

EXPLANATORY MEMORANDUM TO
THE FOLKESTONE HARBOUR REVISION ORDER 2017

2017 No. 601

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Marine Management Organisation and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to authorise Folkestone Harbour Company (“the applicant”) to disapply section 33 of the Harbours Docks Piers and Clauses Act 1847 to the harbour arm and south quay; construct and maintain a wave wall and rock revetments for the purpose of flood defence; define the harbour limits both landward and seaward in modern terms and provide powers considered necessary to facilitate the effective management of Folkestone Harbour (“the Harbour”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The applicant is the statutory harbour authority for the Harbour and operates under Orders dated 1807 to 2017.
- 4.2 The applicant applied to the Marine Management Organisation (“MMO”) on 7 January 2016 for the Folkestone Harbour Revision Order (“the Order”) to be made under Section 14 of the Harbours Act 1964 (“the Act”).
- 4.3 The responsibility for the consideration of the application, and the making of any Order, passed to the MMO by virtue of the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I 2010/674) which delegated the Secretary of State functions under Section 14 to the MMO except in relation to specified applications.
- 4.4 In accordance with paragraph 4 of Schedule 3 to the Act, the MMO concluded that the project related to a project falling within Annex II to Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and was a relevant project (that is a project which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location). The MMO notified the applicant of its decision under paragraph 6 and gave an opinion to the applicant in respect of the extent of the information required to be supplied in an environmental statement accompanying the application.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England only.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Planning permission was granted on 30 January 2015 by Shepway District Council (ref Y12/0897/SH) for the redevelopment and regeneration of Folkestone Seafront for a comprehensive mixed use development comprising of up to 1000 dwellings; up to 10,000m² of commercial floorspace and other community uses, including public open spaces.
- 7.2 The Order authorises works to be undertaken in the Harbour, namely the construction of a wave wall and rock revetments which will act as a flood defence for the redevelopment and regeneration of land along Folkestone Seafront. The works will require the temporary stock piling of rock and plant for the revetment construction and as such the right of navigation over this area will be temporarily suspended.
- 7.3 The Order dis-applies section 33 of the Harbours, Docks and Piers Clauses Act 1847 (the “1847 Act”) removing ‘open port duty’ in so far as it relates to the Harbour Arm and South Quay. It also vests power in the applicant to control which vessels may moor alongside these areas. This formalises the existing situation where trading, including shipping and unshipping of goods and commercial ferry operations, no longer takes place from or on the Harbour Arm and South Quay given the current state of facilities, depth of water, local infrastructure and market demand. Future commercial use of the Harbour Arm and South Quay are not considered viable and the Harbour Arm is intended to form public open space as part of the large scale development.
- 7.4 The Harbour has been used historically by passenger and freight ferries as well as cargo ships between Folkestone and Boulogne. Ferry usage rapidly declined in the 1990s to the point where ferry operations became unsustainable and the ferry link was closed down in 2000.
- 7.5 The railway line, which extended onto the Harbour Arm was designated “permanently out of use” by Network Rail in 2012 and formally ratified by the Office of Rail Regulations on 31 July 2014.
- 7.6 The limits of the Harbour both landward and seaward are defined more precisely in modern terms. Land no longer being used for Harbour purposes is to be released for residential/commercial development thereby reducing the extent of the area of land within the Harbour.
- 7.7 The Order also seeks to clarify and formalise some of the Harbour powers to assist the applicant in the management of the Harbour and maintain the statutory and legal framework underpinning the effective operation of the Harbour in accordance with Modernising Trust Ports guidance (second edition) (“the guidance”). There are

provisions to modernise and extend existing powers vested in the applicant in relation to the management and maintenance of the Harbour.

- 7.8 Whilst the Harbour is not a Trust Port, the section on “coverage” in the guidance indicates that although “it is aimed specifically at trust ports, all ports are encouraged to use the relevant elements of the guidance as a benchmark, as all ports on whom Parliament has devolved statutory powers and duties in the public interest should be accountable for their use”.
- 7.9 The MMO determined that the proposed Order would authorise a project. Accordingly Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment does apply to the proposal and an environmental statement (“ES”) was supplied with the application.

Consolidation

- 7.10 None.

8. Consultation outcome

- 8.1 In accordance with paragraph 10 of Schedule 3 to the Act, a notice was placed in the London Gazette and the Folkestone Herald detailing the application for the Order and how any objections or representations may be registered.
- 8.2 The MMO also consulted with other such bodies it considered to have interest in the Order.
- 8.3 Six objections to the Order were received within the statutory period of forty-two days provided for in Schedule 3 to the Act.
- 8.4 All objections remained unresolved for consideration by the MMO in its determination. Full details of the consultation, objections and representations can be found in the decision letter at <https://www.gov.uk/government/publications/the-folkestone-harbour-revision-order-2016>

9. Guidance

- 9.1 The MMO does not propose to issue guidance in respect of the effects of the Order. However, the Commissioners will publish particulars, and serve copies, of the Order in accordance with paragraph 24 of Schedule 3 to the Act.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minor.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Whilst the MMO will not actively monitor the operation of the provisions introduced by the Order, it will consider any representations received in this respect and will take these into account in the future exercise of its powers.

13. Contact

- 13.1 Jayne Burns at the Marine Management Organisation Telephone: 0208 2256439 or email: Jayne.Burns@marinemanagement.org.uk can answer any queries regarding the instrument.