EXPLANATORY MEMORANDUM TO

THE SAINT MAWES PIER AND HARBOUR REVISION ORDER 2022

2022 No. 228

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 Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend the Saint Mawes Pier and Harbour Act 1854 ("the Act of 1854") so that the number of shares required to be eligible to be a director on the board, for the Saint Mawes Pier and Harbour Company ("the Company"), is reduced from ten to five. The amendment also permits the appointment of up to two non-shareholding directors to be included in the total number of ten directors.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This explanatory memorandum has been re-laid before Parliament. The Secondary Legislation Scrutiny Committee (SLSC) requested further information about the number of shares referred to in the instrument and the effect of reducing the shares. The SLSC also requested further information about how the board of the Company is run and how it will change based on this instrument. This explanatory memorandum now includes this information.

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 Company is the statutory harbour authority for the harbour of Saint Mawes and is governed by its own local legislation collectively known as the Saint Mawes Pier and Harbour Act and Orders 1854 to 2022 as provided for via article 1(2) of the instrument. The Company is responsible for the administration, maintenance, and improvement of the Saint Mawes Pier and Harbour.

6.2 The Company applied to the MMO on 8 October 2020 for the Saint Mawes Pier and Harbour Revision Order 2022 ("the Order").

6.3 Saint Mawes Pier and Harbour is a private port. The key constitutional provisions relating to the Company are found in sections 4 to 8 of the Act of 1854. Under section

4 of the Act of 1854, the capital of the Company shall be £1,400. Section 5 of the Act of 1854 provides that the number of shares into which the capital shall be divided shall be 280 and that the amount of each share is therefore £5. The shares referred to in the Order are these shares. Section 8 of the Act of 1854 sets out that directors must hold a minimum of 10 shares. Every person on the Board is a director.

6.4 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.

7. Policy background

What is being done and why?

7.1 The Ports Good Governance Guidance ("PGGG") published by the Department for Transport sets out principles of openness, accountability and fitness for purpose in managing harbours in the broad public interest. The PGGG can be viewed on the link below:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918508/ports-good-governance-guidance.pdf

7.2 The PGGG identifies a number of principles which harbour authorities are advised to follow in order to comply with the PGGG including reviewing the performance of the harbour authority's board of directors.

7.3 The Company has conducted a review of the performance of the board and has identified a need to increase the flexibility available when appointing new directors to the board in order to comply with the principles of the PGGG. In particular, the principles set out in Part A Section 1, which state:

"The board and its committees need to have the appropriate balance of skills, experience, independence and knowledge to enable them to discharge their respective duties and responsibilities effectively."

7.4 There are approximately 20 people who hold shares in the Company. Of those people, around one third do not currently hold the minimum number of shares to stand for directorship. By reducing the qualification threshold from 10 shares down to 5 shares, the amendments to the Act of 1854 mean that most of those people would then be eligible to stand for directorship. This effectively doubles the number of people that could be eligible to stand as directors and serve on the Board which increases the available skills pool.

7.5 The amendments also permit the appointment of up to two non-shareholding directors to be included in the total number of ten directors. This further widens the pool of people eligible to be a director, making it unlikely that there will be a situation in the future where a person with a particular type of expertise required for the Board cannot be appointed due to shareholding requirements.

7.6 There was no public or media interest in this application.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to the 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(1) of Schedule 3 to the Act, a notice was placed in the London Gazette on 4 May 2021 and the Western Morning News (as a local advertisement) on 4 and 11 May 2021 detailing the application for the Order and how any objections or representations may be registered.

10.2 The MMO also consulted with other such bodies it considered to have an interest in the Order. A full list of those bodies consulted can be seen in the MMO's decision letter which is linked in paragraph 10.4 of this explanatory memorandum.

10.3 No objections to the Order were received within the statutory period of forty-two days provided for in Schedule 3 paragraph 2(f) (procedure for making harbour revision and empowerment orders) to the Act. The consultation ran from 4 May 2021 until 14 June 2021.

10.4 The MMO considered the responses submitted by the bodies consulted, the Company's responses and the information supplied in the formal application, in its determination of this Order. The MMO is satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour. Details of the consultation can be found in the decision letter at:

https://www.gov.uk/government/publications/the-saint-mawes-pier-and-harbour-revision-order

10.5 A hard copy of the decision letter 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 Company will publish particulars, and serve copies of the Order in accordance with paragraph 24 of Schedule 3 to the Act.

12. Impact

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

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

12.3 A full 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

14.1 The instrument does not include a statutory review clause as one is not required. Whilst the MMO will not actively monitor or review the operation of the provisions

introduced by the instrument, 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 Daniel Jose at the MMO can answer any queries regarding the instrument. Address: Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH. Telephone: 0208 720 2232. Email: harbourorders@marinemanagement.org.uk.

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.