

## EXPLANATORY MEMORANDUM TO

### THE CORNWALL HARBOURS HARBOUR REVISION ORDER 2023

2023 No. 675

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Marine Management Organisation (“MMO”) and is laid before Parliament by Command of His Majesty.

#### 2. Purpose of the instrument

- 2.1 The purpose of this instrument is to grant Cornwall Council (“the Council”) power to consolidate and modernise existing local statutory harbour legislation in respect of the harbours of Bude, Newquay, Penryn, Penzance, Prince of Wales Pier (Falmouth), St Ives and Truro (“the seven harbours”). It will confer on the Council further powers considered conducive to the safe, efficient and economical operation, maintenance, management and improvement of the seven harbours.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The 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 seven harbours are classed by the Department for Transport (“DfT”) as municipal ports. The Council is the Statutory Harbour Authority for each of the seven harbours.  
6.2 The Council applied to the MMO on 8th October 2019 for the Cornwall Harbours Harbour Revision Order 2023 (“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 (c.40) (“the Act”) to the MMO except in relation to specified applications.  
6.4 This instrument is related to the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order (“the HEO”) which will come into force after this instrument. The HEO will amend Schedule 1 of this instrument, adding the three harbours of Portreath, Portscatho and Portwrinkle to enable them to be governed by the Council under the provisions of this instrument.

## 7. Policy background

### *What is being done and why?*

- 7.1 In 2014, the Council commissioned a report from Fisher Associates, called a ‘Review of Local Authority Ports and Harbours in Cornwall’ (“the Fisher Report”). The Fisher Report identified the benefits of managing the seven harbours collectively, including the harbours benefiting from economies of scale, access to a reserve fund suited to occasional harbour capital needs, and access to higher level management expertise than the seven harbours would be able to obtain on their own. In addition, the Fisher Report recommended obtaining an order to provide for full ring fencing of harbour funds (providing strong safeguards for the future of the seven harbours) and modernised statutory harbour powers, including governance arrangements. The Fisher Report is available in two parts, on the links below.

[https://www.cornwallharbours.co.uk/wp-content/uploads/2023/05/Cornwall\\_Final\\_Sustainable\\_Strategy\\_9-11-14.pdf](https://www.cornwallharbours.co.uk/wp-content/uploads/2023/05/Cornwall_Final_Sustainable_Strategy_9-11-14.pdf)

[https://www.cornwallharbours.co.uk/wp-content/uploads/2023/05/Review\\_of\\_Local\\_Authority\\_Ports\\_and\\_Harbours\\_in\\_Cornwall\\_October\\_2014\\_.pdf](https://www.cornwallharbours.co.uk/wp-content/uploads/2023/05/Review_of_Local_Authority_Ports_and_Harbours_in_Cornwall_October_2014_.pdf)

A hard copy of the Fisher Report is available on application to Cornwall Council at New County Hall, Treyew Road, Truro, TR1 3AY.

- 7.2 Prior to the making of this instrument, each of the seven harbours was governed by its own local legislation. This instrument repeals the existing local legislation for the seven harbours (apart from the provisions listed in Schedule 5 of this instrument) so that all seven harbours will all be governed by the statutory provisions in this instrument, allowing the Council to realise the benefits described above.
- 7.3 The Port Marine Safety Code (“PMSC”) published by the DfT sets out a national standard for all current aspects of port marine safety. 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918935/port-marine-safety-code.pdf)

A hard copy of the PMSC is available for inspection on application to the Department for Transport Ports and Shipping Team, 4th Floor, Zone 4, Great Minster House, 33 Horseferry Road, London, SW1P 4DR.

- 7.4 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. 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”.*

- 7.5 This instrument sets out the Council’s functions in respect of the harbours and authorises the Council to improve, maintain, regulate, manage, mark and light the harbours and provide harbour facilities; carry out various activities related to works,

structures and equipment at the harbours to facilitate the proper operation, improvement, development and future viability of the seven harbours.

- 7.6 Article 6 of this instrument constitutes the Cornwall Harbours Board (“the Board”) and articles 7 to 12 provide for the appointment to the Board of between five and six Council members and between five and six independent external members, all with voting rights. In addition to these voting members, the Board will also have the power to co-opt up to five non-voting members on to the Board (Article 8). Prior to the making of this instrument, these positions were filled by chairpersons of some of the key harbour stakeholder groups.
- 7.7 This instrument sets out the terms of office, casual vacancies and disqualification or removal of the Board members. Schedule 2 deals with incidental provisions such as the role of the Board and validity of acts of the Board, its meetings and meetings procedure, the Chair and Vice Chairs’ appointment and re-appointment, and members’ remuneration.
- 7.8 This instrument aligns with the Ports Good Governance Guidance (“PGGG”) published by the DfT, which sets out principles of openness, accountability and fitness for purpose in managing harbours in the broad public interest. The PGGG can be viewed on the link below:
- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918508/ports-good-governance-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918508/ports-good-governance-guidance.pdf)
- A hard copy of the PGGG is available for inspection on application to the Department for Transport Ports and Shipping Team, 4th Floor, Zone 4, Great Minster House, 33 Horseferry Road, London, SW1P 4DR
- 7.9 This instrument consolidates, modernises and extends the powers of the Council for the seven harbours. This includes powers in relation to the making of general directions, byelaws, regulation of moorings, and control of bunkering in the harbours. It also allows the Council to develop or dispose of harbour premises and to grant tenancies.
- 7.10 This instrument also disapplies the “Open Port Duty” (section 33 of the Harbours Docks and Piers Clauses Act 1847) in respect of Prince of Wales Pier (Falmouth) (“the Pier”). This is because the Pier is of limited size and the Council only has jurisdiction as a harbour authority for 50 yards seaward of the Pier. Disapplication of the Open Port Duty also ensures that only vessels which are operating in accordance with the applicant’s regulations will be permitted to use the Pier.
- 7.11 This instrument establishes a general reserve fund that all seven harbours can call upon when needed and requires that all surplus harbour revenue be applied to the general improvement of the seven harbours.
- 7.12 This instrument establishes a separate reserve fund for the Port of Truro and Port of Penryn with respect to their existing reserves. These reserve funds will not be topped up and future surpluses from these Ports will be placed into the general reserve fund.
- 7.13 This instrument will create the following new criminal offences, with fines on the standard scale for the seven harbours: For the failure to repair landing places (Article 20(3)(a)) (Level 3 fine), failure to comply with restrictions on works and dredging (Article 21(4)) (Level 4 fine), failure to comply with the controls of certain operations and works of statutory undertakers (Article 22(5)) (Level 3 fine), intentionally causing the obstruction of works (Article 26) (Level 3 fine), obstructing, removing of

moorings or mooring without permission (Article 53(1)) (Level 3 fine) and the carrying out of unlicensed commercial bunkering of vessels (Article 59(5)) (Level 4 fine).

7.14 The offences are created to enable the Council as the SHA to meet its statutory duties and obligations including those relating to environmental protection, safety of navigation, and to comply with the PMSC. Breach of the requirements of these provisions could have serious environmental and/or navigation safety consequences, therefore the levels of fine are justified. The new offences in this instrument are similar to existing criminal offences in place for other SHAs.

7.15 A number of plans accompany this instrument, as the Council is clarifying the limits of each of the harbours. The new limits are described in Schedule 1 and are set out in the deposited plans. The Council can exercise its powers as SHA within the areas outlined with a red line on the plans. In the event of a discrepancy between the limits in Schedule 1 and on the plans, the plans are deemed to be correct. The Council can exercise its powers, including general directions, within the limits defined by the plans. This is necessary to assist in the management of the harbours in compliance with the PMSC.

7.16 In determining applications for Harbour Revision Orders, the MMO must have regard to the relevant marine plan, in accordance with Section 58(3) (Decisions affected by marine policy documents) of the Marine and Coastal Access Act 2009 (c.23). The South West Marine Plan (“Marine Plan”) was considered when making a determination on this application. The Marine Plan can be viewed on the link below:

<https://www.gov.uk/government/publications/the-south-west-marine-plans-documents>

A hard copy of the Marine Plan is available for inspection on application to the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.

7.17 The MMO's assessment of the application in relation to the policies of the Marine Plan is available on the Harbour Orders public register:

<https://www.gov.uk/government/publications/cornwall-harbours-harbour-revision-order>

A hard copy of the assessment is available for inspection on application to the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.

## **8. European Union Withdrawal and Future Relationship**

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

## **9. Consolidation**

9.1 This instrument consolidates the existing local statutory harbour legislation for all the seven harbours.

## **10. Consultation outcome**

10.1 In accordance with paragraph 10(1) of Schedule 3 to the Act, a notice was placed in the London Gazette on 6th September 2021 and the Western Morning News (as a local advertisement) on 6th and 13th September 2021 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. A full list of those bodies consulted is set out in the MMO’s decision letter in the link provided in paragraph 10.6 of this explanatory memorandum. The consultation ran from 6th September 2021 until 18th October 2021.
- 10.3 One objection and one representation in support of the Order were received from members of the public within the statutory period of forty-two days. The objection was withdrawn following a discussion between the objector and the Council.
- 10.4 The MMO also received an objection from the Royal Yachting Association (“RYA”). As part of its objection, the RYA requested inclusion of an additional defence of “reasonable excuse” to be inserted into Article 35 (Failure to comply with directions) of the proposed order, for a failure to comply with a direction under Article 34 (Special directions) (“additional defence”). The MMO requested further justification from both applicant and the RYA to support the inclusion of the additional defence, however the MMO considered that neither the RYA nor the applicant provided sufficient justification for its inclusion and advised the applicant and the RYA of its decision in a letter dated 27 April 2023. The RYA has confirmed that without the inclusion of the additional defence, their objection to the HRO remains outstanding and not withdrawn. The MMO is satisfied that the provisions in the Order are appropriate. The MMO decided to exercise its discretion not to cause an inquiry or a hearing to be held in relation to this issue, in accordance with paragraph 18 (1B) of Schedule 3 to the Act. Further information about the MMO’s consideration of this objection can be found in the MMO’s decision letter, linked in paragraph 10.6.
- 10.5 The MMO considered the responses submitted by the bodies consulted, the Council’s responses and the information supplied in the formal application, in its determination of this Order. The MMO was satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance or management of the seven harbours.
- 10.6 Details of the consultation and the bodies consulted can be found in the MMO’s decision letter at:

<https://www.gov.uk/government/publications/cornwall-harbours-harbour-revision-order>

A hard copy of the consultation outcome is available for inspection 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 this instrument. However, the Council will publish particulars and serve copies of the instrument 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 A full 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 & review**

14.1 This instrument does not include a statutory review clause as one is not required. Whilst the MMO will not actively monitor or review the operation of the provisions introduced by this instrument, 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 David Morris at the MMO, Telephone: 0208 026 5175 or email: [harbourorders@marinemanagement.org.uk](mailto:harbourorders@marinemanagement.org.uk) can be contacted with any queries regarding the instrument.

15.2 Trudi Wakelin, Director of Marine Development (Domestic and International) 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.