



Marine  
Management  
Organisation

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

Table 1: Application details

<b>1. Date application made to MMO</b>	3 March 2023
<b>2. Name of primary contact</b>	Tim Smith
<b>3. Contact details of primary contact</b>	Tim.Smith@bcplaw.com 020 3400 4359
<b>4. Address of primary contact</b>	Bryan Cave Leighton Paisner LLP, Governors House, 5 Laurence Pountney Hill, London EC4R 0BR
<b>5. Name of Statutory Harbour Authority</b>	Folkestone Harbour Company Limited
<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</b>	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>An order is required to correct errors in Articles 12(2), 14(2) and 15(2) of the Folkestone Harbour Revision Order 2017 (the “<b>2017 Order</b>”).</p> <p>The 2017 Order did not reflect the changes made by section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“<b>LASPO</b>”). These changes removed the upper limits on fines that can be imposed on summary conviction where that limit is expressed as the “statutory maximum”. The 2017 Order must therefore be amended to accurately reflect section 85 and the removal of the upper limits on fines.</p> <p>The amendment order made pursuant to this application (the “<b>Amendment Order</b>”) will not authorise any works or change any operations at the harbour, nor will it give the harbour authority any additional powers to those previously granted.</p>
8. Location (coordinates must be provided in WGS84 format if this is a works order)	Folkestone Harbour. Please refer to the enclosed Plan HRO5 which identifies the harbour limits.
9. State the title of all relevant charts/maps/plans included with	HRO5 – Harbour Limits

<b>application (if appropriate)</b>	
<b>10. State the legislation relevant to the Harbour Authority and included with this application (if appropriate)</b>	The Folkestone Harbour Revision Order 2017
<b>11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.</b>	<p>In December 2017, the MMO, DfT and BLP discussed that an amendment order would be required to correct the drafting errors within Articles 12(2), 14(2) and 15(2) of the 2017 Order relating to section 85 LASPO. It was noted that the process for this would be the same as for the original HRO application, but the substance of the Amendment Order would be much reduced.</p> <p>The MMO confirmed that the correct object under which the Amendment Order application would be made is Object 17 of Schedule 2 of Harbours Act 1964. The MMO noted that it must be clear in the notice that the Amendment Order is simply a correction and does not otherwise amend or revoke the 2017 Order.</p>
<b>12. Have you included the required fee for your application?</b>	Application fee to be waived by the MMO.

**Table 3: Statutory Harbour Authority background**

<p>Folkestone Harbour was built in stages between the 1840s and early 1900s around the old fishing port of Folkestone. Over the years passenger and freight ferries, and cargo ships, operated from the Harbour to various destinations, principally between Folkestone and Boulogne. In the early 1990s Sea Containers Limited took over the running of the ferry operation from the port. By the late 1990s ferry operations had become unsustainable and the last ferry link was closed down in 2000.</p> <p>In 2004 Folkestone Properties Limited was acquired by Folkestone Harbour Holdings Limited and was subsequently renamed Folkestone Harbour Company Limited. The Harbour Company is the statutory harbour authority (SHA) for the Harbour. The Harbour Company is a wholly owned subsidiary of Folkestone Harbour Holdings Limited.</p> <p>Folkestone Harbour (GP) Limited, another wholly owned subsidiary of Folkestone Harbour Holdings Limited, subsequently acquired other land adjacent to the harbour land owned by Folkestone Harbour Company. The harbour land was then transferred to Folkestone Harbour (GP) Limited for consistency of land ownership and leased back to Folkestone Harbour Company.</p> <p>The applicant for the Amendment Order is the SHA for the Harbour. This application is therefore made in accordance with section 14(2)(a) of the Act which requires that it be on written application by the “authority engaged in improving, maintaining or managing” the Harbour or “by a person appearing</p>
---

to him to have a substantial interest or body representative of persons appearing to him to have such an interest”. As SHA for the Harbour the Harbour Company is directly responsible for maintaining and managing the Harbour.

The Harbour Company is the body in law that has statutory functions as SHA in relation to the Harbour. In response to the Department for Transport’s Port Marine Safety Code the Harbour Company set up the non-statutory Folkestone Harbour Authority (“**FHA**”) to provide oversight of marine safety at the Harbour, to perform the role of Duty Holder under the Code, and to enable compliance with the Code more generally.

The harbour limits that are within the jurisdiction of the Harbour Company are identified on the enclosed plan (reference HRO5), which was deposited with the 2017 Order.

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

This application for the Amendment Order meets the requirements of section 14(1) of the Harbours Act 1964 as it relates to a harbour that is being managed by a harbour authority in the exercise and performance of statutory powers and duties and the application is sought to achieve an object specified in paragraph 17 of Schedule 2 to the Act.

The sole purpose of seeking the Amendment Order is to remove references to the ‘statutory maximum’ in relation to the imposition of fines on summary conviction in the 2017 Order. This has the effect of removing the limit on the amount of any fine that may be imposed by a Magistrates’ Court on the Harbour Company if they fail to comply with Articles 12(2) (provision against danger to navigation), 14(2) (permanent lights on tidal works) and 15(2) (lights on tidal works during construction) of the 2017 Order.

It is, therefore, considered to be desirable in the interests of securing the management of the harbour in an efficient and economical manner in accordance with section 14(2).

The Amendment Order will satisfy an object in paragraph 17 of Schedule 2 to the Harbours Act 1964, as its achievement will facilitate the efficient functioning of the harbour.

Section 85 of LASPO removed the upper limits on fines that can be imposed on summary conviction where that limit is expressed as the “statutory maximum”.

The 2017 Order incorrectly made reference in Articles 12(2), 14(2) and 15(2) to the statutory maximum and must therefore be amended to accurately reflect section 85 of LASPO and the removal of the upper limits on fines.

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

Article in HRO	Summary of Provision	Requirement for provision
<b>Article 1</b>	Standard citation and commencement provision	Standard requirement for a statutory instrument

<b>Citation and commencement</b>		
<b>Article 2</b>  <b>Amendment of the Folkestone Harbour Revision Order 2017</b>	<p>Outlines the corrections to be made to Articles 12(2), 14(2) and 15(2) of the Folkestone Harbour Revision Order 2017 to delete the words “not exceeding the statutory maximum.”</p>	<p>Section 85 of LASPO removed the upper limits on fines that can be imposed on summary conviction where that limit is expressed as the “statutory maximum”.</p> <p>The 2017 Order incorrectly made reference in Articles 12(2), 14(2) and 15(2) to the statutory maximum and must therefore be amended to accurately reflect section 85 and the removal of the upper limits on fines.</p> <p>By amending these articles to remove reference to the statutory maximum, the Amendment Order will ensure that the legislation governing Folkestone Harbour is consistent with current law and, as such, that the harbour can be managed and function efficiently in accordance with an object specified in paragraph 17 of Schedule 2 to the Harbours Act 1964.</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>
<b>Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)</b>	<p><u>South Inshore Marine Plan</u></p> <p>Folkestone Harbour is situated within the South Inshore Marine Plan area boundary. Accordingly it is subject to the South Inshore and South Offshore Marine Plan published July 2018, which has been considered within this Statement in Support for the purposes of this application.</p> <p>The Amendment Order supports policies defined in Objective 2 of the South Inshore and South Offshore Marine Plan, that being to efficiently manage existing, and aid the provision of new, infrastructure supporting marine and terrestrial activity;</p> <p>Policy S-PS-2 states that within the south marine plan areas there are International Maritime Organisation routeing systems essential for shipping activity, freedom of navigation and navigational safety. S-PS-2 confirms that</p>

	<p>proposals that compromise these important navigation routes should not be authorised. S-PS-2 enables and supports safe, profitable and efficient marine businesses. This aligns with the effect of the Amendment Order in securing the management of the harbour in an efficient and economical manner by penalising the failure to comply with articles that require the provision against dangers to navigation and properly lighting the tidal works at the harbour, thereby upholding safety.</p> <p>Policy S-PS-3 states that the south marine plan areas are very busy with respect to high density navigation routes and passenger services. S-PS-3 confirms that proposals that pose a risk to safe navigation or the viability of these routes and services should not be authorised. S-PS-3 aims to protect these routes and services by enabling and promoting safe, profitable and efficient marine businesses. The Amendment Order operates in a similar vein to facilitate the safe and efficient functioning of the harbour.</p>
<p><b>Insert other relevant plans/policy/guidance in this section</b></p>	<p><u>The Folkestone &amp; Hythe Places and Policies Local Plan</u></p> <p>Policy NE8 of the Folkestone &amp; Hythe Places and Policies Local Plan adopted September 2020 confirms that the Council will promote with partners an Integrated Coastal Zone Management, including the preparation of a comprehensive management plan for the coast. Proposals and initiatives will be supported that promote general objectives, including providing resources to improve the process of harbour and coastal management, incorporating and integrating social, recreational, economic, physical and environmental issues and actions. The Amendment Order is accordingly supported by Policy NE8 in contributing to the improvement of harbour and coastal management.</p> <p><u>Port Marine Safety Code (PMSC)</u></p> <p>The PMSC sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment. It is endorsed by the UK Government. The PMSC is not mandatory but there is a strong expectation by the bodies that endorse it that all harbour authorities will comply. The PMSC is applicable to SHAs such as the Folkestone Harbour Company Limited.</p> <p>The Amendment Order supports the PMSC as follows:</p> <p>The PMSC describes the general duties and powers of duty holders. These include having regard to the efficiency, economy and safety of operation of the services and facilities provided as well as ensuring that appropriate resources are made available for discharging their marine safety obligations. By pursuing the Amendment Order, the applicant is acting in line with the PMSC, given that the effect of the Amendment Order will be to penalise the failure to comply with articles that require provision to be made against danger to navigation and ensuring the proper</p>

lighting of tidal works at the harbour. Provision against dangers to navigation and the proper lighting of tidal works both promote the efficiency and safety of operations at the harbour.

The PMSC describes a duty to take reasonable care, so long as the harbour or facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property. By applying for the Amendment Order, the applicant demonstrates that it is upholding this duty by ensuring that a failure to comply with Article 12(2) on provision against dangers to navigation is properly penalised. Ensuring that tidal works are properly lit also ensures that those using and working at the harbour will be able to navigate the harbour safely.

The PMSC provides that the harbour authority should keep its powers and jurisdiction under review and take account of the various mechanisms, such as harbour orders, which are available to amend statutory powers in their local legislation. By pursuing this Amendment Order, the applicant demonstrates that it has kept its powers under review and is utilising the relevant mechanism to amend its statutory powers.

**Table 5: Any other relevant information**

No other relevant information.