EXPLANATORY MEMORANDUM TO

THE PORTSMOUTH INTERNATIONAL PORT AND CAMBER HARBOUR REVISION ORDER 2025

2025 No. 1223

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 confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 David Morris at the MMO can be contacted by email at the following address with any queries regarding the instrument: harbourorders@marinemanagement.org.uk. Alternatively, the MMO can be contacted by telephone: 0300 123 1032.

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 Portsmouth City Council ("the Council") power as the Statutory Harbour Authority to align previously separate statutory undertakings and miscellaneous pieces of local legislation and to allow the Council to manage both the Portsmouth International Port and the Camber (together "the Port") for the efficient and economical operation, maintenance and improvement of the Port.

4.2 The role of the Statutory Harbour Authority is to manage, regulate and maintain a harbour to ensure safe, efficient and environmentally responsible navigation and use.

Where does the legislation extend to, and apply?

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

4.4 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 a Municipal Port managed by the Council and is made up of three statutory undertakings and governed by a number of miscellaneous pieces of local legislation. The jurisdiction of the Council overlaps with the jurisdiction of the King's Harbour Master for the Dockyard Port of Portsmouth.

5.2 Nearly all the existing local legislation is being repealed to ensure all areas of the Port are governed by virtually identical statutory provisions, which will significantly improve the efficient and economic operation and management of the Port.

5.3 At the time of the Council's application for this instrument, the relevant published guidance was the Port Marine Safety Code[1] ("the PMSC") issued by the Department for Transport ("the DfT"), which set out a national standard for all aspects of port marine safety.

5.4 In April 2025, the DfT published an updated PMSC, entitled Ports & Marine Facilities Safety Code ("the Code"). The Code is available to view online[2] and a hard copy of the Code is available for inspection on application to the Department for Transport Maritime Navigation Safety & Wrecks, Great Minster House, 33 Horseferry Road, London SW1P 4DR. The Code provides updated policy guidance that continues to uphold and reinforce the core principles of the PMSC.

5.5 The MMO has reviewed the Code and is satisfied that it remains consistent with the established safety and operational standards promoted by the PMSC. Accordingly, the MMO considers that the changes made by the Council align with the Code and the decision to make this instrument is appropriate and justified.

5.6 The PMSC identified 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. It advised that harbour authorities should seek additional powers if their existing powers are insufficient to meet their obligations to provide safe navigation. In particular, paragraph 2.5 of the PMSC stated 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 Council conducted a review of the Port's legislation and identified a need to confer additional powers on themselves to assist in the management of the Port in compliance with the PMSC.

5.8 This instrument sets out the Council's functions in respect of the Port and authorises the Council to improve, maintain, regulate, manage, mark and light the Port and provide facilities; carry out various activities related to works, structures and equipment at the Port to facilitate the proper operation, improvement, development and future viability of the Port to be compliant with the Code.

5.9 This instrument also consolidates, modernises and extends the powers of the Council for the Port. It includes powers in relation to general directions, byelaws, regulation of moorings, and control of bunkering in the Port to ensure the safe and economical management of activities within the Port in compliance with the Code.

5.10 The Council already has special direction powers for the Port. However, the instrument modernises those powers to include the power to issue special directions to vessels to meet the obligations for navigational safety under the Code.

[1] Port Marine Safety Code 2016: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032153/port-marine-safety-code.pdf.

[2] Ports & Marine Facilities Safety Code 2025: https://assets.publishing.service.gov.uk/media/67fd175bed87b81608546666/port-marine-safety-code.pdf.

5.11 The Ports Good Governance Guidance ("the PGGG") published by the 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[3], a hard copy of the PGGG is available for inspection on application to the Department for Transport Ports and Shipping Team, Great Minster House, 33 Horseferry Road, London SW1P 4DR.

5.12 The instrument's inclusion of measures to manage surplus funds and to allow the Council to enter into confidential commercial agreements with customers is in accordance with the governance requirements of the PGGG.

5.13 The instrument's inclusion of provisions in articles 46 and 49 regarding the development of land and other commercial activities provide the Council with a specific power to act via a company for the purposes of the Port in order to remove any doubt as to whether a Council in its capacity as Statutory Harbour Authority can rely on its local legislation or its general local government powers for such purposes.

5.14 The MMO is the regulatory authority responsible for determining applications for Harbour Revision Orders under the Harbours Act 1964 (c. 40) ("the Act"). The MMO must review, consult on, and decide whether to approve, modify, or reject proposed changes to harbour powers or boundaries, ensuring they are legal, justified, and in the public interest.

5.15 In accordance with Section 58(3) (decisions affected by marine policy documents) of the Marine and Coastal Access Act 2009 (c. 23), the MMO must also ensure that proposals align with the relevant marine plan. 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[4] and a hard copy of the Marine Plan is available for inspection on application to the Marine Management Organisation Harbour Orders Team, Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne NE4 7AR.

5.16 The MMO's assessment of the application in relation to the policies of the Marine Plan, and its conclusion that this application is compliant with the Marine Plan, is available to view on the Harbour Orders public register[5].

What was the previous policy, how is this different?

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

6. Legislative and Legal Context

How has the law changed?

6.1 The Council applied to the MMO on 26th November 2021 for the Portsmouth International Port and Camber 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

[3] The Ports Good Governance Guidance: https://assets.publishing.service.gov.uk/media/5f624ee08fa8f510664dc460/ports-good-governance-guidance.pdf.
[4] MMO South Marine Plan: https://www.gov.uk/government/collections/south-marine-plans.
[5] MMO Harbour Orders Public Register: https://www.gov.uk/government/publications/the-portsmouth-international-port-and-camber-dock-harbour-revision-order.

of State's functions under Section 14 (minister's powers, on application of harbour authorities to make orders) of the Act to the MMO except in relation to specified applications.

6.3 This instrument gives the Council updated powers to issue special directions to vessels and sets out the consequences of failing to comply with general and special directions.

6.4 This instrument also clarifies the Port limits to expressly include Port premises.

Why was this approach taken to change the law?

6.5 This approach is the sole legal mechanism available to implement the necessary changes to the existing local legislation.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with paragraph 10(1) of Schedule 3 to the Act, notice of this application was placed in the London Gazette on 2nd March 2023, as well as in The News (Portsmouth) on 2nd March 2023 and 9th March 2023. The notices set out details of the application and the process for submitting objections or representations.

7.2 The application and all associated documents were made available for public inspection at the Portsmouth International Port Office and the MMO's office, by prior appointment. The documents were also published on the MMO's website[6].

7.3 In addition, the MMO consulted by email with other organisations it considered to have interest in the proposed instrument. Full details of the consultation, including a list of consultees are provided in the MMO's published decision letter, available to view online. A hard copy of the decision letter is available for inspection on application to the Marine Management Organisation Harbour Orders Team, Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne NE4 7AR.

7.4 The consultation period ran from 2nd March 2023 to 12th April 2023, the statutory period of 42 days under Schedule 3 to the Act.

7.5 No representations in relation to this instrument were received from members of the public during the statutory consultation period.

7.6 The MMO received one objection from the Royal Yachting Association ("the RYA"). As part of its objection, the RYA had concerns regarding the wording of Article 53 relating to unserviceable vessels on land. The reference to 'land' was removed from the Article 53 and the RYA withdrew their objection.

7.7 In determining the application, the MMO considered the responses received from consultees, the Council's replies and the information provided in the formal application. The MMO was satisfied that the making of this instrument is desirable in the interests of securing the improvement, maintenance and management of the Port.

8. Applicable Guidance

8.1 The MMO does not propose to issue guidance on the effects of this instrument. Existing legislative framework and guidance remain sufficient to understand and

[6] MMO Harbour Orders Public Register: https://www.gov.uk/government/publications/the-portsmouth-international-port-and-camber-dock-harbour-revision-order.

implement this instrument. Additionally, the Council 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 because the instrument falls outside of scope of the Better Regulation Framework[7] as it has no direct impact on businesses and because the provisions of this instrument are updating the powers of the Council to ensure effective management of the Port.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the measures in the instrument relate to the management of the Port.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the measures in this instrument relate to the management of the Port.

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. However, it will consider any representations received and may take these into account in the future exercise of its statutory powers.

10.2 The instrument does not include a statutory review clause. The Council in their management of the Port is required to conduct reviews of their existing powers periodically to ensure it meets its obligations in accordance with the Code and where necessary to seek additional powers to fulfil those 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 ("relevant European Union Acts") and does not relate to the withdrawal of the United Kingdom from the European Union.

[7] Better Regulation Framework: https://www.gov.uk/government/publications/better-regulation-framework