



Marine  
Management  
Organisation

# Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

<b>1. Date application made to MMO</b>	12 September 2023
<b>2. Name of primary contact</b>	Lara Moore
<b>3. Contact details of primary contact</b>	Lara Moore, Ashfords LLP l.moore@ashfords.co.uk
<b>4. Address of primary contact</b>	Ashfords LLP, Ashfords House, Grenadier Road, Exeter, EX1 3LH
<b>5. Name of statutory harbour authority</b>	Exeter City Council ('the Council')
<b>6. Is this a Works Order?</b>	No.
<b>a. Brief description of proposed works</b>	N/A
<b>b. Date when notification of intention was submitted to MMO</b>	N/A
<b>c. Date when EIA screening opinion was issued by MMO</b>	N/A

<p><b>d. If screened in, date when scoping opinion was issued by MMO</b></p>	N/A
<p><b>e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO</b></p>	N/A
<p><b>7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.</b></p>	<p>This application is for a Harbour Revision Order to be made under the powers conferred on the Secretary of State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).</p> <p>The HRO would consolidate and modernise existing local statutory harbour legislation in respect of the Port of Exeter (<b>‘the Port’</b>) and confer further modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of the Port. The HRO would confer modern powers on the Council to give general directions to vessels using the Port, and persons and vehicles using the Port, together with powers exercisable by the harbour masters appointed by the Council to give special directions. In respect of special directions and general directions, these powers are required to support the effective management of the undertaking as recommended in the Port Marine Safety Code. In relation to vehicles and port operations ashore, they are consistent with the powers in section 14(3) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within a harbour.</p>
<p><b>8. Location (coordinates must be provided in WGS84 format if this is a works order)</b></p>	Port of Exeter ( <b>‘the Port’</b> )
<p><b>9. State the title of all relevant charts/maps/plans</b></p>	Port Limits Plan Port Premises Plan

<b>included with application (if appropriate)</b>	
<b>10. State the legislation relevant to the harbour authority and included with this application (if appropriate)</b>	<ol style="list-style-type: none"> <li>1. River Exe Act 1539 (the 1539 Act);</li> <li>2. Exeter Canal Act 1829 (the 1829 Act) and Plan;</li> <li>3. Exeter Port Dues Act 1840 (the 1840 Act);</li> <li>4. Exeter Canal Act 1883 (the 1883 Act);</li> <li>5. Straight Point Exeter Light Dues Order 1950 (the 1950 Order);</li> <li>6. Exeter City Council Act 1987 (the 1987 Act); and</li> <li>7. Harbour Directions (Designation of Harbour Authorities) Order 2017.</li> </ol>
<b>8. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.</b>	N/A
<b>9. Have you included the required fee for your application?</b>	£9,790 by BACS.

**Table 3: statutory harbour authority background**

**The statutory harbour authority:**

Exeter City Council is the statutory harbour authority for the Port of Exeter (**'the Port'**). For ease of reference, Exeter City Council, in the exercise of its SHA functions at the Port, is referred to as '**the Council**' throughout this Statement of Support.

The Council, as the statutory harbour authority for the Port, is governed by its own local legislation. The Council is responsible for the administration, maintenance and improvement of the Port, which is further described below.

The Council is also the local lighthouse authority for the Port and surrounding areas.

In managing the Port, the Council strives to observe industry standards set out in Government guidelines. The Council is committed to complying with the principles of the various codes and reports applying to the port and harbour industry, except where not relevant to the Council's constitution.

## **The Port:**

The Port is classed by the Department for Transport ("DfT") as a Municipal Port, with the undertaking comprising Exeter Ship Canal, the Exe Estuary to the seaward limits of the Port, and part of the River Exe and River Clyst.

Originally, the river was navigable up to the city, making it a busy port. In the 13<sup>th</sup> Century, a weir was constructed across the river, preventing navigation to the city. This was resolved in the 16<sup>th</sup> century by the construction of Britain's oldest ship canal, the Exeter Ship Canal, which enabled vessels to bypass the river and re-join it in the city centre. Large scale commercial vessels ceased using the Port in the 1970s which coincided with the increase in recreational use of the river and canal. In 2020, the canal was awarded the title of Heritage Harbour by the Maritime Heritage Trust and National Historic Ships UK, drawing attention to the undertaking and the potential scope to conserve and regenerate certain areas.

The entrance to the Estuary includes a shifting sand bank, which should be avoided during onshore winds and swell, or moderate weather from the East. The undertaking runs through an area of outstanding and protected natural beauty.

The principal activities of the Port include the following:

- provision and maintenance of moorings, berths, boat storage and slipways;
- vessel towing;
- salvage;
- installation, servicing and maintenance of navigation marks; and
- RYA powerboat training courses.

Vessels can visit the Port for a short stay or base themselves there all year round. The Port is typically used by:

- swimmers;
- canoeists;
- paddle boarders;
- dinghies;
- yachts; and
- power boats,

a substantial proportion of which will be visitors to the area. This makes it particularly important for effective legislation and regulations to be in place to give the Council the power to enforce them if necessary, ensuring the safety of visitors and locals alike.

Although the Port is used predominantly for leisure, there is limited commercial activity, such as a number of small fishing vessels and passenger vessels.

**Table 3a: Need and justification for order**

**Port Marine Safety Code:**

As the harbour authority for the Port, the Port Marine Safety Code (November 2016) published by the Department for Transport (“the Code”) applies to the Council as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. The Executive Summary to the Code explains that:

*“The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbour or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope.”*

The Code identifies a number of tasks which harbour authorities should undertake in order to comply with the Code including reviewing and being aware of existing powers based on local and national legislation and 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 Code 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”.

Although the Council does have powers of Harbour Direction, it does not have powers of General Direction. Therefore, the Council is seeking to obtain modern powers of General Direction. Designation with powers of General Direction is an important tool which will assist the Council with compliance with the Code.

**Harbours Act 1964:**

Section 14 of the Harbours Act 1964 (“the 1964 Act”) confers powers which have been devolved to the MMO to make an order under that section (known as a Harbour Revision Order) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 to the 1964 Act.

Section 14(2)(a) of the 1964 Act requires that written application be made to the MMO by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides that the MMO must be:

*“satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.*

The matters set out in Schedule 2 to the 1964 Act include, in particular, at paragraph 4:

*"Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above".*

And, at paragraph 6:

*"Settling (either for all purposes or limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled".*

Because this is not an application for a Harbour Revision Order which, directly or indirectly, authorises a project (within the meaning of paragraph 1 of Schedule 3 to the 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

This application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:

- (A) Section 14(1) of the 1964 Act because it is made in relation to a port which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.
- (B) Section 14(2) of the 1964 Act because:
  - (i) The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing a port; and
  - (ii) The making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the Port in an efficient and economical manner.

**General:**

The proposed HRO would consolidate, modernise and extend the powers of the Council considered conducive to the efficient and economical operation, improvement, maintenance or management of the Port. The definition of "port premises" is flexible, meaning that if further port land within the definition of "port premises" under the Order were purchased in the future (or sold if no longer required for port purposes) such land would automatically become part of (or cease to be part of) the undertaking.

It is considered that it is desirable in the interests of securing the improvement, maintenance or management of the Port in an efficient and economical manner that the Council is provided with a set of modern flexible statutory powers contained within the proposed HRO and that the majority of the current local statutory harbour legislation for the Port is repealed.

The modernised and additional powers include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include the Cornwall Harbours Harbour Revision Order 2023, the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012, the Cowes Harbour Revision Order 2012, the Dover Harbour Revision Order 2014. They include standard statutory harbour powers, such as the power to borrow, reserve fund powers, powers to dispose of and develop land, powers associated with charges (including deposits and liens associated with charges) and miscellaneous powers including a power of general direction, a power to dredge, powers related to the removal of wrecks and other obstructions and various powers related to commercial activities.

An explanation of, and the need for, each substantive article in the HRO is set out below. Some examples of how the powers may be exercised are described below. These examples are not intended to be exhaustive of the ways in which the powers may lawfully be exercised.

Articles 1 is not dealt with below since it is ancillary to the substantive provisions of the HRO.

**Table 2b: Justification for inclusion of provisions**

Article in HRO	Summary of Provision	Requirement for provision
<b>2 Interpretation</b>	<p>This article contains definitions which apply throughout the Order and a number of other provisions assisting with the interpretation of and clarification of scope of the Order.</p>	<p>The definitions are found within paragraph (1) of the article.</p> <p>Paragraph (2) provides that all points, distances etc. in the Order should be construed as if the word “or thereabouts” had been inserted after them.</p> <p>Paragraph (3) sets out that all references to points in the Order are references to World Geodetic System 1984.</p> <p>Article 2 is required to enable the Order and its effect to be properly interpreted.</p>
<b>3 Incorporation of the Harbours, Docks and Piers Clauses Act 1847</b>	<p>This article incorporates the said Act except in relation to the sections listed as being excepted. Those sections included predominantly relate to:</p> <ul style="list-style-type: none"> <li>(A) Power to construct warehouses and other works (section 21).</li> <li>(B) Rates (sections 27).</li> <li>(C) Collection of rates (sections 34 – 40 and 43 – 46 and 48).</li> </ul>	<p>This is an incorporation clauses of the Harbours, Docks and Piers Clauses Act 1847. In relation to section 33 of the 1847 Act, this is not incorporated into the existing local legislation applying to any part of the undertaking. As such, it is not being incorporated under the proposed HRO (and thus the position will remain unchanged when the HRO comes into force). There are historic provisions akin to section 33 of the Harbours, Docks and Piers Clauses Act 1847 under the 1829 Act which apply to the Canal only (see the area shaded green on the port limits plan to be deposited with the HRO). These historic provisions are being repealed under the HRO for consistency across the entire undertaking</p>

	<p>(D) Harbours, Dock and pier master (sections 51 - 65).</p> <p>(E) 68, 69, 72 – 76 (relating to the discharge or cargoes, removal of goods and the protection of the Harbours, Dock and pier);</p> <p>(F) Harbour and dock police (sections 79 – 80).</p> <p>(G) Meters and weighers (sections 81 – 82).</p> <p>(H) Byelaws (section 83).</p> <p>(I) Recovery of damages and penalties (sections 92, 94).</p>	<p>as it would be unusual for certain provisions to apply only to the Canal but not to the Estuary or the River (as shown on the port limits plan).</p>
<b>4 Port Jurisdiction</b>	<p>This article provides that the Council shall exercise jurisdiction as a harbour authority, and the powers of the harbour master shall be exercisable within the Port (which includes the port premises, the limits of which are described fully in Schedule 1 and shown on the port limits plan to be deposited with the HRO).</p>	<p>Due to the proposed repeal of the majority of current statutory harbour legislation, it is important that the Council's jurisdiction as statutory harbour authority is clearly set out in this article. Therefore, it is conducive to the efficient and economic management of the Port to express them clearly in the Order and to deposit plans clearly delineating the port limits and port premises. All of the land (including land covered by water) that is currently understood to fall within the port limits has been included.</p> <p>The areas included within the limits of the Port are set out in article 4 and Schedule 1 to the HRO. These limits have been derived from the definitions of the “canal”, “estuary”, and “the river” included in section 27 of the 1987 Act (section 27 of the 1987 Act provides the Council powers to make byelaws over those areas, and it was also referred to in the Schedule to the 2017 Order which designated the Council with powers of Harbour Direction at the Canal).</p> <p>Certain parts of the existing limits of the Port are being excluded under the HRO, namely the “flood channel” shaded orange on the port limits plan (also defined under section 27 of the 1987 Act) and those other parts of the Port shaded red on the port limits plan (landward of Cricklepit Bridge, landward of Fisher’s Bridge and the entrance channel to Exmouth Marina). It is the view of the applicant that these parts of the Port are not required to be within the statutory limits of the Council as SHA, and that jurisdiction is not required over them. In relation to the entrance channel to Exmouth Marina specifically, this</p>

	<p>area overlaps with the area of jurisdiction of the Exmouth Docks Company (a separate statutory harbour authority for Exmouth Docks). The only vessels anticipated to be within this entrance channel are vessel visiting Exmouth Docks and, as such, it is not considered by the applicant that it needs to continue to have separate jurisdiction over it.</p> <p>It should be noted that certain parts of the Port are non-tidal, including part of the Canal and the River. As such, coordinates have only been provided on the plan surrounding the estuary as far as the tide flows, shaded for illustrative purposes dark blue on the port limits plan. The limits of the other areas of the Port / areas being excluded under the HRO, namely the Canal (shaded green), the River (shaded purple), the Flood Channel being removed (shaded orange) and the remaining older port limits being removed (shaded red) are all fixed with reference to the colours on the plan.</p> <p>In respect of the port premises, in the event of any future alteration to the extent of the port premises (because the Council buys, sells etc. land), the Order requires the Council to publish an updated plan on the Port website and to display one in the port office within 30 days of the alteration. The Council's byelaw and general direction enforcement powers can be exercised over the entire area of jurisdiction.</p> <p>The definition of port premises (defined in article 2(1) of the Order) is flexible, meaning that if further land was purchased in the future for the port undertaking, it would automatically become part of the undertaking (or if land no longer required for the purposes of the port undertaking was sold, it would cease to be a part of the port undertaking).</p> <p>Additionally, paragraph (3) expressly sets out that 'port premises' (as defined in the Order) are deemed to be 'operational land' for the purposes of the Town and Country Planning Act 1990 ('<b>the 1990 Act</b>').</p> <p>'Operational land' is defined in section 263 of the 1990 Act as:</p>
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**263 Meaning of “operational land”.**

(1) Subject to the following provisions of this section and to section 264, in this Act “operational land” means, in relation to statutory undertakers—

(a) land which is used for the purpose of carrying on their undertaking; and

(b) land in which an interest is held for that purpose.

(2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.

In addition in respect of the permitted development rights contained in Schedule 2, Part 8, Class B, the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964

All land within the definition of port premises is therefore within the scope of ‘operational land’ under the 1990 Act. The inclusion of the wording is to make this clear as local planning authorities sometimes ask statutory harbour authorities to explain with reference to their local legislation that harbour land is operational land. All port premises is land designated under a Harbour Revision Order by its very nature. The additional wording is intended to make the effect of local harbour legislation easier to understand and to give a concrete provision that local planning authorities can refer to. Note: it is not changing the current position. It is the view of the applicant that all of its port premises are already ‘operational land’ under the 1990 Act.

		<p>This article is authorised by paragraph 6 of Schedule 2 to the 1964 Act, as follows:</p> <p><i>"Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled."</i></p> <p>A similar provision can be found under article 3 of the Newport (Isle of Wight) Harbour Revision Order 2021. In relation to paragraph (3), a similar provision can be found in force (in Scotland) under article 12(3) of the Eyemouth Harbour Revision Order 2021.</p>
<b>5</b> <b>General Functions</b>	<p>This article provides that the Council may take such steps as it may consider necessary or desirable from time to time for the operation, maintenance, management and improvement of the Port, its approaches and facilities.</p>	<p>For those purposes, this article authorises the Council to improve maintain, regulate, manage, mark and light the Port and provide port facilities; carry out various activities related to works, structures and equipment at the Port (including the port premises) and do all other things which in its opinion is expedient to facilitate the proper operation, improvement or development of the Port including acquiring land. Although the Council has implied powers to acquire land for the Port, it is sensible to include an express reference to the power within the Order.</p> <p>The definition of port facilities highlights the importance of the fishing, leisure, energy, recreational and tourism industries to the future viability of the Port.</p> <p>This article is authorised by paragraph 3 of Schedule 2 to the 1964 Act:</p> <p><i>"Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of- (a) improving, maintaining or managing the harbour; (b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or (c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land".</i></p>

	<p>As a result of the majority of local legislation being repealed under the provisions of the HRO, it is considered that, in the interests of clarity, it is desirable that the Council's powers to carry out the matters set out in this article should be set out expressly, rather than relying on implied and / or existing powers.</p> <p>A similar provision can be found under article 5 of the Weymouth Harbour Revision Order 2021.</p> <p>Specifically relating to the power to invest contained in article 5(2), this provision provides that where there are monies which are not immediately required by the Council for the purposes of the port undertaking, the Council can invest such monies as it thinks fit.</p> <p>This power allows the Council to make such investments as it considers fit using any monies which aren't immediately required for the purposes of the port undertaking. Such monies may include, for example, monies held in the reserve fund established under article 7 of the proposed HRO and applied in accordance with paragraph 3(e). Paragraph 3(e) provides that reserve fund monies may be applied by the Council for "<i>any other lawful purpose sanctioned by the Council and connected with the port undertaking</i>".</p> <p>It is considered that this article is desirable in the interests of securing the improvement, maintenance or management of the port in an efficient and economical manner, as required by section 14(2)(b) of the 1964 Act because it will allow the Council to invest to maximise the funds available to it for the benefit and future of the Port.</p> <p>Similar provisions already exist under local harbour legislation, such as section 12 of the Blyth Harbour Act 1986, article 18 of the Falmouth Harbour Revision (Constitution) Order 2004 in England. Similar provisions can also be found in force in Scotland, for example article 5 of the Montrose Harbour Revision Order 1999 and article 13 of the Eyemouth Harbour Revision Order 2021. These provisions provide that the relevant statutory harbour authority may invest sums not</p>
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		<p>immediately required for the purposes of the harbour undertaking and / or turn their resources to account so far as not required for the purposes of the harbour undertaking.</p> <p>This provision is authorised by paragraph 17 of Schedule 2 to the 1964 Act:</p> <p><i>“Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour”.</i></p>
<b>6</b> <b>Application of Finances</b>	<p>This article provides that the Council shall apply the port revenue in the manner following and not otherwise:</p> <ul style="list-style-type: none"> <li>(A) first in payment of the working and establishment expenses and costs of maintenance of the Port;</li> <li>(B) secondly in payment of the interest on any moneys borrowed by the Council for the Port under any statutory borrowing power;</li> <li>(C) thirdly in payment of all other expenses properly chargeable to port revenue; and</li> <li>(D) fourthly to an account established as a reserve fund for the Port.</li> </ul>	<p>This article is authorised by paragraph 13 of Schedule 2 to the 1964 Act:</p> <p><i>“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”</i></p> <p>This article is useful to the efficient management of the port, as it expressly sets out how port revenue should be used.</p> <p>A similar provision can be found under article 7 of the Weymouth Harbour Revision Order 2021.</p>
<b>7</b> <b>Reserve Fund</b>	<p>This article provides that the Council may establish and maintain a reserve fund covering the Port and carry to such a fund any part of its port revenue as is available for the purpose.</p>	<p>This article is authorised by paragraph 13 of Schedule 2 to the 1964 Act:</p> <p><i>“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”</i></p> <p>It is an essential part of prudent financial management that the Council should have the power to maintain a reserve fund to enable the Council</p>

		<p>to plan for future expenditure across the Port in an economic and efficient manner.</p> <p>A similar provision can be found under article 8 of the Weymouth Harbour Revision Order 2021.</p>
<b>8 Borrowing</b>  <b>9 Temporary borrowing</b>	<p>This article provides that the Council may borrow such sums of money as it considers necessary for the purpose of meeting its obligations in carrying out its functions and that it may secure such borrowing against the assets and revenues of the port undertaking.</p>	<p>These articles are required as the Council's existing borrowing powers under are being repealed under the provisions of the HRO.</p> <p>The articles reflect modern statutory harbour borrowing powers as can be seen in similar powers conferred by article 3 of the Blyth Harbour Revision Order 2015, and article 9 of the Dover Harbour Revision Order 2014.</p> <p>There is no need to place a limit on the amount of money which can be borrowed by the Council because, in reality, borrowings will be limited by the amount a lender is prepared to loan. In addition, the unlimited borrowing power will avoid the requirement for an HRO at a future date to extend the borrowing powers as the value of money decreases as a result of inflation.</p> <p>In respect of article 8(3), the Council, or any subsidiary of the Council, may effect such arrangements as considered fit to mitigate any financial risk incurred for the purposes of borrowing under paragraph (1). The power to enter into risk mitigation arrangements is needed to enable the Council, or its subsidiaries, to exercise the power to borrow in a prudent and cost effective manner.</p> <p>These articles are authorised under paragraph 10 of Schedule 2 to the 1964 Act, as follows:</p> <p style="padding-left: 40px;"><i>"Empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised."</i></p>
<b>Charges (generally)</b>	The articles contained within this Part of the HRO (Charges) set out the Council's powers with respect to	See below for further justification of particular provisions.

	<p>charges it may levy. They are reflective of modern statutory harbour powers relating to charges and are conducive to the improvement, maintenance and management of the Port in an efficient and economical manner. A similar suite of powers can be found in the Weymouth Harbour Revision Order 2021 and the Poole Harbour Revision Order 2012.</p>	
<b>10</b> <b>Charges other than ship, passenger and goods dues</b>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 of the 1964 Act, the Council may demand, take and recover reasonable charges in respect of all vessels. It also expressly states that charges may be made in respect of a variety of other floating platforms etc. so that no dispute will arise as to whether such structures fall within the definition of vessel contained within the Order.</p>	<p>It is important to the Port's future viability that all users of the Port contribute to the cost of the management and maintenance of the Port. It would be detrimental to the improvement, maintenance or management of the Port in an efficient and economical manner if charging powers did not exist in respect of one type of vessel or floating structure using the Port (unless exempt under the HRO). This provision is particularly important because the Order provides for existing charging provisions in current local statutory harbour legislation to be repealed.</p> <p>This article is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p style="padding-left: 40px;"><i>“empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p> <p>A similar provision can be found under article 10 of the Weymouth Harbour Revision Order 2021.</p>
<b>11</b> <b>Charges for services or facilities</b>	<p>This article provides that in addition to ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Council may demand, take and recover reasonable charges for services and facilities provided by it.</p>	<p>This provision is common as it is required for the Port to be managed economically and efficiently.</p> <p>This article is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p style="padding-left: 40px;"><i>“empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour”.</i></p>

		<p>This is pursuant to securing the improvement, maintenance and management of the Port in an efficient and economical manner.</p> <p>A similar provision can be found under article 11 of the Weymouth Harbour Revision Order 2021.</p>
<b>12</b> <b>Payment of Charges</b>	<p>This article provides that charges are payable before the vessel or goods against which they are payable are removed from the Port or port premises. It also sets out who charges are payable by and who they can be recovered from and when.</p>	<p>This article is included to ensure that the payment of charges authorised to be levied are consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner. For these purposes, it is essential that the HRO is clear as to when charges must be paid and from whom charges must be taken. It would be counter-productive to exclude such a provision from the HRO as this would negatively impact the Council's ability to efficiently and economically manage the Port.</p> <p>Furthermore, this article is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it secures the efficient collections of charges levied by the Council, specifying the times at which and the persons by whom charges are to be paid:</p> <p style="padding-left: 40px;"><i>"Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid."</i></p> <p>A similar provision can be found under article 12 of the Weymouth Harbour Revision Order 2021.</p>
<b>13</b> <b>Compounding arrangements and rebates</b>	<p>This article provides the Council with a power to confer exemptions from dues, allow rebates or make compositions with any person with respect to charges. In addition, it provides that the Council does not have to include on its list of ship, passenger and goods dues kept at the port office, charges which have been reduced by a rebate or a compounding arrangement in respect of a due included on the list.</p>	<p>This article is important to enable the Council to act in a commercial manner when entering into arrangements with customers, thereby managing the Port in an efficient and economical manner. This would be extremely difficult if the Port was required to publish commercially sensitive information.</p> <p>The great majority of ports operate on a commercial basis, in competition with each other (domestically and abroad) and in some cases with other modes of transport. This is recognised by the Ports Good Governance guidance at paragraph 1.15. The commercial</p>

		<p>relationship formed with port stakeholders in particular is also recognised at paragraph 2.10 and 2.11, and paragraph 2.28 specifically states:</p> <p><i>"All SHAs are encouraged to consider meeting the reasonable requests for information from stakeholders, where practical. This does not mean that SHAs should be expected to make available information that is commercially or otherwise sensitive..."</i></p> <p>On this basis, it is considered this article is consistent and with the Ports Good Governance Guidance and is therefore justified.</p> <p>A similar article can be found in, for example, the recent Weymouth Harbour Revision Order 2021.</p>
14 <b>Deposits for charges</b>	<p>This article provides that the Council may require from a person who incurs or is about to incur a charge with it, a reasonable deposit or guarantee. It also provides the Council with the power to detain a relevant vessel or goods until the deposit has been paid or the required guarantee made.</p>	<p>It is essential for the economic management of the Port to be able to secure the reasonable charges due to the Council by virtue its charging powers under the local legislation applying to the Port, the 1964 Act or otherwise. Should it become apparent that such a guarantee is not going to be provided by the person from whom it is due, then until such guarantee is received the Council needs to be able to secure the interests of the Port by removing the relevant vessel or goods from the Port or refuse entry.</p> <p>Article 14 is consistent with section 14(2)(b) of the 1964 Act for the order to be <i>"desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner"</i>. Furthermore, article 14 is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it secures the efficient collections of charges levied by the Council:</p> <p><i>"Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid."</i></p> <p>A similar provision can be found under article 14 of the Weymouth Harbour Revision Order 2021.</p>

<b>15</b> <b>Liens for charges</b>	<p>This article provides for a right of lien over goods in the possession or custody respectively of a person collecting charges on behalf of the Council or, a wharfinger or carrier, who has paid or given security for charges on those goods.</p>	<p>This is a standard provision included to secure the financial interests of those who by agreement with the Council collects charges on its behalf, by securing said interest against goods in their possession. As that person will not themselves be liable for the payment of charges, this provision is required to secure debts owed.</p> <p>A similar provision can be found under article 15 of the Weymouth Harbour Revision Order 2021.</p>
<b>16</b> <b>Refusal to pay charges for landing places</b>	<p>This article provides that a vessel may be prevented from using a landing place supplied by the Council, if the master of the vessel refuses to pay the related charges.</p>	<p>It is essential for the economic management of the Port for the Council to be able to secure the reasonable charges due to it by virtue of its charging powers under the local legislation applying to the Port, the 1964 Act or otherwise. Therefore, the Council must be able to prevent vessels from sailing or using facilities at the Port (such as a landing place or mooring) in the event that the master of a vessel refuses to pay the reasonable charge required, as authorised under the HRO.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the harbour in an efficient and economical manner. Furthermore, this article is authorised by paragraph 12 of Schedule 2 to the 1964 Act in that it promotes securing the efficient collections of charges levied by the Council:</p> <p style="padding-left: 40px;"><i>“Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.”</i></p> <p>A similar provision can be found under article 16 of the Weymouth Harbour Revision Order 2021.</p>
<b>17</b> <b>Exemption from Harbour Dues</b>	<p>This article is similar to other modern provisions providing for an exemption for harbour dues for certain vessels, persons and government departments (or their current equivalent) whilst in the exercise of their core duties.</p>	<p>This article is authorised by paragraph 14 of Schedule 2 to the 1964 Act, as follows:</p> <p style="padding-left: 40px;"><i>“Varying or extinguishing any exemption from charges levied by the authority at the harbour or any other right or privilege enjoyed thereat.”</i></p>

		<p>It is necessary for the efficient and safe management of the Port that those persons named in the article are exempt from harbour dues when in the exercise of their core functions, as such persons ought not to be restricted or deterred from exercising those functions as a result of them otherwise being liable to pay harbour dues.</p> <p>A similar provision can be found under article 17 of the Weymouth Harbour Revision Order 2021.</p>
<b>18</b> <b>Recovery of charges</b>	This article provides that in addition to any other powers of recovery available to it, the Council may recover any charges payable to it as a debt in Court.	<p>It is essential for the economic management of the Port to be able to secure the reasonable charges due to the Council by virtue charging powers under the local legislation applying to the Port, the 1847 Act incorporated with the HRO or otherwise. Therefore, the Council must be able to rely on the resources of the Court to assist in securing any debts owed to them should the existing powers of recovery be insufficient to secure the debt.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner.</p> <p>A similar provision can be found under article 18 of the Weymouth Harbour Revision Order 2021.</p>
<b>19</b> <b>Harbour master may prevent sailing of vessels</b>	This article provides that the harbour master may prevent the removal or sailing from the Port of any vessel until evidence is produced that any charges payable in respect of the vessel, its passengers or goods have been paid.	<p>It is essential for the economic management of the Port for the Council to be able to secure the reasonable charges due to it in relation to:</p> <ul style="list-style-type: none"> <li>- the vessel;</li> <li>- passengers on the vessel; and</li> <li>- goods imported, exported or carried on the vessel.</li> </ul> <p>by virtue its powers under the local legislation applying to the Port or otherwise. Therefore, the harbour master is required to have an express power to prevent the sailing and/ or removal of a vessel from the Port until such a time as the charges payable have been paid.</p>

		<p>Should such a vessel be able to leave the Port without having paid the charges due, it would become difficult for the Council to recover said charges and therefore be detrimental to its ability to manage the Port in an economically efficient manner.</p> <p>This article is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner.</p> <p>A similar provision can be found under article 19 of the Weymouth Harbour Revision Order 2021.</p>
20  <b>Power to make General Directions</b>	The Council does not currently have the power of General Direction. These articles provide the Council with powers of General Direction which also cover vehicles for the ease, convenience or safety of harbour operations ashore as defined under the Order (including speed limits for and parking of vehicles) and powers of Special Direction. The provisions also set out the consequences of failing to comply with a general direction or special direction.	The Port Marine Safety Code, advises at paragraph 2.5 of Chapter 2 that:  <i>"In particular, 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."</i>  As set out above, the Council does not have powers of General Direction and seeks to obtain a modern power. The process for keeping general directions up to date is far more time and cost efficient than the byelaw making process, and due to the inclusion of the Port Advisory Group to be set up under the HRO as 'designated consultees' it contains a strong local consultation requirement.  Therefore, in line with the Port Marine Safety Code, the Council is applying for a modernised power of General Direction that will enable the Council to have in place a single set of general directions. In line with best practice, these articles provide a statutory right for 'designated consultees' to be consulted about proposed general directions (see article 21(1)(a) and (b)).
21  <b>Procedure for giving, amending or revoking General Directions</b>		
22  <b>Publication of General Directions</b>		
23		As stated above, a Port Advisory Group will be a 'designated consultee' within article 21(1)(a) alongside the Chamber of Shipping and the Royal Yachting Association.

<b>Special Directions</b>		General directions can be made over the entirety of the Port (which includes the port premises). Any future exercise of this power will be exercised in accordance with article 21. This means that representations received from the designated consultees will be considered by the Council and if they object to proposed general directions and those concerns are unable to be resolved, there is a statutory adjudication process contained in article 21. The process contained in article 21 is likely to be acceptable to the Royal Yachting Association as a similar adjudication process is contained within the Shoreham Port Authority Harbour Revision Order 2021, Fowey Harbour Revision Order 2021 and the Dart Harbour and Navigation Harbour Revision Order 2021.
<b>24</b>		
<b>Failure to comply with directions</b>		
<b>25</b>		
<b>Enforcement of directions</b>		In terms of the precise scope of General Directions, it will be seen that article 20(1) would allow the Council to give or amend directions for:
<b>26</b>		<ul style="list-style-type: none"> <li>(a) <i>the ease, convenience or safety of navigation;</i></li> <li>(b) <i>the safety of persons;</i></li> <li>(c) <i>the protection of property, flora and fauna;</i></li> <li>(d) <i>the ease, convenience and safety of port operations ashore,</i></li> </ul>
<b>Master's responsibility in relation to directions</b>		
<b>27</b>		
<b>Boarding of vessels and vehicles</b>		In relation to vehicles and port operations ashore, such a scope is consistent with the powers in section 14(3) relating to penal provisions and the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a Harbour Revision Order to confer powers for environmental conservation within the harbour.
		Article 24 sets out the maximum fine level (level four on the standard scale) for failure to comply with a general direction once made. Although the Council does not currently have powers of General Direction, it does have byelaw making powers (for example under section LVI of the 1829 Act and section 27 of the 1987 Act) and it is already entitled to impose fines of up to level 4 on the standard scale (section 57 of the Criminal Justice Act 1988). As such, a level 4 fine for the breach of a general direction is considered justified.

	<p>Article 26 is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner as it expressly imposes the Master's own responsibility in relation to directions.</p> <p>A similar provision can be found under article 10 of the Shoreham Port Authority Harbour Revision Order 2021 and under article 10 of the Lymington Harbour Revision Order 2014.</p> <p>Article 27 provides that a duly authorised officer of the Council may, on producing if so required their authority, enter and inspect a vessel or vehicle in the harbour for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the Port, including the enforcement of any such enactment, byelaw or general direction.</p> <p>Such a power will be useful to the Council where a person has failed to comply with byelaws, special directions or general directions. The Council must be afforded the power to board relevant vessels and vehicles for the purposes of enforcing those byelaws, special directions and general directions.</p> <p>The rationale for including the power of entry into vehicles as well as vessels is that, just like vessels, there may be circumstances in which a vehicle needs to be entered to ensure that general directions or byelaws made in respect of it have been complied with. For example, entry to the back of a lorry to ensure that a general direction related to the ensuring loads are properly secured and supported has been complied with.</p> <p>The exercise of the provision is safeguarded by the inclusion of the words "<i>for the purposes of any enactment relating to the port (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the port</i>" as it can only be exercised for those purposes.</p>
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28 <b>Byelaws</b>	<p>This article provides the Council with the power to make byelaws in a range of circumstances in addition to the purposes in section 83 of the Harbours, Docks and Piers Clauses Act 1847 (as incorporated under article 3 of the Order) and is in line with the modern practice of setting out a wide range of matters upon which the Council will have the power to make byelaws.</p> <p>Byelaws made under this provision in the future may, in accordance with paragraph 4(a) of this article, provide for a fine not exceeding level 4 on the standard scale for breach thereof.</p>	<p>The power in this article incorporates the purposes in section 83 of the Harbours, Docks and Piers Clauses Act 1847 and is in line with the modern practice of setting out a wide range of matters (contained in Schedule 2 to the HRO) upon which the Council will have the power to make byelaws.</p> <p>The alternative practice is to set out a more general range of byelaw making powers and rely on the width of the wording of the provision. However, setting out the detail in this way reduces the scope for challenging any prosecution on the basis that the byelaw in question is outside the range of matters for which the Council has the power to make byelaws. This leads to increased costs and delays in prosecutions and therefore the more modern approach is to set out expressly a wider range of byelaw making powers.</p> <p>A similar approach can be found in the Weymouth Harbour Revision Order 2021 and the Portland Harbour Revision Order 1997.</p> <p>It should be noted that the Council already has byelaw-making powers, for example under section 27 of the 1987 Act and section LVI of the 1829 Act, and is already entitled to impose fines up to level 4 on the standard scale for breaches of them (section 57 of the Criminal Justice Act 1988). As such, the level 4 fine contained in paragraph 4(a) of this article is considered appropriate.</p> <p>Historically, there has been little need to initiate any prosecutions at the Port for breach of byelaws as port users have complied with the instructions of the harbour masters. Nevertheless, to comply with the Port Marine Safety Code (PMSC) and to meet its other duties (including navigational safety), it is important that the Council has modern and comprehensive byelaw making powers. It is anticipated that the current byelaws in place at the Port of Exeter will be reviewed and it is likely that they will be repealed and replaced with General Directions following grant of the HRO. However, it is important that the Council retains wide byelaw making powers in case it needs to introduce new byelaws in the future in respect of a risk not covered by the modernised power of General Direction sought above.</p>

		<p>The power to make byelaws is authorised by paragraph 4 of Schedule 2 to the 1964 Act:</p> <p><i>"Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above."</i></p>
<b>29</b> <b>Confirmation of Byelaws</b>	This article sets out the procedure by which byelaws made under the HRO shall be confirmed under the Local Government Act 1972.	<p>A similar provision can be found in article 25 of the Folkestone Harbour Revision Order 2017.</p> <p>This provision is incidental to the power to make byelaws as described above and is consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner</p>
<b>30</b> <b>Saving for existing directions, byelaws etc.</b>	Due to the proposed repeal of the majority of the local legislation currently in force in respect of the Port, it is necessary to include a saving provision for existing byelaws etc. They will then remain in force until replaced in the future.	<p>It is important that any existing byelaws, regulations, licences, leases etc. remain in force following the coming into force of this Order.</p> <p>This provision is incidental to the power to make byelaws and general directions that are being introduced under the provisions of the HRO, and is therefore consistent with section 14(2)(b) of the 1964 Act for the order to be desirable for the improvement, maintenance and management of the Port in an efficient and economical manner.</p> <p>A similar provision can be found under article 11 of the Shoreham Port Authority Harbour Revision Order 2021.</p>
<b>31</b> <b>Advisory bodies</b>	This article covers the establishment of an external advisory body with an independent chair.	<p>This article puts on a statutory basis the establishment and continuance of an advisory group or groups for the Port and their administration. It also requires the Council to consult the advisory group or groups.</p> <p>The statutory requirement for the Council to form an Advisory Group is fundamental to its compliance with the Ports Good Governance Guidance (March 2018) which recognises at para 1.5 "<i>the importance</i></p>

		<p><i>of engaging effectively and fully with stakeholders and carrying out their business in an accountable way</i>" and specifically sets out at para 2.6:</p> <p><i>"Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder's views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders".</i></p> <p>Additionally, the consultation requirement in respect of General Directions (also being provided for under the HRO) sets out that the Council must consult the Advisory Group on all matters substantially affecting the harbour, and therefore this article is necessary and incidental to the inclusion of the power of General Direction under the scheme. The power of General Direction (discussed under General Directions above) will be an essential tool for the Council to comply with the Port Marine Safety Code.</p> <p>As a result of the above, this article is conducive to the efficient and economical development of the harbours which are being improved, maintained and managed by a harbour authority.</p> <p>A similar provision can be found under article 28 of the Weymouth Harbour Revision Order 2021.</p>
<b>32</b> <b>Development of land</b>	This article provides that the Council may use or develop for any purpose, and deal with, any land within or in the vicinity of the Port; or form invest in and promote, or join with another person in forming, investing in and promoting a company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the Port.	<p>Paragraph (2) provides that a company established under paragraph (1)(b) may have powers to do anything necessary for the purposes of the objects for which it has been established notwithstanding that the Council would not itself have the power to do that thing.</p> <p>This article, as far as applying to land not required for the harbour, is authorised by paragraph 9A of Schedule 2 to the 1964 Act:</p> <p><i>"Empowering the authority (alone or with others) to develop land not required for the purposes of the harbour with a view to</i></p>

		<p><i>disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land".</i></p> <p>So far as relating to port land, it is considered that this article is authorised by paragraph 17 of Schedule 2 to the 1964 Act which enables a provision to be included in a Harbour Revision Order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the Port. The case for this is set out below as an integral justification for this article.</p> <p>The purpose of this article is to give the Council the flexibility, subject to obtaining the necessary rights in or over land, to exploit opportunities to develop land (including port land) to maximise the efficient utilisation, expansion and regeneration of the Port. The profits and revenues derived by the port undertaking from the development of any land under this article would be used to improve and develop the Port and provide increased financial security.</p> <p>It should be noted that the powers in this article can only be exercised if "<i>it is conducive to the improvement, maintenance or management of the port in an efficient and economical manner</i>". This limitation brings this article within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers to those in this article were conferred in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014.</p>
33  <b>Power to grant tenancies and to dispose of land</b>	<p>Paragraph (1) gives power to the Council, for the purposes of or in connection with the carrying on of the undertaking, to grant leases and other rights or interests over its land or other property forming part of the Port.</p> <p>Paragraph (2) provides that the Council may also dispose of, or grant the use or occupation for any purpose of, land or property if they consider that the property is surplus to port requirements; or it would</p>	<p>Paragraph (1), which is needed to manage the Port, is authorised by paragraph 3(a) of Schedule 2 which relates to powers conferred for the purposes "<i>of or in connection with the carrying on of the port undertaking</i>".</p> <p>Paragraph (3)(a) is authorised by paragraph 9 of Schedule 2 to the 1964 Act:</p> <p style="padding-left: 40px;"><i>"Empowering the authority to dispose of property vested in them</i></p>

	<p>conduce to the improvement, maintenance or management of the port in an efficient and economical manner for the property to be held by a person other than the Council.</p>	<p><i>and held for the purposes of the harbour which is no longer required for those purposes.”</i></p> <p>It is considered that paragraph (3)(b) is authorised by paragraph 17 of Schedule 2 to the 1964 Act which enables a provision to be included in a Harbour Revision Order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out as an integral part of the need for this article. Paragraphs (1) and (3)(a) are needed to enable the Council to manage the port undertaking effectively.</p> <p>These powers are similar to the powers conferred in the Weymouth Harbour Revision Order 2021, the Poole Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014.</p> <p>Paragraph (3)(b) would enable the Council to grant leases or transfer land or property to a subsidiary or other body. This power is needed to enable the Council to have sufficient flexibility in how to structure the port undertaking in the future. The power in paragraph (3)(b) is only exercisable if “<i>it would conduce to the improvement, maintenance, operation or management of the port in an efficient and economical manner</i>”. This limitation brings paragraph (3)(b) within the powers of section 14(2)(b) of the 1964 Act.</p>
34  <b>Power to appropriate lands and works for particular uses etc.</b>	<p>This article provides that the Council may from time to time for the purpose of or in connection with the management of the Port set apart and appropriate any part of the Port for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.</p>	<p>The power under this article must only be exercised for the “<i>purposes of or in connection with the carrying on of the port undertaking</i>” and not for wider purposes. This article is therefore within the scope of section 14(2)(b) in that it will assist the Council in the management of the Port in an efficient manner and facilitate the efficient and economic transport of goods and passengers by sea, again for Port purposes only.</p> <p>A similar provision can be found under article 31 of the Weymouth Harbour Revision Order 2021.</p>
35	<p>Paragraph (1)(a) provides that the Council may carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another</p>	<p>Paragraph (1)(a) would assist the Council to maximise the potential of the port undertaking by enabling it to carry on any business which could conveniently be carried on with the port undertaking. For example, the</p>

<b>Other commercial activities</b>	<p>person. Paragraph (1)(b) enables the Council to form, invest in and promote, or join with another person in forming, investing in and promoting, a company for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind. Paragraph (2) provides that a company established under paragraph (1)(b) may have powers to do anything necessary or expedient for the purposes of the objects for which it has been established notwithstanding that the Council would not itself (as harbour authority) have the power to do that thing.</p>	<p>Council could utilise and develop the skill and experience of its staff by providing services to other port undertakings or to carry out business activities which are incidental to running a port.</p> <p>Paragraph (1)(b) would enable the Council to carry on such a business as part of a joint venture with another person or persons, for example enabling the Council to contribute land and / or port related expertise to the venture while the other party contributes complementary specialist business expertise.</p> <p>The profits and revenues derived from the business ventures under this article would be used to improve and develop the harbour and ensure increased financial security.</p> <p>It should be noted that the powers in this article can only be exercised if:</p> <p><i>"it is conducive to the improvement, maintenance, operation or management of the port in an efficient and economical manner".</i></p> <p>This limitation brings this article within the powers of section 14(2)(b) of the 1964 Act.</p> <p>Similar powers were conferred in the Weymouth Harbour Revision Order 2021 and the Dover Harbour Revision Order 2014.</p> <p>It is considered that this article is authorised by paragraph 17 of Schedule 2 to the 1964 Act which enables a provision to be included in a Harbour Revision Order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour.</p> <p>The case for this is set out as an integral part of the justification for article.</p>
36	This article provides that the Council may delegate the performance of any of its functions to be carried out by	This article is authorised by paragraph 9B of Schedule 2:

<b>Power to delegate functions</b>	any such company as referred to in paragraph (1)(b).	<p><i>"Empowering the authority to delegate the performance of any functions of the authority except-</i></p> <ul style="list-style-type: none"> <li>(a) <i>a duty imposed on the authority by or under any enactment;</i></li> <li>(b) <i>the making of byelaws;</i></li> <li>(c) <i>the levying of ships, passenger and goods dues;</i></li> <li>(d) <i>the appointment of Harbours, Dock and pier masters;</i></li> <li>(e) <i>the nomination of persons to act as constables;</i></li> <li>(f) <i>functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and seamarks, so far as those functions are exercisable for the purposes of the safety of navigation."</i></li> </ul> <p>The power to delegate functions is needed to enable the Council to carry out day to day activities through a subsidiary or joint venture company. The power does not apply to the key functions which cannot be delegated under paragraph 9B of Schedule 2 to the 1964 Act.</p>
<b>37</b> <b>Power to lay Moorings</b>  <b>38</b> <b>Licensing of moorings</b>  <b>39</b>	<p>These articles provides the Council with powers related to the provision, maintenance and licensing of moorings within the Port. It is considered that modernised express provisions are conducive to the efficient and economical management and maintenance of the Port.</p>	<p>Similar provisions are found within articles 14 to 17 of the Yarmouth (Isle of Wight) Harbour Revision Order 2011, articles 9 to 11 of the Poole Harbour Revision Order 2012, article 18 of the Watchet Harbour Revision Order 2000 and article 21 of the Burry Harbour Revision Order 2000.</p> <p>These articles provides for a level 4 fine for failure to comply with its requirements. This level of fine is required firstly to ensure that there is a sufficient level of deterrent (moorings in the Port are sought after and can be used to generate income, and the level of fine needs to be in excess of likely income generation) and secondly, a mooring obstructing safe navigation in the Port will constitute a navigational hazard. As such, it is considered that a level 4 fine is justified.</p>

<b>Offences as to moorings</b>		
<b>40 Bunkering</b>	This article provides the Council with powers in relation to licensing those persons carrying out commercial refuelling activities related to vessels in the Port.	To comply with the environmental duties contained in section 48A of the 1964 Act, the Council considers that it is important that it has express powers to licence such activities so that proper risk assessments can be carried out and persons carrying out such activities can be required to comply with terms and conditions, designed to mitigate against risks associated with such activities (including environmental). Due to the fact that such operations are being carried out commercially and the potential environmental implications, it is considered that a level 4 fine is justified.  A similar provision can be found under article 31 of the Weymouth Harbour Revision Order 2021.
<b>41 Aids to navigation</b>	This article provides that the Council may, with the approval of Trinity House, erect, place, alter, discontinue or remove any aids to navigation in any place adjacent to the port (subject to obtaining the necessary interest in or over land).	This power is important for enabling the Council to meet its navigational safety duties and is therefore consistent with section 14(2)(b) of the 1964 Act to secure the management of the harbour in an efficient manner or of facilitating the efficient and economic transport of goods or passengers by sea.  A similar provision can be found under article 36 of the Weymouth Harbour Revision Order 2021.
<b>42 Power to dredge</b>	This article provides the Council with a power to dredge.	The power to dredge is a standard statutory harbour power and, under its existing local legislation (for example, section 2 of the 1829 Act and section 31 of the 1840 Act), the Council already has the power to dredge with respect of the Port.  This provision is not a “new” power; it simply provides clarity over the extent of the Council’s power to dredge the Port. It does not provide for additional jurisdiction to dredge in areas where the Council does not already have the power to do so.  It is conducive to the management of the undertaking in an efficient manner (as required by section 14(2)(b) of the 1964 Act, for the power to be included in the proposed HRO).

		<p>It is important that the Council is provided with a new power, reflective of modern provisions, so that it is able to dredge if and when required, and is desirable in the interests of securing the improvement, maintenance or management of the Port in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p> <p>If dredging is carried out at the Port under the provision in the future, then in line with section 75 of the Marine and Coastal Access Act 2009, the Council will not need to obtain a marine licence for the dredging activities at the port (which is the same as the current position). However, if disposal to sea is required in the future, then a marine licence will continue to be required for this disposal.</p> <p>A similar dredging power can be found under article 37 of the Weymouth Harbour Revision Order 2021.</p>
<b>43</b>  <b>Repair of landing places etc.</b>	This article provides that the Council may by notice require the owner or occupier of any landing place, jetty, embankment or structure or other work in the port or immediately adjoining the Port to repair it, within a reasonable time, to their reasonable satisfaction, if it is a danger to persons or vessels using the Port or a hindrance to navigation of the Port. The provision provides for a level 3 fine for non-compliance (on summary conviction) and a power for the Council to carry out the works and recover the reasonable cost of doing so from the person on whom the notice was served. There is right of appeal to the Secretary of State.	<p>This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of port users. Due to the potential safety implications of failure to comply, a level 3 fine is justified. Similar provisions can be found in article 11 of the Portland Harbour Revision Order 1997.</p> <p>This article relates to navigational safety in that it applies to features which are <i>“dangerous to persons or vessels using the port; a hindrance to the navigation of the port”</i> and is therefore desirable in the interests of securing the improvement, maintenance or management of the Port in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p>
<b>44</b>  <b>Restriction of works and dredging</b>	<p>These articles include the following:</p> <ul style="list-style-type: none"> <li>• Restriction of works and dredging;</li> <li>• Control of certain operations of works of statutory undertakers;</li> </ul>	Due to the age of the local legislation which currently applies to the Port, there is not comparable suite of licensing or related powers with which these articles can be compared. The provisions ensure that the Council will be aware of all works and dredging taking place in the Port and that it can require suitable safeguards to be put in place when they

45  Control of certain operations and works	<ul style="list-style-type: none"> <li>• Licensing of works;</li> <li>• Licence to dredge;</li> <li>• Appeals in respect of works or dredging licences; and</li> <li>• Obstruction of works;</li> </ul> <p>These articles provide the Council with modern powers regarding works and dredging carried out by third parties within the port limits. The provisions include requirements to obtain a licence from the Council prior to the undertaking of any works or dredging within the Port. The provisions are important to enable the Council to comply with its duties related to navigational safety and in respect of the environment (in particular section 48A of the 1964 Act).</p>	<p>are being conducted. As such, the level 4 fine in article 44(4) and the level 3 fines in articles 45(5) and 49 for breach are considered appropriate and proportionate.</p> <p>In addition, where works are carried out without or in breach of the terms of a licence, the Council may require the works to be removed and the site restored to its former condition. If they / it is not, the power to do so itself and recover the cost from the person liable.</p> <p>The provisions are important to enable the Council to comply with its duties related to navigational safety and in respect of the environment (in particular section 48A 1964 Act) by requiring third parties to seek authorisation from the Council by way of a licence (unless specifically authorised in accordance with article 44(3)).</p> <p>Article 48 provides an appeal procedure in respect of any refusal to grant a licence, the terms of any licence granted or any modifications requested by the Council. Aggrieved applicants are able to appeal to the Secretary of State.</p> <p>Applications are made in writing and the Council may charge a reasonable in respect of its administrative expenses for dealing with the application.</p> <p>Similar provisions can be found in articles 8 to 10 of the Watchet Harbour Revision Order 2000.</p> <p>With regard to these provisions generally, paragraph 17 of Schedule 2 provides that a Harbour Revision Order may include provision for:</p> <p style="padding-left: 40px;"><i>“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”</i></p>
50	This article provides that the Council may provide parking spaces and connected works within the Port.	This power has been expressly included because the Port includes car parks which form part of the undertaking. Similar provisions can be found in article 20 Penzance Harbour Revision Order 2009.

<b>Parking places and related facilities</b>		<p>The charging for such facilities is authorised by paragraph 11 of Schedule 2 to the 1964 Act:</p> <p><i>"Empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than as aforesaid) levied by them at the harbour."</i></p> <p>With regard to the provision of parking and related facilities generally, paragraph 17 of Schedule 2 to the 1964 Act provides that a Harbour Revision Order may include provision for:</p> <p><i>"Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour."</i></p> <p>And, as such, it is considered that this article is justified.</p>
<b>51 Removal of vehicles and vessels</b>	<p>This article authorises the Council to remove vehicles and vessels from the Port that have been left in a place where they will or are likely to interfere with the use of the Port or in any part of the Port where parking is prohibited.</p>	<p>This power is important in assisting the Council in managing efficiently traffic and vessels within the Port. Similar provisions can be found in article 22 Folkestone Harbour Revision Order 2017 and article 21 Penzance Harbour Revision Order 2009.</p> <p>This article is also desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act as the Council must be able to remove vehicles and vessels that contradict a prohibition notice (which must be conspicuously placed where appropriate) or that otherwise cause an obstruction or interfere with the use of the port. It would not be consistent with section 14(2)(b) of the 1964 Act if the Council was not afforded this express power.</p> <p>The article also provides the Council with the "lawful authority" required under section 52(1) of Part 4 Chapter 2 of the Protection of Freedoms Act 2012, to remove vehicles, as the Council ought not commit an</p>

		<p>offence if it removes vehicles in such circumstances, for the reasons set out above.</p> <p>Finally, it is considered that the interests of people who aren't the Council and otherwise entitled to remove said vehicles are sufficiently safeguarded by the provisions of article 51(2) – (7).</p>
<b>52</b> <b>Power with respect of disposal of wrecks</b>	This article extends the powers of the Council under section 252 of the Merchant Shipping Act 1995. In particular, it extends the circumstances in which the Council may recover expenses reasonably incurred by it in exercising said power from the owner of any such vessel. The provision includes notice requirements to the owner of the vessel and a period in which the vessel owner may dispose of the vessel itself.	This extension of the power in section 252 of the Merchant Shipping Act is common and important if the port is to be run in an efficient and economic manner. Similar provisions can be found in article 24 of the Portland Harbour Revision Order 1997 and article 39 of the Weymouth Harbour Revision Order 2021.
<b>53</b> <b>Power to deal with unserviceable vessels</b>	This article provides that the Council may sell, break up or otherwise dispose of any vessel which is unserviceable and had been laid by or neglected in the Port or immediately adjoining the Port.	<p>This article applies in addition to the power under section 57 of the Harbours, Docks and Piers Clauses Act 1847 (unserviceable vessels to be altogether removed from harbour) and allows the Council to recover its costs for the exercise of removing unserviceable vehicles laid or neglected with the Port.</p> <p>This article is desirable in the interests of securing the improvement, maintenance or management of the Port in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea as required by section 14(2)(b) of the 1964 Act.</p> <p>A similar power can be found under article 40 of the Weymouth Harbour Revision Order 2021.</p>
<b>54</b> <b>Removal of obstructions other than vessels</b>	This article provides that the Council may remove anything other than a vessel which is causing or likely to become an obstruction to, or cause interference with navigation in any part of the Port or its approaches. The provision deals with the recovery of costs by the Council of reasonable expenses incurred by it in relation to the exercise of the power and sale of the item(s) recovered.	This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of port users, and important if the Port is to be run in an efficient and economic manner. Similar provisions can be found in article 8 of the Portland Harbour Revision Order 1997.

<b>55</b> <b>Provision against danger to navigation</b>	This article provides that in the case of injury to, or the destruction or decay of, a tidal work (defined in article 2), the Council must notify Trinity House (the general lighthouse authority) as soon as practicable.	This article is important in ensuring the Authority meets its duties with regards to navigational safety. This article puts on a statutory basis a requirement for the Council to notify Trinity House of an incident relating to tidal works. Under the Merchant Shipping Act 1995 Trinity House then has powers to direct the Council as appropriate in response to the injury, destruction or decay of a tidal work.  This article is conducive to the efficient management of the Port as required under section 14(2)(b) of the 1964 Act.
<b>56</b> <b>Notices</b>	This article sets out the process for serving any notices required under the HRO.	This article is conducive to the efficient management of the Port as required under section 14(2)(b) of the 1964 Act, clearly setting out the procedural requirements for Notices required under the Order.
<b>57</b> <b>Saving for Trinity House</b>	This article provides the standard saving provision for the rights of Trinity House.	No further justification required.
<b>58</b> <b>Crown Rights</b>	This article provides the standard saving provision for Crown Rights.	No further justification required.
<b>59 and 60</b> <b>Amendments</b>	<p><b>Amendment of the Act of 1829</b></p> <p>This Act has been amended to complete the process of modernisation under the HRO. These amendments include several substitutions where the level of fine (which hasn't been updated since 1829) is changed to refer to level 4 on the standard scale.</p> <p><b>Amendment of the Harbour Directions (Designation of Harbour Authorities) Order 2017</b></p> <p>The Port of Exeter currently benefits from being designated with Harbour Directions i.e. Exeter City Council, as SHA, is empowered to make Harbour Directions over it. The existing designation contained in the 2017 Order refers to provisions which are being</p>	<p>For the reasons explained, the amendments are necessary to complete the process of modernisation of the local legislation applying to the statutory harbour authority in conjunction with the provisions of the HRO and the repeals/ revocations contained in article 61 and Schedule 2 to the HRO.</p> <p>It should be noted that the 1840 Act, which established a body of Commissioners (commonly known as the 'River Commissioners' or the 'Topsham River Commissioners'), is being repealed in full under the HRO. The effect of this is that the 1840 Act shall cease to have effect and the body of Commissioners referred to in it shall cease to exist.</p>

	repealed under the proposed HRO. Therefore, it has been updated to refer to the limits of the Port as defined in Schedule 1 to the proposed HRO (limits of port).	
<b>61 Revocation / Repeal</b>	This article provides for the repeal and revocation (as appropriate) of the legislation listed in Schedule 2 referred to from the date of the HRO.	This HRO is being promoted in accordance with the Port Marine Safety Code's recommendation for harbour authorities to review and be aware of existing powers based in local and national legislation, seeking additional powers where necessary. The repeals set out in article 61 and the accompanying Schedule are required in conjunction with this HRO to complete the process of modernising the local legislation applying to the Council, granting the suite of modern powers and duties set out above which are consistent with section 14(2)(b) of the 1964 Act and which will assist the Council in meeting the recommendations of the Port Marine Safety Code.

**Table 4: Relevant policies, guidance and plans**

<b>Plan, policy or guidance</b>	<b><i>Demonstration that application is compliant with relevant plan, policy or guidance.</i></b>
<b>Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)</b>	<p>The Port is situated within the South Inshore Marine Area. Once published, Marine Plans become a material consideration and as such, it is considered in this Statement of Support in addition to the UK Marine Policy Statement. The relevant marine plan applying therefore is the 'South Inshore and South Offshore Marine Plan', July 2018 ("the South Marine Plan").</p> <p>The proposed HRO is a non-works HRO (i.e. it does not authorise a plan or project). Its provisions are focused on modernising the Council's existing statutory powers to support the efficient and economical operation, maintenance, management and improvement of the Port. The HRO modernises the Council's enforcement powers. The modernisation amends the process by which such enforcement provisions can be made, amended and repealed (general directions instead of / in addition to byelaws).</p> <p>The proposed HRO also clarifies the existing port limits to expressly include the port premises removing uncertainty over the exercise of the Council's enforcement powers. The other provisions of the proposed HRO are</p>

predominantly administrative (such as constitutional arrangements, financial, borrowing and charging powers; powers of development and disposal of land; and powers in relation to establishing advisory bodies, moorings, bunkering, dredging, and powers to deal with wrecks and vessels etc.). As such, it is expected that the effects of the proposed HRO on the South Marine Plan will be very limited and that any effects will be positive as the proposed HRO supports the economic and efficient management of the Port (including with respect to environmental considerations). A brief summary of compliance is nevertheless set out below.

### **Compliance with UK Marine Policy Statement**

The UK Marine Policy Statement ('MPS') sets out (in section 2.1) that the UK vision for the marine environment is for '*clean, healthy, safe, productive and biologically diverse oceans and seas.*' The core purpose of the proposed HRO is to modernise the Council's enforcement powers enabling it to keep its enforcement provisions under review and to update, amend and repeal them in a more timely and efficient manner than through byelaws. This will support the Council in ensuring it meets both its environmental duties under s48A of the Harbours Act 1964 and compliance with the Port Marine Safety Code. Both of which will support the vision of ensuring that the marine environment is kept '*clean, healthy, safe, productive and biologically diverse.*' The provisions of the proposed HRO also support the following high-level objectives contained in the MPS:

- (A) **Achieving a sustainable marine economy:** Marine businesses are acting in a way which respects environmental limits and is socially responsible.
- (B) **Ensuring a strong, healthy and just society:** The coast, seas, oceans and their resources are safe to use.
- (C) **Living within environmental limits:** Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.
- (D) **Promoting Good Governance:** Marine businesses are subject to clear, timely, proportionate and, where appropriate, plan-led regulation.

### **Compliance with the South Marine Plan**

The South Marine Plan was published in July 2018. Through its modernisation of the Council's statutory powers enabling the efficient and economic management of the Port and the activities that take place there, the proposed HRO will support the following objectives contained in the South Marine Plan:

	<p><b>Objective 1:</b> to manage existing, and aid in the provision of new, infrastructure supporting marine and terrestrial activity.</p> <p><b>Objective 3:</b> to support diversification of activities which improve socio-economic conditions in coastal communities.</p> <p><b>Objective 6:</b> to maintain and enhance inclusive public access to, and within, the south marine plan areas appropriate to its setting.</p> <p><b>Objective 7:</b> to support the reduction of the environmental, social and economic impacts of climate chance, through encouraging the implementation of mitigation and adaption measures...</p> <p>In addition, the proposed HRO is supported by policy S-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising that '<i>ports and harbour are essential to realise economic and social benefits for the south marine plan areas and the UK. S-PS-1 makes sure proposals do not restrict current port and Harbours Activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.</i>'</p>
<b>Insert other relevant plans/policy/guidance in this section</b>	<p><b>Port Marine Safety Code</b></p> <p>Please see our comments earlier in this Statement of Support relating to the Port Marine Safety Code (Table 3a).</p>

**Table 5: Any other relevant information**

In addition to the specific provisions of Schedule 2 to the 1964 Act, paragraph 17 of Schedule 2 provides that a Harbour Revision Order may include provision for:

*“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”*

For the reasons mentioned above, it is considered that to the extent that any provision contained in the HRO does not fall specifically within any other paragraph of Schedule 2, the provisions of the HRO would be conducive to the efficient functioning of the harbours and it is therefore within the scope of the 1964 Act for them to be included in the HRO.