



Statement in Support of Harbour Empowerment Order (HEO) Application

Table 1: Application details

1. Date application made to MMO	8 September 2022
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 Harbour	Lynmouth Harbour
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 opinion was issued by MMO	N/A

<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>North Devon Council ('the Council') has been managing the harbour since approximately 1952. However, no statutory instrument to date has expressly made the Council the statutory harbour authority. This HEO expressly appoints North Devon Council as the statutory harbour authority and repeals the existing statutory harbour legislation at Lynmouth (which comprises up to four separate undertakings, albeit it appears that only the only works that still exist relate to the 1886 Order and as far as the Council is aware none of the statutory undertakings remain in existence).</p> <p>The HEO would modernise local harbour legislation and confer modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of the harbour. All of the current local legislation relating to the harbour is repealed under the HEO, which will significantly improve the efficient and economic operation and management of it.</p> <p>In addition, the HEO clearly defines the harbour limits. It confers powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of the harbour. In particular, the HEO would confer modern powers on the Council to give general directions to vessels using the harbour, and persons and vehicles using the harbour, together with powers exercisable by the harbour masters to give special directions. In respect of special directions and general directions related to the area of jurisdiction below the level of mean high water spring tides, these powers are required to support the effective management of the undertaking as recommended in the Port Marine Safety Code. In relation to vehicles and harbour operations ashore, they are consistent with the powers in section 16(6) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act .</p>
<p>8. Location (coordinates must be provided in</p>	<p>Lynmouth Harbour, Lynmouth</p>

WGS84 format if this is a works order)	
9. State the names of all relevant charts/maps/plans included with application (if appropriate)	<ul style="list-style-type: none"> • Lynmouth Harbour Premises Plan • Lynmouth Harbour Limits Plan
10. State other legislation relevant to the application and included with this application (if appropriate)	<p>Lynmouth Harbour</p> <ol style="list-style-type: none"> (1) 1877 Lynmouth Pier and Harbour Order ('the 1877 Order') (2) 1886 Lynmouth Pier Order ('the 1886 Order') (3) 1891 Lynmouth Harbour Act ('the 1891 Act') (4) 1899 Lynmouth Harbour Order ('the 1899 Order')
11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.	N/A
12. Have you included the required fee for your application?	£4,000 by BACS.

Table 3: Harbour information

<p>Lynmouth Harbour</p> <p>Lynmouth harbour fell victim to the Lynmouth Flood disaster in 1952 which caused major flooding in the area and torrents of water which washed many cottages into the sea (100 buildings were destroyed or seriously damaged, along with 28 of the 31 bridges in Lynmouth). 38 cars were also washed into the sea and there were 34 recorded deaths attributable to event. A memorial in remembrance of this event can be found at the Memorial Hall of Lynmouth which is located toward the harbour.</p> <p>Presently, Lynmouth harbour forms where the East and West Lyn Rivers join and enter the sea, and part of the river has been walled off as a harbour on the western side. The harbour and approaches dry out from half tide and the approach is limited to approximately an hour and a half either side of</p>
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High Water. Lynmouth harbour facilitates the commercial operations of 1-2 commercial operators per year. Additionally Lynmouth harbour facilitates up to 100 non-commercial vessels per year.

Table 3a: Need and justification for order

NEED AND JUSTIFICATION FOR HEO

The majority of Lynmouth harbour was purchased by North Devon Council in approximately 1952 just before the Lynmouth Flood disaster from the Lady of the Manor and the rest of it was purchased from the Crown in 1979. However, to date despite the statutory history of Lynmouth harbour as set out in the still extant Acts and Orders listed below, there is no local Act or Order which appoints the Council as statutory harbour authority for Lynmouth Harbour.

The proposed HEO would replace, modernise and extend the powers under the existing local legislation in a manner considered conducive to the efficient and economical operation, improvement, maintenance or management of the harbour and appoint the Council as statutory harbour authority for Lynmouth harbour.

In relation to statutory history of Lynmouth Harbour, there are four pieces of in-force legislation which appear to relate to up to four 'potential' undertakings, as follows:

- Undertaking 1, authorised by the 1877 Order;
- Undertaking 2, authorised by the 1886 Order
- Undertaking 3, authorised by the 1891 Act; and
- Undertaking 4, authorised by the 1899 Order.

The existing legislation provides for the statutory harbour limits with reference to works built under the relevant legislation for each undertaking. However, it appears that none of the works under the 1877 Order, the 1891 Act or the 1899 Order were ever built. To date, only the works under the 1886 Order have been built (Work A under article 4 of the 1886 Order). As stated above, as far as the Council is aware, none of the potential statutory undertakings remain in existence today.

North Devon Council has been managing Lynmouth harbour for circa 70 years since it was partly acquired in 1952 as described above. A HEO is therefore required to formally allocate North Devon Council as the statutory harbour authority in the interests of securing and facilitating the efficient

and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act). The HEO will also provide North Devon Council with the necessary powers of enforcement to comply with the Port Marine Safety Code. It is on this basis that a HEO is needed and therefore justified.

In conjunction with the above need for a HEO to make the Council the statutory harbour authority, the Council at the same time seeks to repeal the existing local legislation, to aid the harbour's development and secure its efficient and economical management.

The clarified harbour limits under the HEO would be conducive to facilitating the efficient and economic transport of goods and passengers by sea and the recreational use of sea-going ships. The definition of harbour premises is flexible, meaning that if further harbour land within the definition of harbour premises under the Order were purchased in the future (or sold if no longer required for harbour purposes) such land would automatically become part of (or cease to be part of) the harbour undertaking.

In addition to the clarified harbour limits, the modern and additional powers include powers reflective of those contained in modern Harbour Revision Orders (HROs). HROs which contain some similar provisions include the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012, the Cowes Harbour Revision Order 2012, the Dover Harbour Revision Order 2014 and the Portland Harbour Revision Order 1997. They include standard common harbour powers, such as the power to borrow, reserve fund powers, 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.

In view of all of the above, it is considered that it desirable for the efficient and economic transport of goods and passengers by sea and the recreational use of sea-going ships at Lynmouth harbour that the Council is provided with a set of modern flexible statutory powers contained within the proposed HEO and that all of the current local statutory harbour legislation for Lynmouth harbour is repealed. The repeal of existing legislation is due to the fact that the relevant provisions are fragmented, complex and in some cases no longer fit for purpose, and much of the local legislation relating to Lynmouth no longer applies in any event as many of the works authorised under the existing Acts/ Order were never built.

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

Article 1 is not dealt with below since they are ancillary to the substantive provisions of the HEO.

THE HARBOURS ACT 1964

The background of the statutory harbour legislation applying to Lynmouth harbour is very unusual in that, although there is existing statutory harbour legislation which provides for statutory harbour limits, the statutory undertakings in relation to it no longer appears to exist and instead the management of the harbour has been carried out by the Council (through an arrangement with Lynmouth Town Council) for circa 70 years. In order for the Council to be appointed as statutory harbour authority, the correct procedure under the Harbours Act 1964 is considered to be a Harbour Empowerment Order under section 16 of that Act.

Harbour Empowerment Order

Section 16(1) of the Harbours Act 1964 allows an application to be made for a Harbour Empowerment Order where someone is desirous of securing the improvement, maintenance or management of a harbour in circumstances where “*neither he nor any other person has powers, or sufficient powers, to secure it, or to do so effectively*”. It is considered that this power may be exercised both where there is no statutory harbour authority (i.e. “*neither he nor any other person has powers*”) and where the existing statutory harbour authority is not able to improve, maintain or manage the harbour (i.e. “*neither he nor any other person has ...sufficient powers, to secure it, or to do so effectively*”).

Consequently, the Council is applying for a Harbour Empowerment Order even if a statutory harbour authority for Lynmouth harbour technically survives as an entity because it is not effectively improving, maintaining or managing the harbour, and as the owner of the harbour, the Council requires the necessary powers to be able to do so. Therefore, the Council is making an application for an HEO in accordance with section 16(1) to obtain all such powers that are requisite for the objects provided for in section 16(1), (3) and (6) of the Harbours Act 1964. In particular, the Council is relying on the following objects specified in the 1964 Act:

Section 16(1)(a):

“the improvement, maintenance or management of a harbour (whether natural or artificial) navigated by sea-going ships (not being a fishery harbour or a marine work) or of a port, haven, estuary, tidal or other river or inland waterway so navigated (not being a fishery harbour or a marine work);”

Section 16(3)(a):

“the improvement, maintenance or management of a marine work, being a harbour (whether natural or artificial) navigated by sea-going ships or being a port, haven, estuary, tidal or other river or inland waterway so navigated;”

Section 16(6):

“A harbour empowerment order may include all such provisions as appear to the Minister of the Crown by whom it is made to be requisite or expedient for giving full effect to any provision included in the order by virtue of the foregoing provisions of this section and any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order...”

Additionally, it is considered that the Order (as justified below in relation to each article) is consistent with section 16(5) which states that the Minister/ Secretary of State shall not make a harbour empowerment order unless satisfied:

“that the making thereof is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.

This application for the HEO under section 16 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of section 16(5) of the 1964 Act because the making of the HEO is desirable in the interests of 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 PORT MARINE SAFETY CODE

As the owner of and entity ultimately responsible for the management of Lynmouth Harbour, 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 harbour 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 be appointed as the statutory harbour authority and to obtain modern powers of General Direction to enable it to have a single set of General Directions covering the harbour instead of having separate byelaws and directions. Designation with powers of General Direction is an important tool which will assist the Council with compliance with the Port Marine Safety Code.

Table 2b: Justification for inclusion of provisions

Article in HEO	Summary of Provision	Requirement for provision
<p align="center">2 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) sets out that all references to points in the Order are references to World Geodetic System 1984.</p>

		Article 2 is required to enable the Order and its effect to be properly interpreted.
<p>3 Incorporation of the Harbours, Docks and Piers Clauses Act 1847</p>	<p>This article incorporates the said Act except in relation to the sections listed as being excepted. Those sections included predominantly relate to:</p> <p>(A) Power to construct warehouses and other works (section 21). (B) Rates (sections 27 and 33). (C) Collection of rates (sections 34 – 41 and 43 – 46 and 48). (D) Harbour, dock and pier master (sections 51 - 65). (E) 68, 69, 72 – 76 (relating to the discharge or cargoes, removal of goods and the protection of the harbour, dock and pier); (F) Harbour and dock police (sections 79 – 80). (G) Meters and weighers (sections 81 – 82). (H) Byelaws (section 83). (I) Recovery of damages and penalties (sections 92, 94).</p>	<p>This is an incorporation of clauses of the Harbours, Docks and Piers Clauses Act 1847.</p>
<p>4 Harbour 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 harbour limits.</p> <p>This article clarifies the limits of the harbour.</p>	<p>Due to the proposed repeal of all of the current statutory harbour legislation and the fact that it does not appoint the Council as the statutory harbour authority, it is important that the Council's jurisdiction as statutory harbour authority at each of the harbour is clearly set out in this article.</p> <p>The definition of harbour premises is flexible, meaning that if further land was purchased in the future for the harbour undertaking, it could automatically become part of the undertaking and fall within the harbour</p>

		<p>limits (or if land no longer required for the purposes of the harbour undertaking was sold, it would cease to be a part of the harbour premises). The Council's enforcement powers as a statutory harbour authority will be enforceable over all land within the harbour limits including the harbour premises. Plans have been deposited with the HEO to provide further clarity of the current harbour premises.</p> <p>Because this article removes any uncertainty over which land (including land covered by water) forms part of the undertaking, the clarified harbour limits and flexible harbour premises are important to secure the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and for the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>Additionally, 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 ('the 1990 Act').</p> <p>'Operational land' is defined in section 263 of the 1990 Act as:</p> <p><i>263 Meaning of "operational land".</i></p> <p><i>(1) Subject to the following provisions of this section and to section 264, in this Act "operational land" means, in relation to statutory undertakers—</i></p> <p><i>(a) land which is used for the purpose of carrying on their undertaking; and</i></p> <p><i>(b) land in which an interest is held for that purpose.</i></p> <p><i>(2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which</i></p>
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<p>5 General Functions</p>	<p>This article provides that the 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 harbour, its approaches and facilities.</p>	<p>Article 5 authorises the Council to improve maintain, regulate, manage, mark and light the harbour and provide harbour facilities; carry out various activities related to works, structures and equipment at the harbour (including the harbour premises) and do all other things which in its opinion are expedient to facilitate the proper operation, improvement or development of the harbour including acquiring land. Although the Council will have implied powers to acquire land for the harbour, it is sensible to include an express reference to the power within the Order.</p> <p>The definition of harbour facilities highlights the importance of the fishing,</p>

		<p>leisure, recreational and tourism industries to the future viability of the harbour.</p> <p>The inclusion of this article benefits the harbour by ensuring the proper exercise of the statutory harbour provisions which govern it in accordance with a defined set of general functions. It therefore secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and for the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 5 of the Weymouth Harbour Revision Order 2021.</p> <p>Specifically relating to the power to invest contained in article 5(2), this provision provides that where there are monies which are not immediately required by the Council for the purposes of the harbour undertaking, the Council can invest such monies as it thinks fit.</p> <p>This power allows the Council to make such investments as it considers fit using any monies which aren't immediately required for the purposes of the harbour undertaking. Such monies may include, for example, monies held in the reserve fund established under article 7 of the proposed HRO and applied in accordance with paragraph 3(e). Paragraph 3(e) provides that reserve fund monies may be applied by the Council for <i>“any other lawful purpose sanctioned by the Council and connected with the harbour undertaking”</i>.</p> <p>It is considered that this article is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner because it will allow the Council to invest to maximise the funds available to it for the benefit and future of the Harbour.</p> <p>Similar provisions already exist under local harbour legislation, such as section 12 of the Blyth Harbour Act 1986, article 18 of the Falmouth</p>
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		Harbour Revision (Constitution) Order 2004 in England. Similar provisions can also be found in force in Scotland, for example article 5 of the Montrose Harbour Revision Order 1999 and article 13 of the Eyemouth Harbour Revision Order 2021. These provisions provide that the relevant statutory harbour authority may invest sums not immediately required for the purposes of the harbour undertaking and / or turn their resources to account so far as not required for the purposes of the harbour undertaking.
6 Application of finances	<p>This article provides that the Council shall apply the harbour revenue in the manner following and not otherwise:</p> <p>(a) first in payment of the working and establishment expenses and costs of maintenance of the harbour;</p> <p>(b) secondly in payment of the interest on any moneys borrowed by the Council for the harbour under any statutory borrowing power;</p> <p>(c) thirdly in payment of all other expenses properly chargeable to harbour revenue;</p> <p>(d) fourthly to an account established as a reserve fund for the harbour.</p>	<p>The effect of this provision is to fully ring fence the use of harbour revenue. As stated above, 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 Department for Transport's newly published Ports Good Governance Guidance (March 2018). It therefore secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act).</p> <p>A similar provision can be found under article 7 of the Weymouth Harbour Revision Order 2021.</p>
7 Reserve Fund	<p>This article provides that the Council shall establish and maintain a single reserve fund covering the harbour and carry to such a fund any part of its harbour revenue as is available for the purpose.</p>	<p>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 harbour in an economic and efficient manner. It therefore secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act).</p> <p>A similar provision can be found under article 8 of the Weymouth Harbour Revision Order 2021.</p>

<p style="text-align: center;">8 Borrowing Powers</p> <p style="text-align: center;">9 Temporary Borrowing</p>	<p>Article 8 provides that the Council, or a subsidiary of the Council (defined in article 2(1) of the proposed HEO), may borrow such sums of money as thought fit for the purposes of the harbour undertaking.</p> <p>Article 9 provides that the Council may borrow temporarily by way of overdraft or otherwise such sums of money as the Council may require for the purposes of the harbour undertaking.</p>	<p>The articles reflect modern statutory harbour borrowing powers as can be seen in the similar powers conferred by article 3 of the Blyth Harbour Revision Order 2015, and article 9 of the Dover Harbour Revision Order 2014.</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, borrowings will be limited by the amount a lender is prepared to loan. In addition, the unlimited borrowing power will avoid the requirement for an HRO at a future date to extend the borrowing powers as the value of money decreases as a result of inflation.</p> <p>In respect of article 8(3), the Council, or any subsidiary of the Council, may effect such arrangements as considered fit to mitigate any financial risk incurred for the purposes of borrowing under paragraph (1). The power to enter into risk mitigation arrangements is needed to enable the Council, or its subsidiaries, to exercise the power to borrow in a prudent and cost effective manner.</p> <p>These articles are authorised under paragraph 10 of Schedule 2 to 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>Charges (generally)</p>	<p>The articles contained within Part 4 of the HEO (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 harbour in an efficient and economical manner.</p>	<p>See below for justification of each provision. A similar suite of powers conferred by articles Part 5 has been conferred on Weymouth and Portland Borough Council in articles 10 – 19 of the Weymouth Harbour Revision Order 2021.</p>

<p style="text-align: center;">10 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 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>In relatively small harbours such as Lynmouth harbour, it is important to future viability that all users of the harbour contribute to the cost of the management and maintenance of the harbour. It would be detrimental to the improvement, maintenance or management of the harbour in an efficient and economical manner if charging powers did not exist in respect of one type of vessel or floating structure using the harbour (exemptions are provided in article 17). This provision is particularly important because the Order provides for existing charging provisions in current local statutory harbour legislation to be repealed.</p> <p>By ensuring that the Council is able to secure such revenue and thus ensure the longevity of the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 10 of the Weymouth Harbour Revision Order 2021.</p>
<p style="text-align: center;">11 Charges for services or facilities</p>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 of the Harbours Act 1964, 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 the harbour to be managed economically and efficiently.</p> <p>By ensuring that the Council is able to secure such revenue and thus ensure the longevity of the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 11 of the Weymouth Harbour Revision Order 2021.</p>
<p style="text-align: center;">12 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 harbour or harbour premises. It also sets out who</p>	<p>This article is included to ensure that the payment of charges authorised to be levied are consistent with section 16(1)(a) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour. For these purposes, it is essential that the HEO is clear as</p>

	<p>charges are payable by and who they can be recovered from and when.</p>	<p>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 HEO as this would negatively impact the Council's ability to efficient and economically manage the harbour.</p> <p>By ensuring that the Council is able to secure such revenue and thus ensure the longevity of the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act).</p> <p>A similar provision can be found under article 12 of the Weymouth Harbour Revision Order 2021.</p>
<p>13 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 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 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 Council 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>14 Deposits 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 it, 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 harbour to be able to secure the reasonable charges due to it by virtue of charging powers under the local legislation applying to the harbour, 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 harbour by removing the relevant vessel or goods from the harbour or refuse entry.</p> <p>This article is consistent with section 16(1)(a) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour. Furthermore, by ensuring that the Council has sufficient enforcement powers to secure the charges due, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act).</p> <p>A similar provision can be found under article 14 of the Weymouth Harbour Revision Order 2021.</p>
<p>15 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 collects 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>A similar provision can be found under article 15 of the Weymouth Harbour Revision Order 2021.</p>
<p>16 Refusal to pay charges for landing places</p>	<p>This article provides that a vessel may be prevented from using a landing place supplied by the Council, if the master of the vessel refuses to pay the related charges.</p>	<p>It is essential for the economic management of the harbour for the Council to be able to secure the reasonable charges due to it by virtue of charging powers under the local legislation applying to the harbour, the 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 HEO.</p>

		<p>This article is consistent with section 16(1)(a) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour. Furthermore, by ensuring that the Council has sufficient enforcement powers in relation to payments due for landing places, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 16 of the Weymouth Harbour Revision Order 2021.</p>
<p>17 Exemption from Harbour Dues</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>By ensuring appropriate persons are exempt from harbour dues in the exercise of their core functions (e.g. vessels belonging to lifeboat services or in the service of the police force), the HEO will not deter such operations within the harbour and as such this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 17 of the Weymouth Harbour Revision Order 2021.</p>
<p>18 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 harbour to be able to secure the reasonable charges due to the Council by virtue of charging powers under the local legislation applying to the harbour, 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 recover be insufficient to secure the debt.</p> <p>By ensuring that the Council is able to secure such revenue and thus ensure the longevity of the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section</p>

		<p>16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 18 of the Weymouth Harbour Revision Order 2021.</p>
<p>19 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 harbour for the Council to be able to secure the reasonable charges due to it 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 of its powers under the local legislation applying to the harbour 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 harbour until such a time as the charges payable have been paid. Should such a vessel be able to leave the harbour 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 harbour in an economically efficient manner.</p> <p>This article is consistent with the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 19 of the Weymouth Harbour Revision Order 2021.</p>
<p>20 Power to make General Directions</p> <p>21 Procedure for giving, amending or</p>	<p>These articles provide the Council with a power of General Directions, which cover vehicles, and directions given for the ease, convenience or safety of harbour operations ashore as defined under the Order (including speed limits for and parking of vehicles) and extended powers of Special Direction. They</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>revoking General Directions</p> <p>22 Publication of General Directions</p> <p>23 Special Directions</p> <p>24 Failure to comply with directions</p> <p>25 Enforcement of directions</p> <p>26 Master's responsibility in relation to directions</p> <p>27 Boarding of vessels and vehicles</p>	<p>also set out the consequences of failing to comply with a General or Special Direction.</p>	<p>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 Harbour Advisory Group to be set up under article 31 as 'designated consultees' it contains a strong local consultation requirement.</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 have in place a single set of General Directions. In line with best practice, article 21 of the proposed order provides a statutory right for 'designated consultees' to be consulted about proposed General Directions (see article 21(1)(a) and (b)).</p> <p>As stated above, the Harbour Advisory Group will be a 'designated consultee' within article 21(1)(a) alongside the Chamber of Shipping and the Royal Yachting Association.</p> <p>The proposed HEO itself only grants the <i>power</i> to make General Directions. General Directions can be made over the entirety of the harbour (which, as explained under article 4 above include the harbour premises). Any future exercise of this power will be exercised in accordance with article 21. 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 21. The process contained in article 21 is likely to be acceptable to the Royal Yachting Association as a similar adjudication process is contained within the Shoreham Port Authority Harbour Revision Order 2021, Fowey Harbour Revision Order 2021 and the Dart Harbour and Navigation Harbour Revision Order 2021.</p> <p>In terms of the precise scope of General Directions, it will be seen that article 20(1) would allow the Council to give or amend directions:</p> <p><i>"...for the purpose of promoting or securing directions conducive to the ease, convenience or safety of navigation, the safety of persons, the</i></p>
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		<p>back of a lorry to ensure that a general direction related to the ensuring loads are properly secured and supported has been complied with.</p> <p>The exercise of the provision is safeguarded by the inclusion of the words <i>“for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the harbour”</i> as it can only be exercised for those purposes.</p>
<p>28 Power to make byelaws</p>	<p>This article provides the Council with the power to make byelaws in a range of circumstances 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>Byelaws made under this provision in the future may, in accordance with paragraph 4(a) of this article, provide for a fine not exceeding level 4 on the standard scale for breach thereof.</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 2) 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. 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 Council 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 the Weymouth Harbour Revision Order 2021 and the Portland Harbour Revision Order 1997.</p> <p>To comply with the Port Marine Safety Code (PMSC) and to meet its other duties (including navigational safety) once the HEO is in force, it is important that the Council has modern and comprehensive byelaw making powers. It is anticipated that only General Directions will be set up and maintained at the harbour once the HEO is in force, but it is important that the Council has 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 above.</p> <p>In relation to the level 4 fine for breach of byelaws, it is considered that this fine level is justified on the basis that it is equal to the fine which</p>

		<p>harbour authorities are able to impose as a result of section 57 of the Criminal Justice Act 1988 i.e. level 4 on the standard scale.</p> <p>By ensuring that the Council is able to secure byelaws to regulate the harbour in accordance with the provisions of the HEO, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p>
<p>29 Confirmation of Byelaws</p>	<p>This article sets out the procedure by which byelaws made under the HEO shall be confirmed under the Local Government Act 1972.</p>	<p>A similar provision can be found in article 25 of the Folkestone Harbour Revision Order 2017.</p> <p>This provision is incidental to the power to make byelaws as described above and is consistent with section 16(1)(a) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour, and is therefore justified on the same basis.</p>
<p>30 Saving for existing directions, byelaws etc</p>	<p>Due to the proposed repeal of the majority of the local legislation currently in force in respect of the harbour, it is necessary to include a saving provision for existing byelaws etc. They will then remain in force until replaced in the future.</p>	<p>It is important that any existing byelaws, regulations, licences, leases etc. remain in force following the coming into force of this Order.</p> <p>This provision is incidental to the power to make byelaws and general directions that are being introduced under the provisions of the HEO, and is therefore consistent with section 16(1)(a) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour and is justified on the same basis.</p> <p>A similar provision can be found under article 11 of the Shoreham Port Authority Harbour Revision Order 2021.</p>
<p>31 Advisory Bodies</p>	<p>This article covers the establishment of an external advisory body with an independent chair.</p>	<p>This article puts on a statutory basis the establishment and continuance of an advisory group or groups for the harbour and their administration. It also requires the Council to consult the advisory group or groups.</p> <p>The statutory requirement for the Council to form an Advisory Group is fundamental to its compliance with the Ports Good Governance</p>

		<p>Guidance (March 2018) which recognises at para 1.5 <i>“the importance of engaging effectively and fully with stakeholders and carrying out their business in an accountable way”</i> and specifically sets out at para 2.6:</p> <p><i>“Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder’s views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders”.</i></p> <p>Additionally, the consultation requirement in respect of General Directions (also being provided for under the HEO) sets out that the Council must (except in emergency) consult the Advisory Group on all matters substantially affecting the harbour, and therefore this article is necessary and incidental to the inclusion of the power of General Direction under the scheme. The power of General Direction (discussed under General Directions above) will be an essential tool for the Council to comply with the Port Marine Safety Code.</p> <p>As a result of the above, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>A similar provision can be found under article 28 of the Weymouth Harbour Revision Order 2021.</p>
<p>32 Development of land etc.</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 harbour; 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 harbour.</p>	<p>Article 32(2) provides that a company established under paragraph 32(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 have the power to do that thing.</p> <p>The purpose of article 32 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, expansion and regeneration of the harbour. The profits and revenues</p>

		<p>derived by the harbour undertaking from the development of any land under article 32 would be used to improve and develop the harbour and provide increased financial security.</p> <p>It should be noted that the powers in article 32 can only be exercised if <i>“it conduces to the improvement, maintenance or management of the harbour in an efficient and economical manner”</i>. This limitation brings article 32 within the powers of section 16(1)(a) of the 1964 Act.</p> <p>Similar powers to those in article 32 were conferred in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 the Dover Harbour Revision Order 2014.</p> <p>By ensuring that the Council is able to develop the harbour and deal with land within or in the vicinity of the harbour and invest in, promote or join with another person, this article is conducive to the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p>
<p>33 Power to grant tenancies and to dispose of land</p>	<p>Article 33(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 its land or other property forming part of the harbour.</p> <p>Article 33(2) provides that the Council may also dispose of, or grant the use or occupation for any purpose of, land or property if it considers that the property is surplus to harbour 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>Article 33(1), which is needed to manage the harbour, is consistent with section 16(1)(a) of the 1964 Act for “improving, maintaining or managing” the harbour. Article 33(1) and 33(2)(a) are needed to enable the Council to manage the harbour undertaking effectively.</p> <p>Article 33(2)(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 harbour undertaking in the future. The power in article 33(2)(b) is only exercisable if “it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner”. This limitation brings article 33(2)(b) within the powers of section 16(1)(a) of the 1964 Act.</p> <p>By allowing the council to grant tenancies and to dispose of land if conducive to the improvement, maintenance or management of the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and</p>

		<p>the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>These powers are similar to the powers conferred in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014.</p>
<p>34 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 harbour set apart and appropriate any part of the harbour 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, Dock 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 harbour open for the shipping and unshipping of goods, and the embarkment and landing of passengers. Therefore, the power of article 34 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 article 34 must only be exercised for the “purpose of or in connection with the harbour” and not for wider purposes. Article 34 is therefore within the scope of section 16(5) of the 1964 Act in that it will assist the Council in the management of the harbour and is in the interest facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships, again for harbour purposes only.</p> <p>A similar provision can be found under article 31 of the Weymouth Harbour Revision Order 2021.</p>
<p>35 Other commercial activities</p>	<p>Article 35(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. Article 35(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. Article 35(2) provides that a company established under paragraph 35(1)(b) may have powers to do anything necessary or expedient for the</p>	<p>The case for this is set out below as an integral part of the need for article 35.</p> <p>Article 35(1)(a) would assist the Council to maximise the potential of the harbour undertaking by enabling it to carry on any business which could conveniently be carried on with the harbour 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 harbour.</p> <p>Article 35(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 harbour related expertise</p>

	<p>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>to the venture while the other party contributes complementary specialist business expertise.</p> <p>The profits and revenues derived from the business ventures under article 35 would be used to improve and develop the harbour and ensure increased financial security.</p> <p>It should be noted that the powers in article 35 can only be exercised if <i>“it is conducive to the improvement, maintenance or management of the harbour in an efficient and economical manner”</i>. This limitation brings article 35 within the powers of section 16(1)(a) of the 1964 Act.</p> <p>Similar powers were conferred in the Weymouth Harbour Revision Order 2021 and the Dover Harbour Revision Order 2014.</p> <p>By assisting the Council to maximise the potential of the harbour undertaking by carrying on business which may be carried on with the harbour undertaking, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p>
<p>36 Power to delegate functions</p>	<p>This article provides that the Council may delegate the performance of any of its functions to be carried out by any such company as referred to in article 35(1)(b).</p> <p>The article also sets out the functions which cannot be delegated, as follows:</p> <p>(a) a duty imposed on the authority by or under any enactment;</p> <p>(b) the making of byelaws;</p> <p>(c) the levying of ship, passenger and goods</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.</p> <p>The power does not apply to the key functions which cannot be delegated as provided for in (a) – (f) of the article. The restrictions imposed on what can and cannot be delegate are considered to be appropriate. (a) – (f) are identical to the provisions set out in paragraph 9B of Schedule 2 to the 1964 Act (Objects for whose achievement harbour revision orders may be made). As the proposed Order is an HEO rather than a HRO, it seems appropriate to expressly set out the functions which cannot be delegated in identical terms.</p> <p>By ensuring the Council is able to delegate its functions other than those set out in the article, this article secures the interests of facilitating the</p>

	<p>dues;</p> <p>(d)the appointment of harbour, dock and pier masters;</p> <p>(e)the nomination of persons to act as constables;</p> <p>(f)functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation.</p>	<p>efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p>
<p>37 Power to lay Moorings</p> <p>38 Licensing of moorings</p> <p>39 Offences as to moorings</p>	<p>These articles provides the Council with powers related to the provision, maintenance and licensing of moorings within the harbour.</p>	<p>It is considered that modernised express provisions are conducive to the efficient and economical management and maintenance of the harbour.</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 provides 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 harbour are sought after and 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 harbour 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>By ensuring the Council is to licence and control the use of moorings and secure the enforcement of the provisions by imposing a level 4 fine for failure to comply, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the</p>

		1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act. This is on grounds of protecting the potential revenue that the Council would likely be due should, for example, a mooring be unduly obstructed and on the basis of navigational safety.
40 Bunkering	This article provides the Council with powers in relation to licensing those persons carrying out commercial refuelling activities related to vessels in the harbour.	<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>
41 Aids to navigation	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 harbour (subject to obtaining the necessary interest in or over land).	<p>This power is important for enabling the Council to meet its navigational safety duties and is therefore consistent with section 16(1)(a) of the 1964 Act to secure the management of the harbour.</p> <p>A similar provision can be found under article 36 of the Weymouth Harbour Revision Order 2021.</p>
42 Power to dredge	This article provides the Council with a power to dredge.	<p>The power to dredge is a standard statutory harbour power. It important that the Council is provided with the power so that it is able to dredge if and when required, and is desirable in the interests of securing the improvement, maintenance or management of the harbour consistent with section 16(1)(a) of the 1964 Act.</p> <p>By ensuring the Council is able to dredge and therefore maintain the navigational channels in the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964</p>

		<p>Act.</p> <p>Because there is not an existing power to dredge at the Harbour, section 75 of the Marine and Coastal Access Act 2009 has been disapplied. The reason for this is that if it were to apply to the Harbour, it would result in this non-works HEO becoming a ‘works’ HEO and engage environmental considerations / requirements. Instead, this HEO provides that the Harbour is <u>not</u> exempt under section 75 of the Marine and Coastal Access Act 2009 and, as such, exercising the power to dredge will require a marine licence (at which point environmental considerations / requirements would be taken into account as part of that process). Any disposal to sea of dredged materials will also require a marine licence.</p> <p>A similar dredging power can be found under article 37 of the Weymouth Harbour Revision Order 2021.</p>
<p>43 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 harbour or on land immediately joining the waters of the harbour to repair it, within a reasonable time, to its reasonable satisfaction, if it is a danger to persons or vessels using the harbour or a hindrance to navigation of the harbour. The provision provides for a level 3 fine for non-compliance (on summary conviction) and a power for the Council to carry out the works and recover the reasonable cost of doing so from the person on whom the notice was served. There is right of appeal to the Secretary of State.</p>	<p>This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of harbour users. Due to the potential safety implications of failure to comply, a level 3 fine is justified. Similar provisions can be found in article 11 of the Portland Harbour Revision Order 1997.</p> <p>This article relates to navigational safety in that it applies to features which are “dangerous to persons or vessels using the harbour or a hindrance to the navigation of the harbour” and is therefore desirable in the interests of securing the improvement, maintenance or management of the harbour and facilitating the efficient and economic transport of goods or passengers by sea as required by section 16(5) of the 1964 Act.</p>
<p>44 Restriction of works and dredging</p>	<p>These articles provide the Council with modern powers regarding works and dredging carried out by third parties within the Harbour Limits. The provisions include</p>	<p>There is not a comparable modern suite of provisions relating to the restriction, licensing and control of works and dredging in the existing local legislation which applies to the Harbour undertaking.</p>

<p style="text-align: center;">45 Control of certain operations and works of statutory undertakers</p> <p style="text-align: center;">46 Licencing of works</p> <p style="text-align: center;">47 Licence to dredge</p> <p style="text-align: center;">48 Appeals in respect of works and dredging licences</p>	<p>requirements to obtain a licence from the Council prior to the undertaking of any works or dredging within the harbour.</p>	<p>These 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) by requiring third parties to seek authorisation from the Council by way of a licence (unless specifically authorised in accordance with article 44(3).</p> <p>Article 48 provides an appeal procedure in respect of any refusal to grant a licence, the terms of any licence granted or any modifications requested by the Council. Aggrieved applicants are able to appeal to the Secretary of State.</p> <p>By ensuring the Council has sufficient control and enforcement powers in relation to works and dredging to secure the safety of the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>Similar provisions can be found in articles 8-10 of the Watchet Harbour Revision Order 2000 and article 7 of Lancaster Port Harbour Revision Order 2001.</p> <p>With regard to these provisions generally, section 16(6) of the 1964 Act provides:</p> <p><i>“A harbour empowerment order may include all such provisions as appear to the Minister of the Crown by whom it is made to be requisite or expedient for giving full effect to any provision included in the order by virtue of the foregoing provisions of this section and any supplementary, consequential or incidental] provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order...”</i></p> <p>And, as such, it is considered that these articles are justified.</p>
<p style="text-align: center;">49 Obstruction of works</p>	<p>This article provides that any person who intentionally obstructs any person acting</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 it duties as to</p>

	<p>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>safety. This HEO 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 harbour, 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>By ensuring the Council has sufficient enforcement powers to deter the obstruction of works, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p>
<p>50 Parking places and related facilities</p>	<p>This article provides that the Council is authorised to provide facilities as to the parking of vehicles and for that purpose erect barricades or fences with related offices, waiting rooms and other conveniences, and may charge for such facilities.</p>	<p>By ensuring that the Council is able to secure such revenue and thus ensure the longevity of the harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea or the recreational use of sea-going ships (as required by section 16(5) of the 1964 Act) and the improvement, maintenance or management of the harbour as required by section 16(1)(a) of the 1964 Act.</p> <p>With regard to this provision generally, section 16(6) of the 1964 Act provides:</p> <p><i>“A harbour empowerment order may include all such provisions as appear to the Minister of the Crown by whom it is made to be requisite or expedient for giving full effect to any provision included in the order by virtue of the foregoing provisions of this section and any supplementary, consequential or incidental] provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order...”</i></p> <p>And, as such, it is considered that these articles are justified.</p>

		Similar provisions can be found in article 20 Penzance Harbour Revision Order 2009.
51 Removal of vehicles and vessels	This article provides that the Council may remove vehicles or vessels from the harbour where they pose an obstruction or interfere with the use of the harbours or are otherwise prohibited by notice.	<p>This power is important in assisting the Council in managing efficiently traffic within the harbour and ensuring compliance with the Open Port Duty (in relation to vessels). Similar provisions can be found 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 as required by section 16(1)(a) and of facilitating the efficient and economic transport of goods or passengers by sea as required by section 16(5) of the 1964 Act. This is because 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 harbours. It would not be consistent with section 16(1)(a) 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 (2) – (7).</p>
52 Power with respect to disposal of wrecks	This article extends the powers of the Council under section 252 Merchant Shipping Act 1995. In particular it extends the circumstances in which the Council may recover expenses reasonably incurred by them in exercising said 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	This extension of the power in s252 Merchant Shipping Act is common and important if the harbour are to be run in an efficient and economic manner, consistent with section 16(5) of the 1964 Act. Similar provisions can be found in article 24 of the Portland Harbour Revision Order 1997. A similar power can be found under article 39 of the Weymouth Harbour Revision Order 2021.

	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 harbour or on land immediately adjoining the harbour.	<p>This article applies in addition to the power under section 57 of the Harbour, 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 with the harbour.</p> <p>This article is desirable in the interests of securing the improvement, maintenance or management of the harbour as required by section 16(1)(a) and facilitates the efficient and economic transport of goods or passengers by sea as required by section 16(5) of the 1964 Act.</p> <p>A similar power can be found under article 40 of the Weymouth Harbour Revision Order 2021.</p>
54 Removal of obstructions other than vessels	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 harbour or their approaches. The provision deals with the recovery of costs by the Council of reasonable expenses incurred by it in relation to the exercise of the power and sale of the item(s) recovered.	<p>This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of harbour users, and important if the harbour are to be run in an efficient and economic manner. Similar provisions can be found in article 8 of the Portland Harbour Revision Order 1997.</p> <p>Paragraph (6) of section 16 of the 1964 Act provides:</p> <p><i>“(6) A harbour empowerment order may include all such provisions as appear to the Minister of the Crown by whom it is made to be requisite or expedient for giving full effect to any provision included in the order by virtue of the foregoing provisions of this section and any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order”.</i></p>
55 Notices	This article sets out the process for serving any notices required under the Harbour Revision Order.	This article is conducive to the efficient management of the harbour as required under section 16(1)(a) of the 1964 Act, clearly setting out the procedural requirements for Notices required under the Order.
56 Saving for Trinity House	This article provides the standard saving provision for the rights of Trinity House.	No further justification required.

<p align="center">57 Crown Rights</p>	<p>This article provides the standard saving provision for Crown Rights.</p>	<p>No further justification required.</p>
<p align="center">58 Revocation / Repeal</p>	<p>This article provides for the repeal and revocation (as appropriate) of the local legislation listed in the Schedule from the date of the HEO.</p>	<p>This HEO 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 58 and the accompanying Schedule are required in conjunction with this HEO 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 16(1)(a) and 16(5) of the 1964 Act and which will assist the Council in meeting it the recommendations of the Port Marine Safety Code.</p>

Table 4: Relevant policies, guidance and plans

<p>Plan, policy or guidance</p>	<p>Demonstration that application is compliant with relevant plan, policy or guidance.</p>
<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 WEST MARINE PLAN</p> <p>Lynmouth Harbour is situated within the South West Marine Plan Inshore Area. Once published, Marine Plans become a material consideration and as such, it is considered in this Statement of Support in addition to the UK Marine Policy Statement. The relevant Marine Plan is therefore the South West Inshore and South West Offshore Marine Plan, June 2021 ("the South West Marine Plan").</p> <p>The proposed HEO is a non-works HEO (i.e. it does not authorise a plan or project). Its provisions are focused on providing the Council with modern statutory harbour powers and duties which are desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.</p>

The proposed HEO also clarifies the existing harbour limits to expressly include the harbour premises, securing of the Council's enforcement powers above high water. The other provisions of the proposed HEO are predominantly administrative (such as financial, borrowing and charging powers; powers of development and disposal of land; and powers in relation to establishing advisory bodies, moorings, bunkering, dredging, and powers to deal with wrecks and vessels etc.). As such it is expected that the effects of the proposed HEO on the South West Marine Plan area will be very limited and that any effects will be positive as the proposed HEO supports the economic and efficient management of Lynmouth Harbour (including with respect to environmental considerations). 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 HEO is to modernise the Council's enforcement powers enabling them to keep its enforcement provisions under review and to update, amend and repeal them in a more timely and efficient manner than through byelaws. This will support the 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 Lynmouth harbour is kept '*clean, healthy, safe, productive and biologically diverse.*' The provisions of the proposed HEO also support the following high-level objectives contained in the MPS:

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

Compliance with the South West Inshore and South West Offshore Marine Plan

The South West Marine Plan was published in June 2021. Through its modernisation of the Council's statutory powers, enabling the efficient and economic management of the harbour and the activities that take place there, the proposed HEO will support the following objectives contained in the South West Marine Plan:

	<p>(a) Objective 1: Infrastructure is in place to support and promote safe, profitable and efficient marine businesses.</p> <p>(b) Objective 2: The marine environment and its resources are used to maximise sustainable activity, prosperity and opportunities for all, now and in the future.</p> <p>(c) Objective 3: Marine businesses are taking long-term strategic decisions and managing risks effectively.</p> <p>(d) Objective 6: The use of the marine environment is benefiting society as a whole, contributing to resilient and cohesive communities that can adapt to coastal erosion and flood risk, as well as contributing to physical and mental wellbeing.</p> <p>(e) Objective 7: The coast, seas, oceans and their resources are safe to use.</p> <p>In addition, the proposed HEO is supported by policy SW-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising that <i>'ports and harbours are essential to realising economic and social benefits for the south west marine plan areas and the UK. SW-PS-1 makes sure that proposals do not restrict current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.'</i></p>
<p>Insert other relevant plans/policy/guidance in this column</p>	<p>Port Marine Safety Code – See Table 3A</p>

Table 5: Any other relevant information

In addition to the specific provisions of section 16 provided for above in justification of each article, paragraph (6) of section 16 of the Harbours Act 1964 provides:

“(6) A harbour empowerment order may include all such provisions as appear to the Minister of the Crown by whom it is made to be requisite or expedient for giving full effect to any provision included in the order by virtue of the foregoing provisions of this section and any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order, including, but without prejudice to the generality of the foregoing words, penal provisions and provisions incorporating, with or without modifications, any provision of the Lands Clauses Acts or any other enactment and provisions for excluding or modifying any provision of any Act or of any instrument made under any Act (including this Act) and for repealing any statutory provision of local application affecting the area in relation to which the powers are intended to be exercised; but no penal provision of a harbour empowerment order shall be so framed as to permit of a person's being punished otherwise than on his conviction or as to permit—

(a) on his being summarily convicted, of the infliction on him of a penalty other than a fine or of—

(i) in the case of an offence triable either summarily or on indictment, the infliction on him of a fine exceeding the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 or section 289B of the Criminal Procedures (Scotland) Act 1975;

(ii) in the case of an offence triable only summarily, the infliction on him of a fine exceeding level 4 on the standard scale or, in the case of a continuing offence, a daily fine exceeding £50 for each day on which the offence continues after conviction;

(b) on his being convicted on indictment, of the infliction on him of a penalty other than a fine.”

For the reasons mentioned above, it is considered that to the extent that any provision contained in the HEO is not otherwise justified above, those provisions within the scope of paragraph (6) and are therefore justified on that basis.