EXPLANATORY MEMORANDUM TO

THE FOLKESTONE HARBOUR REVISION ORDER (AMENDMENT) ORDER 2025

2025 No. 596

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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 the 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 correct drafting errors in The Folkestone Harbour Revision Order 2017 (S.I. 2017/601) ("the 2017 Order") by amending Articles 12(2), 14(2), and 15(2), and removing the upper limits on fines for non-compliance with safety and lighting obligations.

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 2017 Order did not reflect the changes made by Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). These changes removed the upper limits on fines applicable upon summary conviction where such limits were defined by reference to the "statutory maximum".

5.2 This instrument corrects the 2017 Order to accurately reflect Section 85 of LASPO and the removal of the upper limits on fines on conviction by magistrates' court.

5.3 The instrument will remove the limit on the amount of any fine that may be imposed by a magistrates' court on Folkestone Harbour Company Limited ("the FHC"), as the Statutory Harbour Authority, if they fail to comply with Articles 12(2) (provision against danger to navigation), 14(2) (permanent lights on tidal works) and 15(2) (lights on tidal works during construction) of the 2017 Order.

5.4 The instrument is a correction to the 2017 Order and does not otherwise amend or revoke the 2017 Order.

5.5 The Port Marine Safety Code ("PMSC") published by the Department for Transport sets out a national standard for all current aspects of port marine safety. The PMSC is available to view online[1] and a hard copy of the PMSC is available for inspection on application to the Department for Transport Ports and Shipping Team, 4th Floor, Zone 4, Great Minster House, 33 Horseferry Road, London SW1P 4DR.

5.6 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.

5.7 The instrument will penalise the failure to comply with articles in the 2017 Order that require provision to be made against danger to navigation and ensuring the proper lighting of tidal works at the harbour. This will support the efficiency and safety of operations at the harbour and will be in accordance with the PMSC.

5.8 The MMO must ensure that proposals are in accordance with the applicable 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 Marine Plan ("the Marine Plan") was considered as the appropriate marine policy when making a determination on this application. The Marine Plan is available to view online[2] 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.

5.9 The MMO's assessment of the application in relation to the policies of the Marine Plan, and conclusion that this application is compliant with the Marine Plan, is available on the Harbour Orders public register[3].

What was the previous policy, how is this different?

5.10 There have been no changes to existing government policy. This instrument is necessary to ensure the FHC continued compliance with existing policy.

6. Legislative and Legal Context

How has the law changed?

6.1 The FHC applied to the MMO on 3rd March 2023 for The Folkestone Harbour Revision Order (Amendment) Order.

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

[1] Port Marine Safety Code: www.gov.uk/government/publications/port-marine-safety-code.
[2] MMO South Marine Plans: https://www.gov.uk/government/collections/south-marine-plans.
[3] MMO Harbour Orders Public Register: www.gov.uk/government/publications/the-folkestone-harbour-revision-order-amendment-order.

(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 corrects errors in Articles 12(2), 14(2) and 15(2) of the 2017 Order.

6.4 This instrument removes the limit on the amount of any fine that may be imposed by a magistrates' court on FHC if they fail to comply with Articles 12(2) (provision against danger to navigation), 14(2) (permanent lights on tidal works) and 15(2) (lights on tidal works during construction) of the 2017 Order.

Why was this approach taken to change the law?

6.5 This approach represents the appropriate legal mechanism available to implement the necessary changes to the 2017 Order.

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 9th May 2024, as well as in the Folkestone Herald on 9th May 2024 and on 16th May 2024 detailing the application for the Order 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 FHC's office and the MMO's office, by prior appointment. The documents were also published on the MMO's website[4].

7.2 The MMO also consulted by email other such organisations it considered to have interest in this instrument. Full details of the consultation and a list of those organisations consulted are set out in the MMO's published decision letter, available to view online[5]. 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 9th May 2024 to 21st June 2024, 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 organisations consulted, the FHC's 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 correcting the errors in the 2017 Order.

8. Applicable Guidance

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

[4] MMO Harbour Orders Public Register: www.gov.uk/government/publications/the-folkestone-harbour-revision-order-amendment-order.
[5] Ibid.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this instrument relates to correcting errors in the 2017 Order.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because the purpose of the instrument is to correct errors in the 2017 Order.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector as the measures in this instrument relate to correction of errors in the 2017 Order.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The MMO will not actively monitor or review effects of this legislation, but it will consider any representations received and will take these into account in the future exercise of its powers.

10.2 This instrument does not include a statutory review clause. The FHC in its management of the Folkestone Harbour is required to conduct reviews of its existing powers to ensure it meets its obligations in accordance with the PMSC.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects errors in the 2017 Order. These errors were drawn to the attention of both Houses by the Joint Committee on Statutory Instruments in its Fourth Report of Session 2017–19[6].

11.2 This Explanatory Memorandum has been revised in response to the Thirty-first Report of Session 2024-25[7] by the Joint Committee on Statutory Instruments for a failure to comply with proper legislative practice by omitting to refer to an earlier Committee report resulting in making this instrument.

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.

[6] Fourth Report of Session 2017-19: https://publications.parliament.uk/pa/jt201719/jtselect/jtstatin/44/44.pdf
[7] Thirty-first Report of Session 2024-25: https://committees.parliament.uk/publications/48735/documents/255448/default/