EXPLANATORY MEMORANDUM TO

THE PORT OF SOUTHAMPTON HARBOUR REVISION ORDER 2025

2025 No. 198

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) Director for Marine Licensing, 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 Associated British Ports ("the Authority") power to modernise the statutory harbour powers applying in relation to the Port of Southampton ("the Port") including updated powers to make general and special directions and to set out the consequences of failing to comply with general or special directions. This instrument also clarifies the definition of Port 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 Port is currently managed by the Authority using the existing local legislation.

5.2 The Authority conducted a review of their local legislation and identified a need to clarify the definition of Port limits to expressly include the dock estate and to confer additional powers on themselves to assist in the management of the Port.

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 the harbour authorities are advised to follow in order to comply with the PGGG. The PGGG sets out that there should be effective management of Ports. This instrument includes an article to define the Port limits to include all the dock estate. This will ensure that all parts of the dock estate come under the jurisdiction of the Port and ensuring that all parts of the dock estate can be managed by the Authority and therefore complying with the governance requirements of the PGGG.

5.5 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.

5.6 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, and it advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation. 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*."

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

5.8 In addition, the Harbour Master appointed by the Authority will have updated powers to issue special directions to vessels to meet the obligations for navigational safety under the PMSC.

5.9 An illustrative plan ("the plan") accompanies this instrument, as the Authority is clarifying the limits of the Port. The limits are set out in the plan. The Authority can exercise its statutory harbour powers within the area outlined with a red line on the plan. This is necessary to assist in the management of the Port in compliance with the PMSC.

5.10 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 Authority to meet its statutory duties and obligations for environmental protection and safety of navigation under the PMSC.

[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.

5.11 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 Marine Plan ("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. 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 to view on the Harbour Orders public register[4].

What was the previous policy, how is this different?

5.12 There have been no changes to existing policy. This instrument is necessary to ensure continued compliance of the Port with existing policy.

6. Legislative and Legal Context

How has the law changed?

6.1 The Authority applied to the MMO on 12th June 2020 for the Port of Southampton Harbour Revision Order 2025.

6.2 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") to the MMO except in relation to specified applications.

6.3 This instrument will give the Authority updated powers to issue special directions to vessels and sets out the consequences of failing to comply with a general or special direction.

6.4 The instrument also clarifies the definition of Port limits to expressly include those parts of the Port situated above the high-water mark of ordinary spring tides.

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 26th April 2021, and in the Southern Daily Echo on 26th April 2021 and 3rd May 2021 detailing the application for this instrument and how any objections or representations may be registered. The application for the instrument and all associated documents were made available for inspection at the Port's office and the MMO's office, by prior appointment. The documents were also published on the MMO's website[5].

[3] MMO South Marine Plans: www.gov.uk/government/collections/south-marine-plans.
[4] MMO Harbour Orders Public Register: www.gov.uk/government/publications/the-port-of-southampton-harbour-revision-order.
[5] Ibid.

7.2 Four representations were received within the statutory period of forty-two days. Two expressed general discontent with the provisions without providing a reason why and the other two were queries regarding the plan that accompanied the application.

7.3 The MMO also consulted by email other such bodies it considered to have interest in this instrument. A full list of those bodies consulted is set out in the MMO's published decision letter, available to view online[6]. The consultation ran from 26th April 2021 until 6th June 2021, the statutory period of forty-two days provided for in Schedule 3 to the Act.

7.4 The MMO considered the responses submitted by the bodies consulted, the Authority's response 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 Port.

7.5 The MMO published details of the consultation online[7]. A hard copy of the consultation outcome is available for inspection on application to the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH.

8. Applicable Guidance

8.1 The MMO does not propose to issue guidance in respect of the effects of this instrument. However, the Authority will publish particulars of the 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 Authority to ensure effective management of the Port of Southampton.

Impact on businesses, charities and voluntary bodies

9.2 This instrument is likely to have a beneficial impact with more effective management of the Port of Southampton 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 the Port of Southampton.

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.

[6] MMO Harbour Orders Public Register: www.gov.uk/government/publications/the-port-of-southampton-harbour-revision-order.
[7] Ibid.

10.2 This instrument does not include a statutory review clause as one is not required. The Authority in their management of the Port is required to conduct reviews of its existing powers to ensure it meets its obligations in accordance with PMSC and PGGG, and where necessary to seek additional powers to meet its 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.