together with other consultees recommended by the MMO) were consulted directly.</p> <p>As a consequence of the COVID-19 pandemic, the Commissioners were unable to hold an in-person ‘drop in’ day during this pre-application consultation but individual commissioners engaged directly with key stakeholders in the harbour and invited them to ask questions about the proposed harbour revision order.</p> <p>The Commissioners received positive and supportive consultation feedback informally during the consultation, with general support for the proposed harbour revision order as drafted. Two formal written consultation responses were received by the Commissioners. Although both of these responses were supportive of the rationale for the proposed harbour revision order, they included several points of specific feedback as summarised below.</p> <p>A. The current commissioners should not automatically remain in office under the revised harbour order. The current commissioners should all retire and those that have the necessary special knowledge, experience or ability should reapply.</p> <p>B. The Commissioners should not be permitted to appoint their own successors. The appointment process for the Commissioners should be overseen by someone impartial such as the appropriate ministry or county council and the appointment of the Commissioners should be the responsibility of the Secretary of State.</p> <p>C. The proposed harbour revision order should not specify the matters in which special knowledge, experience or ability relevant to the management of the harbour is required. New relevant matters will inevitably emerge over time which cannot be envisaged now. The Commissioners should be appointed simply by reference to the relevant official guidance.</p> <p>D. A Commissioner who pays harbour dues ought only to be allowed to take part in a meeting if it is fair in the context of that meeting for him/her to do so. In the interests of showing complete fairness in setting harbour dues, no Commissioner with an interest in their payment should be allowed to vote when harbour dues are set.</p> <p>The Commissioners’ responses to these points of specific feedback are set out below:</p> <p>1. In order to maintain continuity and to facilitate succession-planning amongst the Commissioners, it is essential that the proposed harbour revision order provides for the orderly retirement in rotation of individual commissioners. It would be detrimental to the good management of the harbour if the Commissioners were to retire <i>en masse</i> following the making of the proposed harbour revision order. The proposed harbour</p>
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revision order provides for all of the existing Commissioners to retire in rotation within a period of three years following the date on which the new constitution comes into effect.

2. As set out in section 3.7 of the “Ports Good Governance Guidance” published in March 2018: “the responsibility for board appointments rests with trust port boards, except for the largest five trust ports where the Secretary of State continues to make certain appointments”. There is nothing in this Guidance that supports the proposition that the appointment of the Commissioners should be overseen by the Department for Transport or Northumberland County Council and the Commissioners consider that it would not be appropriate to include a provision to that effect in the proposed harbour revision order. The Commissioners also consider that North Sunderland Harbour is of such a size and nature that it would not be appropriate for the Secretary of State to be given responsibility for appointing the Commissioners.
3. As set out in section 3.8 of the “Ports Good Governance Guidance” published in March 2018: “The aim is for trust ports boards to have the necessary mix of skills and experience to effectively and successfully carry out its role and functions”. The Commissioners consider that this guidance is insufficiently specific for it to form the sole basis for assessing and appointing the Commissioners. The Commissioners accordingly consider that it would be preferable to set out on the face of the proposed harbour order the matters in which special knowledge, experience or ability relevant to the management of the harbour is required.
4. Paragraph 7 of Schedule 2 to the proposed harbour revision order sets out the circumstances in which an individual commissioner may be precluded from participating in the decisions of the Commissioners. Paragraph 7(8)(a) of Schedule 2 to the proposed harbour revision order (which disapplies the provisions dealing with Commissioners’ interests to any interest arising in respect of the payment of harbour dues) is consistent with the equivalent provision to be found in many other harbour revision orders. In a harbour serving a small community such as North Sunderland (Seahouses), it is inevitable that many if not most of the Commissioners are likely to be dues-payers. If the proposed harbour revision order were not to include paragraph 7(8)(a), the Commissioners could frequently find themselves in a quandary when seeking to make decisions regarding the level of harbour dues.

# APPENDIX 1

## Layout of Harbour

