



Marine
Management
Organisation

Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

1. Date application made to MMO	05 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 Statutory Harbour Authority	Poole Harbour Commissioners ("The Commissioners").
6. Is this a Works Order?	No
a. Brief description of proposed works	N/A
b. Date when notification of intention was submitted to MMO	N/A
c. Date when EIA screening	N/A

opinion was issued by MMO	
d. If screened in, date when scoping opinion was issued by MMO	N/A
e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO	N/A
7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.	<p>This application is for a harbour revision order to be made under the powers conferred on the Secretary of State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).</p> <p>The Order modernises and partly consolidates the statutory harbour powers applying in relation to Poole Harbour (hereinafter referred to as “The Harbour”), including updating the Commissioners’ current constitutional provisions to bring them in line with the Ports Good Governance Guidance.</p> <p>The Order also confers a number of modernised powers on the Commissioners considered conducive to the efficient and economical operation, maintenance, management and improvement of Poole Harbour. The provisions cover a range of matters including advisory bodies, commercial activities, dredging, control of repairs and works and bunkering. In particular, the Order would confer modern powers on the Commissioners to give general directions to vessels, persons and vehicles using Poole Harbour. These powers are required to support the effective management of Poole Harbour as recommended in the Port Marine Safety Code. In relation to vehicles and harbour operations ashore, they are instead consistent with the powers in section 14(3) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the harbour.</p>
8. Location (coordinates must be provided in	Poole Harbour (Poole).

WGS84 format if this is a works order)	
9. State the title of all relevant charts/maps/plans included with application (if appropriate)	None
10. State the legislation relevant to the Harbour Authority and included with this application (if appropriate)	<u>Poole Harbour</u> <ol style="list-style-type: none"> 1. Poole Harbour Act 1914; 2. The Poole Harbour Revision Order 1999; 3. The Poole Harbour Revision Order 2001; 4. The Poole Harbour Revision Order 2012; and 5. The Poole Harbour (Works) Revision Order 2015.
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?	£4000.00 by BACS.

Table 3: Statutory Harbour Authority background

Poole Harbour is classed by the Department for Transport ("DfT") as a Trust Port. The Commissioners, as the statutory harbour authority for the Harbour, are governed by their own local legislation. The Commissioners are responsible for the administration, maintenance and improvement of the harbour which is more fully described below.

The Commissioners are also the Local Lighthouse Authority for the harbour and the surrounding area and a Competent Harbour Authority for the purposes of Pilotage.

In managing the Harbour, the Commissioners strive to observe industry standards set out in Government guidelines. The Commissioners are committed to complying with the principles of the various codes and reports applying to the ports and harbour industry, except where not relevant to the Commissioners' constitution.

Poole Harbour is one of the world's largest natural harbours, and hosts many conflicting interests including:

- commercial;
- recreational;
- military;
- environmental (an internationally important area for nature conservation and a designated SPA). There are three national and three local nature reserves, as well as Dorset Wildlife and RSPB managed areas. The harbour's extensive sheltered waters also provide a magnificent haven for recreational sailing and water sports. The mudflats and salt marshes are of great ecological value for feeding and roosting birds.

In terms of commercial activity, navigation channels are shared between sightseeing vessels, leisure craft of all types, cross-Channel freight and passenger ro/ro ferries along with conventional bulk cargo vessels utilising the Harbour. Approximately 1.25 million tons of cargo and around 400,000 passengers pass through the Harbour each year, with more than 5,000 commercial shipping movements per annum. The commercial part of the Harbour (the Port) covers 60 acres and, in recent years, has expanded with the increases in continental traffic. Against strong competition for continental traffic between the south coast ports and harbours, Poole Harbour Commissioners maintain Poole as a prosperous, medium-sized port well in tune with its harbour environment.

Table 3a: Need and justification for order

Port Marine Safety Code:

As the harbour authority for the harbour, the Port Marine Safety Code (November 2016) published by the Department for Transport applies to the Commissioners as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. The Executive Summary to the Port Marine Safety 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 Port Marine Safety Code identifies a number of tasks which harbour authorities should undertake in order to comply with the Port Marine Safety 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.

For the reasons set out throughout this Statement of Support, particularly those reasons which specifically refer to the Port Marine Safety Code, the Commissioners consider the HRO is in line with the guidance and recommendations of the Port Marine Safety Code.

General

The proposed HRO would consolidate and modernise existing local statutory harbour legislation in respect of the Harbour and confer further modernised powers on the Commissioners considered conducive to the efficient and economical operation, maintenance, management and improvement of the Harbour. The local statutory provisions being repealed are set out in Schedule 3 to the Order.

The HRO includes provisions which alter the current constitutional arrangements of the Commissioners to bring them in line with the Ports Good Governance Guidance. This is considered conducive to the efficient management of the Harbour. The existing constitutional provisions from currently-in-force local legislation have already been amended previously and as such rather than amend them again, the Poole Harbour Revision Order 2001 is being repealed and the constitutional provisions set out in the new HRO instead.

It is considered that it is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner that the Commissioners are provided with a set of modern flexible statutory powers contained within the proposed HRO and that some of the current local statutory harbour legislation for Poole Harbour is repealed due to the fact that some of the relevant provisions are or no longer fit for purpose.

Harbours Act 1964

Section 14 of the Harbours Act 1964 (“**the 1964 Act**”) confers powers which have been devolved to the MMO to make an order under that section (known as a harbour revision order) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 to the 1964 Act.

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

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

The matters set out in Schedule 2 to the 1964 Act include, in particular, at paragraph 4:

“Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above”.

And, at paragraph 6:

“Settling (either for all purposes or limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled”

Because this is not an application for a harbour revision order which, directly or indirectly, authorises a project (within the meaning of paragraph 1 of Schedule 3 to the 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

The application for the Order under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:

(a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.

(b) section 14(2) of the 1964 Act because:

(i) the application is made upon the written application of a harbour authority engaged in improving, maintaining or managing the harbour; and

(ii) the making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

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

The modernised and additional powers include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include the Shoreham Port Authority Harbour Revision Order 2021, Weymouth Harbour Revision Order 2021, Fowey Harbour Revision

Order 2021, Dart Harbour and Navigation Harbour Revision Order 2021, Portland Harbour Revision Order 1997, the Cowes Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014. They include common types of statutory harbour powers, such as powers associated with control or works and dredging and powers of general direction.

The Order also repeals the Poole Harbour Order 1914 and the Poole Harbour Order 2001 because their provisions are not required following the coming into force of the Order (which contains modern equivalent provisions). It makes amendments to the Poole Harbour Revision Order 1999 ('the Order of 1999') related to the repeal of earlier enactments and the Poole Harbour Revision Order 2012 ('Order of 2012'). In respect of the Order of 2012 it updates and inserts required definitions and modernises the charging powers of the Commissioners.

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

Article 1 of the Order is not dealt with below because it is ancillary to the substantive provisions of the Order.

Table 2b: Justification for inclusion of provisions

Article in HRO	Summary of Provision	Requirement for provision
<p 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) applies the definition of ‘harbour undertaking’ in the Order to the interpretation of the words ‘harbour undertaking’ in the Order of 1999, Order of 2012 and Poole Harbour Revision Order 2015.</p> <p>Article 2 is required to enable the Order and its effect to be properly interpreted.</p>
<p align="center">3 Incorporation of the Commissioners Clauses Act 1847</p>	<p>This article incorporates provisions of the Commissioners Clauses Act 1847 which predominantly relate to:</p> <ul style="list-style-type: none"> a) Section 41 to 47 (Meetings of the Commissioners); b) Section 53 (Commissioners may provide public offices); c) Section 60 (Legal proceedings); and d) Section 99 to 101 (Notices) 	<p>This is an incorporation clause of the Commissioners Clauses Act 1847.</p>
<p align="center">4 – 12 Constitution of the Commissioners inc. Schedule 1 (Form of Declaration) and Schedule 2 (Incidental</p>	<p>Article 4 states that the Commissioners are incorporated and re-constitutes the Commissioners. Articles 4 -12 broadly reflect the current practices of the Commissioners, with amendments to the current practices where required (including the appointment of all the Commissioners (other than the Chief Executive and officer) by a selection panel), their</p>	<p>These articles of the proposed HRO accord with the Ports Good Governance Guidance with respect to appointment of members of the Commissioners. They provide for all Commissioners (other than the Chief Executive and appointed officer) to be appointed by a selection panel constituted in line with the Ports Good Governance Guidance (PGGG) recommendations. This brings the constitutional arrangements of the Commissioners in line with the PGGG. Under the current arrangements four of the Commissioners can be appointed by third parties. This does not accord with the requirements of the PGGG which</p>

<p>Provisions Relating to the Commissioners)</p>	<p>composition, terms of office, casual vacancies, disqualification and meetings.</p>	<p>states that apart from where the Secretary of State makes appointments, the responsibility for board appointments rests with Trust Port boards. Board members should not be appointed to represent any particular interests.</p> <p>Articles 7 of the Order deal with terms of office and articles 9 and 11 deal with casual vacancies and disqualification or removal of Commissioners. Schedule 2 deals with incidental provisions such as meetings of the Commissioners, the Chair and vice-chairs' appointment and re-appointment, meetings, procedure, members' remuneration, role and validity of acts of the Commissioners.</p> <p>Similar provisions can be found in the Fowey Harbour Revision Order 2001. They accord with the requirements of the Ports Good Governance Guidance.</p>
<p>13 Power to make general directions as to use of the harbour, etc</p> <p>14 Procedure for giving, amending or revoking general directions</p> <p>15 Publication of general directions</p> <p>16 Failure to comply with directions</p>	<p>These articles provide the Commissioner with modern powers of General Direction and slightly extend the standard power to cover vehicles and directions given for the ease, convenience or safety of harbour operations ashore (as defined under the Order). They also set out the consequences of failing to comply with a General Direction.</p>	<p>The Port Marine Safety Code, advises at paragraph 2.5 of Chapter 2 that:</p> <p><i>“In particular, harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already.”</i></p> <p>The Commissioners do have existing powers of General Direction, but they do not cover harbour operations ashore and as such the Commissioners still also require byelaws. 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 21 as ‘designated consultees’, it contains a strong local consultation requirement.</p> <p>Therefore, in line with the Port Marine Safety Code, the Commissioners are applying for a modernised power of General Direction that will enable the Commissioners to repeal their existing byelaws and instead have in place a single set of General Directions. In line with best practice, article 14 of the proposed order provides a statutory right for ‘designated</p>

		<p>consultees' to be consulted about proposed General Directions (see article 14(1)(a) and (b)).</p> <p>As stated above, the Harbour Advisory Group will be a 'designated consultee' within article 14(1)(a) alongside the Chamber of Shipping and the Royal Yachting Association.</p> <p>The proposed harbour revision order itself only grants the power to make General Directions. General Directions can be made over the entirety of the Harbour. Any future exercise of this power will be exercised in accordance with article 14. This means that representations received from the designated consultees will be considered by the Commissioners 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 14. The process contained in article 14 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 13(1) would allow the Commissioners to give or amend directions <i>"...for the purpose of promoting or securing directions conducive to the ease, convenience or safety of navigation, the safety of persons, the protection of property, flora and fauna and the ease, convenience and safety of port operations ashore in the port"</i>. In relation to vehicles and port operations ashore, such a scope is consistent with the powers in section 14(3) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the harbour.</p> <p>Article 16 sets out the maximum fine level (level 4 on the standard scale) for failure to comply with a General Direction once made. The Commissioners are already entitled to impose fines of up to level 4 on</p>
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		<p>the standard scale in respect of their current byelaw and general direction powers. As such, a level 4 fine is considered justified.</p> <p>These articles are authorised by Schedule 2 to the 1964 Act include, in particular:</p> <p>paragraph 3: <i>Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—</i></p> <p style="padding-left: 40px;">(a)improving, maintaining or managing the harbour;</p> <p style="padding-left: 40px;">(b)marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or</p> <p style="padding-left: 40px;">(c)regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.</p> <p>paragraph 4: <i>“Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above”.</i></p> <p>paragraph 16A: <i>“Imposing or conferring on the authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features.”</i></p>
<p>17 Master’s responsibility in relation to directions</p>	<p>Article 17 preserves the responsibility of the Master of a vessel to the Master’s vessel, persons on board it, its cargo and any other persons or property.</p>	<p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner as it expressly imposes the Master’s own responsibility in relation to directions.</p>

		A similar provision can be found under article 10 of the Shoreham Port Authority Harbour Revision Order 2021 and under article 10 of the Lymington Harbour Revision Order 2014.
18 Boarding of vessels and vehicles	This article provides that a duly authorised officer of the Commissioners may, on producing if so required their authority, enter and inspect a vessel or vehicle in the Harbour 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 Commissioners relating to the Harbour, including the enforcement of any such enactment, byelaw or general direction.	<p>Article 18 will also assist in securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act as it will allow an authorised officer of the Commissioners to board vessels for the purposes of any enactment related to harbour functions, or for the enforcement of byelaws and general directions.</p> <p>This provision applies in addition to the existing power to board vessels under article 55 of the Poole Harbour Revision Order 2012 (which is limited to the purposes set out in that article).</p> <p>Such a power will be useful to the Commissioners where a person has failed to comply with byelaws, special directions or general directions. The Commissioners must be afforded the power to board relevant vessels and vehicles for the purposes of enforcing those byelaws, special directions and general directions.</p> <p>The rationale for including the power of entry into vehicles as well as vessels is that, just like vessels, there may be circumstances in which a vehicle needs to be entered to ensure that general directions or byelaws made in respect of it have been complied with. For example, entry to the 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, special direction or general direction of the Commissioners relating to the harbour”</i> as it can only be exercised for those purposes.</p>
19	Article 19 provides a standard saving for existing byelaws, directions etc.	This is a standard provision required to ensure that the provisions of the Order do not affect the status of existing byelaws, directions etc. following the coming into force of this Order.

<p>Saving for existing directions, byelaws etc</p>		<p>Due to the amendments to and proposed repeal of some of the local legislation currently in force in respect of the Harbour, it is necessary to include a saving provision for existing byelaws, directions etc. to ensure that they do stay in force. They will then remain in force until replaced in the future.</p> <p>This provision is incidental to the powers to make byelaws and general directions that are being introduced under the provisions of the HRO and is therefore consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner.</p> <p>A similar provision can be found under article 11 of the Shoreham Port Authority Harbour Revision Order 2021.</p>
<p>20 Harbour Premises Plan</p>	<p>This article clarifies that the Commissioners have jurisdiction as a harbour authority, and that the harbour masters powers are exercisable, within the harbour.</p> <p>Paragraph (3) makes clear that the harbour premises are deemed operational land within the meaning of the Town and Country Planning Act 1990.</p> <p>Paragraph (2) requires a harbour premises plan to be deposited with the HRO, showing the extent of the harbour premises at the date of the HRO. Additionally, paragraphs (4) to (7) similarly require an “illustrative plan” to be maintained by the Commissioners from the date the HRO comes into force. This plan shows for illustrative purposes the extent of the harbour premises and must be kept available for inspection at the harbour office and on the Commissioners’ website. Should any alterations be made to the extent of the harbour</p>	<p>This article is authorised by paragraph 17 of Schedule 2 to the 1964 Act which provides:</p> <p><i>“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.”</i></p> <p>In relation to paragraphs (1), (2), and (4) to (7), these articles are required to ensure clarity over the limits of the Commissions’ jurisdiction as a harbour authority. This is particularly important in this HRO because a new power of General Direction is being introduced under it which will be enforceable over the harbour premises. Therefore, it is essential for a harbour premises plan / illustrative plan to be included so that harbour users can easily understand the extent of the port premises.</p> <p>Paragraph (3) expressly sets out that ‘harbour premises’ (as defined in the Order) are deemed to be ‘operational land’ for the purposes of the Town and Country Planning Act 1990 (‘the 1990 Act’). ‘Operational land’ is defined in section 263 of the 1990 Act as:</p>

	<p>premises, the Commissioners must update the illustrative plan within 30 days of those alterations.</p> <p>The requirement for the harbour premises plan and illustrative plan will ensure that there is clarity over the extent of the harbour premises, both at the date the HRO comes into force and in the future.</p>	<p>263 Meaning of “operational land”.</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 interests are held, for the purpose of the carrying on of statutory undertakings.</i></p> <p>In addition in respect of the permitted development rights contained in Schedule 2, Part 8, Class B, the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964</p> <p>Under the proposed HRO the definition of ‘harbour premises’ is the same as that contained in article 2(1) of the Order of 2012 (as amended by the proposed HRO):</p> <p><i>“the harbour premises” means the quays, piers, landing places and all other works, lands and buildings for the time being vested in, or occupied or administered by, the Commissioners as part of their harbour undertaking, and occupied wholly or mainly for the purpose of activities there carried on;</i></p>
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<p>21 Advisory Bodies</p>	<p>This article covers the establishment of an external advisory body with an independent chairperson.</p>	<p>Article 21 is required because it puts on a statutory basis the establishment and continuance of an advisory group or groups for the harbour and its administration. It also requires the Commissioners to consult the advisory group or groups (except in an emergency) on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the Harbour and its navigation.</p> <p>The statutory requirement for the Commissioners to form an Advisory Group is fundamental to their compliance with the Ports Good Governance 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>Article 21 is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner. It is also</p>

		<p>recommended by the PGGG that it is beneficial to engage port users / stakeholders in decision making for the benefit of the harbour.</p> <p>A similar provision can be found under article 28 of the Weymouth Harbour Revision Order 2021.</p>
<p>22 Commercial activities</p>	<p>Paragraph (1)(a) of the Order provides that the Commissioners may carry on at any place a trade or business of any kind, including a trade or business carried on in conjunction with another person. Paragraph (1)(b) of the Order enables the Commissioners 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. Paragraph (2) provides that a company established under paragraph (1)(b) may have powers to do anything necessary or expedient for the purposes of the objects for which it has been established notwithstanding that the Commissioners would not themselves (as harbour authority) have the power to do that thing.</p>	<p>Paragraph (1)(a) would assist the Commissioners in maximising 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 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>Paragraph (1)(b) would 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 land and/or harbour related expertise to the venture while the other party contributes complementary specialist business expertise.</p> <p>The profits and revenues derived from the business ventures under this article would be used to improve and develop the harbour and ensure increased financial security.</p> <p>It should be noted that the powers in this article can only be exercised if:</p> <p><i>“it conduces to the improvement, maintenance or management of the harbour in an efficient and economical manner”.</i></p> <p>This limitation brings this article within the powers of section 14(2)(b) 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>It is considered that this article is authorised by paragraph 17 of</p>

		<p>Schedule 2 of the 1964 Act which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour.</p> <p>The case for this is set out as an integral part of the justification for article.</p>
<p>23 Power to delegate functions</p>	<p>This article provides that the Commissioners may delegate the performance of any of their functions to be carried out by any such company as referred to in article 22 of the Order or article 53 of the Order of 2012.</p>	<p>Article 23 is authorised by paragraph 9B of Schedule 2 to the 1964 Act:</p> <p><i>"Empowering the authority to delegate the performance of any functions of the authority except- (a) a duty imposed on the authority by or under any enactment; (b) the making of byelaws; (c) the levying of ships, passenger and goods dues; (d) the appointment of harbour, dock and pier masters; (e) the nomination of persons to act as constables; (f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and seamarks, so far as those functions are exercisable for the purposes of the safety of navigation."</i></p> <p>The power to delegate functions is needed to enable the Commissioners to carry out day to day activities through a subsidiary or joint venture company. The power does not apply to the key functions which cannot be delegated under paragraph 9B of Schedule 2 to the 1964 Act.</p> <p>A similar provision can be found under article 33 of the Weymouth Harbour Revision Order 2021.</p>
<p>24 Bunkering</p>	<p>This article provides the Commissioners with powers in relation to licensing those persons carrying out commercial refuelling activities related to vessels in the Harbour.</p>	<p>To comply with the environmental duties contained in s48A of the Harbours Act 1964, the Commissioners consider that it is important that they have 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>

		Similar powers were conferred by article 35 of the Weymouth Harbour Revision Order 2021.
25 Aids to Navigation	This article provides that the Commissioners 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 Commissioners to meet their navigational safety duties. This article relates to navigational safety in that it applies to features which will aid safe navigations within the Harbour and is therefore desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p> <p>A similar provision can be found under article 36 of the Weymouth Harbour Revision Order 2021.</p>
26 Power to dredge	This article provides the Commissioners with a power to dredge.	<p>The power to dredge is a standard statutory harbour power. Presently, the Commissioners, under the article 6 of the Order of 1999, already have the power to dredge in respect to Poole Harbour. However, this power is not expressed in its modern form and therefore an additional modern power is included in the Order. This provision is not a “new” power; it simply provides clarity over the extent of the Commissioners power to dredge the Harbour. It does not provide for additional jurisdiction to dredge in areas where the Commissioners don’t already have the power to do so.</p> <p>Under The Marine and Coastal Access Act 2009, the Commissioners will not need to obtain a marine licence for dredging activities (which is the same as the current position). However, if disposal to sea is required in the future, then a marine licence will be required for this disposal.</p> <p>It is conducive to the management of the undertaking in an efficient manner (as required by section 14(2)(b) of the 1964 Act, for the power to be included in the proposed HRO.</p> <p>A similar dredging power can be found under article 37 of the Weymouth Harbour Revision Order 2021.</p>

<p>27 Repair of Landing places etc</p>	<p>This article provides that the Commissioners 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 their reasonable satisfaction, if it is a danger to persons or vessels using the Harbour or a hindrance to navigation of the Port. The provision provides for a level 3 fine for non-compliance (on summary conviction) and a power for the Commissioners to carry out the works and recover the reasonable costs 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 for assisting the Commissioners in meeting their 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 38 of the Weymouth Harbour Revision Order 2021 and 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 in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p>
<p>28 Restriction of works and dredging</p> <p>29 Control of certain operations and works of statutory undertakers</p> <p>30 Licensing of works</p> <p>31 Licence to dredge</p> <p>32 Appeals in respect of works or dredging licence</p>	<p>These articles provide the Commissioners with modern powers regarding works and dredging carried out by third parties within the Harbour Limits. The provisions include requirements to obtain a licence from Commissioners prior to the undertaking of any works or dredging within the Harbour.</p>	<p>The provisions are important to enable the Commissioners to comply with their duties related to navigational safety and in respect of the environment (in particular s48A 1964 Act).</p> <p>Under the 1914 Act, the Commissioners have existing powers related to providing consent for works being carried out in the harbour. However, the 1914 Act is being repealed and as such new modern provisions are required.</p> <p>The pre-existing provisions and replacement works and dredging licensing powers are not directly comparable due to changes in drafting norms for works licensing and dredging powers. However, both the pre-existing and replacement powers provide for the licensing of works and dredging in the harbour and a right of appeal (now to the Secretary of State, previously to the Board of Trade).</p> <p>Similar provisions can be found in articles 8 -10 of the Watchet Harbour Revision Order 2000 and article 7 of the Port of Tyne Harbour Revision Order 2001.</p>

<p>33 Notices</p>	<p>This article has been included at the request of the Marine Management Organisation. It sets out how notices required under the Order are served.</p>	<p>This article is conducive to the efficient management of the Harbour as required under section 14(2)(b) of the 1964 Act, clearly setting out the procedural requirements for Notices required under the Order.</p>
<p>34 and 35 Savings for Trinity House and Crown Rights</p>	<p>These articles contain standard saving provisions for Trinity House and the Crown.</p>	<p>No further justification required.</p>
<p>36 Amendment of the Order of 1999</p>	<p>The amendments to the 1999 Order update the definition of “harbour” and to remove a reference to repealed legislation.</p>	<p>The amendments to the 1999 Order update the definition of “harbour” to correctly refer to the 2012 Order and to remove a reference to legislation that has been repealed.</p>
<p>37 Amendment of the Order of 2012</p>	<p>The amendments to the 2012 Order include:</p> <ul style="list-style-type: none"> i. inserting a definition of “charges” and “harbour facilities”. ii. updating the definition of “vessel” and inserting a new definition of “watercraft” consistent with the Merchant Shipping (Watercraft) Order 2023. As a result, the existing definition of “personal watercraft” has been omitted. iii. substituting the existing definition of “harbour premises”. iv. in article 3(1) (Incorporation of the Harbours, Docks and Piers Clauses Act 1847) inserting “51,” immediately before “52”. v. inserting a new article 29A - <i>Charges other than ship, passenger and goods</i> 	<p>i to iii.</p> <p>Are consequential amendments to bring the provisions of the Order of 2012 in line with modern drafting (for example, updating the definition of “vessel” will reflect the definition used in most modern Harbour Revision Orders) and the definitions contained in this HRO ,and the definitions will assist with the interpretation of the 2012 Order.</p> <p>iv simply updates the incorporation of the Harbours, Docks and Piers Clauses Act 1847..</p> <p>v. The amendments also insert a new article 29A into the Order of 2012 to ensure that the Commissioners have an express power to charge the equivalent of ship, passenger and goods dues to a range of structures and vessels which are not ‘ships’. It is important to the Harbour’s 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.</p>

	<p>dues. This new provision provides that in addition to ship, passenger and goods dues under section 26 of the 1964 Act, the Commissioners may demand, take and recover reasonable charges in respect of all vessels. It also states that charges may be made in respect of a variety of other floating platforms, chain ferries etc. so that no dispute will arise as to whether such structures can be charged under the powers within the Order.</p> <p>vi. inserting an additional paragraph (5) into article 30 (Payment of charges). The new paragraph provides that charges are payable before the vessel or goods against which they are payable are removed from the harbour (including the harbour premises). It also sets out who charges are payable by and who they can be recovered from and when.</p> <p>vii. inserting an additional paragraph (2) into article 31 (Compounding arrangements and rebates). The new paragraph provides that nothing in section 30 of the 1964 Act (duty of harbour and local lighthouse authorities to make available for inspection, and to keep for sale, copies of lists of certain charges) shall require the Commissioners to include in the list of ship, passenger and goods dues, as required by subsection (1) of that section, charges reduced by a total or partial exemption, a rebate allowed on, or subject</p>	<p>The new article 29A is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p><i>“empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p> <p>vi. Inserting the additional paragraph (5) into article 30 amends the article to assist in ensuring that the charges which the Commissioners are authorised levy are paid. It is therefore desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner. It would be counter-productive to exclude such a provision from the HRO as this would negatively impact the Commissioners’ ability to efficiently and economically manage the Harbour.</p> <p>Furthermore, this additional paragraph is authorised by paragraph 12 of Schedule 2 of the Act of 1964 in that it secures:</p> <p><i>“... the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p> <p>vii. The insertion of the additional paragraph (2) into article 31 brings the drafting in line with modern practices, expressly setting out that the Commissioners are not required to publish information about exemptions or rebates granted.</p> <p>viii. The insertion of the additional paragraph (2) into article 45 of the is required to fully ringfence the use of harbour revenue. Some of the benefits of surplus funds being ring fenced for the benefit of the harbour undertaking are highlighted in paragraph 4.19 of the Ports Good Governance Guidance (March 2018).</p> <p>This insertion is authorised by paragraph 13 of Schedule 2 to the 1964 Act:</p>
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	<p>to a compounding arrangement in respect of, a due included in the said list.</p> <p>viii. inserting an additional paragraph (2) into article 45 (Application of revenue). The new paragraph provides that any revenue not used for the purpose set out in (1)(a) to (c) of the Order of 2012 may be applied to a reserve fund established under article 42 of that Order.</p> <p>ix. Substituting “personal water craft” with the new definition of “watercraft” inserted into the 2012 HRO in respect of the byelaw purposes contained in Schedule 2 to the 2012 Order.</p>	<p><i>“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”</i></p> <p><i>ix. This is an incidental amendments required because the definition of “personal water craft” has been omitted from the 2012 Order and replaced with the new definition of “watercraft”. Therefore, the Schedule (the only place where it appears) has been amended.</i></p>
<p>38 Revocation / Repeal</p>	<p>This article provides for the repeal and revocation (as appropriate) of the local legislation listed in Schedule 3 from the date of the HRO. These Acts and Orders (in so far as they are revoked) either are or will become obsolete once the Order is fully in force.</p>	<p>This Order 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 this article and the accompanying Schedule are required in conjunction with this HRO to complete the process of modernising the local legislation applying to the Commissioners, granting the suite of modern powers and duties set out above which are consistent with section 14(2)(b) of the 1964 Act and which will assist the Commissioners in meeting it the recommendations of the Port Marine Safety Code.</p>
<p>In addition to the specific provisions of Schedule 2 to the 1964 Act mentioned in tables 3(a) and 2(b) above, paragraph 17 of Schedule 2 to the Act provides that a Harbour Revision Order may include provision for:</p> <p><i>“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”</i></p>		

For the reasons mentioned above, it is considered that to the extent that any provision contained in the Order does not fall specifically within any other paragraph of Schedule 2, the provisions of the Order would be conducive to the efficient functioning of Poole Harbour and it is therefore within the scope of the 1964 Act for them to be included in the Order.

Table 4: Relevant policies, guidance and plans

Plan, policy or guidance	<i>Demonstration that application is compliant with relevant plan, policy or guidance.</i>
<p>Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)</p>	<p>COMPLIANCE WITH UK MARINE POLICY STATEMENT AND SOUTH MARINE PLAN</p> <p>Poole Harbour is situated within the South Marine Plan Inshore Area. Marine Plans are a material consideration and as such, it is considered in this Statement of Support in addition to the UK Marine Policy Statement.</p> <p>The proposed HRO is a non-works HRO (i.e. it does not authorise a plan or project). Its provisions are focused on modernising the Commissioners’ existing statutory powers to support the efficient and economical operation, maintenance, management and improvement of Poole Harbour. The HRO modernises the Commissioners’ enforcement powers. The modernisation amends the process by which such enforcement provisions can be made, amended and repealed (General Directions instead of/ in addition to byelaws).</p> <p>Other provisions of the proposed HRO are predominantly administrative (such as establishing advisory bodies, bunkering, and licensing of works and dredging etc.). As such it is expected that the effects of the proposed HRO on the South Inshore Marine Plan area will be limited and that any effects will be positive as the proposed HRO supports the economic and efficient management of Poole Harbour (including with respect to environmental considerations). A brief summary of compliance is nevertheless set out below.</p> <p>Compliance with UK Marine Policy Statement</p> <p>The UK Marine Policy Statement (‘MPS’) sets out (in section 2.1) that the UK vision for the marine environment is for <i>‘clean, healthy, safe, productive and biologically diverse oceans and seas’</i>. The core purpose of the proposed Order is to consolidate and modernise the Commissioners’ powers (in part enabling them to keep their enforcement provisions under review and to update, amend and repeal them in a more timely and efficient manner than through byelaws). The modernisation and consolidation will support the Commissioners’ in ensuring it meets, both its environmental duties under s48A of the Harbours Act 1964 and compliance with the Port Marine Safety Code. Both of which will support the vision of ensuring that the marine environment in and around the Port is kept <i>‘clean, healthy, safe, productive and biologically diverse’</i>. The provisions of the proposed Order also support the following high level objectives contained in the MPS:</p>

(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 Inshore Marine Plan

The South Inshore Marine Plan was published in July 2018. Through its modernisation and consolidation of the Commissioners' statutory powers, enabling the efficient and economic management of the Harbour and the activities that take place there, the proposed Order will support the following objectives contained in the South Marine Plan:

(a) **Objective 1:** To encourage effective use of space to support existing, and future sustainable economic activity through co-existence, mitigation of conflicts and minimisation of development footprints.

(b) **Objective 2:** To manage existing, and aid the provision of new, infrastructure supporting marine and terrestrial activity.

(c) **Objective 11:** To complement and contribute to the achievement of Good Ecological Status or Potential under the Water Framework Directive and Good Environmental Status under the Marine Strategy Framework Directive, with respect to descriptors for marine litter, non-indigenous species and underwater noise.

(d) **Objective 12:** To safeguard space for, and improve the quality of, the natural marine environment, including to enable continued provision of ecosystem goods and services, particularly in relation to coastal and seabed habitats, fisheries and cumulative impacts on high mobility species.

In addition, the proposed Order is supported by policy S-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising that *'ports and harbours are essential to realise economic and social benefits for the south marine plan areas and the UK. S-PS-1 makes sure proposals do not restrict current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient*

	<p><i>port and shipping operations.'</i></p> <p>We are not aware of any marine planning policies that the proposed Order does not accord with.</p>
<p>Insert other relevant plans/policy/guidance in this section</p>	<p>Port Marine Safety Code</p> <p>Please see our comments earlier in this Statement of Support relating to the Port Marine Safety Code (Table 3a).</p> <p>Ports Good Governance Guidance</p> <p>Please see our comments earlier in this Statement of Support relating to the Ports Good Governance Guidance (Table 2b, in relation to article 4 to 12 and Schedules 1 and 2).</p>

Table 5: Any other relevant information

<p>No formal pre-application consultation has been carried out in respect of this application due to the time constraints under which it is being submitted ahead of the HRO application fee increase.</p>
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