

**EXPLANATORY MEMORANDUM TO
THE CAERNARFON HARBOUR TRUST (CONSTITUTION) HARBOUR REVISION
ORDER 2012**

2012 No. 1984

1. This explanatory memorandum has been prepared by the Marine Management Organisation (“MMO”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes changes to the constitution of the Trustees of Caernarfon Harbour Trust (“the Applicant”), extends the limits over which the Applicant has jurisdiction and makes further provision considered conducive to the efficient and economical performance and management of the harbour. The main purpose of the instrument is to give effect to the guidance contained in the Department for Transport publication ‘Modernising Trust Ports Second Edition’ (“MTP2”).

2.2 Specifically the Order:

- a) provides for the Applicant to consist of a body of no more than ten trustees with the required experience in relevant matters but is properly constituted if there are not fewer than seven trustees appointed or co-opted and able to act as trustees of the Trust;
- b) requires that three trustees will be appointed by named local authorities, six by existing trustees and subsequently by the new trustees and one will be the Harbour Master.
- c) enables up to two additional trustees to be co-opted from time to time for a period not exceeding 12 months;
- d) sets down rules governing the administration of the Applicant;
- e) empowers the Applicant to take out indemnity insurance for the trustees;
- f) empowers the Applicant to carry on trades or businesses which conduce to the efficient and economical performance of its functions;
- g) establishes an advisory committee to be consulted by the Applicant on the management, maintenance, improvement, conservation, protection or regulation of the harbour;
- h) defines the limits of jurisdiction of the Applicant and extends that jurisdiction to include that part of the Menai Strait known as “The Swellies”; and

- i) revokes certain provisions of the Caernarfon Harbour Revision Order 1989 concerned with the composition of the Applicant and the appointment procedure and remuneration of trustees.

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

3.1 None

4. Legislative Context

4.1 The Applicant is the harbour authority for the Port of Caernarfon and operates under powers provided in the Caernarfon Acts and Orders 1793 to 1989.

4.2 The Applicant applied to the Secretary of State for Transport ("the Secretary of State") on 11 November 2005 for an Order to be made under Section 14 of the Harbours Act 1964 ("the Act").

4.3 The proposed Order would not authorise a project. Accordingly Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment does not apply to the proposal and no environmental statement has been supplied with the application.

4.4 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 functions under Section 14 to the Organisation except in relation to specified applications.

5. Territorial Extent and Application

5.1 This instrument applies to Wales.

6. European Convention on Human Rights

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

As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

7.1 The Applicant applied to the Secretary of State for a harbour revision order to give effect to the Government guidance on trust ports and to extend its limits of jurisdiction to allow it to effectively manage an additional area of the Menai Strait known as "the Swellies".

7.2 The relevant guidance is contained in MTP2.

7.3 MTP2 is a Department for Transport publication issued by the Secretary of State which updates the guidance published in 2000 by the then Department for

Environment, Transport and Regions produced following a review of the trust port sector.

7.4 MTP2 represents a benchmark for best practice which lays down guidelines for the governance of trust ports. It recommends that all trust ports review their governance arrangements against the standards set out in the guidance. The guidance is available at:

<http://www2.dft.gov.uk/pgr/shippingports/ports/trust/goodgovernancesecondedition.pdf>

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 Caernarfon Herald detailing the application for the Order and how any objections or representations may be registered.

8.2 The Secretary of State received two objections to the Order within the statutory period of forty-two days provided for in Schedule 3 of the Act. Both of these objections were subsequently withdrawn and consequently the MMO was not required to call a public inquiry into the matter.

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 No impact on business, charities or voluntary bodies is foreseen.

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 there are no impacts and the changes are in line with policy.

11. Regulating small business

11.1 The legislation does not apply to small business.

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.

13. Contact

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