



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

Table 1: Application details

<b>1. Date application made to MMO</b>	09 September 2022
<b>2. Name of primary contact</b>	Lara Moore
<b>3. Contact details of primary contact</b>	Lara Moore, Ashfords LLP l.moore@ashfords.co.uk
<b>4. Address of primary contact</b>	Ashfords LLP, Ashfords House, Grenadier Road, Exeter, EX1 3LH
<b>5. Name of Statutory harbour authority</b>	Falmouth Harbour Commissioners
<b>6. Is this a Works Order?</b>	No.
<b>a. Brief description of proposed works</b>	N/A
<b>b. Date when notification of intention was submitted to MMO</b>	N/A
<b>c. Date when EIA screening opinion was issued by MMO</b>	N/A

<p><b>d. If screened in, date when scoping opinion was issued by MMO</b></p>	<p>N/A</p>
<p><b>e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO</b></p>	<p>N/A</p>
<p><b>7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.</b></p>	<p>This 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 HRO would consolidate and modernise existing local statutory harbour legislation in respect of Falmouth Harbour (“the harbour”) and confer further modernised powers on the Falmouth Harbour Commissioners (“the Commissioners”) considered conducive to the efficient and economical operation, maintenance, management and improvement of the harbour.</p> <p>In addition, the HRO clearly defines the harbour limits by reference to co-ordinates and illustrative modern plans. The majority of the current harbour limits are set by reference to lines on historic plans and as such are not as clear as they will be when referenced by co-ordinates. There are a number of statutory harbour authorities in the vicinity of the Falmouth Harbour area, including the Falmouth Docks and Engineering Company who have some overlapping jurisdiction with Falmouth Harbour Commissioners. As such clearly defined limits referenced by co-ordinates are important to the efficient and effective management of Falmouth Harbour.</p> <p>The HRO would confer modern powers on the Commissioners to give general directions to vessels using the harbour and persons and vehicles using the harbour, together with powers exercisable by the harbour masters appointed by the Commissioners to give special directions. These powers are required to support the effective management of those using the harbour, as recommended by the Port Marine Safety Code and, in relation to vehicles and harbour operations ashore, are consistent with the powers in section 14(3) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the harbour.</p>

<b>8. Location (coordinates must be provided in WGS84 format if this is a works order)</b>	Falmouth Harbour.
<b>9. State the title of all relevant charts/maps/plans included with application (if appropriate)</b>	Plans Deposited under proposed Order: <ul style="list-style-type: none"> <li>• Falmouth Harbour Limits Plan.</li> </ul> Plan in Statement of Support in Annex 1 for illustrative purposes: <ul style="list-style-type: none"> <li>• Falmouth Harbour Premises Plan.</li> </ul>
<b>10. State the legislation relevant to the harbour Authority and included with this application (if appropriate)</b>	1.Falmouth Harbour Order 1870; 2.Falmouth Harbour Order 1937; 3.Falmouth Harbour Act 1958 and Plan; 4.Falmouth Harbour Revision Order 1976; 5.Falmouth Harbour Revision Order 1985 and Plan; 6.Falmouth Harbour Revision Order 1991 and Plan; 7.Falmouth (Pilotage) Harbour Revision Order 1988; 8.Falmouth Harbour Revision (Constitution) Order 2004; 9.Cornwall Harbours Harbour Revision Order 2023
<b>11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.</b>	N/A
<b>12. Have you included the required fee for your application?</b>	£4,000 sent by BACS.

**Table 3: Statutory harbour authority background**

**The Statutory harbour authority:**

The 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 are more fully described below.

The Commissioners are also the Local Lighthouse Authority for the harbour and surrounding area.

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.

**The Harbour:**

The Harbour is classed by the Department for Transport ("DfT") as a Trust Port with responsibility for the Inner Harbour at Falmouth (excluding Falmouth Docks), the Penryn River up as far as Coastlines Wharf, the southern part of the Carrick Roads and a large part of Falmouth Bay.

As the third deepest natural Harbour in the world, Falmouth's unique geography and position as the UK's Atlantic Gateway, makes it a highly valuable port for a range of operators. Additionally, Falmouth Bay is the only bunker anchorage in the UK that is outside of the Northern European SECA area.

The Harbour area is equipped with a number of Commercial moorings capable of accommodating a range of vessels up to 190m LOA. The area can cater for a truly diverse range of vessels and offers a complete range of services to the shipping industry including:

- Deep water bunkering.
- Cruise calls.
- Ship repair, refit and dry docking facilities via A&P Falmouth.
- Long and short term layup.
- Cargo handling.
- Casualty reception.
- Anchorages for vessels seeking shelter.
- Personnel transfer, stores and other port services.
- In water surveys.
- Propellor polishing.
- Superyacht berthing, repair and refit.
- Deepwater moorings for vessels up to 180m and 10.5m draft.

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

**Port Marine Safety Code:**

As the harbour authority for Falmouth Harbour, the Port Marine Safety Code (November 2016) published by the Department for Transport (“the Code”) 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 Code explains that:

*“The Code has been developed to improve safety in the harbour 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 harbour 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 Commissioners do not currently have any power of General Direction. As such, the Commissioners are seeking to obtain modern powers of General Direction (covering both vessels and vehicles) to enable them to have a 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 Commissioners with compliance with the Port Marine Safety Code 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.

**Harbours Act 1964:**

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

Section 14(2)(a) of the 1964 Act requires that written application be made to the MMO by the Commissioners 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 Commissioners, 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 Commissioners 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.

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

- (A) Section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.
- (B) Section 14(2) of the 1964 Act because:
  - (i) The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing a 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.

**General:**

The proposed HRO would consolidate, modernise and extend the powers of the Commissioners considered conducive to the efficient and economical operation, improvement, maintenance or management of the harbour. In addition, as explained above, it would clarify the harbour limits (including harbour premises). 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 undertaking.

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 the majority of the current local statutory harbour legislation for the harbour is repealed due to the fact that the relevant provisions are fragmented, complex and in some cases no longer fit for purpose.

The modernised and additional powers include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include the Weymouth Harbour Revision Order 2021, Fowey Harbour Revision Order 2021, the Poole Harbour Revision Order 2012, the Cowes Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014 and the Portland Harbour Revision Order 1997. They include standard statutory 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.

An explanation of, and the need for, each substantive article in the HRO 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 dealt with below since it is ancillary to the substantive provisions of the HRO.

**Table 2b: Justification for inclusion of provisions**

Article in HRO	Summary of Provision	Requirement for provision
<p style="text-align: center;"><b>2</b></p> <p><b>Interpretation</b></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> <p>Article 2 is required to enable the Order and its effect to be properly interpreted.</p>
<p style="text-align: center;"><b>3</b></p> <p><b>Incorporation of the Harbours,</b></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 style="text-align: center;">(A) Power to construct warehouses and other</p>	<p>This is an incorporation clauses of the Harbours, Docks and Piers Clauses Act 1847.</p>

<p><b>Docks and Piers Clauses Act 1847</b></p>	<p>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><b>4</b></p> <p><b>Harbour Jurisdiction</b></p>	<p>This article provides that the Commissioners shall exercise jurisdiction as a harbour authority, and the powers of the harbour master shall be exercisable within the harbour (which includes the harbour premises, the limits of which are described fully in paragraph (1). The clarified harbour limits are important to secure the management of the harbour in an efficient and economical manner because they define the harbour limits by reference to a modern description with coordinates and illustrative plans, all in one Order rather than spread across several Orders.</p>	<p>The article incorporates the harbour premises. This is necessary to ensure that all the land the Commissioners own or is used or intended to be used in connection with the undertaking falls within the limits. The current harbour premises are shown in the plan in Annex 1.</p> <p>Due to the proposed repeal of the majority of current statutory harbour legislation, it is important that the Commissioners’ jurisdiction as statutory harbour authority is clearly set out in this article. Currently, the limits are spread across 3 Orders and the plans are not as clear as they could be. Therefore, it is conducive to the efficient and economic management of the harbour to express them clearly in the Order by reference to co-ordinates and illustrative modern plans. There are a number of statutory harbour authorities in the vicinity of the Falmouth Harbour area, including the Falmouth Docks and Engineering Company who have some overlapping jurisdiction with Falmouth Harbour Commissioners. As such, clearly defined limits referenced by co-ordinates are important to the efficient and effective management of Falmouth Harbour.</p> <p>In respect of the harbour premises, in the event of any future alteration to the extent of the harbour premises (because the Commissioners</p>



		<p>buy, sell etc. land), the Order requires the Commissioners to publish an updated plan on the harbour website and to display one in the harbour office within 30 days of the alteration. The Commissioners' byelaw and general direction enforcement powers can be exercised over the entire area of jurisdiction.</p> <p>The definition of harbour premises (defined in article 2(1) of the Order) is flexible, meaning that if further land was purchased in the future for the harbour undertaking, it would automatically become part of the undertaking (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 undertaking).</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 (<b>'the 1990 Act'</b>).</p> <p>'Operational land' is defined in section 263 of the 1990 Act as:</p> <p style="text-align: center;"><b><i>263 Meaning of "operational land".</i></b></p> <p style="text-align: center;"><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 style="text-align: center;"><i>(a) land which is used for the purpose of carrying on their undertaking; and</i></p> <p style="text-align: center;"><i>(b) land in which an interest is held for that purpose.</i></p> <p style="text-align: center;"><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</i></p>
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		<p><i>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>All land within the definition of harbour premises is therefore within the scope of 'operational land' under the 1990 Act. The inclusion of the wording is to make this clear as local planning authorities sometimes ask statutory harbour authorities to explain with reference to their local legislation that harbour land is operational land. All harbour premises is land designated under a Harbour Revision Order by its very nature. The additional wording is intended to make the effect of local harbour legislation easier to understand and to give a concrete provision that local planning authorities can refer to. Note: it is not changing the current position. It is the view of the applicant that all of its harbour premises are already 'operational land' under the 1990 Act.</p> <p>A similar provision can be found under article 3 of the Newport (Isle of Wight) Harbour Revision Order 2021. In relation to paragraph (3), a similar provision can be found in force (in Scotland) under article 12(3) of the Eyemouth Harbour Revision Order 2021.</p> <p>This article is authorised by paragraph 6 of Schedule 2 to the 1964 Act, as follows:</p> <p><i>“Settling (either for all purposes or for limited purposes) the limits within which the Commissioners are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled.”</i></p>
5	This article provides that the Commissioners may take	For those purposes, this article authorises the Commissioners to

<p><b>General Functions</b></p>	<p>such steps as they 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>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 their opinion is expedient to facilitate the proper operation, improvement or development of the harbour including acquiring land. It is sensible to include an express reference to the power to acquire land within the Order.</p> <p>The definition of harbour facilities highlights the importance of the fishing, leisure, energy, residential, recreational and tourism industries to the future viability of the harbour.</p> <p>This article is authorised by paragraph 3 of Schedule 2 to the 1964 Act:</p> <p><i>"Varying or abolishing duties or powers imposed or conferred on the Commissioners by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of- (a) improving, maintaining or managing the harbour; (b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or (c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land".</i></p> <p>As a result of the majority of local legislation being repealed under the provisions of the HRO, it is considered that, in the interests of clarity, it is desirable that the Commissioners' powers to carry out the matters set out in this article should be set out expressly, rather than relying on implied and/ or existing powers.</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 Commissioners for the purposes of the harbour undertaking, the Commissioners can invest such monies as</p>
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		<p>they think fit.</p> <p>This power allows the Commissioners to make such investments as they consider 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 Commissioners for <i>"any other lawful purpose sanctioned by the Commissioners 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, as required by section 14(2)(b) of the 1964 Act because it will allow the Commissioners to invest to maximise the funds available to them 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 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.</p> <p>This provision is authorised by paragraph 17 of Schedule 2 to the 1964 Act:</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>
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<p style="text-align: center;"><b>6</b></p> <p><b>Application of Finances</b></p>	<p>This article provides that the Commissioners shall apply the harbour revenue in the manner following and not otherwise:</p> <ul style="list-style-type: none"> <li>(A) first in payment of the working and establishment expenses and costs of maintenance of the harbour;</li> <li>(B) secondly in payment of the interest on any moneys borrowed by the Commissioners for the harbour under any statutory borrowing power;</li> <li>(C) thirdly in payment of all other expenses properly chargeable to harbour revenue; and</li> <li>(D) fourthly to an account established as a reserve fund for the harbour.</li> </ul>	<p>This article is authorised by paragraph 13 of Schedule 2 of the 1964 Act:</p> <p style="text-align: center;"><i>“Regulating the application of moneys in the nature of revenue received by the Commissioners and securing that the financial affairs of the Commissioners are properly managed.”</i></p> <p>This article 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 harbours Good Governance Guidance (March 2018).</p> <p>A similar provision can be found under article 7 of the Weymouth Harbour Revision Order 2021.</p>
<p style="text-align: center;"><b>7</b></p> <p><b>Reserve Fund</b></p>	<p>This article provides that the Commissioners may establish and maintain a 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>This article is authorised by paragraph 13 of Schedule 2 to the 1964 Act:</p> <p style="text-align: center;"><i>“Regulating the application of moneys in the nature of revenue received by the Commissioners and securing that the financial affairs of the Commissioners are properly managed.”</i></p> <p>It is an essential part of prudent financial management that the Commissioners should have the power to maintain a reserve fund to enable the Commissioners to plan for future expenditure across the harbour in an economic and efficient manner.</p>
<p style="text-align: center;"><b>8</b></p> <p><b>Borrowing</b></p> <p style="text-align: center;"><b>9</b></p>	<p>Article 8 provides that the Commissioners, or a subsidiary of the Commissioners (defined in article 2(1) of the proposed HRO), may borrow such sums of money as thought fit for the purposes of the harbour undertaking.</p>	<p>The article reflects 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</p>

<p><b>Temporary Borrowing</b></p>	<p>Article 9 provides that the Commissioners may borrow temporarily by way of overdraft or otherwise such sums of money as the Commissioners may require for the purposes of the harbour undertaking.</p>	<p>be borrowed by the Commissioners 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 Commissioners, or any subsidiary of the Commissioners, 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 Commissioners, 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 Commissioners 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><b>Charges (generally)</b></p>	<p>The articles contained within this Part of the HRO (Charges) set out the Commissioners’ powers with respect to charges they may levy. They are reflective of modern statutory harbour powers relating to charges and are conducive to the improvement, maintenance and management of the harbour in an efficient and economical manner. A similar suite of powers can be found in the Weymouth Harbour Revision Order 2021 and the Poole Harbour Revision Order 2012.</p>	<p>See below for further justification of particular provisions.</p>
<p><b>10</b> <b>Charges other than ship, passenger and goods dues</b></p>	<p>This article 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 expressly states that charges may be made in respect of a variety of other floating platforms etc. so that no</p>	<p>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.</p> <p>It would be detrimental to the improvement, maintenance or management of the harbour in an efficient and economical manner if</p>

	dispute will arise as to whether such structures fall within the definition of vessel contained within the Order.	<p>charging powers did not to exist in respect of one type of vessel or floating structure using the harbour (unless exempt under the HRO). This provision is particularly important because the Order provides for the existing charging provisions in current local statutory harbour legislation to be repealed.</p> <p>This article is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p><i>“empowering the Commissioners 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>A similar provision can be found under article 10 of the Weymouth Harbour Revision Order 2021.</p>
<b>11</b> <b>Charges for services or facilities</b>	This article provides that in addition to ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Commissioners may demand, take and recover reasonable charges for services and facilities provided by them.	<p>This provision is common as it is required for the harbour to be managed economically and efficiently.</p> <p>This article is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p><i>“empowering the Commissioners to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p> <p>This is pursuant to securing the improvement, maintenance and management of the harbour in an efficient and economical manner. A similar provision can be found under article 11 of the Weymouth Harbour Revision Order 2021.</p>
<b>12</b> <b>Payment of Charges</b>	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 charges are payable by and who they can be recovered from and when.	This article is included to ensure that the payment of charges authorised to be levied are consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner. For these purposes, it is essential that the HRO is clear as to when charges must be paid and from whom charges must be taken. It would be

		<p>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, article 12 is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it secures the efficient collections of charges levied by the Commissioners, specifying the times at which and the persons by whom charges are to be paid:</p> <p><i>“Securing the efficient collection of charges levied by the Commissioners at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p> <p>A similar provision can be found under article 12 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>13</b></p> <p><b>Compounding arrangements and rebates</b></p>	<p>This article provides the Commissioners with a power to confer exemptions from dues, allow rebates or make compositions with any person with respect to charges. In addition, it provides that the Commissioners do not have to include on their list of ship, passenger and goods dues kept at the harbour office, charges which have been reduced by a rebate or a compounding arrangement in respect of a due included on the list.</p>	<p>This article is important to enable the Commissioners 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 Commissioners were 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>



		A similar article can be found in, for example, the recent Weymouth Harbour Revision Order 2021.
<b>14</b> <b>Deposits for charges</b>	This article provides that the Commissioners may require from a person who incurs or is about to incur a charge with them, a reasonable deposit or guarantee. It also provides the Commissioners with the power to detain a relevant vessel or goods until the deposit has been paid or the required guarantee made.	<p>It is essential for the economic management of the harbour to be able to secure the reasonable charges due to the Commissioners by virtue of their 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 Commissioners 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>Article 14 is consistent with section 14(2)(b) of the 1964 Act for the order to be <i>“desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner”</i>. Furthermore, article 14 is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it secures the efficient collections of charges levied by the Commissioners:</p> <p><i>“Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p> <p>A similar provision can be found under article 14 of the Weymouth Harbour Revision Order 2021.</p>
<b>15</b> <b>Liens for charges</b>	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 Commissioners or, a wharfinger or carrier, who has paid or given security for charges on those goods.	<p>This is a standard provision included to secure the financial interests of those who by agreement with the Commissioners collect charges on their 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>
<b>16</b>	This article provides that a vessel may be prevented from using a landing place supplied by the	It is essential for the economic management of the harbour for the Commissioners to be able to secure the reasonable charges due to them by virtue their charging powers under the local legislation applying

<p><b>Refusal to pay charges for landing places</b></p>	<p>Commissioners, if the master of the vessel refuses to pay the related charges.</p>	<p>to the harbour, the 1964 Act or otherwise. Therefore, the Commissioners must be able to prevent vessels from sailing or using facilities at the harbour (such as a landing place or mooring) in the event that the master of a vessel refuses to pay the reasonable charge required, as authorised under the HRO.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner. Furthermore, this article is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it promotes securing the efficient collections of charges levied by the Commissioners:</p> <p><i>“Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p> <p>A similar provision can be found under article 16 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>17</b></p> <p><b>Exemption from Harbour Dues</b></p>	<p>This article is similar to other modern provisions providing for an exemption for harbour dues for certain vessels, persons and government departments (or their current equivalent) whilst in the exercise of their core duties.</p>	<p>This article is authorised by paragraph 14 of Schedule 2 to the 1964 Act, as follows:</p> <p><i>“Varying or extinguishing any exemption from charges levied by the authority at the harbour or any other right or privilege enjoyed thereat.”</i></p> <p>It is necessary for the efficient and safe management of the harbour that those persons named in the article are exempt from harbour dues when in the exercise of their core functions, as such persons ought not to be restricted or deterred from exercising those functions as a result of them otherwise being liable to pay harbour dues.</p> <p>A similar provision can be found under article 17 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>18</b></p> <p><b>Recovery of charges</b></p>	<p>This article provides that in addition to any other powers of recovery available to them, the Commissioners may recover any charges payable to them as a debt in Court.</p>	<p>It is essential for the economic management of the harbour to be able to secure the reasonable charges due to the Commissioners by virtue of the charging powers under the local legislation applying to the harbour, the 1847 Act incorporated with the HRO or otherwise.</p>

		<p>Therefore, the Commissioners must be able to rely on the resources of the Court to assist in securing any debts owed to them should the existing powers of recovery be insufficient to secure the debt.</p> <p>Article 18 is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner.</p> <p>A similar provision can be found under article 18 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>19</b></p> <p><b>Harbour master may prevent sailing of vessels</b></p>	<p>This article provides that the harbour master may prevent the removal or sailing from the harbour of any vessel until evidence is produced that any charges 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 Commissioners to be able to secure the reasonable charges due to them in relation to:</p> <ul style="list-style-type: none"> <li>- the vessel;</li> <li>- passengers on the vessel; and</li> <li>- goods imported, exported or carried on the vessel.</li> </ul> <p>by virtue of the 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.</p> <p>Should such a vessel be able to leave the harbour without having paid the charges due, it would become difficult for the Commissioners to recover said charges and therefore be detrimental to their ability to manage the harbour in an economically efficient manner.</p> <p>Article 19 is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner.</p> <p>A similar provision can be found under article 19 of the Weymouth Harbour Revision Order 2021.</p>

<p><b>20</b></p> <p><b>Power to make General Directions</b></p>	<p>As the Commissioners do not currently have any powers of General Direction, this article provides a modern power to cover vessels and 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 also set out the consequences of failing to comply with a General or Special 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><b>21</b></p> <p><b>Procedure for giving, amending or revoking General Directions</b></p>		<p>As set out above, the Commissioners do not have existing powers of General Direction. The process for keeping General Directions up to date is far more time and cost efficient than the byelaw making process, and due to the inclusion of the Harbour Advisory Group to be set up under the HRO as ‘designated consultees’ it contains a strong local consultation requirement.</p>
<p><b>22</b></p> <p><b>Publication of General Directions</b></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 its existing byelaws and instead 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><b>23</b></p> <p><b>Special Directions</b></p>		<p>As stated above, a 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><b>24</b></p> <p><b>Failure to comply with directions</b></p>		
<p><b>25</b></p> <p><b>Enforcement of directions</b></p>		<p>General Directions can be made over the entirety of the harbour (which 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 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 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 Authority Revision Order 2021, the</p>

<p style="text-align: center;"><b>26</b></p> <p style="text-align: center;"><b>Master's responsibility in relation to directions</b></p> <p style="text-align: center;"><b>27</b></p> <p style="text-align: center;"><b>Boarding of vessels and vehicles</b></p>		<p>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 Commissioners 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 protection of property, flora and fauna and the ease, convenience and safety of harbour operations ashore in the harbour".</i></p> <p>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 24 sets out the maximum fine level (level four on the standard scale) for failure to comply with a General Direction once made. The Commissioners already have byelaw making powers (for example, under article 8 of the 1985 Act and it is already entitled to impose fines of up to level 4 on the standard scale (section 57 of the Criminal Justice Act 1988), so the level four fine is considered justified.</p> <p>Article 26 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> <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.</p>
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<p><b>28</b></p> <p><b>Byelaws</b></p>	<p>This article provides the Commissioners 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 (as incorporated under article 3 of the Order) and is in line with the modern practice of setting out a wide range of matters upon which the Commissioners will have the power to make byelaws.</p>	<p>The power in article 28 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 Commissioners 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</p>

		<p>challenging any prosecution on the basis that the byelaw in question is outside the range of matters for which the Commissioners have 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>Historically, there has been little need to initiate any prosecutions at the harbour for breach of byelaws as harbour users have complied with the instructions of the harbour masters. Nevertheless, to comply with the Port Marine Safety Code (PMSC) and to meet their other duties (including navigational safety), it is important that the Commissioners have modern and comprehensive byelaw making powers. It is anticipated that the current byelaws in place at the harbour will be reviewed and it is likely that they will be repealed and replaced with General Directions following grant of the HRO. However, it is important that the Commissioners retains wide byelaw making powers in case they 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>The Commissioners already have byelaw making powers (for example, under article 7 of the 1985 Order) and it is already entitled to impose fines of up to level 4 on the standard scale (section 57 of the Criminal Justice Act 1988), so the level four fine is considered justified. The power to make byelaws is authorised by paragraph 4 of Schedule 2 to the 1964 Act:</p> <p><i>“Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above.”</i></p>
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<p><b>29</b></p> <p><b>Confirmation of Byelaws</b></p>	<p>This article sets out the procedure by which byelaws made under the HRO 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 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><b>30</b></p> <p><b>Saving for existing directions, byelaws etc.</b></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 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><b>31</b></p> <p><b>Development of land</b></p>	<p>This article provides that the Commissioners 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>Paragraph (2) provides that a company established under paragraph (1)(b) may have powers to do anything necessary for the purposes of the objects for which it has been established notwithstanding that the Commissioners would not itself have the power to do that thing.</p> <p>This article, as far as applying to land not required for the harbour, is authorised by paragraph 9A of Schedule 2 to the 1964 Act:</p> <p><i>"Empowering the authority (alone or with others) to develop land not required for the purposes of the harbour with a view to disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land".</i></p> <p>So far as relating to harbour land, it is considered that this article is authorised by paragraph 17 of Schedule 2 to 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</p>



		<p>of which will conduce to the efficient functioning of the harbour. The case for this is set out below as an integral justification for this article.</p> <p>The purpose of this article is to give the Commissioners 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 derived by the harbour undertaking from the development of any land under this article would be used to improve and develop the harbour and provide increased financial security.</p> <p>It should be noted that the powers in this article 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 this article within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers to those in this article were conferred in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 the Dover Harbour Revision Order 2014.</p>
<p><b>32</b></p> <p><b>Power to grant tenancies and to dispose of land</b></p>	<p>Paragraph (1) gives power to the Commissioners, 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>Paragraph (2) provides that the Commissioners may also dispose of, or grant the use or occupation for any purpose of, land or property if they consider 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 Commissioners .</p>	<p>Paragraph (1), which is needed to manage the harbour, is authorised by paragraph 3(a) of Schedule 2 to the 1964 Act which relates to powers conferred for the purposes of <i>"improving maintaining or managing the harbour"</i>.</p> <p>Paragraph (3)(a) is authorised by paragraph 9 of Schedule 2 to the 1964 Act:</p> <p><i>"Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes."</i></p> <p>It is considered that paragraph (3)(b) is authorised by paragraph 17 of Schedule 2 to 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. The case for this is set out as an integral</p>

		<p>part of the need for this article. Paragraphs (1) and (3)(a) are needed to enable the Commissioners to manage the harbour undertaking effectively.</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>Paragraph (3)(b) would enable the Commissioners to grant leases or transfer land or property to a subsidiary or other body. This power is needed to enable the Commissioners to have sufficient flexibility in how to structure the harbour undertaking in the future. The power in paragraph (3)(b) is only exercisable if <i>“it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner”</i>. This limitation brings paragraph (3)(b) within the powers of section 14(2)(b) of the 1964 Act.</p>
<p><b>33</b></p> <p><b>Power to appropriate lands and works for particular uses etc.</b></p>	<p>This article provides that the Commissioners 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 Commissioners 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 Commissioners 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 this article will only ever operate insofar as it does not otherwise conflict with the duty under section 33 of the 1847 Act.</p> <p>In addition, the power under this article must only be exercised for the <i>“purpose of or in connection with the harbour”</i> and not for wider purposes. This article is therefore within the scope of section 14(2)(b) in that it will assist the Commissioners in the management of the harbour in an efficient manner and facilitate the efficient and economic transport of goods and passengers by sea, 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><b>34</b></p>	<p>Paragraph (1)(a) provides that the Commissioners</p>	<p>Paragraph (1)(a) would assist the Commissioners to maximise the</p>

<p><b>Other commercial activities</b></p>	<p>may carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person. Paragraph (1)(b) enables the 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 have the power to do that thing.</p>	<p>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 Schedule 2 to 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>
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<p><b>35</b></p> <p><b>Power to delegate functions</b></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 paragraph (1)(b).</p>	<p>This article 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-</i></p> <ul style="list-style-type: none"> <li><i>(a) a duty imposed on the authority by or under any enactment;</i></li> <li><i>(b) the making of byelaws;</i></li> <li><i>(c) the levying of ships, passenger and goods dues;</i></li> <li><i>(d) the appointment of harbour, dock and pier masters;</i></li> <li><i>(e) the nomination of persons to act as constables;</i></li> <li><i>(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></li> </ul> <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><b>36</b></p> <p><b>Power to lay Moorings</b></p> <p><b>37</b></p> <p><b>Licensing of moorings</b></p>	<p>These articles provides the Commissioners with powers related to the provision, maintenance and licensing of moorings within the harbour. It is considered that modernised express provisions are conducive to the efficient and economical management and maintenance of the harbour. They will assist the Commissioners in ensuring that moorings in the harbour do not adversely affect navigation in 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 provide for a level 4 fine for failure to comply with its requirements. This level of fine is required firstly to ensure that there is a sufficient level of deterrent (moorings in the harbour are sought after and can be used to generate income, and the level of fine needs</p>

<p><b>38</b></p> <p><b>Offences as to moorings</b></p>		<p>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><b>39</b></p> <p><b>Bunkering</b></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 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. A similar provision can be found under article 31 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>40</b></p> <p><b>Aids to navigation</b></p>	<p>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>	<p>This power is important for enabling the Commissioners to meet their navigational safety duties and is therefore consistent with section 14(2)(b) of the 1964 Act to secure the management of the harbour in an efficient manner or of facilitating the efficient and economic transport of goods or passengers by sea.</p> <p>A similar provision can be found under article 36 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>41</b></p> <p><b>Power to dredge</b></p>	<p>This article provides the Commissioners with a power to dredge.</p>	<p>The power to dredge is a standard statutory harbour power and, under their existing local legislation (for example, article 9 of the Falmouth Harbour Order 1870), the Commissioners already have the power to dredge with respect of the harbour. However, this is not a modern dredging power (still being in force from 1870) and is in any event being repealed under the proposed HRO.</p> <p>As a result of the above, it important that the Commissioners are provided with a new and modern dredging power so that they are able to dredge when required at the harbour, and is desirable in the</p>

		<p>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>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 do not already have the power to do so.</p> <p>If dredging is carried out at the harbour under the provision in the future, then in line with section 75 of the Marine and Coastal Access Act 2009, the Commissioners will not need to obtain a marine licence for the dredging activities at the harbour (which is the same as the current position). However, if disposal to sea is required in the future, then a marine licence will continue to be required for this disposal.</p> <p>A similar dredging power can be found under article 37 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>42</b> <b>Repair of landing places etc.</b></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 harbour. 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 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 Commissioners in 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 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><b>43</b></p>	<p>These articles include the following:</p>	<p>The provisions ensure that the Commissioners will be aware of all works and dredging taking place in the harbour and that they can</p>

<p><b>Restriction of works and dredging</b></p> <p><b>44</b></p>	<ul style="list-style-type: none"> <li>• Restriction of works and dredging;</li> <li>• Control of certain operations of works of statutory undertakers;</li> <li>• Licensing of works;</li> <li>• Licence to dredge;</li> <li>• Appeals in respect of works or dredging licences; and</li> <li>• Obstruction of works.</li> </ul>	<p>require suitable safeguards to be put in place when they are being conducted. As such, the level 4 fine in article 43(4) and the level 3 fines in articles 44(5) and 48 or breach are considered appropriate and proportionate. Note that there is not a comparable suite of modern provisions relating to the restriction and licensing of works and dredging under the existing local harbour legislation applying to the harbour.</p>
<p><b>Control of certain operations and works</b></p> <p><b>45</b></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 the Commissioners prior to the undertaking of any works or dredging within the harbour. The provisions are important to enable the Commissioners to comply with their duties related to navigational safety, the Open Port Duty and in respect of the environment (in particular s48A of the 1964 Act).</p>	<p>In addition, where works are carried out without or in breach of the terms of a licence, the Commissioners may require the works to be removed and the site restored to its former condition. If the works are not removed and the site not restored to its former condition, the Commissioners have the power to do so themselves and recover the cost from the person liable.</p>
<p><b>Licensing of works</b></p> <p><b>46</b></p> <p><b>Licence to dredge</b></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 the Commissioners prior to the undertaking of any works or dredging within the harbour. The provisions are important to enable the Commissioners to comply with their duties related to navigational safety, the Open Port Duty and in respect of the environment (in particular s48A of the 1964 Act).</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 of the 1964 Act) by requiring third parties to seek authorisation from the Commissioners by way of a licence (unless specifically authorised in accordance with article 44(3)).</p>
<p><b>47</b></p> <p><b>Appeals</b></p> <p><b>48</b></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 the Commissioners prior to the undertaking of any works or dredging within the harbour. The provisions are important to enable the Commissioners to comply with their duties related to navigational safety, the Open Port Duty and in respect of the environment (in particular s48A of the 1964 Act).</p>	<p>Article 47 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 Commissioners. Aggrieved applicants are able to appeal to the Secretary of State and, as such, it is considered that this article is justified.</p>
<p><b>Obstruction of works</b></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 the Commissioners prior to the undertaking of any works or dredging within the harbour. The provisions are important to enable the Commissioners to comply with their duties related to navigational safety, the Open Port Duty and in respect of the environment (in particular s48A of the 1964 Act).</p>	<p>Applications are made in writing and the Commissioners may charge a reasonable amount in respect of their administrative expenses for dealing with the application.</p> <p>Similar provisions can be found in articles 8-10 of the Watchet Harbour Revision Order 2000 and article 7 of the harbour of Tyne Harbour Revision Order 2001.</p>

		<p>With regard to these provisions generally, paragraph 17 of Schedule 2 to the 1964 Act provides that a Harbour Revision Order may include provision for:</p> <p><i>“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”</i></p>
<p><b>49</b></p> <p><b>Parking places and related facilities</b></p>	<p>This article provides that the Commissioners may provide parking spaces and connected works within the harbour.</p>	<p>This power has been expressly included because the harbour includes car parks which form part of the undertaking. Similar provisions can be found in article 20 Penzance Harbour Revision Order 2009.</p> <p>The charging for such facilities 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 as aforesaid) levied by them at the harbour.”</i></p> <p>With regard to the provision of parking and related facilities generally, paragraph 17 of Schedule 2 provides that a Harbour Revision Order may include provision for:</p> <p><i>“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”</i></p> <p>And, as such, it is considered that this article is justified.</p>
<p><b>50</b></p> <p><b>Removal of vehicles and vessels</b></p>	<p>This article authorises the Commissioners to remove vehicles and vessels from the harbour that have been left in a place where they will or are likely to interfere with the use of the harbour or in any part of the harbour where parking is prohibited.</p>	<p>This power is important in assisting the Commissioners 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 in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act as the Commissioners 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 harbour. It would not be consistent with section 14(2)(b) of the 1964 Act if the Commissioners were not afforded this express power.</p> <p>The article also provides the Commissioners with the “lawful authority” required under section 52(1) of Part 4 Chapter 2 of the Protection of Freedoms Act 2012, to remove vehicles, as the Commissioners 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 Commissioners and otherwise entitled to remove said vehicles are sufficiently safeguarded by the provisions of (2) – (7).</p>
<p><b>51</b></p> <p><b>Power with respect of disposal of wrecks</b></p>	<p>This article extends the powers of the Commissioners under section 252 Merchant Shipping Act 1995. In particular, it extends the circumstances in which the Commissioners 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 owner may dispose of the vessel itself.</p>	<p>This extension of the power in s252 Merchant Shipping Act is common and important if the harbour is to be run in an efficient and economic manner. Similar provisions can be found in article 24 of the Portland Harbour Revision Order 1997.</p> <p>A similar power can be found under article 39 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>52</b></p> <p><b>Power to deal with unserviceable vessels</b></p>	<p>This article provides that the Commissioners 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>	<p>This article applies in addition to the power under section 57 of the Harbours, Docks and Piers Clauses Act 1847 (unserviceable vessels to be altogether removed from harbour) and allows the Commissioners 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 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 power can be found under article 40 of the Weymouth Harbour Revision Order 2021.</p>
<p><b>53</b></p> <p><b>Removal of obstructions other than vessels</b></p>	<p>This article provides that the Commissioners 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 its approaches. The provision deals with the recovery of costs by the Commissioners of reasonable expenses incurred by them in relation to the exercise of the power and sale of the item(s) recovered.</p>	<p>This power is important in assisting the Commissioners in meeting their duties with regard to navigational safety and the safety of harbour users, and important if the harbour is to be run in an efficient and economic manner. Similar provisions can be found in article 8 of the Portland Harbour Revision Order 1997.</p>
<p><b>54</b></p> <p><b>Notices</b></p>	<p>This article sets out the process for serving any notices required under the harbour Revision Order.</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><b>55</b></p> <p><b>Saving for Trinity House</b></p>	<p>This article provides the standard saving provision for the rights of Trinity House.</p>	<p>No further justification required.</p>
<p><b>56</b></p> <p><b>Crown Rights</b></p>	<p>This article provides the standard saving provision for Crown Rights.</p>	<p>No further justification required.</p>
<p><b>57 and 58</b></p> <p><b>Amendments</b></p>	<p>Article 57 amends the Falmouth (Pilotage) Harbour Revision Order 1988 to update the definition of “harbour” so that its definition matches the definition included in the proposed Order.</p> <p>Article 58 amends the Order of 2004 so that “chairman” and “vice chairman” are substituted for “chair” and “vice chair” respectively. This makes the terms gender neutral in line with modern drafting standards.</p>	<p>The amendments are necessary to complete the process of modernisation of the local legislation applying to the statutory harbour authority in conjunction with the provisions of the HRO and the repeals /revocations contained in article 59 and Schedule 2 to the HRO.</p>

	<p>Additionally, article 58 substitutes “deputy chairman” for “vice chair” as the inclusion of “deputy chairman” is considered to be a drafting error in the Order of 2004.</p> <p>The definition of “harbour” is also updated to match the definition included in this Order.</p> <p>Additionally, section 60 of the Commissioners Clauses Act 1847 is inserted as a new article 8A into the Order of 2004.</p> <p>Finally, in article 18 (General Powers), the reference to the Acts and Orders of “1870 to 2004” is substituted to state “1870 to 202[ ]” to bring it up to date.</p> <p>In relation to the amendments made to the Cornwall Harbours Harbour Revision Order 2023, this ensures that the correct legislation remaining in force is referred to in the description of the harbour limits at the Prince of Wales Pier (Falmouth). This amendment is required because the 1870 Order (currently referred to in that provision) is being repealed under the HRO.</p>	
<p><b>59</b></p> <p><b>Revocation/ Repeal</b></p>	<p>This article provides for the repeal and revocation (as appropriate) of the local legislation listed in the Schedule referred to from the date of the HRO. These Acts and Orders (in so far as they are revoked) either are or will become obsolete or not fit for purpose once the HRO is fully in force.</p>	<p>This HRO is being promoted in accordance with the Port Marine Safety Code’s recommendation for harbour authorities to review and be aware of existing powers based in local and national legislation, seeking additional powers where necessary. The repeals set out in article 59 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 the recommendations of the Port Marine Safety Code.</p>

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

Plan, policy or guidance	<i>Demonstration that application is compliant with relevant plan, policy or guidance.</i>
<p><b>Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)</b></p>	<p>The harbour is situated within the South West 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 applying therefore is the 'South West Inshore and South West Offshore Marine Plan, June 2021 ("the South West Marine Plan")</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 the 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>The proposed HRO also clarifies the existing harbour limits to expressly include the harbour premises removing uncertainty over the exercise of the Commissioners' enforcement powers above high water. The other provisions of the proposed HRO are predominantly administrative (such as constitutional arrangements, 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 HRO on the South West Marine Plan area will be very limited and that any effects will be positive as the proposed HRO supports the economic and efficient management of the harbour (including with respect to environmental considerations). A brief summary of compliance is nevertheless set out below.</p> <p><b>Compliance with UK Marine Policy Statement</b></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 HRO is to modernise the Commissioners' enforcement powers enabling it 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 Commissioners in ensuring they meet both their 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 is kept <i>'clean, healthy, safe, productive and biologically diverse.'</i> The provisions of the proposed HRO 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 West Marine Plan**

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

- (A) **Objective 1:** Infrastructure is in place to Support and promote safe, profitable and efficient marine businesses.
- (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.
- (C) **Objective 3:** Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.
- (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.
- (E) **Objective 7:** The coasts, seas and oceans and their resources are safe to use.

In addition, the proposed HRO is supported by policy SW-PS-1, which expressly supports competitive and efficient harbour and shipping operations, recognising that '*Ports and harbours are essential to realising economic and social benefits for the south west marine plan areas and the SW-PS-1 makes sure that proposals do not restrict*

	<i>current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.'</i>
<b>Insert other relevant plans/policy/guidance in this section</b>	<b>Port Marine Safety Code</b> Please see our comments earlier in this Statement of Support relating to the Port Marine Safety Code (Table 3a).

**Table 5: Any other relevant information**

No formal pre-application consultation.

In addition to the specific provisions of Schedule 2 to the 1964 Act, paragraph 17 of Schedule 2 provides that a Harbour Revision Order may include provision for:

*“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.”*

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

# ANNEX 1: ILLUSTRATIVE PLAN OF HARBOUR PREMISES AREA

