

EXPLANATORY MEMORANDUM TO
THE NEWPORT (ISLE OF WIGHT) HARBOUR REVISION ORDER 2021
2021 No. 139

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Marine Management Organisation (“the MMO”) 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 the Isle of Wight Council (“the applicant”) to modernise its statutory powers as the harbour authority for Newport Harbour. This includes new powers in relation to regulating the harbour and clarifying the existing limits of the harbour.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The applicant is the statutory harbour authority, governed by its own local legislation contained in local Acts and Orders from 1852 to 2021. The applicant is responsible for the administration, maintenance, and improvement of the harbour.
6.2 The applicant applied to the MMO on 28 February 2018 for the Newport (Isle of Wight) Harbour Revision Order (“the Order”).
6.3 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’s

functions under Section 14 of the Harbours Act 1964 (“the Act”) to the MMO, except in relation to specified applications.

7. Policy background

What is being done and why?

- 7.1 The Port Marine Safety Code (“PMSC”) published by the Department for Transport sets out a national standard for all current aspects of port marine safety. The PMSC seeks to enhance safety for everyone who uses or works in the UK port marine environment. The PMSC can be viewed on the link below.
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918935/port-marine-safety-code.pdf
- 7.2 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 it 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”.
- 7.3 The applicant conducted a review of their local Acts and Orders and identified a need to clarify their harbour limits and confer additional powers on the harbour authority to assist in the management of the harbour in compliance with the PMSC.
- 7.4 In addition, the harbour master appointed by the applicant will have updated powers to issue special directions to vessels.
- 7.5 The extended and modernised power to issue general directions, and the updated harbour master’s powers to issue special directions are recommended by the PMSC, to support the effective management of the harbour and to ensure the convenience and safety of harbour users.
- 7.6 The Order also sets out the consequences of failing to comply with a general or special direction.
- 7.7 In article 3, the Order clarifies the existing harbour limits defined in the 1988 Newport (Isle of Wight) Harbour Revision Order, which were defined on a map annexed to the 1988 Order. To add further clarity, article 3 has been inserted to ensure that the existing harbour limits are accurately defined by the use of coordinates and references to mean high water. The Order also includes the harbour premises in the harbour limits. This means that land and premises owned or used by the harbour will be included within the harbour limits and the applicant can exercise its powers, including general directions, within those limits. This is necessary to assist in the management of the harbour in compliance with the PMSC as it widens the scope over which the applicant can exercise their jurisdiction to harbour owned land and premises.
- 7.8 The Order permits the applicant to grant tenancies in excess of three years. Under existing harbour legislation, tenancies can only be granted for three years and the applicant has stated that this has led to a lack of investment in the harbour. The Order also permits the disposal of land and property which is surplus to what is required for

the purpose of the harbour undertaking, using the money raised from the disposal for the benefit of the harbour.

- 7.9 The Order allows the applicant to carry out commercial activities in the management of the harbour, provided they are conducive to the efficient and economic management of the harbour undertaking. In connection with these activities, the applicant may form companies, either by itself or in conjunction with others.
- 7.10 The Order requires an owner or master of a vessel to provide information to the applicant relating to the number of persons embarking or disembarking their vessel or relating to the cargo being loaded on or unloaded from their vessel. This is so the applicant can determine whether any of the applicant's landing fees or other charges are payable in respect of those persons or cargo, in accordance with section 26(2) of the Harbours Act 1964. The Order also sets out details of the vessels to which it applies, time limits of the owner or master to reply, and sets out the consequences of non-compliance.
- 7.11 There has been public interest in this application. The public interest is summarised below in the 'consultation outcome' section of this Memorandum. There was no media interest in this application.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 In accordance with paragraph 10 of Schedule 3 to the Act, a notice was placed in the London Gazette on 16 March 2018 and the Isle of Wight County Press on 16 and 23 March 2018 detailing the application for the Order and how any objections or representations may be registered.
- 10.2 The MMO also consulted with other such bodies it considered to have interest in the Order.
- 10.3 In total, 18 objections to the Order were received within the statutory period of forty-two days provided for in Schedule 3 to the Act. The consultation ran from 16 March 2018 to 27 April 2018. The applicant engaged with those who submitted an objection, one of these objections was withdrawn.
- 10.4 The MMO considered the objections raised, the responses submitted by the bodies consulted, the applicant's responses and the information provided in the formal application, in its determination of this Order. The MMO is satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour. Details of the consultation can be found in the decision letter at:
- <https://www.gov.uk/government/publications/newport-isle-of-wight-harbour-revision-order-2018>
- 10.5 A hard copy of the consultation is available on application to the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.

11. Guidance

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

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant impact predicted on businesses, charities, voluntary bodies or the public sector.

13. Regulating small business

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

14. Monitoring and review

- 14.1 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.

15. Contact

- 15.1 Melissa Gaskell-Burnup at the MMO can answer any queries regarding the instrument. Address: Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH. Telephone: 0208 225 8268. Email: harbourorders@marinemanagement.org.uk
- 15.2 Trudi Wakelin, Director of Marine Licensing and Planning, at the MMO can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Tom McCormack, Chief Executive Officer at the MMO can confirm that this Explanatory Memorandum meets the required standard.