

EXPLANATORY MEMORANDUM TO
THE NEWHAVEN HARBOUR REVISION ORDER 2016
2016 No. 151

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Marine Management Organisation (“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 modernise and extend the existing powers vested in Newhaven Port and Properties Limited (“the applicant”) and provide powers considered necessary to facilitate the effective management of Newhaven 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 the negative 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 1863 to 2016.
- 4.2 The Applicant applied to the Marine Management Organisation (“MMO”) on 17 April 2015 for the Newhaven 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 The proposed Order does not constitute or authorise a project for the purposes of Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment does not apply to the proposal. Accordingly an environmental statement was not required to support 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 The Order modernises and extends the existing powers vested in the applicant and provides powers considered necessary to facilitate the effective management of the harbour.
- 7.2 In particular it clarifies the jurisdiction of the harbour in modern terms and extends its limits, confers power on the harbour to regulate the operation of commercial workboats operating from the harbour, gives directions to vessels using the harbour, amends borrowing powers and confers other powers considered desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.
- 7.3 The present harbour limits have been in existence since 1978 and it is considered desirable to define them in modern terms and extend them to afford the harbour authority more control over approaches to the harbour and vessel anchorage in the interests of maritime safety.
- 7.4 The proposed licensing of workboats would ensure that all operators of commercial workboats operating from the harbour would have to attain minimum safety standards for vessels used and the competency of their crews. Without a licensing system it would be difficult for the Harbour master to check whether those standards had been achieved.
- 7.5 Further, paragraph 10.2.3 of ‘A guide to good practice on port marine operations’ which supplements the Port Marine Safety Code (“the Code”) states “Local legislation may empower harbour authorities to register, inspect and licence commercially operated port craft. Where this is not the case, the authority’s risk assessments should show some form of agreement with commercial operators about the maintenance and proper use of those vessel. It may be appropriate for the authority to consider seeking those powers.”
- 7.6 In addition the Order also confers power on the applicant to issue directions to vessels within its limits. These powers are considered necessary to facilitate the effective, efficient and safe management of the harbour. The Code, which was published by the Department for Transport in October 2009 applies to the applicant and encourages harbour authorities to seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation.
- 7.7 The Order provides the applicant additional financial powers considered necessary to allow them to borrow (both long and short term) and create a charge over its property in order to raise finances, thus enabling it to continue to invest and develop without undue constraint ensuring it is positioned to maximise opportunity to grow the Port business.
- 7.8 The Order also confers other powers considered desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

Consolidation

7.9 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 in the Sussex Express detailing the application for the Order and how any objections or representations may be registered.

8.2 The MMO also consulted with such other bodies it considered to have interest in the Order.

8.3 A single objection to the Order was received within the statutory period of forty-two days provided for in Schedule 3 of the Act. The objection was subsequently withdrawn. Full details of the consultation and objection can be found at <https://www.gov.uk/government/publications/the-dover-harbour-revision-constitution-order-2015>

9. Guidance

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

10. Impact

10.1 The MMO considers the impact on business, charities or voluntary bodies to be minor.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. The MMO considers the impacts to be minor.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 No mitigating action is proposed to minimise regulatory burden on small businesses because the aspects of the instrument which affect small businesses, the powers to licence workboats in article 13, are introduced in line with the Department for Transport Port Marine Safety Code and subsequent guidance, which have already been the subject of consultancy with the relevant industry representatives.

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 Mark Kirby at the Marine Management Organisation Telephone: 0191 376 2563 or email: mark.kirby@marinemanagement.org.uk can answer any queries regarding the instrument.