

MARINE MANAGEMENT ORGANISATION

HARBOURS ACT 1964 (AS AMENDED)

**PROPOSED PORT OF TYNE HARBOUR REVISION ORDER
201[X]**

**STATEMENT IN SUPPORT OF APPLICATION
FOR THE ORDER BY THE PORT OF TYNE AUTHORITY**

1. **INTRODUCTION**

- 1.1 This statement relates to the application by the Port of Tyne Authority ("the Authority") for the proposed Port of Tyne Harbour Revision Order ("the HRO"). The Authority is the statutory harbour authority for the Port of Tyne.
- 1.2 The application, made in a letter to the Marine Management Organisation ("the MMO") dated 3 May 2016, is accompanied by:
- (a) A draft of the proposed HRO;
 - (b) This statement; and
 - (c) The fee for the application, paid to the MMO by electronic transfer in advance of the application, in the sum of £4,000.00.
- 1.3 The application is for a harbour revision order to be made under the powers conferred on the Secretary State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674)).
- 1.4 The HRO would revoke the requirement for a member of the Port of Tyne Authority ("the Authority") to vacate their office on the 30th June following their seventieth birthday and also revoke the restriction on a person who has attained the age of 64 from being appointed a member of the Authority for the first time. The Order also enables the appointment of the chairman or other member of the authority by the Secretary of State (including an appointment to fill a casual vacancy) to be made for such period not exceeding 3 years as the Secretary of State may specify. These minor changes to the constitution of the Authority are considered conducive to the efficient and economical operation, maintenance, management and improvement of the Port of Tyne.

2. **THE PORT OF TYNE AUTHORITY**

- 2.1 The Port of Tyne ("the Port") is a trust port owned and managed by the Authority being a body established and governed by its own local legislation collectively known as the Port of Tyne Harbour Acts and Orders 1968 to 2008. The Authority were constituted under the Port of Tyne Reorganisation Scheme 1967 Confirmation Order 1968 (S.I. 1967 No. 942) ("the 1967 Scheme") as the body responsible for the conservancy, maintenance and improvement of the Port of Tyne. The Authority were subsequently reconstituted by the Port of Tyne Authority (Constitution) Revision Order 1974.

2.2 The Port of Tyne has no shareholders or owners and is governed by an independent board, the majority of whom are non-executive directors appointed by the Secretary of State for Transport. The port is run on a commercial basis and operates for the benefit of its stakeholders who include customers, suppliers, employees, river users and the local community – all reflecting its trust port status.

3. **THE PORT OF TYNE**



3.1 The Port of Tyne is situated in the north east of England and is one of the UK's largest Trust Ports. It is also one of the UK's major deep sea ports and a vital trading gateway to Europe and beyond.

3.2 The origins of the Port can be traced back to the second century when the Romans established a port on the River Tyne to trade goods with northern Europe, Spain and Italy. The Port continued thorough medieval times but it was the steady growth in the export of coal from 1600 onwards, together with the duties levied on river users, that gave Newcastle its prosperity and the famous phrase "carrying coals to Newcastle" as coal steadily increased in importance.

3.3 The growth in trade and industry, fuelled by the Industrial Revolution and an expanding railway network, marked a growing need for improvements to the river Tyne. In 1850 the Tyne Improvement Act passed the stewardship of river to Tyne Improvement Commissioners made up of two life commissioners; fifteen representatives from the corporations of Newcastle, South Shields, Tynemouth, Gateshead and Jarrow; and fifteen representatives from ship owners, mine owners and traders.

3.4 In 1854, the Commissioners started a programme of development and improvement that continued well into the twentieth century and laid the

foundations for what was to become the modern-day Port of Tyne. Within 70 years, the river Tyne was deepened from 1.83 metres to 9.14 metres and over 150 million tonnes dredged from it. The North and South Piers were built together with the Northumberland, Tyne and Albert Edward Docks and the staithes at Whitehill Point and Dunston. The results of these developments could be seen in 23 million tonnes of cargo being handled by the Port by 1910.

- 3.5 On 31st July 1968 the Tyne Improvement Commissioners were dissolved under the provisions of the 1967 Scheme and their property, rights and liabilities were transferred to the Port of Tyne Authority. In addition, the 1967 Scheme also transferred to the Port of Tyne Authority the property, powers and duties of the Corporations of Gateshead, Newcastle and Tynemouth in respect of those bodies' harbour undertakings.
- 3.6 Following a decade of diversification and redevelopment including £120 million of reinvestment the Port now has five commercial business areas – bulk & conventional cargo, car terminals, cruise & ferries, logistics, and estates. –The Port's three rail terminals, its modern international cruise and passenger terminal building and its growing cruise business all add value to the north east region.
- 3.7 The Port of Tyne is now North East England's major deep river port comprising 613 acres and operating across five business areas whilst retaining a strong commitment to the community with a mission to provide a vibrant and sustainable Port of Tyne well into the next century.

4. **THE HARBOURS ACT 1964**

- 4.1 Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers which have been delegated to the MMO (see paragraph 1.3 above) to make an order under that section (known as a harbour revision order) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 to the Act.
- 4.2 Section 14(2)(a) of the 1964 Act requires that written application be made to the MMO by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides that the MMO must be:

"satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships".

- 4.3 Because this is not an application for a harbour revision order which, directly or indirectly, authorises a project (within the meaning of paragraph 1 of Schedule 3 to the 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.
- 4.4 The application for the HRO under section 14 of the Act of 1964 meets the conditions set out in that section. In particular, the application meets the requirements of:
- (a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained and managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.
 - (b) section 14(2) of the 1964 Act because:
 - (i) The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing the harbour: and
 - (ii) The making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.
- 4.5 Paragraph 1 of Schedule 2 to the Harbours Act 1964 provides that a Harbour Revision Order may include provision for "*reconstituting the harbour authority by whom the harbour is being improved, maintained or managed or altering their constitution....*".
- 4.6 Paragraph 17 of Schedule 2 to the Harbour Act 1964 provides that a Harbour Revision Order may include provision for "*Any object which, though not falling within any of the foregoing paragraphs, appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour.*"

5. **NEED AND JUSTIFICATION FOR HRO**

General

- 5.1 The proposed HRO would make minor amendments to certain provisions which apply in respect of the appointment of members of the Authority which it is considered would be conducive to the efficient and economical operation, maintenance, management and improvement of the Port of Tyne.

The 1967 Scheme

- 5.2 As briefly mentioned in paragraph 2.1 above, the Authority was first constituted under the 1967 Scheme. The Scheme also conferred duties and powers on the Authority with respect to the property and undertakings transferred to it referred to in paragraph 3.5 above. The 1967 Scheme also made provision with respect to the procedure of, and other incidental matters concerning, the Authority set out in Schedule 1 to the Scheme. In particular –
- 5.2.1 Paragraph 7 of Schedule 1 to the 1967 Scheme provides that a member of the Authority must vacate their office on the 30th June following their seventieth birthday, and
- 5.2.2 Paragraph 9 of Schedule 1 to the 1967 Scheme prevents a person who has attained the age of 64 from being appointed a member of the Authority for the first time.
- 5.3 The standards set out in DfT's Guide to Modernising Trust Ports (second edition)(2009) ("the Guide") are designed to provide a benchmark of best practice for all trust ports in England. Chapter 3 of the Guide gives guidance relating to the constitution and management of trust ports. Chapter 3.6.1 states that *"trust port boards should contain an appropriate balance of skills, competencies and **experience** to control the port effectively and provide it with leadership, motivation and strategic direction"* (emphasis supplied) . Chapter 3.6.2 suggests that *"**relevant life experience** and track record should be considered as important as skills obtained through a conventional career path and professional qualifications"* (emphasis supplied). Most relevantly, paragraph 3.6.6 states *"There is no age limit or minimum requirement on board membership. The overriding requirement is for the board to be optimally effective, and this is most likely to be achieved with a diverse range of members, in which age should not be a relevant factor, but in which a breadth and depth of skills and experience should be paramount"*.
- 5.4 The Equality Act 2010 came into force in England on 1 October 2010 and consolidated most of the UK's anti-discrimination laws and expanded the scope of the Public Sector Equality Duty from disability, race and sex to cover, among other categories, age. As a trust port, the Authority is not a public body to which the Act applies but the Act does serve to demonstrate public policy in respect of age discrimination.
- 5.5 In light of the above, it is considered that the provisions of the 1967 Scheme requiring that a member of the Authority must vacate their office following their seventieth birthday, and preventing a person who has attained the age of 64 from being appointed a member of the Authority for the first time are not only

outmoded but conflict with specific Government guidance applying to the Authority.

The 1974 Order

- 5.6 On 1 August 1974, the Authority was reconstituted under the provisions of the Port of Tyne Authority (Constitution) Revision Order 1974 (S.I. 1974 No.923). That Order ("the 1974 Order") also made incidental provision with respect to the members and proceedings of the Authority in addition to those provisions of Schedule 1 to the 1967 Scheme which were not repealed by the 1974 Order. The 1974 Order made a small repeal to paragraph 7 of Schedule 1 to the 1967 Scheme (but only in respect of the first appointments made under the Scheme) and did not affect paragraph 9 of Schedule 1 to the Scheme).

Article 4(1) of the 1974 Order made provision as to the appointment by the Secretary of State of the first members of the Authority under the new constitution. Article 4(2) of the 1974 Order then made provision in relation to subsequent appointments of members of the Authority by the Secretary of State. In particular, article 4(2) provides for such members to continue in office until the end of June in either the second or third year following their appointment unless they are appointed to fill a casual vacancy. In the case of a member appointed to fill a casual vacancy, such a member may continue in office until the end of June occurring within four years after the date of appointment to be specified by the Secretary of State at the time of making the appointment.

- 5.7 The requirement under article 4(2) of the 1974 Order that all members of the authority (other than members appointed to fill a casual vacancy) must be appointed for a term ending on 30 June is unduly prescriptive and has given rise to difficulties in practice on occasions where there have been delays in the appointment of members. It would conduce to the efficient functioning of the harbour for the Secretary of State to have the flexibility to appoint members for a maximum period of three years expiring at any time.

6. The HRO

- 6.1 An explanation of each substantive article in the HRO is set out below.
- 6.2 Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

Article 3 of the Order – Amendment of 1974 Order

- 6.3 Article 3 of the Order amends article 4 of the 1974 Order and substitutes for paragraph (2) of that article, new paragraphs (2) to (5) set out in article 3. This

amendment removes the requirement that the term of a member of the Authority must expire at the end of June and enables the Secretary of State to appoint any member of the Board for a term not exceeding three years expiring at any time.

6.4 The need and justification for article 3 is explained in paragraph 5.7 above

Article 4 of the Order – Revocations

6.5 Article 4 revokes paragraphs 7 and 9 of Schedule 1 to the 1967 Scheme. The revocations have the following effect–

6.5.1 a Member of the Authority who attains the age of 70 will no longer be required to vacate their office on 30 June following that birthday, and

6.5.2 a person who is 64 or older may become a member of the Authority for the first time.

6.6 The need and justification for article 4 is explained in paragraph 5.3 to 5.5 above.

Conclusion

6.7 It is considered that the provisions of the Order fall within paragraph 1 of Schedule 2 to the 1964 Act (see paragraph 4.5 above).

6.8 In addition to paragraph 1 of Schedule 2 to the 1964 Act, paragraph 17 of Schedule 2 provides that a harbour revision order may include provision providing for:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

6.9 For the reasons mentioned above, it is considered that if and to the extent that any provision contained in the HRO does not fall specifically within paragraph 1 of Schedule 2, the provisions of the HRO would be conducive to the efficient functioning of Tyne Harbour and it is therefore within the scope of the 1964 Act for them to be included in the HRO.

Dated: 3 May 2016

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