EXPLANATORY MEMORANDUM TO

THE CATTEWATER HARBOUR REVISION ORDER 2025

2025 No. 390

1. Introduction

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

2. Declaration

2.1 Michelle Willis, acting Chief Executive Officer at the MMO can confirm that this Explanatory Memorandum meets the required standard.

2.2 Trudi Wakelin, Director of Marine Development (Domestic and International) at the MMO can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Morris at the MMO can be contacted with any queries regarding this instrument. Address: Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH. Telephone: 0208 026 5175. Email: harbourorders@marinemanagement.org.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to grant the Cattewater Harbour Commissioners ("the Commissioners") power as the Statutory Harbour Authority to modernise the powers applying in relation to Cattewater Harbour ("the Harbour") including updated powers to issue special directions to vessels and to set out the consequences of failing to comply with general or special directions. This instrument also clarifies the definition of Harbour limits.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 The Harbour is currently managed by the Commissioners using the existing local legislation.

5.2 The Commissioners conducted a review of their local legislation and identified a need to clarify the definition of harbour limits to expressly include the harbour premises, a need to update their borrowing powers to allow them to meet their obligations in

carrying out their functions and to confer additional powers on themselves to assist in the management of the Harbour.

5.3 The Ports Good Governance Guidance ("PGGG") published by the Department for Transport ("DfT") sets out principles of openness, accountability and fitness for purpose in managing harbours in the broad public interest. The PGGG is available to view online[1]. 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.

5.4 The PGGG identifies a number of principles which harbour authorities are advised to follow in order to comply with the PGGG. This instrument includes articles regarding the appointment and removal of the chair and deputy of the Commissioners and updating of the borrowing powers of the Commissioners, allowing them to manage the Harbour more effectively and to comply with the governance requirements of the PGGG.

5.5 The instruments inclusion of the Harbour premises will ensure that all parts of the Harbour come under the jurisdiction of the Harbour and ensuring that all parts of the Harbour can be managed by the Commissioners, therefore complying with the governance requirements of the PGGG.

5.6 The Port Marine Safety Code ("PMSC"), published by the DfT, sets out a national standard for all current aspects of port marine safety. The PMSC is available to view online[2] and a hard copy of the PMSC is available for the 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.

5.7 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 that:

"… *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*".

5.8 The Commissioners conducted a review of their local legislation and identified a need to confer additional powers on themselves to assist in the management of the Harbour in compliance with the PMSC, including updated powers to issue special directions to vessels and to set out the consequences of failing to comply with general or special directions.

5.9 In addition, the harbour master appointed by the Commissioners will have updated powers to issue special directions to vessels to meet the obligations for navigational safety under the PMSC.

5.10 Illustrative plans ("the plans") accompany this instrument, as the Commissioners are clarifying the limits (including the premises) of the Harbour. The limits are set out in the plans (Cattewater Harbour Limits Plan to the Harbour plan to the 2025 Order).

[1] Good governance guidance for ports: www.gov.uk/government/publications/good-governance-guidance-for-ports.
[2] Port Marine Safety Code: www.gov.uk/government/publications/port-marine-safety-code.

The Commissioners can exercise their statutory harbour powers within the area outlined with a red line on the plans. This is necessary to assist in the management of the Harbour in compliance with the PMSC.

5.11 The instrument also includes articles relating to the licensing, maintaining, and laying down of moorings, as the Commissioners identified a need for greater control over moorings to ensure the safe and economical management of activities within the Harbour to be compliant with the PMSC.

5.12 The instrument also sets out the consequences of failing to comply with a general or special direction and the consequences for committing an offence relating to moorings. This will enable the Commissioners to meet their statutory duties and obligations for environmental protection and safety of navigation under the PMSC.

5.13 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 Marine and Coastal Access Act 2009 (c.23). The South West Marine Plan ("the Marine Plan") was considered when making a determination on this application. The Marine Plan is available to view online[3] and 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.

5.14 The MMO's assessment of the application in relation to the policies of the Marine Plan, and conclusion of this application being compliant with the Marine Plan, is available on the Harbour Orders public register[4].

What was the previous policy, how is this different?

5.15 There have been no changes to government policy. This instrument makes changes to existing harbour legislation to align with government policy.

6. Legislative and Legal Context

How has the law changed?

6.1 The Commissioners applied to the MMO on 13th October 2020 for the Cattewater Harbour Revision Order 2025.

6.2 The responsibility for the consideration of the application, and the making of any Harbour Revision Order, passed to the MMO by virtue of the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674) which delegated the Secretary of State's functions under Section 14 of the Harbours Act 1964 ("the Act") to the MMO except in relation to specified applications.

6.3 This instrument will give the Commissioners updated powers to issue special directions to vessels and sets out the consequences of failing to comply with a general or special direction and the consequences for committing an offence relating to moorings.

6.4 The instrument also clarifies the definition of harbour limits to expressly include harbour premises.

[3] MMO South West Marine Plan: www.gov.uk/government/publications/the-south-west-marine-plans-documents.
[4] MMO Harbour Orders Public Register: www.gov.uk/government/publications/cattewater-harbour-revision-order.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with paragraph 10(1) of Schedule 3 to the Act, a notice was placed in the London Gazette on 8th June 2021 and the Western Morning News on 8th June 2021 and 15th June 2021 detailing the application for this instrument and how any objections or representations may be registered. The application for this instrument and all associated documents were made available for inspection at the Commissioners' office and the MMO's office, by prior appointment. The documents were also published on the MMO's website[5].

7.2 The MMO also consulted by email other such bodies it considered to have interest in this instrument. Full details of the consultation and a list of those bodies consulted are set out in the MMO's published decision letter, available to view online[6]. A hard copy of the decision letter is available for inspection on application to the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH.

7.3 The consultation ran from 8th June 2021 until 19th July 2021, the statutory period of forty-two days provided for in Schedule 3 to the Act.

7.4 No objections to this instrument were received within the statutory period of forty-two days.

7.5 The MMO considered the responses submitted by the bodies consulted, the Commissioners' responses and the information supplied in the formal application, in its determination of this instrument. The MMO was satisfied that the making of the instrument is desirable in the interests of securing the modernisation of the powers of the Harbour.

8. Applicable Guidance

8.1 The MMO does not propose to issue guidance in respect of the effects of this instrument. However, the Commissioners will publish particulars of this instrument in accordance with paragraph 24 of Schedule 3 to the Act.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument for the reason that the instrument is likely to have a low level of impact to businesses because the provisions of the instrument are updating the powers of the Commissioners to ensure effective management of Cattewater Harbour.

[5] MMO Harbour Orders Public Register: www.gov.uk/government/publications/cattewater-harbour-revision-order.
[6] Ibid.

Impact on businesses, charities and voluntary bodies

9.2 This instrument is likely to have a beneficial impact with more effective management of the Cattewater Harbour through the provisions in the instrument.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector given that the measures in this instrument mainly relate to the management of Cattewater Harbour.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The MMO will not actively monitor the operation of the provisions introduced by the instrument, but it will consider any representations received in this respect and will take these into account in the future exercise of its powers.

10.2 The instrument does not include a statutory review clause as one is not required. The Commissioners in their management of the Harbour are required to conduct reviews of their existing powers to ensure they meet their obligations in accordance with PMSC and PGGG, and where necessary to seek additional powers to meet their obligations.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 and does not relate to the withdrawal of the United Kingdom from the European Union.