



Marine
Management
Organisation

Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

1. Date application made to MMO	08 September 2023.
2. Name of primary contact	Lara Moore
3. Contact details of primary contact	Lara Moore, Ashfords LLP l.moore@ashfords.co.uk
4. Address of primary contact	Ashfords LLP, Ashfords House, Grenadier Road, Exeter, EX1 3LH
5. Name of statutory harbour authority	South Hams District Council ("the Council")
6. Is this a Works Order?	No
a. Brief description of proposed works	N/A
b. Date when notification of intention was submitted to MMO	N/A
c. Date when EIA screening opinion was issued by MMO	N/A

<p>d. If screened in, date when scoping opinion was issued by MMO</p>	<p>N/A</p>
<p>e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO</p>	<p>N/A</p>
<p>7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.</p>	<p>This application is for a harbour revision order (HRO) to be made under the powers conferred on the Secretary of State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).</p> <p>The HRO would consolidate and modernise existing local statutory harbour legislation in respect of Salcombe Harbour ('the Harbour') and confer modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of the Harbour. The HRO would confer modern powers on the Council to give general directions to vessels, persons and vehicles using the Harbour, together with powers exercisable by the harbour master appointed by the Council to give special directions. In respect of special directions and general directions related to the area of jurisdiction below the level of mean high water, 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) 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>
<p>8. Location (coordinates must be provided in WGS84 format if this is a works order)</p>	<p>Salcombe Harbour ('the Harbour')</p>
<p>9. State the title of all relevant charts/maps/plans included with</p>	<p>Salcombe Harbour Limits Plan Salcombe Harbour Premises Plan</p>

application (if appropriate)	
10. State the legislation relevant to the harbour authority and included with this application (if appropriate)	<ol style="list-style-type: none"> 1. The Salcombe Harbour Order 1954 ('the 1954 Order'), confirmed by the Pier and Harbour Order (Salcombe) Confirmation Act 1954. 2. Harbour Directions (Designation of Harbour Authorities) Order 2015 ('the 2015 Order').
3. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.	N/A
4. Have you included the required fee for your application?	£9,790 by BACS.

Table 3: statutory harbour authority background

<p>The statutory harbour authority:</p> <p>South Hams District Council is the statutory harbour authority ('the SHA') for the Harbour. For ease of reference, South Hams District Council, in the exercise of its SHA functions at the Harbour, is referred to as "the Council" throughout this Statement in Support.</p> <p>The Council, as the SHA for the Harbour, is governed by its own local legislation. The Council is responsible for the administration, maintenance and improvement of the Harbour, which is further described below.</p> <p>The Council is also the local lighthouse authority for the Harbour and surrounding areas.</p> <p>In managing the Harbour, the Council strives to observe industry standards set out in Government guidelines. The Council is committed to complying with the principles of the various codes and reports applying to the port and harbour industry, except where not relevant to the Council's constitution.</p>

Salcombe Harbour:

The Harbour is classed by the Department for Transport (“DfT”) as a Municipal Port with the undertaking stretching from the seaward limit to the tidal reaches of the Kingsbridge Estuary and also the estuary itself.

The area surrounding the Harbour has not been overly developed and its main attraction lies in its natural beauty. The Harbour is bounded by a bar which can cause breaking seas that can be dangerous in particular wind directions. There are multiple beaches which, along with the town of Salcombe, become very popular in the summer season. The Harbour is also one of the most popular pit stops for yachts west of the Solent. As such, the Harbour is mainly used for leisure activities and can get extremely busy, with a large proportion of users not being experienced mariners. This makes it particularly important for effective legislation and regulations to be in place to give the Council the power to enforce them if necessary, ensuring the safety of visitors and locals alike.

The principal activities are the provision and maintenance of multiple anchorages, moorings, pontoons and berths.

The Harbour can accommodate vessels up to 30 metres LOA, 5.5 metre draught and 100 tonne displacement, and has on occasion hosted vessels up to 50 metres LOA and 600 tonne displacement.

The Harbour area is equipped with over 1,000 moorings and several pontoons and berths for the use of residents and visitors to the area. The Harbour is typically used by:

- swimmers;
- canoeists;
- paddle boarders;
- dinghies;
- yawls;
- yachts;
- power boats; and
- super yachts,

many of which partake in the numerous competitive regattas held there. There is also a water taxi service.

Although the Harbour is used predominantly for leisure, there is limited commercial activity. For example, it accommodates a small number of fishing vessels.

Table 3a: Need and justification for order

Port Marine Safety Code ('the PMSC')

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 Council as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. The Executive Summary to the PMSC explains that:

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

The PMSC 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. In particular, paragraph 2.5 of the PMSC states "... *harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already*".

Because the Council does not currently have the power to give general directions, the Council is seeking to obtain modern powers of General Direction to enable it to have a set of general directions covering the Harbour instead of having separate byelaws and directions. Designation with powers of General Direction is an important tool which will assist the Council with compliance with the PMSC and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the Harbour.

Harbours Act 1964:

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

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

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

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

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

And, at paragraph 6:

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

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

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

- (A) Section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.
- (B) Section 14(2) of the 1964 Act because:
 - (i) The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing a port; and
 - (ii) The making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner.

General:

The proposed HRO would consolidate, modernise and extend the powers of the Council considered conducive to the efficient and economical operation, improvement, maintenance or management of the Harbour. The definition of "harbour premises" is flexible, meaning that if further harbour land within the definition of "harbour premises" under the HRO was purchased in the future (or sold if no longer required for harbour purposes), such land would automatically become part of (or cease to be part of) the undertaking.

It is considered that it is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner that the Council is provided with a set of modern flexible statutory powers contained within the proposed HRO and that the current local statutory harbour legislation (which came into force in 1954 and has not been updated since) is largely repealed.

The modernised and additional powers include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012, the Cowes Harbour Revision Order 2012, the Dover Harbour Revision Order 2014, and the Cornwall Harbours Harbour Revision Order 2023. They include standard statutory harbour powers, such as the power to borrow, reserve fund powers, powers to dispose of and develop land, powers associated with charges (including deposits and liens associated with charges) and miscellaneous powers including a power of General Direction, a power to dredge, powers related to the removal of wrecks and other obstructions and various powers related to commercial activities.

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

Article 1 is not dealt with below since it is ancillary to the substantive provisions of the HRO.

Table 2b: Justification for inclusion of provisions

Article in HRO	Summary of Provision	Requirement for provision
<p style="text-align: center;">2</p> <p style="text-align: center;">Interpretation</p>	<p>This article contains definitions which apply throughout the Order and a number of other provisions which assist with the correct interpretation of the Order.</p>	<p>The definitions are found within paragraph (1) of the article.</p> <p>Paragraph (2) provides that all points, distances etc. in the Order should be construed as if the word “or thereabouts” had been inserted after them.</p> <p>Paragraph (3) sets out that all references to points in the Order are references to the World Geodetic System 1984.</p> <p>Article 2 is required to enable the Order and its effect to be properly interpreted.</p>
<p style="text-align: center;">3</p> <p style="text-align: center;">Incorporation of the Harbours, Docks and Piers Clauses Act 1847</p>	<p>This article incorporates the said Act except in relation to the sections listed as being excepted. Those sections included predominantly relate to:</p> <p>(A) Power to construct warehouses and other works (section 21).</p> <p>(B) Rates (sections 27 and 33).</p> <p>(C) Collection of rates (sections 34, 36, 39, 40, 43 – 46 and 48).</p>	<p>This is an incorporation of clauses of the Harbours, Docks and Piers Clauses Act 1847.</p>

	<p>(D) Harbour, dock and pier master (sections 51 – 53, 56 – 58 and 63 – 65).</p> <p>(E) The discharge or cargoes, removal of goods and the protection of the harbour, dock and pier (sections 68, 74 and 76);</p> <p>(F) Harbour and dock police (sections 79 and 80).</p> <p>(G) Meters and weighers (sections 81 – 82).</p> <p>(H) Byelaws (section 83).</p> <p>(I) Recovery of damages and penalties (section 94).</p>	
<p>4</p> <p>Harbour Jurisdiction</p>	<p>This article provides that the Council shall exercise jurisdiction as a harbour authority, and the powers of the harbour master shall be exercisable within the Harbour (which includes the harbour premises).</p>	<p>Due to the proposed repeal of the majority of the provisions of the existing local harbour legislation (the 1954 Order), it is important that the Council's jurisdiction as statutory harbour authority is clearly set out. Therefore, it is conducive to the efficient and economic management of the Harbour to express the Council's jurisdiction clearly in this article and to deposit plans clearly delineating the harbour limits and harbour premises. All of the land (including land covered by water) that is currently understood to fall within the harbour limits has been included. The 'wet' limits of the harbour are set with reference to the level of mean high water spring tides. This is a slight change from the current limits which refer to the level of high water mark medium tides. The line of mean high water spring tides is commonly used in modern enactments. This change does not affect land ownership.</p> <p>In respect of the harbour premises, in the event of any future alteration to the extent of the harbour premises (because the Council buys, sells etc. land), the Order requires the Council to publish an illustrative plan on the harbour website within 30 days of the alteration and to keep this plan available for inspection at its harbour office. The Council's powers to make byelaws and general directions can be exercised over the entire area of jurisdiction.</p>

		<p>It should be noted that the Creek Car Park has been included on the harbour premises plan being deposited with the HRO. This area is used each year by the Council as SHA between 01 October to 30 April as winter storage, and as such is administered by the SHA between those dates. Therefore, it forms part of the harbour premises during that period and the Council, as SHA, is able to exercise jurisdiction over it.</p> <p>The definition of harbour premises (defined in article 2(1) of the Order) is flexible, meaning that if further land was purchased in the future for the harbour undertaking, it would automatically become part of the undertaking (or if land no longer required for the purposes of the harbour undertaking was sold, it would cease to be a part of the harbour undertaking).</p> <p>Additionally, paragraph (3) expressly sets out that 'harbour premises' (as defined in the Order) are deemed to be 'operational land' for the purposes of the Town and Country Planning Act 1990 ('the 1990 Act').</p> <p>'Operational land' is defined in section 263 of the 1990 Act as:</p> <p style="text-align: center;">263 Meaning of "operational land".</p> <p><i>(1) Subject to the following provisions of this section and to section 264, in this Act "operational land" means, in relation to statutory undertakers—</i></p> <p><i>(a) land which is used for the purpose of carrying on their undertaking; and</i></p> <p><i>(b) land in which an interest is held for that purpose.</i></p> <p><i>(2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which</i></p>
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		<p><i>is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.</i></p> <p>In addition in respect of the permitted development rights contained in Schedule 2, Part 8, Class B, the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964</p> <p>All land within the definition of harbour premises is therefore within the scope of 'operational land' under the 1990 Act. The inclusion of the wording is to make this clear as local planning authorities sometimes ask statutory harbour authorities to explain with reference to their local legislation that harbour land is operational land. All harbour premises is land designated under a Harbour Revision Order by its very nature. The additional wording is intended to make the effect of local harbour legislation easier to understand and to give a concrete provision that local planning authorities can refer to. Note: it is not changing the current position. It is the view of the applicant that all of its harbour premises are already 'operational land' under the 1990 Act.</p> <p>This article is authorised by paragraph 6 of Schedule 2 to the 1964 Act, as follows:</p> <p><i>“Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled.”</i></p> <p>A similar provision can be found under article 3 of the Newport (Isle of Wight) Harbour Revision Order 2021. In relation to paragraph (3), a similar provision can be found in force (in Scotland) under article 12(3) of the Eyemouth Harbour Revision Order 2021.</p>
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<p style="text-align: center;">5</p> <p>General Functions</p>	<p>This article provides that the Council may take such steps as it may consider necessary or desirable from time to time for the operation, maintenance, management and improvement of the Harbour, its approaches and facilities.</p>	<p>For those purposes, this article authorises the Council to improve maintain, regulate, manage, mark and light the Harbour and provide harbour facilities; carry out various activities related to works, structures and equipment at the Harbour (including the harbour premises) and do all other things which in its opinion are expedient to facilitate the proper operation, improvement or development of the Harbour including acquiring land. Although the Council has implied powers to acquire land for the Harbour, it is sensible to include an express reference to the power within the HRO.</p> <p>The definition of harbour facilities highlights the importance of the fishing, leisure, energy, recreational and tourism industries to the future viability of the Harbour.</p> <p>This article is authorised by paragraph 3 of Schedule 2 to the 1964 Act:</p> <p style="text-align: center;"><i>"Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of- (a) improving, maintaining or managing the harbour; (b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or (c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land".</i></p> <p>As a result of the majority of the provisions of the existing local legislation (the 1954 Order) being repealed under the provisions of the HRO, it is considered that, in the interests of clarity, it is desirable that the Council's powers to carry out the matters set out in this article should be set out expressly, rather than relying on implied and / or existing powers.</p> <p>A similar provision can be found under article 5 of the Weymouth Harbour Revision Order 2021.</p>
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		<p>Specifically relating to the power to invest contained in article 5(2), this provision provides that where there are monies which are not immediately required by the Council for the purposes of the harbour undertaking, the Council can invest such monies as it thinks fit.</p> <p>This power allows the Council to make such investments as it considers fit using any monies which aren't immediately required for the purposes of the harbour undertaking. Such monies may include, for example, monies held in the reserve fund established under article 7 of the proposed HRO and applied in accordance with paragraph 3(e). Paragraph 3(e) provides that reserve fund monies may be applied by the Council for <i>“any other lawful purpose sanctioned by the Council and connected with the harbour undertaking”</i>.</p> <p>It is considered that this article is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner, as required by section 14(2)(b) of the 1964 Act, because it will allow the Council to invest to maximise the funds available to it for the benefit and future of the Harbour.</p> <p>Similar provisions already exist under local harbour legislation, such as section 12 of the Blyth Harbour Act 1986 and 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</p>
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		<p>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>6</p> <p>Application of finances</p>	<p>This article provides that the Council shall apply harbour revenue in the manner following and not otherwise:</p> <ul style="list-style-type: none"> (A) first in payment of the working and establishment of expenses and costs of maintenance of the Harbour; (B) secondly in payment of the interest on any moneys borrowed by the Council for the Harbour under any statutory borrowing power; (C) thirdly in payment of all other expenses properly chargeable to harbour revenue; and (D) fourthly to an account established as a reserve fund for the Harbour. 	<p>This article is authorised by paragraph 13 of Schedule 2 of the 1964 Act:</p> <p><i>“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”</i></p> <p>This article is useful to the efficient management of the Harbour, as it expressly sets out how harbour revenue should be used.</p> <p>A similar provision can be found under article 7 of the Weymouth Harbour Revision Order 2021.</p> <p>It should be noted that, as marked on the key to the harbour premises plan being deposited with the HRO, several areas of the harbour premises are only “administered” by the Council in its capacity as SHA for the Harbour. The revenue arising from those parts of the harbour premises are in fact received by the Council in its general capacity. The Council then (in its general capacity) is charged by the SHA for its time and labour costs for the administration of those areas.</p> <p>Because those areas are administered by the SHA, they fall within the definition of “harbour premises” in the HRO. As such, the Council (as SHA) is able to exercise its enforcement powers over it. However, because the monies arising from those areas goes directly to the Council in its general capacity, and Council in its general capacity retains responsibility for the costs of maintenance.</p>
<p>7</p>	<p>This article provides that the Council may establish and maintain a reserve fund covering the Harbour and</p>	<p>This article is authorised by paragraph 13 of Schedule 2 to the 1964 Act:</p>

<p>Reserve Fund</p>	<p>carry to such a fund any part of its harbour revenue as is available for the purpose.</p>	<p><i>“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”</i></p> <p>It is an essential part of prudent financial management that the Council should have the power to maintain a reserve fund to enable the Council to plan for future expenditure across the Harbour in an economic and efficient manner.</p> <p>A similar provision can be found under article 8 of the Weymouth Harbour Revision Order 2021.</p>
<p>8</p> <p>Borrowing</p> <p>9</p> <p>Temporary borrowing</p>	<p>Article 8 provides that the Council may borrow such sums of money as it considers necessary for the purpose of meeting its obligations in carrying out its functions and that it may secure such borrowing against the assets and revenues of the harbour undertaking.</p> <p>Article 9 provides that the Council may temporarily borrow by way of overdraft or otherwise.</p>	<p>These articles are required as the Council’s existing borrowing powers under the 1954 Order are being repealed under the provisions of the HRO.</p> <p>The articles reflect modern statutory harbour borrowing powers as can be seen in the powers conferred by article 3 of the Blyth Harbour Revision Order 2015, and article 9 of the Dover Harbour Revision Order 2014.</p> <p>There is no need to place a limit on the amount of money which can be borrowed by the Council because, in reality, borrowings will be limited by the amount a lender is prepared to loan. In addition, the unlimited borrowing power will avoid the requirement for an HRO at a future date to extend the borrowing powers as the value of money decreases as a result of inflation.</p> <p>In respect of article 8(3) may effect such arrangements as considered fit to mitigate any financial risk incurred for the purposes of borrowing under paragraph (1). The power to enter into risk mitigation arrangements is needed to enable the Council to exercise the power to borrow in a prudent and cost effective manner.</p> <p>These articles are authorised by paragraph 10 of Schedule 2 to</p>

		<p>the 1964 Act:</p> <p><i>“Empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised.”</i></p>
Charges (generally)	<p>The articles contained within this Part of the HRO (Charges) set out the Council’s powers with respect to charges it may levy. They are reflective of modern statutory harbour powers relating to charges and are conducive to the improvement, maintenance and management of the Harbour in an efficient and economical manner. A similar suite of powers can be found in the Weymouth Harbour Revision Order 2021 and the Poole Harbour Revision Order 2012.</p>	<p>See below for further justification of particular provisions.</p>
<p>10</p> <p>Charges other than ship, passenger and goods dues</p>	<p>This article provides that in addition to its power to levy ship, passenger and goods dues under section 26 of the 1964 Act, the Council may demand, take and recover reasonable charges in respect of all vessels. It also expressly states that charges may be made in respect of a variety of other floating platforms etc. so that no dispute will arise as to whether such structures fall within the definition of vessel contained within the HRO.</p>	<p>It is important to the Harbour’s future viability that all users of the Harbour contribute to the cost of the management and maintenance of the Harbour.</p> <p>It would be detrimental to the improvement, maintenance or management of the Harbour in an efficient and economical manner if charging powers did not exist in respect of one type of vessel or floating structure using the Harbour (unless exempt under the HRO). This provision is particularly important because the HRO provides for 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</p>

		Harbour Revision Order 2021.
11 Charges for services or facilities	This article provides that in addition to ship, passenger and goods dues it may levy under section 26 of the 1964 Act, the Council may demand, take and recover reasonable charges for services and facilities provided by it.	<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.</p> <p>A similar provision can be found under article 11 of the Weymouth Harbour Revision Order 2021.</p>
12 Payment of charges	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>This article is included to ensure that the payment of charges authorised to be levied are consistent with section 14(2)(b) of the 1964 Act for the HRO to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner. For these purposes, it is essential that the HRO is clear as to when charges must be paid and from whom charges must be taken. It would be counter-productive to exclude such a provision from the HRO as this would negatively impact the Council’s ability to efficiently and economically manage the Harbour.</p> <p>Furthermore, this article is authorised by paragraph 12 of Schedule 2 of the 1964 Act in that it secures the efficient collection of charges levied by the Council, specifying the times at which and the persons by whom charges are to be paid:</p>

		<p><i>“Securing the efficient collection of charges levied by the 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>13</p> <p>Compounding arrangements and rebates</p>	<p>This article provides the Council with a power to confer exemptions from dues, allow rebates or make compositions with any person with respect to charges. In addition, it provides that the Council does not have to include on its list of ship, passenger and goods dues kept at the harbour office, charges which have been reduced by a rebate or a compounding arrangement in respect of a due included on the list.</p>	<p>This article is important to enable the Council to act in a commercial manner when entering into arrangements with customers, thereby managing the Harbour in an efficient and economical manner. This would be extremely difficult if the Council was required to publish commercially sensitive information.</p> <p>The great majority of ports / 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 harbour 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 and with the Ports Good Governance Guidance and is therefore justified.</p> <p>A similar article can be found in, for example, the recent Weymouth Harbour Revision Order 2021.</p>
<p>14</p> <p>Deposit for charges</p>	<p>This article provides that the Council may require from a person who incurs or is about to incur a charge with it, a reasonable deposit or guarantee. It also provides the Council with the power to detain a relevant vessel</p>	<p>It is essential for the economic management of the Harbour to be able to secure the reasonable charges due to the Council by virtue its charging powers under the local legislation applying to the Harbour, the 1964 Act or otherwise. Should it become apparent</p>

	<p>or goods until the deposit has been paid or the required guarantee made.</p>	<p>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 Council needs to be able to secure the interests of the Harbour by removing the relevant vessel or goods from the Harbour or refuse entry.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be “<i>desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner</i>”. Furthermore, this article is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it secures the efficient collections of charges levied by the Council:</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 14 of the Weymouth Harbour Revision Order 2021.</p>
<p>15</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 Council or, a wharfinger or carrier, who has paid or given security for charges on those goods.</p>	<p>This is a standard provision included to secure the financial interests of those who by agreement with the Council collects charges on its behalf, by securing said interest against goods in their possession. As that person will not themselves be liable for the payment of charges, this provision is required to secure debts owed.</p> <p>A similar provision can be found under article 15 of the Weymouth Harbour Revision Order 2021.</p>
<p>16</p> <p>Refusal to pay charges for landing places</p>	<p>This article provides that a vessel may be prevented from using a landing place supplied by the Council, if the master of the vessel refuses to pay the related charges.</p>	<p>It is essential for the economic management of the Harbour for the Council to be able to secure the reasonable charges due to it by virtue its charging powers under the local legislation applying to the Harbour, the 1964 Act or otherwise. Therefore, the Council must be able to prevent vessels from sailing or using facilities at the Harbour (such as a landing place or mooring) in the event that the</p>

		<p>master of a vessel refuses to pay the reasonable charge required, as authorised under the HRO.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner. Furthermore, this article is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it promotes securing the efficient collections of charges levied by the Council:</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>17</p> <p>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>It is necessary for the efficient and safe management of the Harbour that those persons named in the article are exempt from ship, passenger and goods dues when in the exercise of their core functions, as such persons ought not to be restricted or deterred from exercising those functions as a result of them otherwise being liable to pay harbour dues.</p> <p>A similar provision can be found under article 17 of the Weymouth Harbour Revision Order 2021.</p>
<p>18</p> <p>Recovery of charges</p>	<p>This article provides that in addition to any other powers of recovery available to it, the Council may recover any charges payable to it as a debt in Court.</p>	<p>It is essential for the economic management of the Harbour to be able to secure the reasonable charges due to the Council by virtue of its charging powers under the local legislation applying to the Harbour, the 1847 Act incorporated with the HRO or otherwise. Therefore, the Council must be able to rely on the resources of the</p>

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

<p style="text-align: center;">20</p> <p style="text-align: center;">Power to make general directions</p>	<p>The Council does not currently have the power of General Direction. These articles provide the Council with powers of General Direction which also cover vehicles for the ease, convenience or safety of harbour operations ashore as defined under the HRO (including speed limits and parking of vehicles) and powers of Special Direction. The provisions also set out the consequences of failing to comply with a general directions or special directions.</p>	<p>The PMSC, advises at paragraph 2.5 of Chapter 2 that:</p> <p style="text-align: center;"><i>“In particular, harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already.”</i></p>
<p style="text-align: center;">21</p> <p style="text-align: center;">Procedure for giving, amending or revoking general directions</p>		<p>As set out above, the Council does not have powers of General Direction and seeks to obtain a modern power. The process for keeping general directions up to date is far more time and cost efficient than the byelaw making process, and due to the inclusion of the Harbour Advisory Group to be set up under the HRO as ‘designated consultees’ it contains a strong local consultation requirement.</p>
<p style="text-align: center;">22</p> <p style="text-align: center;">Publication of general directions</p>		<p>Therefore, in line with the PMSC, the Council is applying for a modernised power of General Direction that will enable the Council to have in place a single set of general directions. In line with best practice, these articles provide a statutory right for ‘designated consultees’ to be consulted about proposed general directions (see article 21(1)(a) and (b)).</p>
<p style="text-align: center;">23</p> <p style="text-align: center;">Special directions</p>		<p>As stated above, a Harbour Advisory Group will be a ‘designated consultee’ within article 21(1)(a) alongside the Chamber of Shipping and the Royal Yachting Association.</p>
<p style="text-align: center;">24</p> <p style="text-align: center;">Failure to comply with directions</p>		<p>General directions can be made over the entirety of the Harbour (which includes the harbour premises). Any future exercise of this power will be exercised in accordance with article 21. This means that representations received from the designated consultees will be considered by the Council and if they object to proposed general directions and those concerns are unable to be resolved, there is a statutory adjudication process contained in article 21. The process contained in article 21 is likely to be acceptable to the Royal Yachting Association as a similar adjudication process is contained within the Shoreham Port Authority Harbour Revision</p>
<p style="text-align: center;">25</p> <p style="text-align: center;">Enforcement of directions</p>		
<p style="text-align: center;">26</p>		

<p style="text-align: center;">Master's responsibility in relation to directions</p> <p style="text-align: center;">27 Boarding of vessels and vehicles</p>		<p>Order 2021, the Fowey Harbour Revision Order 2021 and the Dart Harbour and Navigation Harbour Revision Order 2021.</p> <p>In terms of the precise scope of general directions, it will be seen that article 20(1) would allow the Council to give or amend directions for:</p> <ul style="list-style-type: none"> (a) <i>the ease, convenience or safety of navigation;</i> (b) <i>the safety of persons;</i> (c) <i>the protection of property; flora and fauna;</i> (d) <i>the ease, convenience or safety of harbour operations ashore, within the harbour.</i> <p>In relation to vehicles and harbour operations ashore, such a scope is consistent with the powers in section 14(3) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the harbour.</p> <p>Article 24 sets out the maximum fine level (level four on the standard scale) for failure to comply with a general direction once made. The Council already has byelaw making powers (for example, under section 83 of the Harbours, Docks and Piers Clauses Act 1847), and it is already entitled to impose fines of up to level 4 on the standard scale (section 57 of the Criminal Justice Act 1988), so the level four fine is considered justified.</p> <p>Article 26 is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner as it expressly imposes the Master's own responsibility in relation to directions.</p>
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<p>28</p> <p>Byelaws</p>	<p>This article provides the Council with the power to make byelaws in a range of circumstances in addition to the purposes in section 83 of the Harbours, Docks and Piers Clauses Act 1847 (as incorporated under</p>	<p>The power in this article 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</p>

	<p>article 3 of the HRO) and is in line with the modern practice of setting out a wide range of matters upon which the Council will have the power to make byelaws. The range of purposes for which byelaws may be made is included in Schedule 1 to the HRO.</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>(contained in Schedule 1 to the HRO) upon which the Council will have the power to make byelaws.</p> <p>The alternative practice is to set out a more general range of byelaw making powers and rely on the width of the wording of the provision. However, setting out the detail in this way reduces the scope for challenging any prosecution on the basis that the byelaw in question is outside the range of matters for which the Council has the power to make byelaws. This leads to increased costs and delays in prosecutions and therefore the more modern approach is to set out expressly a wider range of byelaw making powers.</p> <p>A similar approach can be found in the Weymouth Harbour Revision Order 2021 and the Portland Harbour Revision Order 1997.</p> <p>Historically, there has been little need to initiate any prosecutions at the Harbour for breach of byelaws as harbour users have complied with the instructions of the harbour masters. Nevertheless, to comply with the PMSC and to meet its other duties (including navigational safety), it is important that the Council has modern and comprehensive byelaw making powers. It is anticipated that the current byelaws in place at the Harbour will be reviewed and it is likely that they will be repealed and replaced with general directions following the grant of the HRO. However, it is important that the Council retains wide byelaw making powers in case it needs to introduce new byelaws in the future in respect of a risk not covered by the modernised power of General Direction sought above.</p> <p>The Council already has byelaw making powers (for example, under section 83 of the Harbours, Docks and Piers Clauses Act 1847) 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 to make byelaws is authorised by paragraph 4 of Schedule 2 to the 1964 Act:</p>
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<p>29</p> <p>Confirmation of Byelaws</p>	<p>This article sets out the procedure by which byelaws made under the HRO shall be confirmed under the Local Government Act 1972.</p>	<p>A similar provision can be found in article 25 of the Folkestone Harbour Revision Order 2017.</p> <p>This provision is incidental to the power to make byelaws as described above and is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner.</p>
<p>30</p> <p>Saving for existing directions, byelaws etc.</p>	<p>Due to the proposed repeal of the majority of the provisions of the local legislation (1954 Order) currently in force in respect of the Harbour, it is necessary to include a saving provision for existing byelaws etc. They will then remain in force until replaced in the future.</p>	<p>It is important that any existing byelaws, regulations, licences, leases etc. remain in force following the coming into force of this HRO.</p> <p>This provision is incidental to the power to make byelaws and general directions that are being introduced under the provisions of the HRO, and is therefore consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Harbour in an efficient and economical manner.</p> <p>A similar provision can be found under article 11 of the Shoreham Port Authority Harbour Revision Order 2021.</p>
<p>31</p> <p>Advisory bodies</p>	<p>This article covers the establishment of an external advisory body with an independent chair.</p>	<p>This article puts on a statutory basis the establishment and continuance of an advisory group or groups for the Harbour and their administration. It also requires the Council to consult the advisory group or groups.</p> <p>The statutory requirement for the Council to form an Advisory Group is fundamental to its compliance with the Ports Good</p>

		<p>Governance Guidance (March 2018) which recognises at para 1.5 “the importance of engaging effectively and fully with stakeholders and carrying out their business in an accountable way” and specifically sets out at para 2.6:</p> <p><i>“Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder’s views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders”.</i></p> <p>Additionally, the consultation requirement in respect of general directions (also being provided for under the HRO) sets out that the Council must (except in an emergency) consult the Advisory Group on all matters substantially affecting the Harbour, and therefore this article is necessary and incidental to the inclusion of the power of General Direction in the HRO. The power of General Direction will be an essential tool for the Council to comply with the PMSC.</p> <p>As a result of the above, this article is conducive to the efficient and economical development of the Harbour which is being improved, maintained and managed by a harbour authority.</p> <p>A similar provision can be found under article 28 of the Weymouth Harbour Revision Order 2021.</p>
<p>32</p> <p>Development of land</p>	<p>This article provides that the Council may use or develop for any purpose, and deal with, any land within or in the vicinity of the Harbour; or form invest in and promote, or join with another person in forming, investing in and promoting a company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the Harbour.</p>	<p>Paragraph (2) provides that a company established under paragraph (1)(b) may have powers to do anything necessary for the purposes of the objects for which it has been established notwithstanding that the Council would not itself have the power to do that thing.</p> <p>This article, as far as applying to land not required for the harbour, is authorised by paragraph 9A of Schedule 2 to the 1964 Act:</p>

		<p><i>"Empowering the authority (alone or with others) to develop land not required for the purposes of the harbour with a view to disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land".</i></p> <p>So far as relating to harbour land, it is considered that this article is authorised by paragraph 17 of Schedule 2 to the 1964 Act which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the Harbour. The case for this is set out below as an integral justification for this article.</p> <p>The purpose of this article is to give the Council the flexibility, subject to obtaining the necessary rights in or over land, to exploit opportunities to develop land (including harbour land) to maximise the efficient utilisation, expansion and regeneration of the Harbour. The profits and revenues derived by the harbour undertaking from the development of any land under this article would be used to improve and develop the Harbour and provide increased financial security.</p> <p>It should be noted that the powers in this article can only be exercised if <i>"it is conducive to the improvement, maintenance or management of the harbour undertaking in an efficient and economical manner"</i>. This limitation brings this article within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers to those in this article were conferred in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 the Dover Harbour Revision Order 2014.</p>
<p>33</p>	<p>Paragraph (1) gives power to the Council, for the purposes of or in connection with the carrying on of the undertaking, to grant leases and other rights or interests over its land or other property forming part</p>	<p>Paragraph (1), which is needed to manage the Harbour, is authorised by paragraph 3(a) of Schedule 2 to the 1964 Act which relates to powers conferred for the purposes of <i>"improving maintaining or managing the harbour"</i>.</p>

<p>Power to grant tenancies and to dispose of land</p>	<p>of the Harbour.</p> <p>Paragraph (2) enables the Council to delegate functions of the Council (other than those specified in sub-paragraphs (a)-(f) of paragraph 9B of Schedule 2 of the 1964 Act) to a lessee or grantee where a lease or grant is made or given.</p> <p>Paragraph (3) provides that the Council may also dispose of, or grant the use or occupation for any purpose of, land or property if they consider that the property is surplus to harbour requirements; or it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner for the property to be held by a person other than the Council.</p>	<p>Paragraph (3)(a) is authorised by paragraph 9 of Schedule 2 to the 1964 Act:</p> <p><i>“Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes.”</i></p> <p>It is considered that paragraph (3)(b) is authorised by paragraph 17 of Schedule 2 to the 1964 Act which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out as an integral part of the need for this article. Paragraphs (1) and (3)(a) of the HRO are needed to enable the Council to manage the harbour undertaking effectively.</p> <p>These powers are similar to the powers conferred in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014.</p> <p>Paragraph (3)(b) would enable the Council to grant leases or transfer land or property to another body. This power is needed to enable the Council to have sufficient flexibility in how to structure the harbour undertaking in the future. The power in paragraph (3)(b) is only exercisable if <i>“it would conduce to the improvement, maintenance, operation or management of the harbour undertaking in an efficient and economical manner”</i>. This limitation brings paragraph (3)(b) within the powers of section 14(2)(b) of the 1964 Act.</p>
<p>34</p> <p>Power to appropriate lands and works for particular uses etc.</p>	<p>This article provides that the Council may from time to time for the purpose of or in connection with the management of the Harbour set apart and appropriate any part of the Harbour for the exclusive, partial or preferential use and accommodation of any</p>	<p>Section 33 of the Harbours, Dock and Piers Clauses Act 1847 is incorporated into the HRO (the Open Port Duty) and as such the Council remain under a duty to keep the Harbour open for the shipping and unshipping of goods, and the embarkment and landing of passengers. Therefore, the power of this article will only</p>

	<p>particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.</p>	<p>ever operate insofar as it does not otherwise conflict with the duty under section 33 of the 1847 Act.</p> <p>In addition, the power under this article must only be exercised for the “for the purposes of or in connection with the carrying on of the harbour undertaking” and not for wider purposes. This article is therefore within the scope of section 14(2)(b) of the 1964 Act in that it will assist the Council in the management of the Harbour in an efficient manner and facilitate the efficient and economic transport of goods and passengers by sea, again for harbour purposes only.</p> <p>A similar provision can be found under article 31 of the Weymouth Harbour Revision Order 2021.</p>
<p>35</p> <p>Other commercial activities</p>	<p>Paragraph (1)(a) provides that the Council may carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person. Paragraph (1)(b) enables the Council to form, invest in and promote, or join with another person in forming, investing in and promoting, a company for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind. Paragraph (2) provides that a company established under paragraph (1)(b) may have powers to do anything necessary or expedient for the purposes of the objects for which it has been established notwithstanding that the Council would not itself (as harbour authority) have the power to do that thing.</p>	<p>Paragraph (1)(a) would assist the Council to maximise the potential of the harbour undertaking by enabling it to carry on any business which could conveniently be carried on with the harbour undertaking. For example, the Council could utilise and develop the skill and experience of its staff by providing services to other harbour undertakings or to carry out business activities which are incidental to running a harbour.</p> <p>Paragraph (1)(b) would enable the Council to carry on such a business as part of a joint venture with another person or persons, for example enabling the Council to contribute land and / or harbour related expertise to the venture while the other party contributes complementary specialist business expertise.</p> <p>The profits and revenues derived from the business ventures under this article would be used to improve and develop the Harbour and ensure increased financial security.</p> <p>It should be noted that the powers in this article can only be exercised if:</p> <p><i>“it is conducive to the improvement, maintenance, operation or management of the harbour in an efficient and economical manner”.</i></p>

		<p>This limitation brings this article within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers were conferred in the Weymouth Harbour Revision Order 2021 and the Dover Harbour Revision Order 2014.</p> <p>It is considered that this article is authorised by paragraph 17 of Schedule 2 to the 1964 Act which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour.</p> <p>The case for this is set out as an integral part of the justification for the article.</p>
<p>36</p> <p>Power to delegate functions</p>	<p>This article provides that the Council may delegate the performance of any of its functions to be carried out by any such company as referred to in article 35(1)(b).</p>	<p>This article is authorised by paragraph 9B of Schedule 2 to the 1964 Act:</p> <p><i>"Empowering the authority to delegate the performance of any functions of the authority except-</i></p> <ul style="list-style-type: none"> <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,</i>

		<p><i>beacons and seamarks, so far as those functions are exercisable for the purposes of the safety of navigation."</i></p> <p>The power to delegate functions is needed to enable the Council to carry out day to day activities through a company. The power does not apply to the key functions which cannot be delegated under paragraph 9B of Schedule 2 to the 1964 Act.</p>
<p>37</p> <p>Power to lay Moorings</p> <p>38</p> <p>Licensing of moorings</p> <p>39</p> <p>Offences as to moorings</p>	<p>These articles provide the Council with powers related to the provision, maintenance and licensing of moorings within the Harbour. It is considered that modernised express provisions are conducive to the efficient and economical management and maintenance of the Harbour.</p>	<p>Similar provisions are found within articles 14 to 17 of the Yarmouth (Isle of Wight) Harbour Revision Order 2011, articles 9 to 11 of the Poole Harbour Revision Order 2012, article 18 of the Watchet Harbour Revision Order 2000 and article 21 of the Burry Harbour Revision Order 2000.</p> <p>These articles provide for a level 4 fine for failure to comply with its requirements. This level of fine is required firstly to ensure that there is a sufficient level of deterrent. There is no marina present in the Harbour and over a thousand moorings. This makes the moorings sought after, particularly in the summer season, and they can be used to generate income. The level of fine needs to be in excess of likely income generation. Secondly, a mooring obstructing safe navigation in the Harbour will constitute a navigational hazard and can interfere with the operation of the Open Port Duty. As such, it is considered that a level 4 fine is justified.</p>
<p>40</p> <p>Bunkering</p>	<p>This article provides the Council with powers in relation to licensing those persons carrying out commercial refuelling activities related to vessels in the Harbour.</p>	<p>To comply with the environmental duties contained in section 48A of the 1964 Act, the Council considers that it is important that it has express powers to licence such activities so that proper risk assessments can be carried out and persons carrying out such activities can be required to comply with terms and conditions, designed to mitigate against risks associated with such activities (including environmental). Due to the fact that such operations are being carried out commercially and the potential environmental implications, it is considered that a level 4 fine is justified.</p>

		Similar powers were conferred by article 35 of the Weymouth Harbour Revision Order 2021.
41 Aids to navigation	This article provides that the Council may, with the approval of Trinity House, erect, place, alter, discontinue or remove any aids to navigation in any place adjacent to the Harbour (subject to obtaining the necessary interest in or over land).	This power is important for enabling the Council to meet its navigational safety duties and is therefore consistent with section 14(2)(b) of the 1964 Act to secure the management of the Harbour in an efficient manner or of facilitating the efficient and economic transport of goods or passengers by sea.
42 Power to dredge	This article provides the Council with a power to dredge.	<p>The power to dredge is a standard statutory harbour power and, under its existing local legislation (article 20(1) of the 1954 Order), the Council already has the power to dredge with respect of the Harbour. This provision is not a “new” power. This provision provides clarity over the extent of the Council’s power to dredge the Harbour (with reference to the limits of the “harbour” as defined in article 2 of the proposed HRO).</p> <p>It is conducive to the management of the undertaking in an efficient manner (as required by section 14(2)(b) of the 1964 Act, for the power to be included in the proposed HRO.</p> <p>Because the historic power to dredge under the 1954 Order is being repealed under the proposed HRO, it is important that the Council is provided with a power, reflective of modern provisions, so that it is able to dredge if and when required, and is desirable in the interests of securing the improvement, maintenance or management of the Harbour 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>If dredging is carried out at the Harbour under this provision in the future, then in line with section 75 of the Marine and Coastal Access Act 2009, the Council will not need to obtain a marine licence for the dredging activities at the Harbour (which is the same as the current position). However, if disposal to sea is required in the future, then a marine licence will continue to be</p>

		<p>required for this disposal.</p> <p>A similar dredging power can be found under article 37 of the Weymouth Harbour Revision Order 2021.</p>
<p>43</p> <p>Repair of landing places etc.</p>	<p>This article provides that the Council may by notice require the owner or occupier of any landing place, jetty, embankment or structure or other work in the Harbour or on land immediately joining the waters of the Harbour to repair it, within a reasonable time, to its reasonable satisfaction, if it is a danger to persons or vessels using the Harbour or a hindrance to navigation of the Harbour. The provision provides for a level 3 fine for non-compliance (on summary conviction) and a power for the Council to carry out the works and recover the reasonable cost of doing so from the person on whom the notice was served. There is right of appeal to the Secretary of State.</p>	<p>This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of harbour users. Due to the potential safety implications of failure to comply, a level 3 fine is justified. Similar provisions can be found in article 11 of the Portland Harbour Revision Order 1997.</p> <p>This article relates to navigational safety in that it applies to features which are <i>“dangerous to persons or vessels using the harbour; a 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>44</p> <p>Restriction of works and dredging</p> <p>45</p> <p>Control of certain operations and works</p> <p>46</p> <p>Licensing of works</p> <p>47</p> <p>Licence to dredge</p>	<p>These articles include the following:</p> <ul style="list-style-type: none"> ● Restriction of works and dredging; ● Control of certain operations of works of statutory undertakers; ● Licensing of works; ● Licence to dredge; ● Appeals in respect of works or dredging licences; ● Obstruction of works. <p>These articles provide the Council with modern powers regarding works and dredging carried out by third parties within the harbour limits. The provisions include requirements to obtain a licence from the Council prior to the undertaking of any works or</p>	<p>There is not a comparable modern suite of provisions relating to the restriction, licensing and control of works and dredging in the existing local legislation which applies to the Harbour.</p> <p>The provisions ensure that the Council will be aware of all works and dredging taking place in the Harbour and that it can require suitable safeguards to be put in place when they are being conducted. As such, the level 4 fine in article 44(4) and the level 3 fines in articles 45(5) and 49 for breach are considered appropriate and proportionate.</p> <p>In addition, where works are carried out without or in breach of the terms of a licence, the Council may require the works to be removed and the site restored to its former condition. If they are / it is not, the power to do so itself and recover the cost from the person liable.</p>

<p style="text-align: center;">48</p> <p style="text-align: center;">Appeals</p> <p style="text-align: center;">49</p> <p>Obstruction of works</p>	<p>dredging within the Harbour.</p>	<p>The provisions are important to enable the Council to comply with its duties related to navigational safety and in respect of the environment (in particular section 48A of the 1964 Act) by requiring third parties to seek authorisation from the Council by way of a licence (unless specifically authorised in accordance with article 44(3)).</p> <p>Article 48 provides an appeal procedure in respect of any refusal to grant a licence, the terms of any licence granted or any modifications requested by the Council. Aggrieved applicants are able to appeal to the Secretary of State and, as such, it is considered that this article is justified.</p> <p>Applications are made in writing and the Council may charge a reasonable amount in respect of its administrative expenses for dealing with the application.</p> <p>By ensuring the Council has sufficient control and enforcement powers in relation to works and dredging to secure the safety of the Harbour, this article secures the interests of facilitating the efficient and economic transport of goods or passengers by sea and the improvement, maintenance or management of the Harbour.</p> <p>Similar provisions can be found in articles 8 to 10 of the Watchet Harbour Revision Order 2000.</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 style="text-align: center;"><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>
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<p style="text-align: center;">50</p> <p>Parking places and related facilities</p>	<p>This article provides that the Council may provide parking spaces and connected works within the Harbour.</p>	<p>This power has been expressly included because the Harbour includes car parks which form part of the undertaking. Similar provisions can be found in article 20 Penzance Harbour Revision Order 2009.</p> <p>The charging for such facilities is authorised by paragraph 11 of the 1964 Act:</p> <p style="text-align: center;"><i>“Empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than as aforesaid) levied by them at the harbour.”</i></p> <p>With regard to the provision of parking and related facilities generally, paragraph 17 of Schedule 2 to the 1964 Act provides that a Harbour Revision Order may include provision for:</p> <p style="text-align: center;"><i>“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”</i></p> <p>And, as such, it is considered that this article is justified.</p>
<p style="text-align: center;">51</p> <p>Removal of vehicles and vessels</p>	<p>This article authorises the Council to remove vehicles and vessels from the Harbour that have been left in a place where they will or are likely to interfere with the use of the Harbour or in any part of the Harbour where parking is prohibited.</p>	<p>This power is important in assisting the Council in managing efficiently traffic within the Harbour and ensuring compliance with the Open Port Duty under section 33 of the Harbours, Docks and Piers Clauses Act 1847 (in relation to vessels). Similar provisions can be found in article 22 of the Folkestone Harbour Revision Order 2017 and article 21 of the Penzance Harbour Revision Order 2009.</p> <p>This article is also desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act as the Council must be able to remove vehicles and vessels that contradict a prohibition notice</p>

		<p>(which must be conspicuously placed where appropriate) or that otherwise cause an obstruction or interfere with the use of the Harbour. It would not be consistent with section 14(2)(b) of the 1964 Act if the Council was not afforded this express power.</p> <p>The article also provides the Council with the “lawful authority” required under section 52(1) of Part 4 Chapter 2 of the Protection of Freedoms Act 2012, to remove vehicles, as the Council ought not commit an offence if it removes vehicles in such circumstances, for the reasons set out above.</p> <p>Finally, it is considered that the interests of people who aren’t the Council and otherwise entitled to remove said vehicles are sufficiently safeguarded by the provisions of paragraphs (2) – (7).</p>
<p>52</p> <p>Power with respect of disposal of wrecks</p>	<p>This article extends the powers of the Council under section 252 Merchant Shipping Act 1995. In particular, it extends the circumstances in which the Council may recover expenses reasonably incurred by 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>	<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. Similar provisions can be found in article 24 of the Portland Harbour Revision Order 1997.</p> <p>A similar power can be found under article 39 of the Weymouth Harbour Revision Order 2021.</p>
<p>53</p> <p>Power to deal with unseviceable vessels</p>	<p>This article provides that the Council may sell, break up or otherwise dispose of any vessel which is unseviceable and had been laid by or neglected in the Harbour or immediately adjoining the Harbour.</p>	<p>This article applies in addition to the power under section 57 of the Harbours, Docks and Piers Clauses Act 1847 (unseviceable vessels to be altogether removed from harbour) and allows the Council to recover its costs for the exercise of removing unseviceable vehicles laid or neglected within the Harbour.</p> <p>This article is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p>

		A similar power can be found under article 40 of the Weymouth Harbour Revision Order 2021.
54 Removal of obstructions other than vessels	This article provides that the Council may remove anything other than a vessel which is causing or likely to become an obstruction to, or cause interference with navigation in any part of the Harbour or its approaches. The provision deals with the recovery of costs by the Council of reasonable expenses incurred by it in relation to the exercise of the power and sale of the item(s) recovered.	This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of harbour users, and important if the Harbour is to be run in an efficient and economic manner. Similar provisions can be found in article 8 of the Portland Harbour Revision Order 1997.
55 Tidal works	Paragraph (1) provides that in the case of injury to, or the destruction or decay of, a tidal work (defined in article 2), the Council must notify Trinity House (the general lighthouse authority) as soon as practicable. 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).	Paragraph (1) is important in ensuring the Council meets its duties with regards to navigational safety. This article puts on a statutory basis a requirement for the Council 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 Council 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. 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 efficient and economical manner as required section 14(2)(b) of the 1964 Act.
56 Power of the Council to prosecute or defence legal proceedings	This power provides that where the Council considers it is conducive to the improvement, maintenance, operation, management or protection of the harbour undertaking, it may prosecute, defend or appear in legal proceedings, institute civil proceedings, and make representations in any public inquiry held under any enactment.	This provision provides an express power for the Council to prosecute, defend or appear in legal 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).

<p style="text-align: center;">57</p> <p style="text-align: center;">Notices</p>	<p>This article sets out the process for serving any notices required under the HRO.</p>	<p>This article is conducive to the efficient management of the Harbour as required under section 14(2)(b) of the 1964 Act, clearly setting out the procedural requirements for Notices required under the HRO.</p>
<p style="text-align: center;">58</p> <p style="text-align: center;">Saving for Trinity House</p>	<p>This article provides the standard saving provision for the rights of Trinity House.</p>	<p>No further justification required.</p>
<p style="text-align: center;">59</p> <p style="text-align: center;">Crown Rights</p>	<p>This article provides the standard saving provision for Crown Rights.</p>	<p>No further justification required.</p>
<p style="text-align: center;">60</p> <p style="text-align: center;">Amendment of the Salcombe Harbour Order 1954</p>	<p>This article makes minor amendments to the Salcombe Harbour Order 1954.</p> <p>The amendments include changes incidental to the HRO and the modernisation process, such as updating the definition of “the Council” and “vessel” for consistency across the local legislation.</p>	<p>These amendments are required to complete the process of modernisation of the local legislation applying to the Harbour as a result of the majority of the 1954 Order being repealed under the article 62 and Schedule 2 to the HRO.</p>
<p style="text-align: center;">61</p> <p style="text-align: center;">Amendment of the 2015 Order</p>	<p>This article makes a minor amendment to the Harbour Directions (Designation of Harbour Authorities) Order 2015. This amendment includes altering the reference in the Schedule to refer to limits expressed under the HRO instead of the 1954 Order (being repealed).</p>	<p>Under the 2015 Order, the Harbour became a designated harbour authority for the purpose of harbour directions.</p> <p>The current designation, set out in article 2 and the Schedule, includes a reference to the limits of the Harbour as defined under the 1954 Order. However, these historic limits are being repealed under the HRO and replaced with modern terms and a clear plan. As such, the HRO amends the 2015 Order to substitute the existing reference to the limits under the 1954 Order with a reference to the limits under the HRO.</p> <p>The area over which harbour directions has been made has not been affected by this amendment. However, it is important to ensure that the Harbour still benefits from designation for the purposes of harbour directions, which is important for compliance with the PMSC.</p>

<p style="text-align: center;">62</p> <p>Revocation / Repeal</p>	<p>This article provides for the repeal and revocation (as appropriate) of the local legislation listed in Schedule 2 from the date the HRO comes into force.</p>	<p>This HRO is being promoted in accordance with the PMSC's recommendation for harbour authorities to review and be aware of existing powers based in local and national legislation, seeking additional powers where necessary. The repeals set out in this article and the accompanying Schedule are required in conjunction with this HRO to complete the process of modernising the local legislation applying to the Council, granting the suite of modern powers and duties set out above which are consistent with section 14(2)(b) of the 1964 Act and which will assist the Council in meeting the recommendations of the PMSC.</p>
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Table 4: Relevant policies, guidance and plans

<p>Plan, policy or guidance</p>	<p><i>Demonstration that application is compliant with relevant plan, policy or guidance.</i></p>
<p>Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)</p>	<p>Salcombe Harbour is situated within the South West Inshore Marine Plan area. Once published, Marine Plans become a material consideration and as such, it is considered in this Statement of Support in addition to the UK Marine Policy Statement. The relevant marine plan applying therefore is the 'South West Inshore and Offshore Marine Plan' ("the South West Marine Plan").</p> <p>The proposed HRO is a non-works HRO (i.e. it does not authorise a plan or project). Its provisions are focused on modernising the Council's existing statutory powers to support the efficient and economical operation, maintenance, management and improvement of the Harbour. The HRO modernises the Council'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 proposed HRO also clarifies the existing harbour limits to expressly include the harbour premises removing uncertainty over the exercise of the Council's enforcement powers above high water. The other provisions of the proposed HRO are predominantly administrative (such as financial, borrowing and charging powers; powers of development and disposal of land; powers in relation to establishing advisory bodies, moorings, bunkering, dredging, and powers to deal with wrecks and vessels etc.). As such, it is expected that the effects of the proposed HRO on the South West Marine Plan area will be very limited and that any effects will be positive as the proposed</p>

HRO supports the economic and efficient management of Salcombe Harbour (including with respect to environmental considerations). A brief summary of compliance is nevertheless set out below.

Compliance with UK Marine Policy Statement

The UK Marine Policy Statement ('MPS') sets out (in section 2.1) that the UK vision for the marine environment is for '*clean, healthy, safe, productive and biologically diverse oceans and seas.*' The core purpose of the proposed HRO is to modernise the Council'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 the Council in ensuring it meets both its environmental duties under s48A of the 1964 Act and compliance with the PMSC. Both of which will support the vision of ensuring that the marine environment is kept '*clean, healthy, safe, productive and biologically diverse.*' The provisions of the proposed HRO also support the following high-level objectives contained in the MPS:

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

Compliance with South West Inshore and Offshore Marine Plan

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

- (A) **Objective 1:** Infrastructure is in place to support and promote safe, profitable and efficient marine businesses.

	<p>(B) Objective 2: The marine environment and its resources are used to maximise sustainable activity, prosperity and opportunities for all, now and in the future.</p> <p>(C) Objective 3: Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.</p> <p>(D) Objective 6: The use of the marine environment is benefiting society as a whole, contributing to resilient and cohesive communities that can adapt to coastal erosion and flood risk, as well as contributing to physical and mental wellbeing.</p> <p>(E) Objective 7: The coasts, seas and oceans and their resources are safe to use.</p> <p>In addition, the proposed HRO is supported by policy SW-PS-1, which expressly supports competitive and efficient harbour and shipping operations, recognising that <i>'ports and harbours are essential to realising economic and social benefits for the south west marine plan areas and the UK. SW-PS-1 makes sure that proposals do not restrict current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.'</i></p>
<p>Insert other relevant plans/policy/guidance in this section</p>	<p>Port Marine Safety Code</p> <p>Please see our comments earlier in this Statement in Support relating to the PMSC (table 3a).</p>

Table 5: Any other relevant information

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

“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”

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