

EXPLANATORY MEMORANDUM TO
THE PORTREATH, PORTSCATHO AND PORTWRINKLE HARBOUR
EMPOWERMENT ORDER 2023

2023 No. 680

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 the instrument is to make Cornwall Council (“the Council”) the Statutory Harbour Authority (“SHA”) for the harbours of Portreath, Portscatho, and Portwrinkle (“the three harbours”). The instrument also amends the Cornwall Harbours Harbour Revision Order 2023 (S.I. 2023/675) (“the HRO”) to include the harbours of Portreath, Portscatho, and Portwrinkle, allowing these harbours to be governed under the HRO.

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 Council is currently responsible for the administration, maintenance and improvement of the three harbours. This instrument will enable the Council to become the SHA for the three harbours.

6.2 The Council applied to the MMO on 1st October 2019 for the Portreath, Portscatho and Portwrinkle Harbour Empowerment 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 functions under Section 16 of the Harbours Act 1964 (c.40) (“the Act”) to the MMO except in relation to specified applications.

6.4 This instrument should be read in conjunction with the HRO as it amends the HRO so the provisions will apply to the three harbours, with the exception of an amendment to article 50 (power to dredge) to insert a new paragraph (4) to disapply the dredging

exemption contained in section 75 of the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”).

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 three harbours collectively including the harbours benefiting from economies of scale, access to a reinvestment reserve fund suited to occasional harbour capital needs and access to higher level management expertise than individual harbours would be able to obtain on their own. 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/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 The Port Marine Safety Code (“PMSC”) published by the Department for Transport (“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

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.

- 7.3 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”.

- 7.4 The HRO 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 safe operation, improvement, efficient and economic development and future viability of the three harbours.
- 7.5 Article 5 of this instrument amends the HRO to add the three harbours to the definition of “harbours” contained in article 2(1) of the HRO. The effect of these amendments is that the provisions of the HRO (with an amendment to article 50 (power to dredge)) will apply to the three harbours in addition to Cornwall Council’s

seven other statutory harbours, Bude, Newquay, Penryn, Penzance, Prince of Wales Pier (Falmouth), St Ives and Truro. This will enable the three harbours to be maintained and managed in an economic and efficient manner through the provisions contained in the HRO.

- 7.6 Article 5 of this instrument amends article 50 of the HRO (power to dredge) to disapply the exemption contained in section 75 of the 2009 Act. This exemption allows dredging to be carried out by or on behalf of a harbour authority without the need for a marine licence. As this instrument does not authorise any intervention in the environment, the exemption cannot be applied to the three harbours. The three harbours will therefore require a marine licence for dredging activities.
- 7.7 Article 6 of the HRO 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 the HRO, these positions were filled by chairpersons of some of the key harbour stakeholder groups.
- 7.8 This HRO sets out the terms of office, casual vacancies and disqualification or removal of the Board members. Schedule 2 of the HRO 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.
- 7.9 This instrument aligns with the Ports Good Governance Guidance (“PGGG”) published by the DfT 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
- 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.
- 7.10 This instrument by virtue of the HRO provides access for the three harbours to the general reserve fund established by the HRO that the three harbours, together with the seven harbours under the HRO, can call upon when needed and requires that all surplus harbour revenue be applied to the general improvement of the ten harbours.
- 7.11 This instrument by virtue of the HRO creates the following new criminal offences, with fines on the standard scale for the three harbours, For the failure to repair of 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 control 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 carrying out of unlicensed commercial bunkering of vessels (Article 59(5)) (Level 4 fine).
- 7.12 The offences are created to enable the Council as the SHA to meet its statutory duties and obligations and compliance with the PMSC, including those relating to

environmental protection and safety of navigation. Breach of the requirements of these provisions could have serious environmental and/or navigation safety consequences. The new offences in the Order are similar to existing criminal offences in place for other statutory harbour authorities.

7.13 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 Article 4 and are set out in the deposited plans. The Council can exercise its powers as SHA within the areas outlined with a solid red line on the plans. In the event of a discrepancy between the limits in Article 4 of the instrument 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 harbour in compliance with the PMSC.

7.14 The MMO must ensure that proposals are in accordance with the relevant marine plan unless relevant considerations indicate otherwise, in accordance with Section 58 (Decisions affected by marine policy documents) of the Act 2009 Act (c.23). The South West Marine Plan (“Marine Plan”) was considered when making a determination on this application. The Marine Plan can be viewed here on the below link:

<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.

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

7.15 <https://www.gov.uk/government/publications/the-portreath-portscatho-and-portwrinkle-harbour-empowerment-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 does not consolidate any legislation.

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. The consultation ran from 6th September 2021 to 17th October 2021.

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 10.5 of this explanatory memorandum.

- 10.3 The MMO received an objection from the Royal Yachting Association (“RYA”) in relation to the HRO. 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 10.5.
- 10.4 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 the order is desirable in the interests of securing the improvement, maintenance or management of the three harbours.
- 10.5 Details of the consultation and the bodies consulted can be found in the decision letter at:

<https://www.gov.uk/government/publications/the-portreath-portscatho-and-portwrinkle-harbour-empowerment-order>

A hard copy of the consultation outcome 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 Council 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 & review

- 14.1 The Order 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 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 David Morris at the MMO, Telephone: 0208 026 5175 or email: 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.