

MARINE MANAGEMENT ORGANISATION

HARBOURS ACT 1964 (AS AMENDED)

**PROPOSED DOVER HARBOUR REVISION
(CONSTITUTION) ORDER 201[X]**

**STATEMENT IN SUPPORT OF APPLICATION
FOR THE ORDER BY DOVER HARBOUR BOARD**

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1. **INTRODUCTION**

- 1.1 This statement relates to the application by Dover Harbour Board (“the Board”) for the proposed Dover Harbour Revision Order (“the HRO”). The Board is the statutory harbour authority for Dover Harbour.
- 1.2 The application, made in a letter to the Marine Management Organisation (“the MMO”) dated 6 January 2015, 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 BACS 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 make changes to the constitution of the Board considered conducive to the efficient and economical operation, maintenance, management and improvement of Dover Harbour. It would enable the Board to make further contribution to the town and community of Dover as proposed in the Ministerial statement referred to in 5.11.4 below.

2. **DOVER HARBOUR BOARD**

- 2.1 The Port of Dover (“the Port”) is a trust port owned and managed by the Board being a body established and governed by its own local legislation collectively known as the Dover Harbour Acts and Orders 1954 to 2014. The Board is responsible for the administration, maintenance and improvement of the harbour at Dover which is more fully described in section 3 below. Under its current constitution, most Board Members are appointed by the Department for Transport and there are no shareholders or owners.
- 2.2 Every year the Board takes responsibility for approximately 13 million passengers travelling through the Port, as well as other major shipping activities such as general cargo, cruise and marina. In doing so, the Board observes the standards set out in Government guidelines for trust port governance which deal with accountability, and seeks to act in an open and accountable way but without compromising commercial confidentiality or legal responsibility.

2.3 The Board is committed to complying with the principles of the various codes and reports covering corporate governance except where not relevant to the Board's constitution.

3. **DOVER HARBOUR**

3.1 The Port, situated in the county of Kent on the south-east tip of England and in close proximity to the Continent, has always been of importance to cross-Channel traffic and the history and origins of the Port can be traced right back to Roman times. Since then, the Port has grown and evolved through the centuries to what it is today - one of the world's premier ports, a key gateway to and from the European mainland and when the Channel Tunnel is closed, which does happen, the Port provides the alternative means by which most freight and passengers can enter or leave the UK.

3.2 The history of the Port since the Second World War has been one of expansion and development to keep pace with the demands from passengers, tourist cars, and roll-on roll-off freight.

3.3 Most recently the introduction of double-deck berths and further redevelopment of the ferry terminal led to the opening of the Port's most recent ferry berths in 2005 by Her Majesty Queen Elizabeth II. Since then the Port has experienced huge transformation and growth, and with a very substantial increase in freight traffic, the Port is now a very significant international transport hub for the movement of people and goods.

3.4 The Port receives over 19,000 vessels per year, double that of any other port in the UK. The Port handles approximately 5 million RoRo vehicles per year and over 13 million passengers and its annual revenues are circa £60 million. The value of freight traffic through the Port is approximately £89 billion per year. The Port is crucial to the UK's economy and national resilience in terms of trade flows. In addition the Port is a major employer in East Kent, supporting approximately 4,000 jobs at the Port and 3,752 within its supply chain.

3.5 Dover Cruise Port is now the UK's second busiest cruise port and the marina achieves the highest ratings in the industry for service and quality.

3.6 Continuous traffic growth prompted the Board to be the first UK port to undertake a comprehensive 30 year Master planning exercise. As a result of the Master Plan and in consultation with the public and stakeholders the Board developed a major proposal for a new second ferry terminal in the Western Docks ("Terminal 2"). Powers to carry out the Terminal 2 project were granted to the Board by the Dover Harbour Revision Order 2012.

- 3.7 Since the application for the Harbour Revision Order 2012, Europe has undergone a period of recession and consequently there has been a short term reduction in freight traffic levels. The Board has implemented a substantial amount of renovation work within the Eastern Docks, including several berth refurbishments and the introduction of a Traffic Management Improvement Scheme. Although there has been a 13% increase in ro-ro traffic at the Port the earlier short term reduction in freight traffic in combination with increased ferry sizes and the improvement works at the Eastern Docks has delayed the capacity breach which will trigger the requirement to commence construction of Terminal 2.
- 3.8 In order to protect the consented development under the HRO, the Board is proposing to commence the construction of Terminal 2 through the development of an interim scheme, called the Dover Western Docks Revival (DWDR). The DWDR scheme will create a 2 berth cargo handling facility, pending the need to bring the full Terminal 2 scheme on-stream. It will bring forward the majority of the marine works required for the Terminal 2, thereby securing port operational land for the future, whilst creating a 23 hectare site which can be made available in the interim for cargo handling facilities and the potential subsequent delivery of a Port Centric Logistics Centre.

4. **THE HARBOURS ACT 1964**

- 4.1 Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers which have been devolved 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 interest 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 Harbour Act 1965 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*".

5. **NEED AND JUSTIFICATION FOR HRO**

5.1 **General**

5.1.1 The proposed HRO would modernise the Board's constitution which is considered conducive to the efficient and economical operation, maintenance, management and improvement of the Port of Dover.

5.1.2 Currently the Board consists of a chairman and four other members appointed by the Secretary of State, the chief executive officer and a further executive officer with the Board having discretion to appoint a further member. The HRO would retain the power of the Secretary of State to appoint the chairman with the other members of the Board ("directors") being appointed by the Board. It will enable the Board to appoint two community directors, which in turn will strengthen the links between the Port and its community as envisaged in the Ministerial statement (see paragraph 5.11.4 below). These directors will bring special knowledge or experience of the position of the port within the local community and local economy. The HRO also puts the Port's consultative mechanisms on a statutory basis and, in line with

the Companies Act 2006, provides for meetings to take place by electronic means.

- 5.1.3 The Port is a hugely important part of the local economy and ranks first as the largest ferry port in the EU. The powers sought are considered by the Board and the Department for Transport necessary to enable Dover to work with the community at the beginning of what will be a significant period of regeneration for the Port and its town.
- 5.1.4 An explanation of, and the need for, each substantive article in the HRO is set out below.
- 5.1.5 Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

5.2 **Article 3 of the Order – New Constitution.**

- 5.2.1 This article lays out the future constitution of the Board, increasing the number of directors from eight to nine. The Board will comprise a chairman appointed by the Secretary of State, six non-executive directors appointed by the Board and two executive directors appointed by the Board. Two of the non-executive directors will be drawn from the community and will have special knowledge or experience of the position of the Port within the local community and local economy.
- 5.2.2 The article reflects the Ministerial statement (referred to in paragraph 5.11.4 below) and embeds an enduring and meaningful consultative relationship between the Port and its community by the appointment of two non-executive directors who live in or who have a business in the community.
- 5.2.3 Article 3(4) sets out the process for the appointment of the two directors to be drawn from the community.
- 5.2.4 Article 3(6) details the skills, competencies, knowledge, experience or ability requirements for persons which the Board consider may be suitable to be appointed as directors.

5.3 **Article 4 of the Order – Appointment and terms of office of first directors.**

This article details the transitional arrangements which apply to the initial reconstitution of the Board, including provision for the existing directors to continue in office for their current terms of office.

5.4 **Article 5 of the Order – Terms of office of subsequent directors**

This article provides for the term of office of a director which will usually be for three years or a lesser period exceeding 12 months, unless the director has been appointed to fill a casual vacancy.

5.5 **Article 6 of the Order – Casual vacancies**

This article sets out the process for filling casual vacancies as and when they occur.

5.6 **Article 7 of the Order – Appointment of chief executive**

This article provides for the appointment of a chief executive.

5.7 **Article 8 of the Order – Undertaking and declaration by directors**

This article requires that each director must, before his or her appointment takes effect, sign an undertaking in respect of the discharge of the duties of a director and disclose any relevant interest.

5.8 **Article 9 of the Order – Advisory bodies**

This article covers the establishment of two external advisory bodies each with an independent chairman. The Dover Port Users Group and Port & Community Forum have already been established and article 9 puts on a statutory basis the establishment and continuance of the two bodies and their administration and makes provision for the Board to consult the bodies.

5.9 **Article 10 of the Order and Schedule 1 - incidental provisions relating to the Board**

Schedule 1 sets out the board procedures for meetings, appointment of a deputy chair, resignation of directors, disqualification of directors and vacation of office, frequency of meetings, quorum, meetings by electronic means and re-appointment of directors.

5.10 **Article 11 and Schedule 2 – Revocation**

Article 11 and Schedule 2 revoke the Dover Harbour Revision Order 1975 which is superseded by the proposed HRO.

5.11 **Conclusion**

5.11.1 In addition to paragraph 1 of Schedule 2 to the 1964 Act (see paragraph 4.5 above), 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."

5.11.2 For the reasons mentioned above, it is considered that 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 Dover Harbour and it is therefore within the scope of the 1964 Act for them to be included in the HRO.

5.11.3 The Shipping and Ports Minister, Stephen Hammond visited Dover Harbour on 9 April 2014 and announced that he had agreed with the Board that it should seek up-to-date financial powers giving it the flexibility it needs to improve and expand further. Those powers were granted by the Dover Harbour Revision Order 2014.

5.11.4 During his visit on 9 April 2014 the Minister also stated:

"I believe Dover needs an enduring and meaningful consultative relationship with its port. This can be achieved by a legal commitment to consult interested parties, as has been done successfully at other major trust ports.

So as well as the legal commitment I have agreed with the board that an important form of permanent community involvement is seats in the boardroom.

Therefore additional, community non-executive directors should be appointed to the board, as has been done at other successful trust ports."

The new community directors and the consultation provisions in the proposed HRO will enable this to happen.

Dated: 8 January 2015

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