EXPLANATORY MEMORANDUM TO

THE YARMOUTH (ISLE OF WIGHT) HARBOUR REVISION ORDER 2011

2011 No. 1347

1. This explanatory memorandum has been prepared by the Marine Management Organisation 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 the Yarmouth (Isle of Wight) Harbour Commissioners ("the Applicant") with powers to facilitate the efficient management and regulation of the harbour.

2.2 The Yarmouth (Isle of Wight) Harbour Revision Order 2011 ("the Order") repeals and in certain cases amends various existing enactments relating to the harbour in line with the Government's Trust Port Policy.

2.3 The powers sought in the order would:

a) clarify and define the harbour limits in modern terms;
b) allow the Applicant to make general directions and the Harbourmaster to make special directions for a wide range of purposes;
c) introduce a licensing regime for harbour water taxis;
d) require that private moorings in the harbour should be licensed by the Applicant;
e) provide powers for the Applicant to designate parts of the harbour for specific uses;
f) require private fuel bowsers used in the harbour to be licensed;
g) make miscellaneous changes to the management procedures at the port.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Applicant applied to the Secretary of State for Transport on 14 March 2008 for the present Order to be made under Section 14 of the Harbours Act 1964 ("the Act").

4.2 The responsibility for the consideration of the application, and the making of any order, passed to the Marine Management Organisation (MMO) by virtue of the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I 2010/674) which delegated the Secretary of State functions under Section 14 to the Organisation except in relation to specified applications.

4.3 The Applicant operates Yarmouth harbour as a Trust Port under powers contained in the Yarmouth (Isle of Wight) Harbour Orders 1931 to 2002. The orders incorporate section 33 of the Harbours, Docks and Piers Clauses Act 1847, which has the effect of making the harbour subject to the "open port" duty. This means that the harbour must be open to anyone for the shipping and unshipping of goods and the embarking and landing of passengers on payment of the rates set by the local legislation for the port.

4.4 The harbour is also subject to the Yarmouth (Isle of Wight) Harbour Byelaws 1973, which were made under the Harbour Revision Order of 1971. The Byelaws were made almost forty years ago. The Applicant now regards them as out of date. The present order has been promoted to modernise the powers of the Applicant, having regard to the advice contained in the Government's Trust Port Review of 1998 and in "Modernising Trust Ports" (originally published in 2000) that harbour authorities should review and update their legislation.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The MMO has made the following statement regarding Human Rights:

In our view the provisions of the Order are compatible with the Convention rights.

7. Policy background

7.1 Following the modernisation of its constitution in 2001 the Applicant carried out a full review of the harbour byelaws and concluded that many were outdated and inadequate for present day conditions.

7.2 In order for the applicant to change any of the bylaws at present an application to the Secretary of State is required. The process of securing and amending bylaws takes considerable time, the only alternative is to promote a harbour revision order which is also a time consuming process.

7.3 Increasingly, harbour authorities are obtaining powers to issue general or special directions, which allow management changes in connection with the operation of the harbour to be implemented much more quickly. The Department for Transport's May 2008 consultation document on the draft Marine Navigation Bill acknowledges the desirability of harbour authorities obtaining powers to issue general directions to shipping. While a power currently exists for the Harbourmaster at Yarmouth to give special directions in limited circumstances, it is considered that a wider power would be helpful.

7.4 The Applicant therefore decided to promote this Order to seek the power to issue both general directions and special directions on a wider range of matters.

At the same time, it was decided to seek to modernise and extend other powers to enable the Applicant to manage the harbour effectively in the interests of all stakeholders and harbour users.

8. Consultation outcome

8.1 In accordance with the Act a notice was placed in the London Gazette and for two consecutive weeks in the Isle of Wight County Press detailing the application for the Order and how any objections or representations may be registered. The Secretary of State received 10 objections to the Order within the statutory period of forty-two days provided for in Schedule 3 of the Act. Not all of these objections were withdrawn and the Secretary of State therefore determined that he was required to hold a public inquiry. A public inquiry was held on 19, 20 and 21 January 2010 and the inspector's report was received on 25 February 2010. The report can be found at www.marinemanagement.org.uk/licensing/public_register/harbour/documents/yhc_inspectors.pdf

8.2 In addition to the statutory notice period the Applicant consulted with a wide range of stakeholders about the draft proposals for the Order. Changes were made to the pre-application draft of the Order as a result of the consultation, notably the introduction of a review process under which objectors to a proposed general direction would be able to refer the matter to an adjudicator. Discussion with stakeholders continued after the application for the Order was made. This process led the Applicant to seek amendments at inquiry to the original draft. The agreements reached in those discussions led to the withdrawal of six of the original objections.

9. Guidance

9.1 The MMO does not propose to issue guidance in respect of the effects of the Order. However, the Applicant will publish particulars, and serve copies, of the order in accordance with paragraph 24 of Schedule 3 to the Act.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minor.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument. The MMO considers the impacts to be minor. A public inquiry was held into the order and the inspector recommended the order be made.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 In particular this instrument impacts on small business in the following ways:

a) The Order requires any person who wishes to operate a water taxi in the harbour to be licensed by the Applicant and therefore applies to small business. This is considered to be positive for both operator and the harbour in that it will create a degree commercial certainty for any operator and provide assurance to the Applicant that a service will be provided all year round.

b) The Order applies to small business indirectly through the provision which gives power to issue general or special directions, in so far as any user of the harbour will be subject to directions issued. The issuing of directions is not uncommon; directions are issued to assist in the effective and safe management of the harbour.

c) The Order includes provision for the Applicant to licence fuel bowsers. This effectively prohibits the use of a private fuel bowsers in the harbour unless they are licensed. This provision applies to all users of the harbour including any small business, any business who does not wish to pay a licence fee is not forced to do so, there are alternative options for refuelling such as using the fuelling birth in the harbour or refuelling a one of the nearby harbours.

12. Monitoring & review

12.1 Whilst the MMO will not actively monitor the operation of the provisions introduced by the Order, it will consider any representations received in this respect and will take these into account in the future exercise of its powers, both generally and in respect of the Yarmouth (Isle of Wight) Harbour.

13. Contact

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