



Marine
Management
Organisation

Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

1. Date application made to MMO	16 September 2022
2. Name of primary contact	Lester Aldridge LLP
3. Contact details of primary contact	Philippa Langton LA Marine, Lester Aldridge LLP Philippa.Langton@LA-Law.com
4. Address of primary contact	LA Marine, Mountbatten House, Grosvenor Square, Southampton, SO15 2JU
5. Name of Statutory Harbour Authority	Yarmouth (Isle of Wight) Harbour Commissioners (the "Commissioners")
6. Is this a Works Order?	No
a. Brief description of proposed works	N/A
b. Date when notification of intention was submitted to MMO	N/A
c. Date when EIA screening 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 draft Harbour Revision Order (the “Order”) modernises the statutory harbour powers for Yarmouth Harbour (the “Harbour”).</p> <p>It confers modernised powers on the Commissioners considered conducive to the maintenance, management and improvement of the harbour in an efficient and economic manner, notably in relation to borrowing and finance and powers to trade and engage in commercial activity.</p> <p>It also provides the Commissioners with a power to conduct board meetings electronically.</p> <p>The Order amends the 2011 Order by:</p> <ol style="list-style-type: none"> 1. Allowing general directions to be given to vessels leaving, entering or proposing to enter the harbour and; 2. Amending the definition of “vessel” to ensure consistency. The wider definition is introduced in anticipation of new general directions.
<p>8. Location (coordinates must be provided in WGS84 format if this is a works order)</p>	<p>Yarmouth Harbour, Isle of Wight</p>

<p>9. State the title of all relevant charts/maps/plans included with application (if appropriate)</p>	<p>Not applicable. The boundaries of the harbour are not being changed under the Order. However, a plan of the extent of the harbour is submitted alongside this application for information purposes only and for ease of reference.</p>
<p>10. State the legislation relevant to the Harbour Authority and included with this application (if appropriate)</p>	<p>Land Clauses Consolidation Act 1845 Commissioners Clauses Act 1847 Harbour, Docks and Piers Clauses Act 1847 Pier and Harbour Order (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931 Pier and Harbour Order (Yarmouth (Isle of Wight)) Confirmation Act 1960 Pier and Harbour Order (Yarmouth (Isle of Wight)) Confirmation Act 1963 The Yarmouth (Isle of Wight) Harbour Revision Order 1971 The Yarmouth (Isle of Wight) Harbour Revision Order 1980 The Yarmouth (Isle of Wight) Harbour Revision Order 1985 The Yarmouth (Isle of Wight) Harbour Revision Order 1989 The Yarmouth (Isle of Wight) Harbour Revision Order 1996 The Yarmouth (Isle of Wight) Harbour Revision Order 2001 The Yarmouth (Isle of Wight) Harbour Revision Order 2002 The Yarmouth (Isle of Wight) Harbour Revision Order 2011 The Yarmouth (Isle of Wight) Harbour Commissioners (Removal of Pilotage Functions) Order 2015 (the "Yarmouth (Isle of Wight) Harbour Revision Orders 1971-2011")</p>
<p>11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.</p>	<p>No</p>

<p>12. Have you included the required fee for your application?</p>	<p>The MMO has advised that payment details will follow after receipt, and an initial check, of the application. The applicable fee is £4,000.</p>
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Table 3: Statutory Harbour Authority background

The Harbour is classed by the Department for Transport as a Trust Port. The Commissioners, as the Statutory Harbour Authority for the Harbour, are governed by their own local legislation including the Pier and Harbour Order (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931, Pier and Harbour Order (Yarmouth (Isle of Wight)) Confirmation Act 1960 and 1963 and Yarmouth (Isle of Wight) Harbour Revision Orders 1971-2011. The Commissioners are responsible for the administration, maintenance and improvement of the Harbour, which is more fully described below. The Commissioners manage the Harbour for the benefit of all Harbour users. The Commissioners are obliged to use the Harbour's assets for the benefit of the Harbour's statutory undertaking. The Harbour and Commissioners are wholly funded by charges for the use of the harbour and by other funds the Harbour generates, partly through infrastructure. The Harbour does not receive any central or other Government subsidy.

The Harbour is located in Yarmouth on the northwest coastline of the Isle of Wight and located at the Western entrance of The Solent. The Harbour comprises of the inner and outer Harbour. The outer Harbour encompasses the tidal waters falling off the coast of the Isle of Wight and can be more particularly described as follows:

So much of the Solent below the level of high water and bounded on its seaward sides by imaginary straight lines drawn –

- a) commencing at a point 50 42.38'N, 001 31.00'W, and terminating at a point 50 42.57'N, 001 31.00'W;
- b) commencing at a point 50 42.57'N, 001 31.00'W, and terminating at a point 50 42.86'N, 001 29.88'W;
- c) commencing at a point 50 42.86'N, 001 29.88'W and terminating at a point 50 42.38'N, 001 29.82'W;

and on its landward side by the level of high water within the area so enclosed, and by the imaginary line referred to in (a) of the "Inner Harbour" (defined below).

The Inner Harbour consists of the breakwaters which encompass the tidal waters that are located in the breakwater and the Western Yar river estuary. It can be more particularly described as follows:

So much of the natural Harbour at Yarmouth and of the river Yar as is situated below the level of high water and enclosed:-

- a) by an imaginary line drawn across the Harbour entrance, commencing at a point at the eastern end of the west breakwater (reference point 50 42.39' N, 001 29.90' W) and terminating at a point at the northern end of the inner pier (reference point 50 42.39'N, 001 29.35'W); and
- b) by the northern side of the road bridge known as the causeway;

and by the level of high water within the area so enclosed, including all adjoining creeks, bays and inlets to the extent that they are situated below the level of high water but excluding any areas situated to the west of the imaginary line described in section 14(1)(ii) of the 1931 Order, including all docks, marinas and other natural or artificial watered areas navigable by seagoing vessels which adjoin the portion of the river Yar described above in "the Inner Harbour" definition including all such areas which are separated from the river by lock gates, sluices or other moveable devices through which seagoing vessels may pass.

The Harbour is both a commercial and pleasure Harbour. The Harbour has 23 commercial moorings, the facility to sell fuel to harbour users and sailing schools operate out of the Harbour. Outside of the commercial remit, the Harbour offers an array of pleasure moorings which include 267 annual moorings for residents of the Isle of Wight, long-term visitor moorings, short term visitor moorings and around 150 seasonal moorings, which are located in the outer Harbour. The Commissioners also have ownership of property on the landside, and limited powers to lease property. The Harbour generates income through leasing property. The Harbour also has the power to purchase land, which power is limited to purchasing land for specific purposes.

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

Table 3a: Need and justification for order

Port Marine Safety Code

The Port Marine Safety Code (November 2016) published by the Department for Transport (the "Code") applies to the Commissioners. The executive summary of 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 provides that harbour authorities must periodically review their existing powers to "avoid a failure in discharging their duties or risk exceeding their powers" (paragraph 2.3 of the Code). The Order will better enable the Commissioners to discharge their duties under the Code, in particular, provide powers which will enable the Commissioners to carry out development and operate in a more commercial way, will enable the Commissioners to innovate and be creative in discharging their functions which will help to ensure safe and efficient port marine operations and support the open port duty and conservancy duty. The Order also widens the Commissioners' power to give general directions to include vessels leaving, entering or proposing to enter the harbour and slightly amends the definition of "vessel" in the 2011 Order to ensure consistency.

Harbours Act 1964

Section 14 of the Harbours Act 1964 (“the 1964 Act”) confers powers on the appropriate minister to make a Harbour Revision Order in relation to harbours which are 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 1964 Act. This power has been devolved to the MMO.

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). Therefore, prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

The proposed Order will modernise the powers of the Commissioners in a way which is considered conducive to the efficient and economical operation, improvement, maintenance and management of the Harbour. Some of the modernisation provisions are sought to enable the business of the Commissioners to be conducted in line with modern working practices and to regulate activities in the Harbour related to new technologies. In addition to general modernisation, the proposed Order contains powers to trade and carry on business and to deal with property so as to enable the Commissioners to engage in commercial activities and to innovate for the benefit of the harbour undertaking. The Commissioners intend to use the proposed commercial powers to support and make a positive contribution to the South Marine Plans area and plan objectives and to improve and safeguard the Harbour for the benefit of its users for the future.

An explanation of, and the need for, each substantive article in the Order is set out in the table below. The examples provided are not intended to be an exhaustive illustration of when and how various proposed powers could be used. Articles 1 and 2 of the Order are not dealt with below since they are ancillary to the substantive provisions of the Order.

Table 3b: Justification for inclusion of provisions

Article in HRO	Summary of Provision	Requirement for provision
<p>Article 3</p> <p>Incorporation of the Harbours, Docks and Piers Clauses Act 1847</p>	<p>This article describes the extent to which the 1847 Act is incorporated in within this Order. The Act contains provisions relating to the construction, improvement and general operations of harbours, docks and piers, which can be incorporated by subsequent legislation. The Order incorporates all provisions of the Act except for the following sections: (a) Accommodation for custom house officers (sections 14-15); (b) Warehouses and cranes (section 21); (c) Rates (sections 25-26); (d) Collection of rates (sections 34-43, 44-47); (e) Harbour, Dock and Pier Master (sections 51-65); (f) Discharge of cargoes and removal of goods (sections 66-68); (g) Protection of the Harbour, dock, and pier (sections 69-76); (h) Lighthouses, beacons and buoys (sections 77-78); (i) Harbour and Dock Police (sections 79-80); (j) meters and weighers (sections 81-82); (k) recovery of damages and penalties (sections 92-94); (l) Access to special act (sections</p>	<p>This is an incorporation of clauses of the Harbours, Docks and Piers Clauses Act 1847.</p>

	<p>97-98); (m) Saving of rights (sections 99-103). These sections are currently incorporated into the 1971 Order only. This article incorporates the provisions into all of the Harbour orders, with minor modifications, predominantly relating to the level of fines for various offences, which are in conformity with those contained in numerous other harbour orders.</p>	
<p>Article 4 Commercial Activities</p>	<p>This article provides the Commissioners with modern powers to allow the Commissioners to set up or incorporate a special purpose company or corporate entity for carrying out and engaging in commercial activities. The power is limited to commercial activities that are conducive to the efficient and economical performance by the Commissioners of the management of the Harbour.</p>	<p>This article allows the Commissioners to improve their efficiency in the provision of Harbour services by giving the Commissioners greater flexibility to carry on activities which improve the management of the Harbour and to form other commercial entities to carry out its functions and powers. By way of example, the Commissioners intend to design a clothing range to promote the Harbour and raise funds.</p> <p>The proposed power will enable the Commissioners to operate in a more commercial way with the objective of improving and better managing the Harbour, which will conduce to the efficient functioning of the Harbour, and is therefore authorised by paragraphs 3(a) and 17 of schedule 2 to the 1964 Act:</p> <p><i>“3. Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the Harbour, being duties or powers imposed or conferred for the purpose of—</i></p> <p><i>(a) improving, maintaining or managing the Harbour . . .</i></p> <p><i>. . .</i></p> <p><i>17. 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>Similar powers were conferred in the Weymouth Harbour Revision Order 2021, the Dover Harbour Revision Order 2014 and under article 57 of the Cornwall Harbours Harbour Revision Order 2023.</p>
<p>Article 5</p> <p>Power to become a member of a body corporate or subscribe for securities</p>	<p>This article provides the Commissioners with the power to buy shares and to become a part of commercial entities in order to allow for the Commissioners to benefit from advantages such as limited liability.</p>	<p>This power will improve the Commissioners' efficiency in the provision of Harbour services by giving the Commissioners greater flexibility to carry on activities which improve the management of the Harbour and to form other commercial entities to carry out its functions and powers. It is proposed that the Commissioners are granted powers to become a member of a body corporate or acquire shares or securities.</p> <p>Article 5 of the proposed Order is authorised by paragraph 17 of Schedule 2, 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 power in article 5 is needed to enable the Commissioners to invest in companies including companies limited by guarantee. This power covers some of the same ground as article 4 but is wider in that, for example, it enables the Commissioners to become a member of a company limited by guarantee which is not formed to carry on a trade or business. The power would, for example, enable the Commissioners to hold property through a charitable company which will allow the Harbour to benefit from funding opportunities.</p> <p>This article is also authorised under paragraph 3(a) of Schedule 2 of the 1964 Act. In particular:</p> <p><i>Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the Harbour, being duties or powers imposed or conferred for the purpose of—</i></p>

		<p><i>(a)improving, maintaining or managing the Harbour</i></p> <p>Similar powers were conferred in the Weymouth Harbour Revision Order 2021, the Dover Harbour Revision Order 2014 and under article 57 of the Cornwall Harbours Harbour Revision Order 2023.</p>
<p>Article 6</p> <p>Power to Delegate Functions to be Carried out by a Body Corporate</p>	<p>This article gives the Commissioners the power to delegate some of their functions to a body corporate. This will modernise their powers and allow them to carry out the activities which can be delegated through a subsidiary or joint venture company.</p>	<p>This article allows the Commissioners to improve their efficiency in the provision of Harbour services by delegating certain functions which will improve the management of the Harbour. There is a carve-out in respect of functions set out in paragraph 9B Schedule 2 to the Harbours Act 1964 (functions which cannot be delegated under a power conferred by a harbour revision order).This power will enable the Commissioners to carry out activities (save for those which cannot be delegated under paragraph 9B of Schedule 2 to the 1964 Act – see below) through a subsidiary or joint venture company.</p> <p>This article is authorised under paragraph 9B of Schedule 2 of the 1964 Act which provides that one of the objects for which a harbour revision order may be made is to “[Empower] the authority to delegate the performance of any of the functions of the authority except—</p> <p><i>(a)a duty imposed on the authority by or under any enactment;</i></p> <p><i>(b)the making of byelaws;</i></p> <p><i>(c)the levying of ship, passenger and goods dues;</i></p> <p><i>(d)the appointment of Harbour, dock and pier masters;</i></p> <p><i>(e)the nomination of persons to act as constables;</i></p> <p><i>(f)functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-</i></p>

		<p><i>marks, so far as those functions are exercisable for the purposes of the safety of navigation.”</i></p> <p>Similar powers can be found in Article 33 of the Weymouth Harbour Revision Order 2021 and Article 8 of the Dover Harbour Revision Order 2014.</p>
<p>Article 7</p> <p>Commissioners’ Borrowing Powers</p>	<p>Article 7 gives the Commissioners power to borrow such sums of money as they consider necessary for the purposes of meeting their obligations in carrying out their functions and that they may secure such borrowing by way of charge.</p>	<p>This power modernises the borrowing powers of the Commissioners in common with other statutory harbour authorities, for example, Article 9 of the Dover Harbour Revision Order 2014. Unlimited borrowing powers will avoid the requirement for a further harbour revision order at a later date to extend borrowing powers as the value of money decreases as a result of inflation and property prices increase. Borrowing powers will necessarily be limited to that which a lender is prepared to lend.</p> <p>This article is authorised under paragraph 10 of Schedule 2 to the 1964 Act which provides that a harbour revision order may be made to <i>“[Empower] 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> <p>This power is required because existing borrowing powers under the 2002 Order are being repealed under the provisions of this HRO.</p> <p>The articles reflect modern statutory harbour borrowing powers as can be seen in the powers conferred by article 18 of the Cornwall Harbours Harbour Revision Order 2023, and article 9 of the Dover Harbour Revision Order 2014.</p>
<p>Article 8</p> <p>Temporary borrowing powers</p>	<p>Article 8 gives the Commissioners power to borrow such sums of money as they consider necessary for the purposes of meeting their obligations in carrying out their functions and that they may secure such borrowing by way of charge.</p>	<p>Article 8 gives the Commissioners unlimited temporary borrowing powers by way of overdraft or otherwise. This article is authorised under paragraph 10 of Schedule 2 of</p>

		<p>the 1964 Act which provides that a harbour revision order may be made to:</p> <p><i>“[Empower] 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> <p>This power is required because existing borrowing powers under the 2002 Order are being repealed under the provisions of this HRO.</p> <p>The articles reflect modern statutory harbour borrowing powers as can be seen in the powers conferred by article 18 of the Cornwall Harbours Harbour Revision Order 2023, and article 9 of the Dover Harbour Revision Order 2014.</p>
<p>Article 9 Register of charges</p>	<p>Article 9 provides that the Commissioners must maintain a register of any charges granted pursuant to Article 6 and is available for public inspection of the register.</p>	<p>This power is desirable in the interests of managing the harbour in an efficient, transparent and economical manner.</p> <p>It is authorised by paragraph 10 of Schedule 2 to the 1964 Act: <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>Similar powers can be found in Article 43 of the Poole Harbour Revision Order 2012.</p>
<p>Article 10 Power to charge interest to capital</p>	<p>Article 10 provides the Commissioners with the power to charge interest to capital in respect of monies raised for one of the purposes set out in the article.</p>	<p>This article is authorised by paragraph 10 of Schedule 2 to the 1964 Act: <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>The purpose of this article is to provide the Commissioners with flexibility in raising funds for the statutory undertaking</p>

		<p>and to encourage modernisation of the Harbour, its facilities and premises.</p> <p>Similar powers can be found in Article 40 of the Poole Harbour Revision Order 2012.</p>
<p>Article 11</p> <p>Power to invest</p>	<p>This article gives the Commissioners power to invest monies</p>	<p>This article is authorised by paragraph 10 of Schedule 2 to the 1964 Act: <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>The profits and revenues derived from the investments made by the Commissioners would be used to improve and develop the Harbour and ensure increased financial security. This will help maximise the potential of the Harbour.</p> <p>Similar powers can be found in Article 44 of the Poole Harbour Revision Order 2012.</p>
<p>Article 12</p> <p>Power to give guarantees</p>	<p>Article 12 gives the Commissioners power to give guarantees. This is limited to companies in which the Commissioners have an interest and only for specific purposes.</p>	<p>This article is authorised by paragraph 10 of Schedule 2 to the 1964 Act: <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> and paragraph 17 of Schedule 2 to the 1964 Act (<i>“Any object which , , , will conduce to the efficient functioning of the harbour”</i>).</p> <p>The purpose of this article is to allow the Commissioners’ to conduct improvements to the Harbour and to manage the Harbour in a more commercial way.</p> <p>Similar powers can be found in Article 46 of the Poole Harbour Revision Order 2012.</p>

<p>Article 13</p> <p>Power to lend money</p>	<p>Article 13 gives the Commissioners power to lend money, specifically to subsidiaries, persons carrying on or proposing to carry on harbour operations or any business in the harbour.</p>	<p>It is authorised by paragraph 10 of Schedule 2 to the 1964 Act: “<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 will allow for the Commissioners to invest in the Harbour and the operations and services that it provides. This will allow the Commissioners to ensure that the Harbour is being efficiently and effectively maintained and managed.</p> <p>Similar powers can be found in Article 47 of the Poole Harbour Revision Order 2012.</p>
<p>Article 14</p> <p>Meetings of Commissioners</p>	<p>This article provides modernisation of the powers of the Commissioners in order to efficiently perform their functions and enable the efficient management of the Harbour by allowing the Commissioners to conduct meetings electronically in order for management of the Harbour to take place when the Commissioners cannot all attend the same venue.</p>	<p>This power will enable the Commissioners to conduct their meetings in line with modern working practices and is authorised by paragraph 2 of Schedule 2 to the 1964 Act, “<i>Regulating (in whole or to a less extent) the procedure of, or of any committee of, the authority . . .</i>”.</p> <p>The purpose of this power is to allow for modern practices in the efficient and commercial management of the Harbour. It will allow the Commissioners’ meetings to happen when they are needed, as opposed to when it is convenient and this will benefit the Harbour.</p> <p>Similar powers can be found in paragraph 9 of the schedule to the Dover Harbour (Constitution) Revision Order 2016.</p>
<p>Article 15</p> <p>Commissioners Payment of Subscriptions and Donations</p>	<p>This article provides that the Commissioners may pay or make reasonable subscriptions, payments or donations to the funds of such associations, public institutions or charities as the Commissioners think fit.</p>	<p>The purpose of Article 15 is to enable the Harbour and Commissioners to play a greater role in the local community by making reasonable contributions to charitable or public causes which will support the aims and objectives of the South Marine Plans. Making such contributions promotes a close and general relationship of the Harbour with the local community, increases goodwill and gains the support for</p>

		<p>Harbour projects by the community, which is key to facilitating the efficient functioning of the Harbour.</p> <p>Article 15 is authorised by paragraph 17 of Schedule 2 which enables a provision to be included in a Harbour revision order if the object of the provision (i.e. the promotion of good relations with the local community and wider marine area) appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the Harbour.</p> <p>Similar powers can be found in Article 49 of the Poole Harbour Revision Order 2012.</p>
<p>Article 16</p> <p>Power to grant tenancies and to dispose of land</p>	<p>This article gives the Commissioners flexibility to structure its property holdings in a way that enables the Commissioners to manage the Harbour undertaking efficiently and commercially.</p>	<p>Currently, the Commissioners cannot grant a lease for more than 21 years and their powers to lease are restricted to pavilions, rooms, shops, baths, sheds or other buildings. The article expands the type of property that can be leased.</p> <p>The article also includes a power to dispose of property or to grant the use or occupation of the same if it is surplus to the Commissioners' requirements or if it will conduce to the improvement, maintenance or management of the Harbour in an efficient and economical manner for the property to be held by another person (e.g. a sale and leaseback arrangement).</p> <p>Article 16(1) is authorised by paragraph 3(a) of Schedule 2, which relates to powers conferred for the purposes of improving maintaining or managing the Harbour.</p> <p>Article 16(2) is authorised by paragraphs 9 "<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>" and 17 of Schedule 2 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</p>

		<p>achievement of which will conduce to the efficient functioning of the Harbour. This power will enable the Commissioners to grant leases or transfer land or property to a subsidiary or other body and is needed to allow the Commissioners to manage the undertaking more commercially and give the Commissioners sufficient flexibility in how to structure the undertaking in future.</p> <p>Article 35 and Schedule 1 revoke section 35 (Leasing) of the 1931 Order in light of the modernised provision. The proposed power and revocation are authorised by paragraphs 3(a), 9 and 17 of schedule 2 to the 1964 Act.</p> <p>The purpose of this Article is to ensure the Commissioners have sufficient flexibility in how to structure the Harbour undertaking in the future and to keep it efficient and commercial.</p> <p>Similar powers can be found in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014.</p>
<p>Article 17</p> <p>Power to develop land</p>	<p>This article provides that the Commissioners may use or develop land and property 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 17 provides that a company established as set out above may have power to do anything necessary for the purposes of the objects for which it has been established notwithstanding that the Commissioners will not themselves have the power to do that thing.</p> <p>Article 17 is authorised by paragraph 9A of Schedule 2 to the 1964 Act in so far as it applies to land not required for the Harbour "<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>" and by paragraph 17 of Schedule to so far as relating to Harbour land, which enables a provision to be included in a Harbour revision</p>

		<p>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 purpose is to give the Commissioners flexibility, subject to obtaining the necessary rights in or over land to exploit opportunities to develop land to maximise the efficient utilisation and expansion of the Harbour (as regards Harbour land) and regeneration (as regards non-Harbour land).</p> <p>The need for the Commissioners to have powers to carry on part of their Harbour undertaking by means of a joint venture with another person or persons is set out above. For the same reasons, the Commissioners need the ability to develop Harbour land through such a joint venture as part of a package of the powers. The profits and revenues derived from the development of any non-Harbour land under article 16 will be used to improve and develop the Harbour and provide increased financial security. The powers in article 17 can only be exercised if "<i>it conduces to the improvement, maintenance or management of the Harbour in an efficient and economical manner</i>" which limitation brings article 17 within section 14(2)(b) of the 1964 Act.</p> <p>The power under this article could be used to allow the Commissioners to develop the land on the Harbour in cooperation with other companies to provide a structure and business that the Commissioners do not have any knowledge of, for example forming a complex to include shops and restaurants for the Harbour. This will allow the Commissioners to enter into the venture with a company that has experience in this area allowing the Commissioners to be protected financially while developing the Harbour for the benefit of harbour users and the local area.</p>
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		<p>Similar powers can be found in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 the Dover Harbour Revision Order 2014.</p>
<p>Article 18</p> <p>Power with respect to disposal of wrecks</p>	<p>This article extends the powers of the Commissioners under s252 Merchant Shipping Act 1995. It extends the circumstances in which the Commissioners may recover expenses reasonably incurred by them in exercising said power from the owner of any such vessel. The provision includes notice requirements to the Owner of the vessel and a period in which the vessel owner may dispose of the vessel itself.</p>	<p>This extension of power is common and is necessary if the harbour is to be run in an efficient and economic way.</p> <p>This Article is authorised by paragraph 3(b) of schedule 2 to the 1964 Act:</p> <p><i>Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the Harbour, being duties or powers imposed or conferred for the purpose of—</i></p> <p>...</p> <p><i>(b) marking or lighting the Harbour, raising wrecks therein or otherwise making safe navigation thereof;</i></p> <p>...</p> <p>This power is required because existing powers with respect to wreck disposal under the 1971 Order are being repealed under the provisions of this HRO.</p> <p>Similar powers can be found in Article 24 of the Portland Harbour Revision Order 1997. A similar power can be found under Article 39 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 19</p> <p>Power to repair landing places</p>	<p>This article gives the Commissioners the power to deal with potentially dangerous structures in or surrounding the Harbour that could be a danger to navigation and users.</p>	<p>The purpose is to give the Commissioners flexibility in the dealing with dangerous structures, encompassing the ability to request that the repairs are conducted by the Owner and then the power to repair it themselves if this is not sufficient. It is important for the Commissioners to meet their duties in relation to navigational safety.</p>

		<p>This is authorised by paragraph 17 of schedule 2 to the 1964 Act as it will conduce to the efficient functioning of the Harbour.</p> <p>Similar powers can be found in Article 11 of the Portland Harbour Revision Order 1997.</p>
<p>Article 20</p> <p>Power to Dredge</p>	<p>This Article provides the Commissioners with modernised powers in relation to dredging carried out within the Harbour limits.</p>	<p>The Harbour Commissioners already have the power to dredge under section 17 of the 1931 Act and Article 20 modernises the provision.</p> <p>It is necessary for the Commissioners to have such powers to dredge in the interests of improving, maintaining and managing the harbour in an efficient and economical manner as when dredging is carried out by the Commissioners in future, the Commissioners will not need to obtain a marine licence for the dredging activity in line with section 75 of the Marine and Coastal Access Act 2009. It will also facilitate the efficient and economic transport of passengers by sea and be in the interests of the recreational use of sea-going ships. The proposed power does not widen the existing power of the Commissioners to dispose of the dredged material. If any disposal at sea of dredged material is required in future then a marine licence will be required in respect of this disposal.</p> <p>This Article is required because section 17 of the 1931 Order (power to dredge) is revoked. Section 17(5) of the 1931 Order (requiring the Commissioners to notify the Postmaster-General of dredging activity within 50 yards of any submarine cable laid by the Postmaster-General) between Yarmouth and Hurst Castle is no longer required as we understand there is no such cable.</p> <p>The proposed power and revocation are authorised by paragraphs 3(b) and 4 of schedule 2 to the 1964 Act.</p>

		<p>In line with the South Marine Plan (S-DD-2 Dredging and disposal), the Order takes account of the need to pursue re-use opportunities to minimise the use of dredged waste to disposal sites.</p> <p>Similar powers can be found in Article 37 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 21 Prevent sailing of vessels</p>	<p>This article gives the Harbourmaster the power to prevent the removal or sailing from the Harbour of a vessel until evidence is produced that any charges in respect of the vessel, its passengers or goods have been paid.</p>	<p>This Article provides greater powers of enforcement of the payment of charges and enables the Commissioners to manage the Harbour in a more economical and efficient manner. If a vessel leaves the Harbour without having paid the charges and dues payable then the Commissioners will struggle to recover the unpaid amounts.</p> <p>This article is authorised by paragraphs 17 and 3(b) of schedule 2 of the 1964 Act.</p> <p>Similar powers can be found in Article 19 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 22 Charges for services provided other than ship, passenger and goods dues or other charges</p>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 1964 Act, the Commissioners may demand, take and recover reasonable charges in respect of all vessels.</p>	<p>This provision is a common provision in Harbour Revision Orders and allows for the Harbour to be managed efficiently and economically. It also 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 Order.</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>The purpose of this Article is to allow for the Harbour to be run in an efficient and economic manner so that the Harbour can experience improvement, maintenance and sufficient management.</p> <p>Similar powers can be found in Article 11 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 23</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 Commissioners may demand, take and recover reasonable charges for services provided by them.</p>	<p>This article is authorised by paragraph 11 of schedule 2 of the 1964 Act:</p> <p><i>“Empowering the authority to levy at the Harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than as aforesaid) levied by them at the Harbour.”</i></p> <p>The purpose of this Article is to allow for the Harbour to be run in an efficient and economic manner so that the Harbour can experience improvement, maintenance and sufficient management.</p> <p>A similar provision can be found under article 40 of the Cornwall Harbours Harbour Revision Order 2023, and article 11 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 24</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 Commissioners, if the master of the vessel refuses to pay the related charges.</p>	<p>This article is consistent with section 14(2)(b) of the 1964 Act. This allows for the improvement, maintenance and management of the Harbour in an efficient and economical manner. This article is authorised by paragraph 12 and 17 of schedule 2 of the Harbours Act 1964 as it allows for the efficient collection of charges levied by the Commissioners:</p> <p><i>“Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p>

		<p>The purpose of this Article is to allow for the Harbour to be run in an efficient and economic manner so that the Harbour can experience improvement, maintenance and sufficient management.</p> <p>A similar provision can be found under article 46 of the Cornwall Harbours Harbour Revision Order 2023, and article 16 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 25</p> <p>Deposits for charges</p>	<p>This article provides that the Commissioners may require from a person who incurs or is about to incur a charge with them, a reasonable deposit or guarantee. It also provides the Commissioners with the power to detain a relevant vessel or goods until the deposit has been paid or the required guarantee made.</p>	<p>This modernises the powers available to the Commissioners and allows for the efficient and economic management of the Harbour by securing deposits for the charges due to the Harbour and allows the Commissioners and Harbour to secure their interest in any dues or charges.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act. This allows for the improvement, maintenance and management of the Harbour in an efficient and economical manner. This article is authorised by paragraph 12 and 17 of schedule 2 of the Harbours Act 1964 as it allows for the efficient collection of charges levied by the Commissioners:</p> <p><i>“Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p> <p>The purpose of this Article is to allow for the Harbour to be run in an efficient and economic manner so that the Harbour can experience improvement, maintenance and sufficient management.</p> <p>A similar provision can be found under article 44 of the Cornwall Harbours Harbour Revision Order 2023, and article 16 of the Weymouth Harbour Revision Order 2021.</p>

<p>Article 26</p> <p>Recovery of charges as a debt</p>	<p>This article provides that in addition to any other powers of recovery available to them, the Commissioners may recover any charges payable to them as a debt in Court.</p>	<p>This modernises the recovery powers available to the Commissioners in recovering charges owed. This allows for the efficient and economic management of the Harbour by allowing the Commissioners and Harbour to efficiently recover any outstanding Harbour charges as a debt. This provides efficient and effective methods of recovering debts.</p> <p>The purpose of this Article is to allow the Commissioners to easily recover outstanding charges through the English court system which will be more efficient and economical.</p> <p>This article is authorised by paragraph 12 and 17 of schedule 2 of the Harbours Act 1964.</p> <p>Similar powers can be found in Article 18 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 27</p> <p>Recovery of expenses as a debt</p>	<p>This article provides that the Commissioners may recover expenses incurred in the recovery of charges due to them as a debt.</p>	<p>This Article modernises the recovery powers available to the Commissioners in recovering expenses incurred in recovering unpaid charges and will ensure that proceedings can be taken in an efficient and economical way. This allows for the efficient and economic management of the Harbour by allowing the Commissioners to efficiently recover their expenses of recovering unpaid charges as a debt. This is a vital tool in ensuring the Harbour recover expenditure which can be returned into the Harbour.</p> <p>The purpose of this Article is to allow the Commissioners to easily recover outstanding charges through the English court system which will be more efficient and economical.</p> <p>This article is authorised by paragraph 17 of schedule 2 of the Harbours Act 1964.</p> <p>Similar powers can be found in Article 48 of the Cornwall Harbours Harbour Revision Order.</p>

<p>Article 28</p> <p>Liens for charges</p>	<p>This article provides for a right of lien over goods in the possession or custody of a person collecting charges on behalf of the Commissioners or, a wharfinger or carrier, who has paid or given security for charges on those goods.</p>	<p>This modernises the powers to recover unpaid charges. It is commonly used in industry to secure financial interest. The commissioners will use this as a method to collect unpaid charges from Harbour users who have entered into an agreement with the Harbour. The power will secure debts against a user's possessions and ensuring any unpaid charges are paid.</p> <p>This article is authorised by paragraph 12 and 17 of schedule 2 of the Harbours Act 1964.</p> <p>A similar provision can be found under article 45 of the Cornwall Harbours Harbour Revision Order 2023, and article 15 of the Weymouth Harbour Revision Order 2021.</p>
<p>Article 29</p> <p>Indemnity of the Commissioners</p>	<p>This Article provides a right for the commissioners to be indemnified for any costs, claims, damages and similar losses. This indemnity does not apply if the Commissioners have knowingly acted in breach of their duties.</p>	<p>The Ports Good Governance Guidance published by the Department for Transport suggests that the indemnity provisions for Commissioners should be modified in order for the Commissioners liability to be reduced. This means that the Commissioners will not be liable for the acts done in the capacity of Commissioner and to be indemnified for any acts they carried out as Commissioner, if necessary. This provision is required in order to encourage individuals to become Commissioners and to keep sufficient governance of the Harbour.</p> <p>This is authorised by paragraph 17 of the 1964 Act, being an object which will conduce to the efficient functioning of the harbour.</p> <p>We do not know if a similar provision has previously been granted, but it is in the interests of the efficient functioning of the Harbour that Commissioners are not liable or prosecuted for breaches of duty when carrying out their roles in good faith. Article 24(1) provides that Commissioners can only be so liable where they knew they were acting in breach of duty or in excess of their powers</p>

		<p>or were reckless as to the fact. Similarly, as provided by Article 24(2) it is in the interests of the efficient functioning and management of the Harbour that the Commissioners are indemnified by the undertaking for losses they may incur when acting lawfully in the exercise of their powers. Without such provision, Commissioners or potential Commissioners may be deterred from acting as such.</p>
<p>Article 30 Removal of Vehicles</p>	<p>This article sets out when the Commissioners may remove a vehicle from the Harbour.</p>	<p>This modernises the Commissioners powers in relation to the control of the parking of vehicles at the Harbour to ensure the safety of the users and prevent vehicles being left in unsafe places or obstructing emergency access, rendering the vehicle a safety and security risk. The Commissioners have encountered problems with parked vehicles being left and blocking emergency access to the Harbour.</p> <p>The article also enables the Commissioners to deal with abandoned vehicles efficiently to ensure the efficient managing of traffic in the Harbour to comply with the Open Port Duty. This provides for the improvement, maintenance and management of the Harbour to allow for the continued transport of goods or passengers through the Harbour.</p> <p>The article is authorised by paragraph 4 of schedule 2 to the 1964 Act, of imposing or conferring on the Commissioners duties or powers in substitution for powers or duties imposed or conferred under paragraph 3(c) regarding powers for the purpose of regulating the carrying on by others of activities relating to the Harbour or of activities on Harbour land.</p> <p>Similar powers can be found in Article 22 Folkestone Harbour Revision Order 2017, Article 21 Penzance Harbour Revision Order 2009 and section 177(7)(2) of the Port of London Act 1968.</p>

<p>Article 31</p> <p>Notices</p>	<p>This article sets out the process for serving any notices required under the Harbour Revision Order.</p>	<p>Article 31 sets out the correct method for service of documents in order to clarify and achieve effective administration and clearly sets out the procedural requirements for notices under the Order. This allows for the efficient and effective management of the harbour.</p> <p>This Article is authorised under section 14(2)(b) of the 1964 Act.</p>
<p>Article 32</p> <p>Crown Rights</p>	<p>Article 32 is necessary to clarify the fact that this Order does not prejudice the rights of the Crown.</p>	<p>No further justification is required.</p>
<p>Article 33</p> <p>Saving for Trinity House</p>	<p>Article 33 is necessary to clarify the fact that this Order does not prejudice the rights of Trinity House which was created under a Royal Charter.</p>	<p>No further justification is required.</p>
<p>Article 34</p> <p>Amendment of the 1971 Order and the 2011 Order</p>	<p>This article amends the wording of the 2011 Order in order to extend the Commissioners' power to give general directions to vessels proposing to enter the harbour. Such a power is desirable in the interests of managing the harbour and would conduce to the efficient functioning of the harbour and is therefore authorised by paragraph 17 of Schedule 2 to the 1964 Act. It also slightly expands the definition of "vessels" in the 1971 and 2011 Orders to ensure consistency.</p>	<p>The amendments to these orders are required to allow for the Commissioner's powers to be modernised in conjunction with the provisions of the HROs and the repeals and revocations contained within the HRO.</p>
<p>Article 35 & Schedule</p> <p>Repeals/revocations Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931</p>	<p>This provides for the repeal and revocation of the local legislation listed in Schedule 2 of the HRO.</p>	<p>Sections 17 (dredging) and 35 (leasing) are revoked in light of the modernised provisions and the provisions in this HRO. The repeals and revocations, along with the HRO, demonstrates the Commissioner's compliance with the Port Marine Safety Code to be aware of local and national legislation and to seek additional powers where necessary.</p> <p>This provision complies with section 14(2)(b) of the 1964 Act.</p> <p>This provision is required in order for the Commissioners to comply with the Port Marine Safety Code.</p>

<p>The Yarmouth (Isle of Wight) Harbour Revision Order 1971</p>		<p>Article 9 (powers with respect to disposal of wrecks) is revoked in light of the modernised provision and the provisions in this HRO. The revocation, along with the HRO, demonstrates the Commissioner’s compliance with the Port Marine Safety Code to be aware of local and national legislation and to seek additional powers where necessary.</p> <p>This provision complies with section 14(2)(b) of the 1964 Act.</p> <p>This provision is required in order for the Commissioners to comply with the Port Marine Safety Code</p>
<p>The Yarmouth (Isle of Wight) Harbour Revision Order 2002</p>		<p>The entire order is revoked by this HRO which is necessary in light of the provisions relating to borrowing contained within this Order. The revocation, along with the new powers under the HRO, demonstrates the Commissioner’s compliance with the Port Marine Safety Code to be aware of local and national legislation and to seek additional powers where necessary.</p> <p>This provision complies with section 14(2)(b) of the 1964 Act.</p> <p>This provision is required in order for the Commissioners to comply with the Port Marine Safety Code.</p>

Table 4: Relevant policies, guidance and plans

Plan, policy or guidance	<i>Demonstration that application is compliant with relevant plan, policy or guidance.</i>

Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)

COMPLIANCE WITH THE SOUTH MARINE PLANS

The Harbour is situated within the South Marine Plan area. More specifically, the Harbour falls within the South Inshore Marine Plan. The South Marine Plan was published and adopted in 2018. It is a material consideration and in proposing this Order the Commissioners have had due regard to the South Marine Plan.

The Order is a non-works order and its provisions predominantly modernise the Commissioner’s existing powers in order to allow the Commissioners to trade and operate the harbour in a more efficient and commercial way and to support the efficient and economical operation, improvement, maintenance and management of the Harbour.

One of the objectives of the South Marine Plan is to manage existing, and aid the provision of new, infrastructure supporting marine and terrestrial activity. The provisions of the Order relating to development and trade will allow the Commissioners to effectively manage the existing infrastructure and enable them to develop, obtain and sell property and infrastructure and to engage in trade or business that will support and promote marine and terrestrial activity in the area.

In particular, the provisions of the Order relating to improvement of the harbour and commercial activities will enhance or promote social benefits, both locally and within the wider recreational marine community (S-SOC-1 Knowledge, understanding, appreciation & enjoyment) and will enhance or promote tourism and recreation activities (S-TR-2 Tourism & recreation).

In proposing this Order the Commissioners have had due regard to the areas of the Solent designated as Marine Conservation Zones and it is not considered that the proposed Order or anything done in reliance on the proposed Order will have adverse impacts on the objectives of marine protected areas and the ecological coherence of the marine protected area.

Insert other relevant plans/policy/guidance in this section

Port Marine Safety Code (the “Code”)

The Code was introduced in November 2016 and published by the Department for Transport. The Code was introduced to improve safety standards in the marine environment and allow marine operations to be managed to nationally agreed standards. The Harbour is a trust port and as such the Port Marine Safety Code is applicable to the Commissioners. In line with the Code the Commissioners have carried out a review of their existing powers and have determined that the Order is necessary to future-proof the harbour and in the interests of the improvement, maintenance and management of the Harbour in an efficient and economical way and to continue to ensure safe and efficient port marine operations.

	<p>In proposing this Order the Commissioners have also paid due regard to the Ports Good Governance Guidance and consider that the provisions of the Order relating to finance and electronic meetings of the Commissioners in particular, further the best practice advocated by the Ports Good Governance Guidance.</p>
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Table 5: Any other relevant information

No general formal pre-application consultation has been carried out in respect of this application due to the imminence of the proposed increase in fees for applying for a new Harbour Revision Order. The Harbour Master for the Harbour has been heavily involved in the drafting of the Harbour Revision Order and has provided approval of the Order.