



Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

1. Date application made to MMO	1 October 2019
2. Name of primary contact	Ashfords LLP
3. Contact details of primary contact	Lara Moore, Ashfords LLP l.moore@ashfords.co.uk
4. Address of primary contact	Ashfords LLP, Ashford House Grenadier Road Exeter EX1 3LH
5. Name of Statutory Harbour Authority	Littlehampton Harbour Board (“the Littlehampton SHA”)
6. Is this a Works Order?	No
a. Brief description of proposed works	N/A
b. Date when notification of intention was submitted to MMO	N/A
c. Date when EIA screening	N/A

<p>opinion was issued by MMO</p>	
<p>d. If screened in, date when scoping opinion was issued by MMO</p>	<p>N/A</p>
<p>e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO</p>	<p>N/A</p>
<p>7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.</p>	<p>This statement relates to the application by Littlehampton SHA for the proposed Littlehampton Harbour Revision Order 20[X] (“the HRO”), and has been updated since submission in October 2019 in respect of amendments to the HRO provisions, consultation responses and the outcome of the section 31 Harbours Act 1964 challenges decided by the Secretary of State in March 2022.</p> <p>The 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 and confer further modernised powers on the Littlehampton SHA considered conducive to the efficient and economical operation, maintenance, management and improvement of Littlehampton Harbour. It also changes the name of the Littlehampton SHA from the Littlehampton Harbour Board to the Littlehampton Harbour Commissioners.</p> <p>In particular, the HRO would confer extended powers (covering vehicles and harbour operations ashore) on the Littlehampton SHA to give general directions in respect of Littlehampton Harbour. In respect of general directions related to the area of jurisdiction below the level of mean high water spring tides, these powers are required to support the effective management of the undertaking as recommended in the Port Marine Safety Code. In relation to vehicles and harbour operations ashore, they are consistent with the powers in section 14(3) of the 1964 Act 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 a harbour.</p>

	In addition, the HRO extends the harbour limits and contains extensive charging, licensing and miscellaneous provisions.
8. Location (coordinates must be provided in WGS84 format if this is a works order)	Littlehampton Harbour
9. State the title of all relevant charts/maps/plans included with application (if appropriate)	<p>The "harbour map" referred to in the HRO is being deposited with it. A copy was supplied when the application was made.</p> <p>In Annex 1 of this Statement of Support is an additional plan, that is not being deposited with the HRO, that shows the alteration between the current harbour limits and the extended harbour limits.</p>
10. State the legislation relevant to the Harbour Authority and included with this application (if appropriate)	<ul style="list-style-type: none"> • Littlehampton Harbour and Arun Drainage Outfall Act 1927 ("1927 Act") • West Sussex County Council Act 1972 ("1972 Act") • Littlehampton Harbour Revision Order 1986 ("1986 Order") • Littlehampton (Pilotage) Harbour Revision Order 1988 ("1988 Order") • Littlehampton Harbour Revision Order 2015 ("2015 Order")
11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.	N/A
12. Have you included the required fee for your application?	Sent by BACS on 1 October 2019.

Table 3: Statutory Harbour Authority background

The Statutory Harbour Authority

Littlehampton Harbour (**“the Harbour”**) is classed by the Department for Transport (**"DfT"**) as a Trust Port. The proposed HRO would change the name of the Littlehampton Harbour Board to the Littlehampton Harbour Commissioners. However, to avoid confusion, in this Statement of Support, the statutory harbour authority at Littlehampton Harbour is referred to throughout as the **‘Littlehampton SHA’**.

The Littlehampton SHA, as the statutory harbour authority, is governed by its own local legislation collectively known as the Littlehampton Harbour Acts and Orders 1927 to 2015. The Littlehampton SHA is responsible for the administration, maintenance and improvement of the Harbour which is more fully described below.

The Littlehampton SHA is also the competent harbour authority under the Pilotage Act 1987 and is the local lighthouse authority for the Harbour and surrounding area.

In managing the Harbour, the Littlehampton SHA strives to observe industry standards set out in Government guidelines. It is committed to complying with the principles of the various codes and reports applying to the ports and harbours industry, except where not relevant to the Littlehampton SHA's constitution.

Littlehampton Harbour

The Harbour is located on the south coast between Chichester and Worthing and close to the South Downs National Park. The Harbour is at the mouth of the River Arun and has an active leisure boat and yachting community, a small inshore fishing fleet and a sole commercial shipping operator receiving bulk cargos at wharf space rented from the Littlehampton SHA to feed its adjacent asphalt plant. The harbour limits extend from the old road bridge at Arundel to approximately 100 feet due south of the western breakwater arm and 500 yards either side of this structure (a distance of approximately 6 miles along the River Arun). Overall, the total harbour area is some 91.8 hectares. The mean tidal ranges are 5.5m (spring) and 2.7m (neap). The HRO does not alter the existing pilotage limits but does slightly extend the harbour limits.

The entrance to the Harbour and the 'Narrows' require careful navigation due to the cross current, lack of room for manoeuvre and the strong ebb and flood streams in the river. The spring ebb stream in the Narrows can reach six knots. The Littlehampton bar (drying heights on approach to the harbour mouth) extends 600m southwards from the end of the West Pier. All ships over 60 gross tonnes, over 20m in length carrying more than 12 passengers, engaged in towing or pushing another vessel where combined tonnage exceeds 60 gross tonnes, or greater than or equal to 20m length suffering from a defect or deficiency that effects its normal ability to navigate and/or manoeuvre or its ability to comply with the requirements of the COLREGS and/or STCW entering the Harbour are required to take a pilot on board.

There is a single navigation channel running from the breakwater arms, inland, which ranges from about 70 to 120m wide at High Water beyond the Narrows which are 33m wide at their most constricted point. Moorings for small craft have been established on both sides of the river. The majority of activity within the Harbour is concentrated within the first nautical mile of this channel before the A259 crosses the River Arun and effectively limits

larger traffic from passing upstream. A retractable footbridge also crosses the river linking east and west banks of Littlehampton and is operated by the Littlehampton SHA on behalf of the West Sussex County Council.

There are two clubs, a marina and 2 small boatyards providing leisure moorings on the west bank for approximately 350 vessels. Approximately 9 commercial fishing vessels ranging from 6 to 10m in length also moor in the Harbour mainly at the boatyards and Marina. Catch value in Littlehampton for 2020 was £118,356 (down from £268,000 in 2017) and, of this value, £80,761 was for shellfish (comprising crab, whelk, cuttlefish, lobster and scallops – down from £149,000 in 2017) (source: MMO).

On the east bank, the Littlehampton SHA provides 30 moorings for resident leisure craft and 90m of visitor berthing at a Town Quay pontoon adjacent to the Harbour Office which has visitor facilities. An 8.5m short stay berth is also provided at the Harbour Office. This is open to the public, so can be used by smaller vessels on an ad hoc basis, seasonal inland ferry services and the emergency services. The ferry service most recently operated in 2022 was supported financially by the Town Council and was run by the Littlehampton Ferry Company (part of Osborne of Arun Group Management Ltd). It provided a seasonal service for both tourists and local foot passengers, with a maximum of 12 passengers, crossing the river between the Harbour Office and the Littlehampton Yacht Club a trip of some 115m and occasional tours of the Harbour and up river.

Below the retractable footbridge on the east bank, in addition to the Littlehampton SHA moorings, there are approximately 15 private moorings adjacent to waterside housing developments and a public slipway adjacent to an RNLI Lifeboat station. The RNLI operate two inshore lifeboats and respond to between 60 to 100 incidents a year locally. Above the footbridge there are a small number of moorings operated by a public house, 5 moorings at the Littlehampton SHA workshops and two larger commercial wharves operated by the sole commercial operator providing two berths for vessels of up to 80m in length.

Cargoes of granite and steel slag are imported for the production of asphalt. Since 2012, the Harbour has handled between approximately 10 to 30,000 tonnes of cargo per annum for the sole commercial operator within the Harbour. The same operator was also the sole user of pilotage services during the 2018/19 charge year. During the 2019/20 charge year, there were 10 calls by large commercial vessels delivering 23,400 tons of roadstone and sand cargoes. Due to the combined impacts of the pandemic and local market forces on demand for Asphalt and then EU Exit on ease of roadstone import, commercial shipping fell to 6 calls and 13,932 tons in 2020/21 and 5 calls and 10,080 tonnes in 2021/22. In 2022/23, shipping calls recovered to 14 calls but fell back to 5 calls in 2023/24. At the time of writing, only 7 ships have called this year so far. In recent years, PECs have also been issued for the scheduled delivery of approximately 20,000 tons of rock by barge for Environment Agency coastal defence works within the competent harbour authority area. In other years, the pilotage service has also been required for the movement of workboats and jack-up barges associated with flood defence projects and similar works are planned by the Environment Agency this autumn/winter in Arundel (part of the statutory harbour authority area). The historic decline in number of commercial calls is a key problem faced by the Harbour.

Despite the low volume of commercial traffic however, there is limited room for expansion in leisure moorings. Basins and mud docks on the west bank could feasibly be dredged to provide additional moorings and local consent has been granted north of the A259 road bridge for installation of moorings, but no plans have yet been submitted to the MMO. Applications to provide additional moorings within the river would be unlikely to be approved due to the encroachment into the main navigation channel.

Use of the Harbour by small and medium sized vessels continues to fluctuate year on year. The number of vessels paying Annual Ship Passenger and Goods Dues has risen from 568 in 2020/21, 607 in 2021/22 to 627 in 2022/23.

Staff are on duty weekdays during office hours and the Harbour Office is staffed at weekends from April to September. During the busier summer season, on weekends and during holidays, full time staff are augmented by volunteer staff who contribute 88 person days of casual staff time, equating to £5,000 of expense. The office may be temporarily closed out of season or when staff are busy elsewhere in which case the duty officer is available via mobile phone. The staffing levels are considered by the Littlehampton SHA to be set at a level which provides for safe and efficient running of the Harbour and discharge of its statutory duties.

Table 3a: Need and justification for order

The Port Marine Safety Code

As the harbour authority for the Harbour, the Port Marine Safety Code (November 2016) published by the Department for Transport (“**the PMSC**”) applies to the Littlehampton SHA as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. The Executive Summary to the Code explains that:

“The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope.”

The Code identifies a number of tasks which harbour authorities should undertake in order to comply with the PMSC including reviewing and being aware of existing powers based on local and national legislation and advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation.

For the reasons set out throughout this Statement of Support, particularly those reasons which specifically refer to the PMSC, the Littlehampton SHA considers the HRO is in line with the guidance and recommendations of the PMSC.

The Harbours Act 1964

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

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

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

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

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

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

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

Pre-application Consultation

Prior to submission of the HRO application, the Littlehampton SHA carried out extensive pre-application consultation (and in the intervening period between October 2019 and May 2022) including:

- (a) A meeting with the Department for Transport with an early draft of the proposed HRO in June 2019 and further subsequent correspondence.

- (b) Meetings and further correspondence with the two Councils (Arun District Council and West Sussex County Council) who pay annual contributions / a precept in respect of Littlehampton Harbour annually under the provisions of the 1972 Act.
- (c) A 28-day pre-application public consultation on the proposed HRO between the 5th August and 1st September 2019. During this pre-application consultation, they also held a 'drop in' day between 10 am and 4 pm on 13th August 2019, where stakeholders were able to attend Arun Civic Centre at any time during the day and ask questions about the proposed HRO.
- (d) A public meeting on 24th September 2019 where feedback was provided on the public consultation responses and amendments made / not made to the proposed HRO as a result of the consultation feedback.
- (e) A further meeting on 24th September 2019 with one of the consultees who provided an extensive response during the public consultation to discuss the response and amendments made / not made to the proposed HRO as a result of their consultation feedback.
- (f) Meetings and correspondence with the Angmering Park Estate Trust.

The Littlehampton SHA received a substantial amount of consultation feedback which is set out under the specific provisions to which it relates below.

In addition, the Littlehampton SHA understands that Arun District Council has considered whether to submit its own Harbour Revision Order application to seek to turn Littlehampton Harbour from a Trust Port into a municipal (Council run) port, but that at this time it has decided not to. If, in the future, the Council did intend to submit a Harbour Revision Order application, the Littlehampton SHA would be an extremely important consultee and as such it is anticipated and hoped that the Council will carry out extensive preapplication consultation with the Littlehampton SHA prior to submission.

Need & Justification for the Harbour Revision Order

The proposed HRO would consolidate, modernise and extend the powers of the Littlehampton SHA considered conducive to the efficient and economical operation, improvement, maintenance or management of the Harbour. As stated above, over the last 40 years there has been a decline in number of commercial calls at Littlehampton Harbour. This problem has become particularly acute in the last few years, with only 5 commercial ships calling at the harbour during 2017/18, 16 during 2018/19, (down from 300 to 400 per year in the period 1984 to 1990) and 10 during 2019/20. The decline has largely been due to the trend for commercial operators to use ships larger than the Harbour can accommodate and is a key problem faced by the Harbour.

In addition, between 2016 and 2018, the Littlehampton SHA was involved in litigation regarding the charging of 'ship' dues on pontoons. This matter was settled for a fraction of the original amount claimed, but nevertheless, the litigation and associated settlement significantly depleted the Littlehampton SHA's reserve fund. It also highlighted the difficulties for the Littlehampton SHA in managing the Harbour in the absence of modern local harbour legislation.

During 2018, a section 31 Harbours Act 1964 challenge was also lodged with the Secretary of State (DfT) against the harbour dues imposed on leisure vessels within the harbour for the 2018/19 year. However, this challenge was not determined by the Secretary of State during that year, meaning that a further challenge was lodged in respect of the same dues for the 2019/20 year. Throughout the matter, the Littlehampton SHA were confident that it has a very strong case for the tariff levels that it charged, and that charges were set with due regard to both its statutory duties and powers, and the policy guidance given by Government.

The Inquiry was heard by PINS, with the associated Report to the Secretary of State being dated 22 February 2022. Following said report, the Secretary of State accepted the recommendations of the report and circulated its Decision Letter on 31 March 2022. Ultimately, the Secretary of State approved all of the disputed charges levied by Littlehampton SHA contained in the 2018/19 and 2019/20 Schedule of Charges in respect of Issues 1, 1A, 2 and 2A. Furthermore, the Secretary of State described Littlehampton SHA's approach towards budget setting in 2018/19 as *"logical and appropriate, that it carefully considered the needs of stakeholders, the consequences of increasing charges and dues on different stakeholder groups and strove to reach fair and equitable increases for all users"*.

Regardless, as stated in its initial response to the section 31 challenge, the Littlehampton SHA is aware that changes need to be made to try and place the Harbour on a better financial footing long term. It also needs to significantly decrease its reliance on annual contributions / a precept paid to the Littlehampton SHA by two local authorities (Arun District Council and West Sussex County Council) under the provisions of the 1972 Act, whilst setting dues and charges at rates that allow current business to, ideally, expand and to attract new business and visitors to the Harbour. To effect these changes, a Harbour Revision Order is required. It is therefore 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 current application is made to provide the Littlehampton SHA with a set of modern flexible statutory harbour powers and to repeal those provisions of current local statutory harbour legislation that are dated, 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 Cornwall Harbours Harbour Revision Order 2023, Weymouth Harbour Revision Order 2021, the Shoreham Harbour Order 2021, the Portland Harbour Revision Order 1997, the Poole Harbour Revision Order 2012, the Cowes Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014. They include common statutory harbour powers, such as powers to dispose of and develop land, powers associated with charges (including deposits and liens associated with charges) and miscellaneous powers including a power to dredge, powers related to the licensing of moorings, works and dredging within the harbour, powers related to the removal of wrecks or other obstructions and various powers related to the carrying out of commercial activities by the Littlehampton SHA both inside and beyond the statutory harbour limits.

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 not dealt with below since it is ancillary to the substantive provisions of the HRO. In relation to article 2 (interpretation), there has been a limited amount of pre-consultation feedback relating to the definition of a 'vessel' contained within article 2 of the proposed HRO. These consultation responses consider that the definition of a vessel should reflect the definition under consideration in the case of *'Environment Agency v Parker and Gibbs (2016 EWHC 843 (Admin))*. However, that case related to an Inland Waterways Order and 'houseboats' in particular. The definition of vessel under consideration was *'vessel includes every description of vessel with or without means of propulsion of any kind and includes anything*

constructed or used to carry persons, goods, plant and machinery, or to be propelled or moved on, in or by water'. This is not a definition commonly used in Harbour Revision Orders and it is considered that it is more appropriate to use the definition contained within the draft proposed HRO. This definition is very similar to the one in use in other modern HROs including the Weymouth Harbour Revision Order 2021, the Shoreham Harbour Revision Order 2021, the Fowey Harbour Revision Order 2021, the Dart Harbour and Navigation Order 2021 and most recently the Cornwall Harbours Harbour Revision Order 2023.

It is likely that the concerns have been raised as a result of the recent pontoon litigation (described above) and a concern that the definition of vessel contained within the proposed HRO could be used to attempt to charge 'ship' dues on stationary pontoons within the harbour (i.e. those which are simply walked over to provide access to boats, yachts etc.). However, as set out in the pre-application consultation document and again stated here, such pontoons are not 'propelled or moved' and as such do not fall within the definition of 'vessel' contained within the proposed HRO (the Littlehampton SHA offered to write to the consultee that raised this concern to confirm the above in a letter from its lawyers, thereby addressing this concern. The letter was sent on 25 February 2020). Instead, these stationary pontoons will in the future be managed under the provisions of article 28 of the proposed HRO.

Table 2b: Justification for inclusion of provisions

Article in HRO	Summary of Provision	Requirement for provision
<p style="text-align: center;">2</p> <p style="text-align: center;">Interpretation</p>	<p>This article contains definitions which apply throughout the HRO and a number of other provisions assisting with the interpretation of and clarification of scope of the HRO.</p>	<p>The definitions are found within paragraph (1) of the article.</p> <p>Paragraph (2) provides that all points, distances etc. in the HRO 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 HRO are references to World Geodetic System 1984.</p> <p>Article 2 is required to enable the HRO and its effect to be properly interpreted.</p>
<p style="text-align: center;">3</p> <p style="text-align: center;">Incorporation of the Commissioners Clauses Act 1847</p>	<p>This article incorporates the Commissioners Clauses Act 1847 except in relation to the sections listed as being excepted. Those sections included predominantly relate to:</p> <ul style="list-style-type: none"> a) Meetings of commissioners (section 39 and 53). b) Contracts (section 56, 58 and 59). c) Legal proceedings (sections 60 – 64). 	<p>This is an incorporation clause of the Commissioners Clauses Act 1847 (which consolidates commonly used provisions in respect to the constitution and regulation of bodies of commissioners appointed for carrying on undertakings of a public nature). These provisions are required to govern some of the basic constitutional requirements of the Littlehampton SHA.</p>

	<ul style="list-style-type: none"> d) Officers (sections 65, and 69 – 74). e) Byelaws (sections 96 – 98). f) Notices (sections 99 – 102). g) Recovery of damages and penalties (section 109). h) Access to special Act (sections 110 – 111). 	
<p style="text-align: center;">4</p> <p style="text-align: center;">Incorporation of the Harbours, Docks and Piers Clauses Act 1847</p>	<p>This article incorporates the Harbours, Docks and Piers Clauses Act 1847 ('the 1847 Act') into the HRO and the 1927 Act except in relation to the sections listed as being excepted. Those sections included predominantly relate to:</p> <ul style="list-style-type: none"> a) Interpretation (sections 1-5). b) Power to construct warehouses and other works (section 21) c) Rates (sections 27 and 33). d) Collection of rates (sections 34, 36, 39, 40, 43 – 46 and 48). e) Harbour, dock and pier master (sections 51 – 53, 56 – 58 and 63 – 65). f) Discharge of cargoes and removal of goods and the protection of the harbour, dock and pier (sections 68, 74 and 76). g) Harbour and dock police (sections 79 and 80). h) Meters and weighers (sections 81 – 82). i) Byelaws (section 83) j) Recovery of damages and penalties (section 94). 	<p>An amendment has been made to the standard incorporation of section 33 of the 1847 Act to provide the Littlehampton SHA with flexibility in the future, should its sole commercial operator stop using the Harbour.</p> <p>Under the amendment, section 33 (also known as 'the Open Port Duty') would only apply to vessels under 24 m in length (this covers all existing current users of the Harbour apart from the sole commercial operator). This would enable the Harbour in the future to become a leisure focused harbour and enable the Littlehampton SHA to apply for a Pilotage Function Removal Order to discontinue its pilotage service should it lose its sole commercial operator.</p> <p>The sole commercial operator's current lease runs until 2026 and it contributes approximately 40% of the Littlehampton SHA's annual income (excluding contributions from the Councils). As such, it is a very important part of the current harbour undertaking. In addition, the West Sussex Minerals Plan requires the Littlehampton SHA to maintain commercial wharfs (with or without the sole commercial operator) until 2031. Nevertheless, with the continuing trend for commercial operators to use ships larger than Littlehampton Harbour can accommodate, it seems likely that the future of the Harbour lies in a leisure focused offering and the amendment to the incorporation of section 33 of the 1847 Act is required to enable this future flexibility.</p> <p>Under the draft HRO published for pre-application consultation, section 33 would only have applied to fishing vessels under 15 m in length and ferries or charter boats carrying 12 passengers or less and no other commercial vessels. However, the RYA and further limited consultation responses consulted queried the scope of the provision and whether it would apply to leisure vessels. Following further consultation with the RYA, it was</p>

		agreed that the currently proposed wording, restricting the application of section 33 of the 1847 Act to vessels under 24 m in length was clearer.
5 Change of name of the Board of Commissioners	Article 5 of the HRO changes the current name of the Littlehampton SHA from the Littlehampton Harbour Board to the Littlehampton Harbour Commissioners.	<p>This change has been included, to more properly reflect the status of the Littlehampton SHA as a Trust Port.</p> <p>The Littlehampton SHA has received a limited amount of consultation feedback raising concerns about the change of name of the Littlehampton SHA from the 'Littlehampton Harbour Board' to the 'Littlehampton Harbour Commissioners'. These concerns have predominantly related to the cost implications associated with the change of name. However, as most of the branding for the harbour is 'Littlehampton Harbour', there should be minimal cost implications associated with the change of name.</p>
6 Constitution of the Commissioners	Article 6 of the HRO modernises the constitution of the Littlehampton SHA and reflects current government guidance and best practice which requires that Trust Port board members should be appointed on the basis of merit and that board members should act independently in the best interests of the board, rather than represent the interests of particular stakeholders.	<p>Due to the monetary contribution / precept paid yearly by West Sussex County Council and Arun District Council under sections 18 to 21 of the West Sussex County Council Act 1972 ('the 1972 Act'), it is considered important that each Council should retain a reduced power of appointment to the board of Commissioners of one Commissioner each (subject to a right of veto by the new board of Commissioners).</p> <p>Once appointed, these Commissioners, in line with government guidance will be expected to act impartially, in the best interests of the Harbour. This is already the current position with the members of the current Littlehampton Harbour Board appointed by the Councils.</p> <p>The first draft of the proposed HRO provided for a power of appointment to the board of Commissioners of two Commissioners each, with no right of veto by the Board. This draft of the proposed HRO was provided to both Councils and the Department for Transport for early pre-application consultation. A meeting also took place with both Councils to discuss the proposed HRO and whether there were any alternative arrangements that could be put in place to reduce or limit the Littlehampton SHA's requirement to request contributions / precept from the Councils. However, no alternative solution was found.</p> <p>Initial feedback on the first draft of the HRO from the Councils was divided. One of the Councils was content with the reduction to two Commissioners each and the other expressed a preference to retaining four appointees. However, the Department for Transport's advice, was that despite the</p>

		<p>monetary contributions / precept from the Councils, the proposed HRO should reflect the requirements of a Trust Port board contained within the Ports Good Governance Guidance and that there should be no powers of appointment to the board for either Council.</p> <p>The Littlehampton SHA considers both the Councils and the Department for Transport to be extremely important stakeholders. The current provision in the proposed HRO (power of appointment for each Council of one Commissioner subject to a right of veto by the board of Commissioners) is aimed at striking a balance between the view of the Department for Transport (that there should be no Council appointees) and a recognition of unusual circumstances in respect of the Councils as a result of the monetary contributions / precept paid by the Councils under the provisions of the 1972 Act.</p> <p>Since this change, only one of the Councils has provided further formal feedback on the current provision. This Council remains supportive in principle of the changes to the constitution. It has however raised a limited number of concerns, including one over the introduction of the right of veto by the board of Commissioners.</p> <p>As the current provision does not accord in full with the Department for Transport's recommendation of no appointees, the right of veto has been introduced to address the Department for Transport's concern over an external third party having a right of appointment to a Trust Port board. The current provision represents the Littlehampton SHA's desire to try to find a solution which is acceptable to all three. As the Department for Transport is responsible for Trust Port policy, the Littlehampton SHA considers it needs to give significant weight to its recommendation.</p> <p>In relation to other stakeholders, pre-application consultation responses were received both in support of and raising concerns about the reduction in the number of Council appointees and accountability as a result of the reduction. In addition, a small number of consultation responses considered that there should be a requirement / power for a stakeholder representative to be appointed to the board of Commissioners by a stakeholder body. The same considerations as have been outlined above apply to the concerns regarding the reduction in the number of Council appointees.</p>
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		<p>In respect of a stakeholder body having a power of appointment to the board, or a requirement to have a Commissioner representative of stakeholders (and specifically leisure interests) on the newly constituted board of Commissioners, such an appointment would not meet with the requirements of the Department for Transport as set out in the Ports Good Governance Guidance. In addition, unlike the very unusual position regarding the Councils and their annual monetary contributions to the Littlehampton SHA, there are no special circumstances at the Harbour of a magnitude that would justify a departure from the Ports Good Governance Guidance in the manner suggested. For these reasons, no power of appointment for a stakeholder body representative to the board of Commissioners, or requirement to have a representative Commissioner on the board has been included in the proposed HRO.</p> <p>A limited number of consultees also raised a concern about the Chief Executive (or the harbour master if no Chief Executive is appointed) being appointed as a Commissioner. However, such an appointment is common in Industry and similar appointments are made in the Dover Harbour Revision (Constitution) Order 2016, the Great Yarmouth Port Authority (Constitution) Harbour Revision Order 2015 and the Falmouth Harbour Revision (Constitution) Order 2004.</p> <p>Finally, in response to pre-application consultation feedback, a further category has been added to the list of special knowledge, experience or ability in article 6(2). This additional skill is <i>'knowledge and understanding of the Littlehampton area'</i>. It is considered this would, in any event, have fallen within the scope of 'public relations and community issues' or the final general category. However, given the importance of such knowledge, the Littlehampton SHA is happy for it to have its own separate category.</p>
<p>7 Appointment and terms of office of first Commissioners</p> <p>8 Terms of office of subsequent Commissioners</p>	<p>Articles 7 to 13 and Schedules 1 and 2 of the HRO deal with appointment, terms of office, declaration (contained in Schedule 1), casual vacancies, disqualification, indemnity insurance and in Schedule 2: incidental provisions such as appointment of chair and vice chair, meetings, vacation of office, reappointment, committees,</p>	<p>These provisions accord with the requirements of the Ports Good Governance Guidance. Similar provisions can be found in the Poole Harbour Revision Order 2012, the Fowey Harbour Revision Order 2001, and the Great Yarmouth Harbour Revision (Constitution) Order 2015.</p> <p>In response to pre-application consultation feedback:</p> <ul style="list-style-type: none"> a) the term of the first chair appointed under the proposed HRO has been reduced from three years to one year;

<p>9 Declaration to be made by Commissioners</p> <p>10 Casual vacancies</p> <p>11 Disqualification of Commissioners</p> <p>12 Indemnity insurance for Commissioners</p> <p>13 Incidental provisions in relation to Commissioners</p> <p>Schedule 1 Form of Declaration</p> <p>Schedule 2 Incidental provisions relating to the Commissioners</p>	<p>proceedings, authentication of seal, remuneration, regulation and appointment.</p>	<p>b) the reference to paying Commissioners a salary in paragraph 21 of Schedule 2 has been deleted;</p> <p>c) in addition a consultee raised a request that the number of terms a Commissioner can serve should be limited to two three year terms, with a third three year term only in exceptional circumstances and after advertisement of the role (in accordance with the Ports Good Governance Guidance). This requirement is already reflected in paragraph 11 of Schedule 2 of the proposed HRO.</p> <p>In addition, a limited number of consultees asked whether future appointment of Commissioners could be made by a panel that included independent persons. It is not unusual for Trust Port appointments to be made following recommendation by an appointments panel (normally of three) that contains one or two external persons. A typical make up may be a Commissioner (often the Chair), an independent person with Ports / Harbour experience (possibly the Port's Designated Person or another similar professional) and then either a person with Human Resources experience, another member of the Board or another independent person. Sometimes this person is a stakeholder, for example it could be the chair of the statutory advisory body or a person from the statutory advisory body chosen by the Commissioners. As is the case with other Trust Ports that implement such a process, and in line with the Ports Good Governance Guidance, the final appointments are still made by the Commissioners (i.e. the choice of the appointments panel is then ratified by the Commissioners). As such, no amendments are required to the proposed HRO to facilitate such a process.</p>
<p>14 General Functions</p>	<p>This article provides that the Littlehampton SHA may take 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>For those purposes, article 14 authorises the Littlehampton SHA to improve, maintain, retain,</p>	<p>The definition of harbour facilities highlights the importance of the fishing, leisure, recreational and tourism industries to the future viability of the Harbour, given the challenges it faces regarding the significant reduction in commercial shipping at the Harbour (as stated above, the Harbour cannot accommodate vessels over 80m, which is a small vessel by current commercial standards).</p> <p>Article 14 is authorised by paragraph 3 of Schedule 2 to the 1964 Act:</p>

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 are expedient to facilitate the proper operation, improvement or development of the Harbour.

“Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of- (a) improving, maintaining or managing the harbour; (b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or (c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land”.

Two pre-application consultation responses have been received in respect of this article 14. One consultation response proposed amendments to the article, including the deletion of wording relating to *‘conservation of the harbour’s flora, fauna and geological and physiographical features of special interest’*. It would not however be appropriate to delete such wording because of the Littlehampton SHA’s environmental duties under section 48(A) of the Harbours Act 1964. Having considered this consultation response and following consultation with the Royal Yachting Association (the other response), the only amendment made to this article was to amend the reference to *‘harbour approaches within the pilotage limits’* to simply read, the *‘harbour approaches’*. The Royal Yachting Association has confirmed that, following this amendment, it would be content with the article. Due to the length of time since submission of this application, the ‘standard’ drafting of similar provisions in similar HROs has evolved. This provision has therefore been further updated for consistency with those HROs and no longer refers to the ‘harbour approaches’ at all. It is anticipated that the RYA will be content with the provision as drafted given that it is consistent with the drafting used in similar powers in similar HROs which are already post-consultation.

A similar provision can be found under article 5 of the Weymouth Harbour Revision Order 2021.

Specifically relating to the power to invest contained in article 14(2), which was not included at the time of the pre-application consultation, this provision provides that where there are monies which are not immediately required by the Littlehampton SHA for the purposes of the harbour undertaking, the Littlehampton SHA can invest such monies as it thinks fit.

		<p>This power allows the Littlehampton SHA to make such investments as it considers fit using any monies which aren't immediately required for the purposes of the harbour undertaking.</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 Littlehampton SHA to invest to maximise the funds available to it for the benefit and future of the Harbour.</p> <p>Similar provisions already exist under local harbour legislation, such as section 12 of the Blyth Harbour Act 1986, article 18 of the Falmouth 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>
<p>15 Infrastructure fund</p>	<p>Article 15 and the associated amendments to the 1972 Act contained in article 59 (see below) of the proposed HRO establish an Infrastructure Fund that sits alongside the contribution / precept provisions contained in the 1972 Act.</p>	<p>The Infrastructure Fund provision has been included to provide a mechanism by which the Littlehampton SHA can start saving funds to reduce its medium to long term need to call on contributions / precept from the Councils.</p>

		<p>Under the provisions in the 1972 Act, the Littlehampton SHA calls on contributions from the Councils annually if there is an anticipated shortfall in their outgoings compared to revenue for the year. In calculating any such shortfall, any funds in the Littlehampton SHA's current reserve fund above £35,000 are required to be used to reduce the deficit before a contribution can be called for. The contribution is then paid 50% each by the two Councils. There is no express monetary limit on the size of the contribution that can be called for, but the Littlehampton SHA is under a duty to ensure (so far as reasonably practicable) that it breaks even each year, without recourse to a contribution from the Councils.</p> <p>If during a year, the deficit is larger than originally anticipated, the Littlehampton SHA may then call for a further precept from the Councils to cover the additional shortfall. This again would be paid for 50% each by the two Councils. At the end of each financial year, any surplus funds (as long as there is £35,000 contained in the current reserve fund) is returned to the two Councils up to the value of the contributions paid in that year. The result of this mechanism is that whilst the Littlehampton SHA requires a contribution from the Councils, it cannot save funds for future infrastructure repairs (above £35,000). This means that any sizeable future infrastructure repair works that cannot be paid for by revenue during the year, either have to be funded by the two Councils under the contribution / precept provisions or through a loan, the repayments of which may have to be funded, at least in part, by the Councils through the contribution / precept provisions.</p> <p>It is considered that it would be far better for there to be a mechanism in place that would enable savings to start being accumulated for future infrastructure repairs. However, it is acknowledged that it would not be appropriate to use the contribution / precept provisions to accumulate reserves in the infrastructure fund, for example by calling on an additional twenty, fifty or one hundred thousand pounds a year to be placed in the infrastructure fund for future anticipated repairs. However, it is also unlikely that the Littlehampton SHA will be in a position of genuine surplus (i.e. no call on contributions / precept from the Councils) for the foreseeable future.</p> <p>Therefore, the draft provision (which has been considered and reviewed by Attorney General A-List Counsel) is designed to strike a balance</p>
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		<p>between the need to accumulate funds for future infrastructure repairs and the return of monies to the two Councils. It is for this reason that it is proposed that if at the end of a financial year there is a 'surplus' (i.e. the deficit has not been as great as anticipated either due to an improved performance or decreased expenditure) and monies are available to return to the two Councils, 80% of this money will be returned to the two Councils (50% each) and 20% of the money can be placed in the infrastructure fund for future use. Any capital monies received by the Littlehampton SHA could be placed directly into the infrastructure fund.</p> <p>This provision has been the subject of consultation with both Councils and was amended following the initial consultation to address some of the concerns they raised. In addition, although not referred to in the provisions of the HRO, a Memorandum of Understanding has been drafted and provided to the Councils setting out a formal structure for consultation and the provision of information relating to any monies requested as a contribution or precept and any funds to be paid into the infrastructure fund. The proposal to have an infrastructure fund is generally considered to be a sensible one by the Littlehampton SHA, but the detail of how it will operate continues to be considered by the two Councils and it is believed they will provide further feedback during the statutory consultation period for the proposed HRO.</p>
<p>16 – 26 Charges</p>	<p>The articles contained within Part 4 of the HRO (Charges) set out the Littlehampton SHA's powers with respect to charges it may levy. They are reflective of modern statutory harbour powers relating to charges and conducive to the improvement, maintenance or management of the Harbour in an efficient and economical manner.</p> <p>A similar suite of powers conferred by articles 16, 17, 19, 20, 21, 22, 23, 24, 25 and 26 has been conferred on Weymouth and Portland Borough Council in articles 10 to 19 of the Weymouth Harbour Revision Order 2021.</p>	<p>See below for justification of each specific provision.</p>

<p>16</p> <p>Charges other than ship, passenger and goods dues</p>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 of the 1964 Act, the Littlehampton SHA may demand, take and recover reasonable charges in respect of all vessels. It also expressly states that charges may be made in respect of a variety of other floating platforms etc. so that no dispute will arise as to whether such structures fall within the definition of vessel contained within the HRO.</p>	<p>In a relatively small harbour such as Littlehampton, it is important to future viability that all users of the Harbour contribute to the cost of the management and maintenance of the Harbour. It would be detrimental to the improvement, maintenance or management of the Harbour in an efficient and economical manner if charging powers did not exist in respect of one type of vessel or floating structure using the harbour (exemptions are provided in article 24). This provision is particularly important because the HRO 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 authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p> <p>A similar provision can be found under article 10 of the Weymouth Harbour Revision Order 2021.</p>
<p>17</p> <p>Charges for services or facilities</p>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 of the 1964 Act, the Littlehampton SHA may demand, take and recover reasonable charges for services provided by it.</p>	<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 authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p> <p>This is pursuant to securing the improvement, maintenance and management of the Harbour in an efficient and economical manner. The Littlehampton SHA must be able to charge for the services and facilities it provides for the same reasons as though set out in respect of article 16 of the HRO, ‘Charges other than ships, passenger and goods dues’.</p>
<p>18</p> <p>Charges for debt recovery,</p>	<p>Article 18 provides that, in addition to articles 16 and 17 set out above, the Littlehampton SHA may recover such monies relating to the recovery of such reasonable charges that it is authorised to demand, including interest on late payments or</p>	<p>In respect of article 18, it would not usually be necessary to include such a provision in an HRO because it is widely accepted that statutory harbour authorities are able to and do exercise such powers incidentally to their functions and under a variety of statutory powers. However, as part of the original section 31 challenge considered by the DfT, the Objectors</p>

<p>administration and commercial activities</p>	<p>payments by instalment, administration, commercial and other incidental activities undertaken by the Littlehampton SHA.</p>	<p>included a challenge against charges such as debt recovery charges for non-payment of dues etc. The Department for Transport declined to consider those parts of the challenge that were not related to 'Ship, Passenger and Good Dues'.</p> <p>However, although the Littlehampton SHA can already exercise such powers, it is considered desirable and conducive to the management of the Harbour in an efficient and economical manner to include an express provision for such charges, thereby significantly reducing the likelihood of a further legal challenge about the existence of such powers.</p>
<p>19 Payment of charges</p>	<p>This article provides that charges are payable before the vessel or goods against which they are payable are removed from the Harbour or harbour premises. It also sets out who charges are payable by and who they can be recovered from and when.</p>	<p>This article is included to ensure that the charges authorised to be levied are paid 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 counter-productive to exclude such a provision from the HRO as this would negatively impact the Littlehampton SHA's ability to efficient and economically manage the harbour.</p> <p>Furthermore, article 19 is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it secures:</p> <p style="text-align: center;"><i>“... the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p> <p>A similar provision can be found under article 12 of the Weymouth Harbour Revision Order 2021.</p> <p>Paragraph (5) in particular is required as it is important for the Littlehampton SHA to be able to secure the charges due to it. The ability to refuse entry, detain or remove vessels or goods is necessary as a deterrent against avoiding charges that are due, until such time as those charges are paid. It would otherwise become very difficult for the Littlehampton SHA to recover the charges. On this basis, paragraph (5) is consistent with section 14(2)(b) and Schedule 2, paragraph 12 of the 1964 Act set out above.</p>

<p>20</p> <p>Compounding arrangements and rebates</p>	<p>This article provides the Littlehampton SHA 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 Littlehampton SHA does not have to include on its list of ship, passenger and goods dues kept at the harbour office, charges which have been reduced by a rebate or a compounding arrangement in respect of a due included on the list.</p>	<p>This article is important to enable the Littlehampton SHA 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 Littlehampton SHA was required to publish commercially sensitive information.</p> <p>The great majority of ports and harbours 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 this article is consistent with the Ports Good Governance Guidance and is therefore justified.</p> <p>A similar article can be found in, for example, the recent Weymouth Harbour Revision Order 2021.</p>
<p>21</p> <p>Deposit for charges</p>	<p>This article provides that the Littlehampton SHA 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 Littlehampton SHA with the power to detain a relevant vessel or goods until the deposit has been paid or the required guarantee made.</p>	<p>It is essential for the economic management of the Harbour for the Littlehampton SHA to be able to secure the reasonable charges due to it by virtue of its 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 Littlehampton SHA needs to be able to secure the interests of the Harbour by detaining the relevant vessel or goods or refusing entry to the Harbour.</p> <p>Article 21 is consistent with section 14(2)(b) of the 1964 Act for the HRO to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner. Furthermore, article 21 is</p>

		<p>authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it secures the efficient collections of charges levied by the Littlehampton SHA:</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> <p>One pre-application consultee objected to this provision. However, the provision is standard in the Industry and is an important part of the Open Port Duty (which requires the port or harbour to be open for the shipping and unshipping of goods and passengers on ‘payment of rates’). Examples of other HROs containing the same provisions are the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 (article 32), the Maryport Harbour Revision Order 2007 (article 49) and the Cowes Harbour Revision Order 2012 (article 6).</p>
<p>22</p> <p>Liens for charges</p>	<p>This article provides for a right of lien over goods in the possession or custody respectively of a person collecting charges on behalf of the Littlehampton SHA or a wharfinger or carrier who has paid or given security for charges on those goods.</p>	<p>This is a standard provision included to secure the financial interests of those who by agreement with the Littlehampton SHA collects charges on its behalf, by securing said interest against goods in their possession. As that person will not themselves be liable for the payment of charges, this provision is required to secure debts owed.</p> <p>A similar provision can be found under article 15 of the Weymouth Harbour Revision Order 2021.</p>
<p>23</p> <p>Refusal to pay charges for landing place</p>	<p>This article provides that a vessel may be prevented from using a landing place supplied by the Littlehampton SHA, if the master of the vessel refuses to pay the related charges.</p>	<p>It is essential for the economic management of the Harbour for the Littlehampton SHA to be able to secure the reasonable charges due to it by virtue of its charging powers under the local legislation applying to the Harbour, the 1964 Act or otherwise. Therefore, the Littlehampton SHA 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</p>

		<p>of a vessel refuses to pay the reasonable charge required, as authorised under the HRO.</p> <p>Article 23 is consistent with section 14(2)(b) of the 1964 Act for the HRO to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner. Furthermore, article 23 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 Littlehampton SHA. Paragraph 12 of Schedule 2 to the 1964 Act states:</p> <p style="text-align: center;"><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>One consultee suggested amendments to this article. However, this provision is, again, common in the Industry and does not require amendment. Examples of other HROs containing the same provisions are the Weymouth Harbour Revision Order 2021, the Folkestone Harbour Revision Order 2017 and the Portland Harbour Revision Order 1997.</p>
<p style="text-align: center;">24</p> <p style="text-align: center;">Exemption from ship, passenger and goods dues</p>	<p>This article is similar to other modern provisions providing for an exemption for ship, passenger and goods 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 style="text-align: center;"><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>A similar provision can be found under article 17 of the Weymouth Harbour Revision Order 2021.</p> <p>This article is particularly important as, set out in article 61 and Schedule 5, the exemption provisions contained in the existing local harbour legislation have been repealed in full.</p> <p>A small number of consultation responses have been received requesting either that some of the current exemptions are not repealed or that new exemptions are granted. However, due to the circumstances at the</p>

		<p>Harbour (contribution / precept provisions, limited landownership of the Littlehampton SHA and decline in commercial shipping), the exemptions to the requirement to pay dues need to be framed relatively narrowly and certainly no wider than other current modern exemption provisions.</p> <p>The starting point in the proposed HRO is that each vessel / business should contribute to the overall costs of running the Harbour, thereby reducing the burden on any particular group. It is clear from the responses (and the section 31 challenges), that some stakeholder groups have concerns about the sums they are paying and consider that they should pay less. In addition, any group that is currently not contributing or only in a very limited manner, does not want to contribute anything additional. The aim of the HRO therefore is to spread the costs as widely as possible (within the scope of standard industry exemptions) thereby reducing the burden on any one particular group. It is considered that the HRO represents a reasonable and fair solution in the circumstances.</p>
<p>25 Recovery of charges</p>	<p>This article provides that in addition to any other powers of recovery available to it, the Littlehampton SHA may recover any charges payable to it as a debt in Court.</p>	<p>It is essential for the economic management of the Harbour for the Littlehampton SHA to be able to secure the reasonable charges due to it by virtue of its charging powers under the local legislation applying to the Harbour, the 1847 Act incorporated with the HRO or otherwise. Therefore, the Littlehampton SHA must be able to rely on the resources of the Court to assist in securing any debts owed to it should its existing powers of recovery be insufficient to secure the debt.</p> <p>Article 25 is consistent with section 14(2)(b) of the 1964 Act for the HRO 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>26 Harbour Master may prevent sailing of vessels</p>	<p>This article provides that the Littlehampton SHA 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 Littlehampton SHA to be able to secure the reasonable charges due to it in relation to:</p> <ul style="list-style-type: none"> - the vessel; - passengers on the vessel; and

		<p>- goods imported, exported or carried on the vessel,</p> <p>By virtue of its powers under the local legislation applying to the Harbour or otherwise. Therefore, the harbour master is required to have an express power to prevent the sailing and / or removal of a vessel from the Harbour until such a time as the charges payable have been paid. Should such a vessel be able to leave the Harbour without having paid the charges due, it would become difficult for the Littlehampton SHA to recover said charges and therefore be detrimental to its ability to manage the Harbour in an economically efficient manner.</p> <p>Article 26 is consistent with section 14(2)(b) of the 1964 Act for the HRO 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>27 Power to lay moorings</p> <p>28 Licensing of moorings</p> <p>29 Offences as to moorings etc.</p>	<p>These articles provide the Littlehampton SHA with powers related to the provision, maintenance and licensing of moorings within the Harbour.</p>	<p>The Littlehampton SHA already grants works licences in respect of the laying of new moorings within the Harbour as an important part of its management of the Harbour. However, it is considered that modernised express provisions are conducive to the efficient and economical management and maintenance of the Harbour.</p> <p>Similar provisions are found within articles 14 to 17 of the Yarmouth (Isle of Wight) Harbour Revision Order 2011 and articles 9 to 11 of the Poole Harbour Revision Order 2012.</p> <p>This provision has received a number of pre-application consultation responses. The main concern raised related to wording now removed from the article, which provided that the annual mooring licence charge could also include a charge for 'use of the mooring'. A more limited number of consultees objected more widely to the provision and suggested amendments to it (again individual feedback has been provided to the two consultees that raised the most detailed concerns in relation to the provision).</p> <p>The main purpose of including this provision relates to the fact that under the Littlehampton SHA's current powers under section 43 of the 1927 Act, the Littlehampton SHA can only refuse to grant a works licence on grounds</p>

		<p>that the work would interfere with or endanger the use of the waterways of the Harbour. Once granted, there is very limited / no power to require that structure to be removed in the future, i.e. it is a one-off permission. This has the following effect.</p> <p>Firstly, because the authorisation of the Littlehampton SHA is required to lay the moorings and install pontoons in the Harbour (under section 43 of the 1927 Act), the exemption to the requirement to obtain a marine licence from the Marine Management Organisation (the MMO) contained in articles 25 and 25A of the Marine Licensing (Exempted Activities) Order 2011 is likely to apply. However, because the Littlehampton SHA can only refuse permission on navigational grounds, the Littlehampton SHA cannot meet its environmental duties under s48A of the Harbours Act 1964. In addition, because of the exemption, the MMO does not consider the environmental impacts either. In addition, the Littlehampton SHA has no way of requiring pontoons / moorings to be moved to a new location if a future navigational safety concern arises. As such new and modern provisions are required to replace it.</p> <p>The provisions chosen reflects other modern HROs and provides a safeguard for existing pontoons / moorings at article 28(3) which provides that a mooring licence for an existing mooring can only be refused on navigational safety grounds. However, the Littlehampton SHA considers that it is important that these existing moorings are required to hold an annual moorings licence. There have been a number of instances in the Harbour in recent years of third party moorings not being maintained properly. These issues can be addressed through moorings licences. Section 43 of the 1927 Act is repealed under the proposed HRO.</p> <p>As stated above, in the draft HRO released for pre-application public consultation, the charging provision in respect of mooring licences included wording allowing for an annual charge to be made linked to use of the mooring (which includes pontoons). This is because the starting point for the proposed HRO was that each harbour user (be that a vessel owner or related business etc.) should contribute to the overall costs of running the Harbour, thereby reducing the burden on any particular group.</p> <p>Due to the Littlehampton SHA's limited landholdings (it does not have a lease of the majority of the bed of the Harbour below mean high water springs) and the outcome of the pontoon litigation, it is unable to recover</p>
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		<p>any income from the majority of moorings or pontoons situated in the majority of the Harbour area below mean high water springs. The result of this is that there are a small number of businesses within the Harbour which generate significant income (in the context of the Littlehampton SHA's annual turnover) from vessels using the Harbour (i.e. through pontoon, mooring and membership charges) but contribute very little to the running costs of the Harbour. This means that a greater burden is placed on other harbour users (for example, through annual ship, passenger and goods dues) than would be if income could be generated from a wider pool of users. It is for this reason that the express wording related to a charge for use of the mooring was included at the pre-application stage to obtain feedback from harbour users about the proposal.</p> <p>However, following objections from a number of local stakeholders (who would be required to pay the charge) and consultation with the Royal Yachting Association (who acknowledged the increased pressure that would be placed on charges such as ship, passenger and goods dues if the wording was removed, but nevertheless considered it should be removed) the Littlehampton SHA has removed the wording.</p>
30 Aids to navigation	This article provides that the Littlehampton SHA may, with the approval of Trinity House, erect, place, alter, discontinue or remove any aids to navigation in any place adjacent to the Harbour (subject to obtaining the necessary interest in or over land).	<p>This power is important for enabling the Littlehampton SHA to meet its duties with regard to navigational safety and the safety of harbour users, and it is considered such a provision is conducive to the safe management of the Harbour. Although such a power may be exercised in places outside of the harbour area, it remains subject to both obtaining the necessary rights over land and ultimately requires the approval from Trinity House in any event.</p> <p>A similar provision can be found under article 36 of the Weymouth Harbour Revision Order 2021.</p>
31 Power to dredge	This article provides the Littlehampton SHA with a power to dredge.	<p>The power to dredge is a standard statutory harbour power. Presently, the Littlehampton SHA, under section 41 of the 1927 Act, already has the power to dredge the Harbour including in the entrance channels to it. However, this power is not expressed in modern form and therefore a new modern power is included in the proposed HRO. Because the existing power is already exercisable in the entrance channels to the harbour, the</p>

		<p>Littlehampton SHA considers that is already able to dredge the whole of the harbour (as extended under the proposed HRO).</p> <p>Dredging (albeit relatively small scale) is required at the Harbour on a regular basis. It is anticipated that this will continue in the future. It is therefore important that the Littlehampton SHA is provided with the modern power so that it can dredge if and when required.</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 Littlehampton SHA will not need to obtain a marine licence for the dredging activity. Most material resulting from maintenance dredge activity has historically been disposed of to land, or has used techniques that have not resulted in material being brought to the surface. However, if disposal to sea is required in the future then a marine licence will be required for this disposal.</p> <p>One pre-application consultation response was received in relation to this article from a consultee with an interest in the bed of the Harbour below mean high water springs. The Littlehampton SHA has responded to the consultee individually.</p>
<p>32 Repair of landing places etc.</p>	<p>This article provides that the Littlehampton SHA may by notice require the owner or occupier of any landing place, jetty, wall, pontoon, pile, embankment, bridge, structure, groyne, aids to navigation or other work in the Harbour or on land immediately joining the waters of the Harbour to repair it, within a reasonable time, to its reasonable satisfaction, if it is a danger to persons or vessels using the Harbour or a hindrance to navigation of the Harbour. The provision provides for a level 4 fine for non-compliance (on summary conviction) and a power for the Littlehampton SHA 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 Littlehampton SHA in meeting its duties with regard to navigational safety and the safety of harbour users. A similar provision can be found in the Weymouth Harbour Revision Order 2021 and the Portland Harbour Revision Order 1997. Following correspondence, the Royal Yachting Association confirmed during pre-application consultation that it is content with the provision as drafted at that time.</p> <p>One further consultee considered that the provision should be amended to expressly exclude the structures referred to in section 38 of the 1927 Act. The Littlehampton SHA does not consider that the suggested amendment is appropriate or required. If the Littlehampton SHA tried to serve notice and recover costs under article 32, in relation to a structure it was under a statutory duty to maintain, it is extremely likely that the person on whom the notice was served would be able to demonstrate a 'reasonable excuse' under article 32(3) and that person has a right of appeal to the Secretary of State. As such, there are already sufficient safeguard within the article without requiring further amendment.</p>

		<p>This article relates to navigational safety in that it applies to features which are “<i>dangerous to persons or vessels using the harbour</i>” or a “<i>hindrance to the navigation of the harbour</i>” 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>33 Restriction of works and dredging</p> <p>34 Control of certain operations and works of statutory undertakers</p> <p>35 Licensing of works</p> <p>36 Licence to dredge</p> <p>37 Appeals in respect of works or dredging licence</p>	<p>These articles provide the Littlehampton SHA with modern powers regarding works and dredging carried out by third parties within the Harbour. The provisions include requirements to obtain a licence from the Littlehampton SHA prior to the undertaking of any works or dredging within the Harbour.</p>	<p>The provisions are important to enable the Littlehampton SHA to comply with its duties related to navigational safety and in respect of the environment (in particular, s48A of the 1964 Act).</p> <p>Under section 42 of the 1927 Act, the Littlehampton SHA has existing powers related to providing consent for works being carried out in the Harbour. However, under the provisions of section 42, the Littlehampton SHA is required to provide consent ‘<i>unless in the opinion of the Harbour Board any such embankment building work or pile would interfere with or endanger the use of the waterways of the harbour.</i>’ The consent, once given, is not time limited.</p> <p>This requirement means that the Littlehampton SHA is unable to refuse consent on environmental protection grounds (and therefore is potentially unable to comply with its duties under s48A of the 1964 Act). In addition, as explained above, for certain activities, such as laying of moorings and some pontoons, the consent of the Littlehampton SHA, means that such works are also exempt from the need to obtain a marine licence under the marine licensing regime. The Marine Management Organisation therefore also does not consider the environmental impacts of such works. Modernisation of the Littlehampton SHA’s licensing powers are therefore required. Yearly licensing will also enable the Littlehampton SHA to meet its safety of navigation duties more easily.</p> <p>Similar provisions can be found in articles 8 to 10 of the Watchet Harbour Revision Order 2000 and article 7 of the Port of Tyne Harbour Revision Order 2001.</p> <p>Two consultees have provided detailed consultation responses on these provisions, including suggested amendments. Individual consultation</p>

		<p>feedback has been provided to them explaining why their suggestions have not been included in the draft proposed HRO.</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>38 Power to make byelaws</p> <p>39 Confirmation of byelaws</p> <p>Schedule 3 Purposes for which byelaws may be made</p>	<p>Article 38 provides the Littlehampton SHA with the power to make byelaws in a range of circumstances in addition to the purposes in section 83 of the Harbours, Docks and Piers Clauses Act 1847 (as incorporated under article 4 of the HRO) and is in line with the modern practice of setting out a wide range of matters upon which the Littlehampton SHA will have the power to make byelaws. Purposes for which byelaws may be made are included in Schedule 3.</p> <p>Byelaws made under this provision in the future may, in accordance with paragraph 4(a) of this article, provide for a fine not exceeding level 4 on the standard scale for breach thereof.</p> <p>Article 39 sets out the procedure by which byelaws made under the HRO shall be confirmed under the Local Government Act 1972.</p>	<p>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> <p>The Littlehampton SHA already has byelaw making powers (for example, under section 70 of the 1927 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>The power in article 38 incorporates the purposes in section 83 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 3) upon which the Littlehampton SHA 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 to cover the full range of matters set out in in Schedule 3. However, setting out the detail in this way reduces the scope for challenging any prosecution on the basis that the byelaw in question is outside the range of matters for which the statutory harbour authority has the power to make byelaws. This leads to increased costs and delays in prosecutions and</p>

		<p>therefore the more modern approach is to set out expressly a wider range of byelaw making powers.</p> <p>Similar provisions 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 master. Since 2019, there have been a limited number (5) prosecutions for breach of general directions. It is the intention of the Littlehampton SHA to continue to only have a single set of general directions in force in the future. Nevertheless, to comply with the Port Marine Safety Code (PMSC) and to meet its other duties (including navigational safety), it is important that the Littlehampton SHA has modern and comprehensive byelaw making powers, in case a risk becomes apparent that cannot be covered under general directions.</p> <p>Article 39 applies the procedure contained in sections 236 and 238 of the Local Government Act 1972 to the making of such byelaws. This represents the Department for Transport's preferred procedure. The amendments made to the sections are reflective of other HROs including the Poole Harbour Revision Order 2012 (article 28).</p> <p>Two consultees suggested amendments to article 38. However, the provision as currently drafted is reflective of other HROs and the amendments were not considered to be appropriate (individual feedback on the points raised has been given to each of the consultees).</p>
<p>40 Advisory bodies</p>	<p>This article covers the establishment of an external advisory body with an independent chair.</p>	<p>There are three Stakeholder Groups already established:</p> <ol style="list-style-type: none"> 1) The Littlehampton Harbour Board Stakeholder Group, chaired by Board's Recreational Users' Representative, had relatively informal membership and no decision making powers. 2) A Personal Watercraft (PWC) Users Group (known as Littlehampton Jet Ski Club) which runs independently of the Littlehampton SHA. 3) In addition, there is a further stakeholder group called the Littlehampton Harbour Stakeholder Association.

		<p>None of these groups have a statutory right to be consulted, so article 40 puts on a statutory basis the establishment and continuance of a new advisory group and its administration. Importantly, it also requires the Littlehampton SHA to (except in an emergency) consult the advisory group on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the Harbour and its navigation.</p> <p>This statutory requirement is fundamental to the Littlehampton SHA's compliance with the Ports Good Governance Guidance (March 2018) which recognises at para 1.5 <i>"the importance of engaging effectively and fully with stakeholders and carrying out their business in an accountable way"</i> and specifically sets out at para 2.6:</p> <p><i>"Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder's views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders"</i>.</p> <p>During 2020/21, the Littlehampton SHA replaced its previous Stakeholder Group with the Littlehampton Harbour Advisory Body which had a clearly set Terms of References with representatives for designated harbour user groups (by formal appointments or nominations depending on the type of group) and the ability to appoint its own chair. This chair is also invited to the Littlehampton SHA's meetings except during confidential business. The pandemic slowed the implementation of this group but, since January 2021, it has been meeting regularly and engaging with the Littlehampton SHA.</p> <p>It is proposed that the Littlehampton Harbour Advisory Body is the group which will fulfil the role of the advisory body under article 40 of the HRO. The article reflects best practice guidance and is similar to provisions contained in the Weymouth Harbour Revision Order 2021, the Crouch Harbour Authority (Constitution) Harbour Revision Order 2007, the Maryport Harbour Revision Order 2007 and the Dover Harbour (Constitution) Revision Order 2016.</p>
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		<p>Two consultation responses have been received seeking to provide the advisory group with decision making, rather than advisory powers and one of the responses sought to make further amendments to the drafting of the article. It would not be appropriate for a stakeholder advisory group to be able to make decisions about the harbour related to the Littlehampton SHA's functions as a statutory harbour authority. Indeed, there are a range of matters that cannot be delegated under an HRO even if the Littlehampton SHA wished to. These are set out at paragraph 9B of Schedule 2 to the Harbours Act 1964 as follows:</p> <ul style="list-style-type: none">a) a duty imposed on the authority by or under any enactment;b) the making of byelaws;c) the levying of ship, passenger and goods dues;d) the appointment of harbour, dock and pier masters;e) the nomination of persons to act as constables;f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation. <p>A few consultation responses raised more general concerns over current stakeholder engagement and considered that the Littlehampton SHA is not responsive to feedback. However, the Littlehampton SHA does in fact have a number of systems in place for stakeholder engagement (it has a clear procedure for asking questions to the Littlehampton SHA, it engages regularly with Stakeholders and publishes reports etc. in line with government ports guidance). It is also important to remember that there is a difference between considering feedback and doing what the particular stakeholder providing the feedback has asked. It is acknowledged that both the Littlehampton SHA and relevant stakeholders who were involved in both the pontoon litigation and the section 31 harbour dues challenges need to engage constructively with each other to establish a good future working relationship.</p> <p>Individual consultation feedback has been provided to the consultee that submitted detailed suggested amendments to the article.</p> <p>A similar provision can be found under article 28 of the Weymouth Harbour Revision Order 2021.</p>
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<p>41 Development of land etc.</p>	<p>This article provides that the Littlehampton SHA may use or develop for any purpose, and deal with, any land within or in the vicinity of the Harbour; or form invest in and promote, or join with another person in forming, investing in and promoting a company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the Harbour.</p>	<p>Article 41(2) provides that a company established under article 41(1)(b) may have powers to do anything necessary for the purposes of the objects for which it has been established notwithstanding that the Littlehampton SHA would not itself have the power to do that thing.</p> <p>Article 41, 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 article 41 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 below as an integral justification for article 41.</p> <p>The purpose of article 41 is to give the Littlehampton SHA 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 article 41 would be used to improve and develop the Harbour and provide increased financial security.</p> <p>It should be noted that the powers in article 41 can only be exercised if <i>"it is conducive to the improvement, maintenance or management of the harbour in an efficient and economical manner"</i>. This limitation brings article 41 within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers to those in article 41 were conferred under the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014.</p>

		Individual consultation feedback has been provided to the one consultee that submitted suggested amendments to the article.
42 Power to appropriate lands and works for particular uses etc.	This article provides that the Littlehampton SHA 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 Littlehampton SHA may think fit.	<p>Section 33 of the Harbours, Dock and Piers Clauses Act 1847 is incorporated into the HRO (also known as ‘the Open Port Duty’) and as such the Littlehampton SHA remains under a duty to keep the Harbour open for the shipping and unshipping of goods, and the embarkment and landing of passengers. Therefore, the power of article 42 will only operate insofar as it does not otherwise conflict with the duty under section 33 of the 1847 Act.</p> <p>In addition, the power under article 42 must only be exercised for the “<i>purpose of or in connection with the carrying on of the harbour undertaking</i>” and not for wider purposes. Article 42 is therefore within the scope of section 14(2)(b) of the 1964 Act in that it will assist the Littlehampton SHA 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>Individual consultation feedback has been provided to the one consultee that submitted suggested amendments to the article.</p> <p>A similar provision can be found under article 31 of the Weymouth Harbour Revision Order 2021.</p>
43 Other commercial activities	Article 43(1)(a) provides that the Littlehampton SHA may carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person. Article 43(1)(b) enables the Littlehampton SHA to form, invest in and promote, or join with another person in forming, investing in and promoting, a company for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind. Article 43(2) provides that a company established under article 43(1)(b) may have powers to do anything necessary or expedient for the purposes of the objects for	<p>It is considered that article 43 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 below as an integral part of the need for article 43.</p> <p>Article 43(1)(a) would assist the Littlehampton SHA to maximise the potential of the harbour undertaking by enabling it to carry on any business which could conveniently be carried on with the harbour undertaking. For example, the Littlehampton SHA 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>which it has been established notwithstanding that the Littlehampton SHA would not itself (as harbour authority) have the power to do that thing.</p>	<p>Article 43(1)(b) would enable the Littlehampton SHA to carry on such a business as part of a joint venture with another person or persons, for example enabling the Littlehampton SHA 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 article 43 would be used to improve and develop the harbour and ensure increased financial security.</p> <p>It should be noted that the powers in article 43 can only be exercised if <i>“it is conducive to the improvement, maintenance, operation or management of the harbour in an efficient and economical manner”</i>. This limitation brings the article within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers were conferred under the Weymouth Harbour Revision Order 2021 and the Dover Harbour Revision Order 2014.</p> <p>Individual consultation feedback has been provided to the one consultee that submitted suggested amendments to the article.</p>
<p>44 Power to delegate functions</p>	<p>This article provides that the Littlehampton SHA may delegate the performance of any of its functions to be carried out by any such company as referred to in article 43(1)(b).</p>	<p>Article 44 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"> <i>(a) a duty imposed on the authority by or under any enactment;</i> <i>(b) the making of byelaws;</i> <i>(c) the levying of ships, passenger and goods dues;</i> <i>(d) the appointment of harbour, dock and pier masters;</i> <i>(e) the nomination of persons to act as constables;</i> <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> <p>The power to delegate functions is needed to enable the Littlehampton SHA to carry out day to day activities through a subsidiary or joint venture</p>

		company. The power does not apply to the key functions which cannot be delegated under paragraph 9B of Schedule 2 to the 1964 Act.
45 Bunkering	This article provides the Littlehampton SHA with powers in relation to licensing those persons carrying out commercial refuelling activities related to vessels in the Harbour.	<p>To comply with the environmental duties contained in s48A of the Harbours Act 1964, the Littlehampton SHA considers that it is important that it has express powers to licence such activities so that proper risk assessments can be carried out and persons carrying out such activities can be required to comply with terms and conditions, designed to mitigate against risks associated with such activities (including environmental). Due to the fact that such operations are being carried out commercially and the potential environmental implications, it is considered that a level 4 fine is justified.</p> <p>Individual consultation feedback has been provided to the one consultee that submitted a query and suggested amendments to the article.</p> <p>A similar provision can be found under article 31 of the Weymouth Harbour Revision Order 2021.</p>
46 Power with respect to disposal of wrecks	This article extends the powers of the Littlehampton SHA under section 252 of the Merchant Shipping Act 1995. In particular, it extends the circumstance in which the Littlehampton SHA may recover expenses reasonably incurred by it 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>This extension of the power in section 252 of the Merchant Shipping Act 1995 is common and important if the Harbour is to be run in an efficient and economic manner.</p> <p>Similar provisions can be found in the Weymouth Harbour Revision Order 2021 and the Portland Harbour Revision Order 1997.</p>
47 Power to deal with unseviceable vessels	<p>This article provides that the Littlehampton SHA may sell, break up or otherwise dispose of any vessel which is unseviceable and had been laid by or neglected in the Harbour or on land immediately adjoining the Harbour.</p> <p>The Littlehampton SHA is authorised under article 47 to retain from the proceeds of any sale</p>	<p>Individual consultation feedback has been provided to the one consultee that submitted suggested amendments to the article.</p> <p>This article is conducive to the efficient and economical operation of the Harbour under section 14(2)(b) of the 1964 Act. In addition to the duties of the Littlehampton SHA with regard to securing the safe navigation of vessels and users of the Harbour, it ought to be able to recover the costs involved in removing unseviceable or neglected vessels in the Harbour</p>

	<p>the expenses incurred by it, but any surplus funds must then be paid to the entitled body. If the proceeds are insufficient, the Littlehampton SHA may then recover the difference from that body.</p> <p>There is a restriction included in the provision for, except in emergencies, the Littlehampton SHA to provide 14 days' notice of its intention to the registered owner of the vessel and advertise in a local paper for 2 successive weeks, or at the principal office of the Littlehampton SHA if the registered owner's address is not known or outside of the UK.</p>	<p>and in areas immediately adjoining the Harbour to allow it to operate in an economically efficient manner. The power of the article is restricted to the recovery of expenses, ensuring that surplus funds (if any) are still to be paid to the registered owner of the vessel and therefore operates purely to avoid the Harbour suffering losses as a result of unseaworthy or neglected vessels.</p> <p>A similar power can be found under article 40 of the Weymouth Harbour Revision Order 2021.</p>
<p>48</p> <p>Removal of obstructions other than vessels</p>	<p>This article provides that the Littlehampton SHA 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 Littlehampton SHA of reasonable expenses incurred by it in relation to the exercise of the power and sale of the item(s) recovered.</p>	<p>This power is important in assisting the Littlehampton SHA in meeting its duties with regard to navigational safety and the safety of harbour users, and is important if the Harbour is to be run in an efficient and economic manner. Similar provisions can be found in the Weymouth Harbour Revision Order 2021 and the Portland Harbour Revision Order 1997.</p> <p>Individual consultation feedback has been provided to the one consultee that submitted suggested amendments to the article.</p>
<p>49</p> <p>Tidal works</p>	<p>Paragraph (1) provides that in the case of injury to, or the destruction or decay of, a tidal work (defined in article 2), the Commissioners must notify Trinity House (the general lighthouse authority) as soon as practicable.</p> <p>Paragraph (2) deems all tidal works forming part of the harbour undertaking to be within the area of the local planning authority (to the extent they are not already within it).</p>	<p>Paragraph (1) is important in ensuring the Littlehampton SHA meets its duties with regards to navigational safety. This article puts on a statutory basis a requirement for the Commissioners to notify Trinity House of an incident relating to tidal works. Under the Merchant Shipping Act 1995 Trinity House then has powers to direct the Commissioners as appropriate in response to the injury, destruction or decay of a tidal work. This is conducive to the efficient management of the harbour as required under section 14(2)(b) of the 1964 Act.</p> <p>Paragraph (2) is important to ensure, in simple and modern terminology, that all tidal works within the Harbour are part of the local planning authority area and therefore making them subject to planning control insofar as they are not already. This is considered to be desirable for the improvement, maintenance and management of the Harbour in an</p>

		efficient and economical manner as required section 14(2)(b) of the 1964 Act.
50 Power of the Commissioners to prosecute or defence legal proceedings	This power provides that where the Littlehampton SHA considers it is conducive to the improvement, maintenance, operation, management or protection of the harbour undertaking, it may prosecute, defend or appear in local proceedings, institute civil proceedings, and make representations in any public inquiry held under any enactment.	This provision provides an express power for the Littlehampton SHA to prosecute, defend or appear in local proceedings, institute civil proceedings, and make representations in any public inquiry held under any enactment. It is considered to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner as required section 14(2)(b) of the 1964 Act for this power to be expressly stated (rather than implied).
51 Notices	This article has been included at the request of the Marine Management Organisation. It sets out how notices required under the HRO are served.	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 HRO.
52 Savings	This article provides savings for the Trustees of the 16th Duke of Norfolk's 1958 Settlement Reserve Fund (changed from the Duke of Norfolk and the Earl of Arundel at the request of the Angmering Park Estate Trust) and Arun District Council.	No further justification required.
53 Saving for Trinity House	This article provides the standard saving provision for the rights of Trinity House.	No further justification required.
54 Crown Rights	This article provides the standard saving provision for Crown Rights.	No further justification required.
55 Saving for existing directions, byelaws etc.	This article provides for the saving of existing general directions, special directions, byelaws, regulations, licences, leases etc. notwithstanding the change of name of the Littlehampton SHA from Littlehampton Harbour Board to	It is important that any existing directions, byelaws, regulations, licences, leases etc. remain in force following the coming into force of this HRO, particularly in this case due to the change of name of the Littlehampton Harbour Board to the Littlehampton Harbour Commissioners, and the amendments / revocations set out.

	Littlehampton Harbour Commissioners and the amendments and revocations of the historic Acts and Orders by virtue of articles 56 to 61 and Schedules 4 and 5.	
56 Amendment of the Order of 2015 to extend the harbour limits	This article was not in the draft of the proposed HRO circulated for pre-application consultation. However, following pre-application consultation and in particular correspondence with the Royal Yachting Association, the article has been included to extend the harbour limits approximately 0.5 miles seaward (still well within the current Pilotage Limits of Littlehampton Harbour).	<p>This decision has been made, because it is considered important that the Littlehampton SHA is able to give directions (General or Special) in the additional area in order to ensure safety of navigation and the Royal Yachting Association considered that such powers should only be exercised within the harbour limits (rather than the harbour approaches as well). Recent incidents have highlighted both the potential danger small leisure vessels can place themselves in by impeding the safe navigation of commercial ships entering the Harbour, and the inconvenience and expense caused by snagging fishing gear deployed on the approaches to the Harbour. Increased powers of Direction would have assisted in managing these incidents. The 0.5 miles additional area has been selected because once a ship enters this area, it is difficult for it to alter course safely when approaching and leaving the Harbour. As such, there is a need to control all vessels and activity in the area.</p> <p>A harbour map showing the new harbour limits (encompassing the current limits and the new extended limits) has been submitted with the application for the proposed HRO. In addition, the plan in Annex 1 of this Statement of Support identifies the change from the current harbour limits.</p> <p>It is important to note that the currently in force general directions will not automatically apply to the extended harbour limits. For them to do so, they would have to be amended, which would involve a separate 6 week consultation outside the Harbour Revision Order process.</p>
57 and Schedule 4 Further amendments of the Order of 2015	<p>This article and Schedule 4 provide for the amendment of Littlehampton Harbour Revision Order 2015 to further modernise and extend the Littlehampton SHA's powers of General Direction to cover vehicles and harbour operations ashore.</p> <p>The extension to the powers of General Direction will mean that in future, the Littlehampton SHA will not need to introduce byelaws to deal with landside matters and can instead have a single</p>	<p>In terms of the precise scope of general directions, it will be seen that the revised article 4(1) to be inserted into the Order of 2015, would allow the Littlehampton SHA to give or amend directions for the purpose of promoting "<i>...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, within the harbour</i>".</p> <p>Such a scope is consistent with 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</p>

	<p>set of general directions covering the whole Harbour.</p>	<p>confer powers for environmental conservation within the Harbour. In relation to vehicles and harbour operations ashore, these powers 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.</p> <p>Similar powers are contained in the Shoreham Port Authority Harbour Revision Order 2021, the Fowey Harbour Revision Order 2021 and the Dart Harbour and Navigation Harbour Revision Order 2021.</p>
<p>58 Amendment of the Order of 1986</p>	<p>This article amends the 1986 Order to link the existing borrowing powers under article 2 of the Order so that they become linked to the Retail Price Index, and also incidentally defines “RPI” to mean <i>“the Retail Price Index or any replacement thereof, or if no replacement exists, the Consumer Price Index or any replacement thereof”</i>.</p>	<p>Originally during pre-application consultation and at the point of submission of the proposed HRO, the proposed HRO contained at article 15 a provision that provided that the Littlehampton SHA may borrow such sums of money as it thinks necessary for the purpose of meeting its obligations in carrying out its functions and that they may secure such borrowing against its assets and / or revenues.</p> <p>The article reflected modern statutory harbour borrowing powers as can be seen in the powers conferred by the Weymouth Harbour Revision Order 2021 and the Dover Harbour Revision Order 2014.</p> <p>It was considered that there is no need to place a limit on the amount of money which can be borrowed by the Littlehampton SHA, because, in reality its borrowings would have been limited by the amount a lender is prepared to loan it. In addition, the unlimited borrowing power would have avoided 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>However, pre-application consultation responses were received from both Councils expressing concern over an unlimited power of borrowing whilst the provisions in the 1972 Act relating to the annual contributions / precept from the Councils remain. It is therefore proposed instead to index link the Littlehampton SHA’s current power of borrowing (£5 million) contained in article 3 of the 1986 Order to inflation (Retail Price Index), so that the level of borrowing, increased by inflation remains in real terms the same as it was when the power was granted. It is hoped that the proposal set out in this paragraph will assist in alleviating the Councils’ concerns in a manner which also reflects the Littlehampton SHA’s status as an independent Trust Port.</p>

<p>59 Amendment of the Act of 1972</p>	<p>This article amends the 1972 Act to facilitate the establishment of an Infrastructure Fund (article 15 of the HRO).</p>	<p>Please see the justification for the establishment of an Infrastructure Fund above at article 15. These amendments are incidental to the inclusion of article 15 and are therefore justified on the same basis as article 15.</p>
<p>60 Amendment of the Act of 1927</p>	<p>This article provides for amendments to the Littlehampton and Arun District Drainage and Outfall Act 1927 from the date of the HRO.</p>	<p>The amendments are necessary to complete the process of modernisation of the Littlehampton SHA's powers as a statutory harbour authority in conjunction with the provisions of the HRO and the repeals / revocations contained in article 61 and Schedule 5.</p>
<p>61 Revocation / Repeal</p>	<p>This article provides for the repeal / revocation of the local legislation listed in Schedule 5 from the date of the HRO.</p>	<p>These Acts and Orders (in so far as they are revoked) either are or will become obsolete once the HRO is fully in force.</p> <p>Individual consultation feedback has been provided to the two consultees that submitted consultation response about the revocations / repeals.</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>Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)</p>	<p>The Harbour is situated within the South Marine Plan Inshore Area. Once published, Marine Plans become a material consideration and as such, it is considered in this Statement of Support in addition to the UK Marine Policy Statement. The relevant marine plan applying therefore is the ‘South Inshore and South Offshore Marine Plan’, July 2018 (“the South 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 Littlehampton SHA’s existing statutory powers to support the efficient and economical operation, maintenance, management and improvement of the Harbour. The HRO modernises Littlehampton SHA’s 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 provisions of the proposed HRO are predominantly administrative (such as constitutional arrangements, financial, borrowing and charging powers; powers of development 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 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>Compliance with UK Marine Policy Statement</p> <p>The UK Marine Policy Statement (‘MPS’) sets out (in section 2.1) that the UK vision for the marine environment is for ‘<i>clean, healthy, safe, productive and biologically diverse oceans and seas.</i>’ A key purpose of the proposed HRO is to modernise Littlehampton SHA’s 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 Littlehampton SHA in ensuring it meets both its environmental duties under s48A of the Harbours Act 1964 and compliance with the Port Marine Safety Code. Both of which will support the vision of ensuring that the marine environment 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>

	<p>(A) Achieving a sustainable marine economy: Marine businesses are acting in a way which respects environmental limits and is socially responsible.</p> <p>(B) Ensuring a strong, healthy and just society: The coast, seas, oceans and their resources are safe to use.</p> <p>(C) Living within environmental limits: Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.</p> <p>(D) Promoting Good Governance: Marine businesses are subject to clear, timely, proportionate and, where appropriate, plan-led regulation.</p> <p>Compliance with South Marine Plan</p> <p>The South Marine Plan was published in July 2018. Through its modernisation of Littlehampton SHA’s 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 Marine Plan:</p> <p>(A) Objective 2: To manage existing, and aid the provision of new, infrastructure supporting marine and terrestrial activity.</p> <p>(B) Objective 3: To support diversification of activities which improve socio-economic conditions in coastal communities.</p> <p>(C) Objective 6: To maintain and enhance inclusive public access to, and within, the south marine plan areas appropriate to its setting.</p> <p>In addition, the proposed HRO is supported by policy S-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising that <i>‘ports and harbour are essential to realise economic and social benefits for the south marine plan areas and the UK. S-PS-1 makes sure proposals do not restrict current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.’</i></p>
<p>Insert other relevant plans/policy/guidance in this section</p>	<p>See table 3a in relation to the Port Marine Safety Code, in addition to specific references to the Port Marine Safety Code set out in table 2b.</p> <p>See table 2b in relation to considerations given in relation to the Ports Good Governance Guidance.</p>

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Table 5: Any other relevant information

As stated above, prior to submission of the HRO application, the Littlehampton SHA carried out extensive pre-application consultation (and in the intervening period between October 2019 and May 2022) including:

- (a) A meeting with the Department for Transport with an early draft of the proposed HRO in June 2019 and further subsequent correspondence.
- (b) Meetings and further correspondence with the two Councils (Arun District Council and West Sussex County Council) who pay annual contributions / a precept in respect of Littlehampton Harbour annually under the provisions of the 1972 Act.
- (c) A 28 day pre-application public consultation on the proposed HRO between the 5th August and 1st September 2019. During this pre-application consultation, they also held a 'drop in' day between 10am and 4 pm on 13th August 2019, where stakeholders were able to attend Arun Civic Centre at any time during the day and ask questions about the proposed HRO.
- (d) A public meeting on 24th September 2019 where feedback was provided on the public consultation responses and amendments made / not made to the proposed HRO as a result of the consultation feedback.
- (e) A further meeting on 24th September 2019 with one of the consultees who provided an extensive response during the public consultation to discuss the response and amendments made / not made to the proposed HRO as a result of their consultation feedback.
- (f) Meetings and correspondence with the Angmering Park Estate Trust.

The consultation responses received have been summarised against the relevant articles above.

Final comments

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 to the 1964 Act, 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: Plan showing the change between the current harbour limits and the new extended harbour limits