EXPLANATORY MEMORANDUM TO

THE DOVER HARBOUR REVISON ORDER 2022

2022 No. 709

1. Introduction

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to provide powers to construct and maintain a wave wall at the Port of Dover ("the Port") to protect a newly constructed marina from wave energy within the Port. The instrument also confers relevant associated powers required in connection with the wave wall construction and maintenance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Port is a trust port owned and managed by Dover Harbour Board ("the Board"). It is a body established and governed by its own local legislation collectively known as the Dover Harbour Acts and Orders 1954 to 2022.

6.2 The Board applied to the MMO on 20th October 2021 for the Dover Harbour Revision Order 2022 ("the Order").

6.3 The responsibility for the consideration of the application, and the making of any Order, passed to the MMO by virtue of the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674) which delegated the Secretary of State's functions under Section 14 of the Harbours Act 1964 (c.40) ("the Act") (Ministers' powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency) to the MMO except in relation to specified applications.

6.4 In accordance with paragraph 4 of Schedule 3 to the Act, the MMO concluded that the project did not fall within Environmental Impact Assessment Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and was not a relevant project (that is a project which would be likely to have significant effects on the environment by virtue of factors such as its nature, size

or location). The MMO notified the Board of its decision under paragraph 5 of Schedule 3 to the Act on 12th October 2021.

7. Policy background

What is being done and why?

7.1 The Dover Harbour Revision Order 2012 (S.I. 2012/416) authorised the construction of the Dover Western Docks Revival ("DWDR") Scheme, those works were also subject to a marine licence in accordance with Part 4, Section 67 (Applications) of the Marine and Coastal Access Act 2009 (c. 23) ("the 2009 Act").

7.2 Following completion of the construction of a new marina as part of the DWDR Scheme, the Board identified an unexpected situation whereby wave heights within the new marina under south westerly storm conditions, in combination with high water, were leading to unacceptable movement of the floating pontoons within the new marina. The movement of the floating pontoons causes serious safety concerns, and the Board cannot open the new marina until the problem is rectified.

7.3 It was determined that wave attenuation measures were required before the marina would be suitable for use. A small inner wave wall was constructed in 2020, at the entrance to the marina. The wall was not, however, sufficient to rectify the safety issue. It was therefore proposed to construct an outer wave wall of approximately 70 metres in length. The outer wave wall is designed to protect the entrance to the marina from wave energy. The outer wave wall was not included within the Dover Harbour Revision Order 2012, therefore the Board determined that a new Order was required.

7.4 The Order creates offences of intentionally or recklessly obstructing any person acting under the authority of the Board in setting out the lines of or in constructing the works and interfering with, moving or removing equipment for the purposes of setting out. Setting out is the process of marking the principle points of the works in preparation for construction. The Order also requires the Board to exhibit lights and take such other steps for the prevention of danger to navigation in relation to the works, as Trinity House may direct. If the Board fails to comply with a direction from Trinity House and was found guilty of an offence, it would be liable for a fine. These offences were considered necessary to enable the Board to manage the construction of the works and to regulate the carrying on by others of activities relating to the construction of the works. The offences were also considered necessary to prevent danger to navigation.

7.5 The outer wave wall will support tourism and recreation by allowing the newly created marina to open and to provide enhanced facilities for sea-going vessels. Sea ports perform an important role in the tourism and leisure industries, supporting many different forms of economic and social activity, including passenger cruise liners, ferries and sea going vessels in accordance with the National Policy Statement for Ports (February 2012). This can be viewed on the below link:

https://www.gov.uk/government/publications/national-policy-statement-for-ports

7.6 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 2009 Act. The South East Marine Plan was considered when making a determination on this application. The South East Marine Plan can be viewed here on the below link:

https://www.gov.uk/government/publications/the-south-east-marine-plan-documents

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

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

https://www.gov.uk/government/publications/port-of-dover-outer-wave-screen-harbour-revision-order

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

7.9 In accordance with Part 4, Section 67 (Applications) of the 2009 Act, an application for a marine licence for these works was submitted to the MMO on 19th October 2021.

7.10 There was public interest in this application. Please see section 10 of this Explanatory Memorandum for further information. There was no media interest in this application.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 In accordance with paragraph 10 of Schedule 3 to the Act, a notice was placed in the London Gazette on 9th December 2021 and the Dover Express on 9th December 2021 and 16th December 2021 detailing the application for the Order and how any objections or representations may be registered. The consultation ran from 9th December 2021 to 22nd January 2022. Two public representations were received within this period and no objections were received.

10.2 The MMO also consulted with other such bodies it considered to have interest in the Order. These are set out in the decision letter via the link provided in paragraph 10.4 (below).

10.3 The public representations were made in relation to potential impacts on recreational rowers, the safe passage in and out of the marina, beach renourishment, the hydrographic modelling for the wave wall and the plan of the works. The Board provided clarifications to those who submitted a representation. The MMO considered the responses submitted by the bodies consulted, the Board's responses and the information supplied in the formal application, in its determination of this Order. The MMO was satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour.

10.4 Details of the consultation and the bodies consulted can be found in the decision letter at:

https://www.gov.uk/government/publications/port-of-dover-outer-wave-screen-harbour-revision-order

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

11. Guidance

11.1 The MMO does not propose to issue guidance in respect of the effects of the Order. However, the Board will publish details of the making of the Order in accordance with paragraph 24(1) and (2) of Schedule 3 to the Act.

12. Impact

12.1 There is no, or no significant, impact predicted on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact predicted on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant impact predicted on businesses, charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

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

15. Contact

15.1 David Morris at the MMO Telephone: 0208 026 5175 or email: harbourorders@marinemanagement.org.uk can be contacted with any queries regarding the instrument.

15.2 Trudi Wakelin, Director for Marine Licensing at the MMO can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tom McCormack, Chief Executive Officer at the MMO can confirm that this Explanatory Memorandum meets the required standard.