

**WELSH GOVERNMENT
HARBOURS ACT 1964 (AS AMENDED)**

**PROPOSED PORT TALBOT HARBOUR
(EXTENSION OF LIMITS) HARBOUR REVISION
ORDER 202[X]**

**STATEMENT IN SUPPORT OF APPLICATION
FOR ORDER BY:**

ASSOCIATED BRITISH PORTS

1.	INTRODUCTION.....	3
2.	ASSOCIATED BRITISH PORTS AND PORT TALBOT HARBOUR.....	4
3.	THE PORT MARINE SAFETY CODE AND MARINE PLANS	5
4.	THE HARBOURS ACT 1964	8
5.	NEED AND JUSTIFICATION FOR HRO	9
6.	CONCLUSION	12

1. INTRODUCTION

1.1 This statement relates to the application by Associated British Ports (“ABP”) for the proposed Port Talbot Harbour (Extension of Limits) Harbour Revision Order 202[X] (“HRO”). ABP is the statutory harbour authority for Port Talbot Harbour.

1.2 The application, made in a letter to Welsh Ministers dated [] 2023 is accompanied by:

- (a) [6] copies of the draft HRO;
- (b) [6] copies of the plan referred to in the HRO
- (c) [6] copies of this statement;
- (d) the fee for the application,[paid by BACS, in the sum of £XXX];
- (e) a Welsh translation of the HRO; and
- (f) copies of the following legislation:

Port Talbot Railway and Docks Act 1894;

Port Talbot Railway and Docks Act 1914;

British Transport Docks Act 1964;

British Transport Docks Act 1971;

Associated British Ports Act 1990; and

The Harbour Directions (Designation of Harbour Authorities)(No.2) Order 2015.

1.3 The application is for a harbour revision order to be made under the powers conferred by section 14 of the Harbours Act 1964 (“HA 1964”) which in Wales have been transferred to Welsh ministers by the Wales Act 2017

1.4 The HRO provides for the extension of the harbour limits of Port Talbot Harbour into Swansea Bay to include the land shown on Plan [x] within the jurisdiction of ABP as statutory harbour authority. It provides for ABP’s statutory responsibilities to be extended over the proposed new limits. The extension is required to specifically to address concerns of navigational safety in relation to specific anchorage and pilotage issues, and more generally to support the effective management of Port Talbot Harbour in an efficient and economical manner for the purpose of section 14(2)(b) of the HA 1964 and as recommended in the Port Marine Safety Code.

2. ASSOCIATED BRITISH PORTS AND PORT TALBOT HARBOUR

- 2.1 ABP is the statutory harbour authority for the Port Talbot Harbour, as well as for a number of other ports around the United Kingdom. The harbour undertaking inherited by ABP from the British Transport Docks Board (see para 2.10) includes the powers and duties conferred by local legislation in relation to Port Talbot Harbour, as set out below.
- 2.2 An Act for improving the Port and Harbour of Aberavon in the County of Glamorgan in 1834 established the Aberavon Harbour Company and authorised the construction of piers, breakwaters and other works to improve the facilities of the harbour formed by the estuary of the River Avon.
- 2.3 The Aberavon Port and Harbour Act 1836 provided for the Aberavon Harbour Company to be known as the Port Talbot Company and authorised the construction of the Old Dock and alterations to the entrance of the port. The powers of the company were subsequently extended by the Port Talbot Company Act of 1840.
- 2.4 By the Port Talbot Act 1865, the earlier legislation was repealed and the Port Talbot Company was dissolved, reconstituted and re-financed. The 1865 Act also authorised further works including a dock and entrance lock and various lengths of dock railway. Section 3 provided for the incorporation of the Harbour Docks and Piers Clauses Act 1847.
- 2.5 Thereafter, the Port Talbot Company became the Port Talbot Railway and Docks Company pursuant to the Port Talbot Railway and Docks Company Act 1894, which Act authorised significant new building work including a breakwater extension, a new breakwater, a new dock and an entrance lock.
- 2.6 The limits of the harbour were extended and defined by the Port Talbot and Railway and Docks Act 1899. The Port Talbot Railway and Docks Act 1914 authorised further extension of the piers at Port Talbot and the construction of a new entrance lock.
- 2.7 The Port Talbot Railway and Docks Company was absorbed into the Western Group under the Great Western Railway pursuant to the Railways Act 1921, and the port passed into the ownership of the British Transport Commission pursuant to the British Transport Act 1947.

- 2.8 The British Transport Docks Act 1964 authorised the construction of two new breakwaters so as to form the large tidal harbour. The harbour limits were extended to include an approach channel by section 19 of the British Transport Docks Act 1971.
- 2.9 The port was transferred to the British Dock Board when nationalised transport undertakings were reorganised under the Transport Act 1962 and is listed as one of the Dock Board's harbours in Part 2 of Schedule 3 to that Act. By virtue of section 5(1) of the Transport Act 1981, the British Transport Docks Board was reconstituted as Associated British Ports.
- 2.10 Section 16 of the Associated British Ports Act 1990 authorised an extension of the harbour limits, but only in respect of the powers of the harbour master and not for any other purposes, that is it did not extend the full jurisdiction of the harbour authority over the new limits. The Act also authorised an extended approach channel in which powers were taken to dredge.
- 2.11 The Harbour Directions (Designation of Harbour Authorities) (No. 2) Order 2015 designated the harbour authority of Port Talbot Harbour as a designated harbour authority for the purpose of harbour directions, at paragraph 12 of Schedule 1 to that Order in respect of the harbour limits as defined in the Port Talbot and Railway and Docks Act 1899 and extended by the British Transport Docks Act 1971.

3. THE PORT MARINE SAFETY CODE, A GUIDE TO GOOD PRACTICE ON PORT OPERATIONS AND MARINE PLANS

- 3.1 As the harbour authority for Port Talbot Harbour, the Port Marine Safety Code ("Code"), published November 2016 by the Department for Transport ("DfT") and endorsed by the devolved administrations, applies to ABP as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK.
- 3.2 The Executive Summary to the Code explains that:

"The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory

duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope.”

- 3.3 The Code, as well as the supporting document A Guide to Good Practice on Port Marine Operations, February 2018 (“Guide”), identify a number of tasks which harbour authorities should undertake in order to comply with the Code including reviewing and being aware of existing powers based on local and national legislation and advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation and, in doing so, to take account of the various mechanisms such as harbour orders which are available to amend statutory powers in an authority’s local legislation.
- 3.4 Part 2 of the Code contents sets out key measures to secure marine safety. This includes that ongoing review of existing powers should be supported by use of formal risk assessment and, in turn, formulation and implementation of a marine safety management system in order to keep risk as low as reasonably practicable. The requirements by which harbour authorities should keep their powers under review, and the use of risk assessment are set out in sections 2 and 3 of the Code.
- 3.5 Of particular reference to the proposed HRO, para 2.4 of the Code provides that “[a]dditional powers should be sought, if a risk assessment concludes that this would be the best means of meeting their safety obligations”. In addition, para 3.12 of the Code provides that harbour revision orders may be used, in the general context of marine safety, to extend harbour limits.
- 3.6 Section 4 of the Code describes key powers to be kept under review, which include:
 - 3.6.1 direction
 - 3.6.2 regulation of dangerous vessels
 - 3.6.3 lighting to manage safety of navigation
 - 3.6.4 pilotage.
- 3.7 The Guide sets out industry best-practice principles for compliance with the Code. Para 1.9.4 of the Guide describes how the harbour revision order process as set out in HA 1964 may be used to amend a harbour authority’s powers and jurisdiction to ensure compliance with the Code.
- 3.8 The Code, the Guide and the Ports Good Governance Guidance (published March 2018 by DfT) and applicable to ABP as statutory harbour authority place an emphasis on the

important role the harbour authority has on the safety of those using the harbour. This is relevant to the operative articles of the HRO and the purpose for which they are proposed. See section 5 of this statement below.

- 3.9 In accordance with this requirements set out in the Code, ABP has reviewed its powers at Port Talbot Harbour and concluded that it is necessary and desirable in the interests of safety to extend the limits of the harbour to address the specific anchorage and pilotage navigational safety issues, as set out in detail below.
- 3.10 The Welsh National Marine Plan ("Marine Plan"), adopted in November 2019, is the relevant marine plan made for the purpose of section 51 of the Marine and Coastal Access Act 2009. That plan contains a number of objectives which are aligned with the purpose of the HRO.
- 3.11 The Plan contains a number of cross-cutting themes, the second of which is "Achieving a sustainable marine economy". Objectives within this theme include contribute to a thriving Welsh economy by encouraging economically productive activities and profitable and sustainable businesses that create long term employment at all skill levels; and providing space to support existing and future economic activity through managing multiple uses, encouraging the coexistence of compatible activities, the mitigation of conflicts between users and reducing the displacement of existing activities. The Plan emphasises at para 26 that it "provides an integrated set of objectives and policies for the sustainable development of the Plan area and, as such, none of the objectives, policies or supporting text should be considered or applied in isolation".
- 3.12 The Plan also includes several sector-specific policies, one of which relates to ports and shipping. The ports and shipping sector objective in the Plan is to safeguard established shipping routes and support sustainable development in the shipping and ports sector.
- 3.13 By extending the harbour limits as proposed, having identified specific concerns in respect of navigational safety relating to the anchorage and pilotage which form part of the harbour's operations, the HRO will ensure the continued safe and effective operation of the harbour. (Note that para 414 of the Plan notes that Port Talbot specialises in bulk shipments.) By enabling safe navigation of the harbour by vessels, the HRO will facilitate increased use of the harbour, thereby encouraging economically productive activity. In doing so, the proposal is compliant with both general and sector-specific objectives in the Plan.
- 3.14 The HRO does not authorise any development and consequently it is not considered that it engages the National Policy Statement for Ports, February 2012.

4. THE HARBOURS ACT 1964

4.1 Section 14 of HA 1964 confers powers 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 HA 1964.

4.2 Section 14(2)(a) of HA 1964 requires that written application be made to Welsh Ministers by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides that Welsh Ministers 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 The matters set out in Schedule 2 to HA1964 include, in particular, at paragraph 6:

Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled.

4.4 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 HA 1964), prior notification to Welsh Ministers under paragraph 3(a) of Schedule 3 to HA 1964 is not required. [Welsh Ministers have been consulted, however, on the proposals.]

4.5 The application for the HRO under section 14 of HA 1964 meets the conditions set out in that section. The extension of the harbour falls within the objects set out in paragraph 6 of Schedule 2 in altering the limits of the harbour. In addition, the application meets the requirements of:

(a) section 14(1) of HA 1964 because it is made in relation to a harbour which is being improved, maintained or 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 HA 1964; and

(b) section 14(2) of HA 1964 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 and management of the harbour in an efficient and economical manner by enabling ABP to extend an established and robust safety management system over the added area over which management of navigation is required to maintain risk to as low as reasonably practicable.

5. NEED AND JUSTIFICATION FOR HRO

- 5.1 The HRO is required primarily for purposes of navigational safety. In addition to its status as a statutory harbour authority, ABP is a competent harbour authority in respect of Port Talbot Harbour under the Pilotage Act 1987, and has made a compulsory pilotage direction in respect of the area for which is such an authority. The area over which ABP exercises powers as a competent harbour authority does not extend beyond the existing limits of the harbour.
- 5.2 The deep water anchorage and pilot boarding area associated with Port Talbot Harbour are shown indicatively on fig [X] appended to this Statement. The existing harbour limits of Port Talbot Harbour are nine (9) nautical miles distant from the harbour's deep-water anchorage and designated pilot boarding area. Between the existing harbour limits and the Pilot boarding area in the deep-water anchorage are the designated dredge disposal spoil ground, sub 10m designated anchorage off Swansea and the White Oyster Ledge shoal patch.
- 5.3 The Port Talbot designated anchorage is located at a distance from Port Talbot Harbour as a requirement to accommodate very deep drafted vessels. The pilot boarding and landing area has necessarily been established in the anchorage area in lieu of the ability to manage safe navigation for lesser draft vessels to board and land in more sheltered areas of Swansea Bay between the existing deep water anchorage and the existing Port Talbot Harbour limits.
- 5.4 In compliance with the requirements of the Code in respect of marine safety and risk assessment(s), ABP undertook a pilotage boarding/landing and risk assessment review in April 2021 (reviewed February 2022), which drew attention to the following points:
 - 5.4.1 The ability to board and land pilots within as low as reasonably practicable principles (ALARP) in the Port Talbot Harbour deep water anchorage was limiting the ability to dock and sail vessels in the sheltered harbour within the relevant ALARP considerations for the harbour; and

- 5.4.2 To navigate without pilot to a safe boarding area and/ or disembark a pilot at a position that maintains pilot boarding and landing ALARP principles would require vessels to navigate to and from an area which presents various navigational hazards (see fig [Y] appended to this Statement).
- 5.5 The situation described above is recognised as being in conflict with the harbour authority's duty to effectively and safely manage marine operations within the harbour and approaches.
- 5.6 In addition, the ABP marine safety management system requires competent marine risk assessors and reviewers to consider incidents and investigation outcomes that have taken place in other harbour areas as part of the local risk review and continuous improvement process, and in compliance with the Code. Consequently, and following incidents at Port Talbot Harbour and at other ports, ABP undertook a review of anchorages in Swansea Bay including the Port Talbot anchorage in December 2021 which recognised certain points in relation to the safety of anchorage as a consequence of the anchorages being outside the Port Talbot harbour limits, which are set out below.
- 5.6.1 ABP has no powers to direct anchorage positions, spacing and circumstances within presently established anchorages;
- 5.6.2 ABP has no powers to direct the use of passage planning for piloted or non-piloted vessels approaching anchorages or leaving anchorages to board pilots in poor weather conditions;
- 5.6.3 ABP has no powers to establish reasonable general direction for safe anchoring and transit to and from pilot boarding / landing positions and also to the existing SHA limits;
- 5.6.4 ABP has no powers to utilise special direction in specific navigation safety scenarios to maintain navigational safety in poor weather conditions; and
- 5.6.5 without the powers described in points 5.6.1 to 5.6.4, extending the local port service's 24-hour provision and the established marine safety management plan would not alone provide the required level of safety management.
- 5.7 The proposed extension of the Port Talbot harbour limits will address the specific anchorage and pilotage navigational safety issue in addition to extending other powers such as removal of wrecks and lighting and marking in relation to safe navigation. It will enable ABP to extend an established and robust safety management system over the

added area over which the management of navigation is required to maintain ALARP principles.

- 5.8 ABP believes this proposed extension is not only in line with the Code's requirement to review powers and jurisdiction but also the requirement to seek the powers required to effectively manage marine safety.
- 5.9 As set out above, the justification and need for the HRO rely primarily on the matter of servicing the existing traffic of the port. However, and in addition to which, ABP has aspirations to promote further development at the port in order to take advantage of opportunities in respect of floating off-shore wind generation. In such circumstances, the extension of harbour limits as proposed in the HRO will assist in allowing safe use of the port to service future potential offshore wind generation facilities.
- 5.10 The HRO would authorise the extension of all powers and jurisdiction of ABP as harbour authority currently exercises over the harbour limits delineated in the British Transport Docks Act 1971 over the added area (as defined in the proposed HRO and as shown on the attached plan XX). For the avoidance of doubt, the added area will include that smaller area over which limited powers of the harbour master were extended under the Associated British Ports Act 1990. The purpose of this extension is to address specific navigational safety issues, relating to anchorage and pilotage, which ABP has identified in compliance with its obligations under the Code.
- 5.11 An explanation of, and the need for, each substantive article of the proposed HRO is set out below. Articles 1 and 2 of the HRO are not dealt with below as they are ancillary to the substantive provisions of the HRO.

Article 3 – Extension of limits of jurisdiction

- 5.12 This article authorises the extension of Port Talbot Harbour from the limits as defined in the Port Talbot Railway and Docks Act 1899 and as further extended by the British Transport Docks Act 1971 to include the added area. The added area is described in Schedule 1 to the HRO and shown for identification purposes on the plan at Schedule 2.
- 5.13 Article 3(2) provides that the same rights, powers, duties, obligations or liabilities which are exercisable or imposed on ABP or the harbour master in respect of the existing harbour limits will extend without amendment over the added area, subject to the qualifications in article 4. This is to ensure that the harbour authority's jurisdiction is consistent across the whole of the extended harbour limits

- 5.14 Note that the added area includes that area over which limited powers, in respect of the harbour master only, were extended under section xx of the British Transport Docks Act 1990. Again, this is to ensure that there is no inconsistency in the jurisdiction of the harbour authority and harbour master across the extent of the revised harbour limits.

.Article 4 – Application of existing legislation

- 5.15 This article provides that the Harbours Docks and Piers Clauses Act 1847 has effect within the added area as it was incorporated in the British Transport Docks Act 1964. This is to ensure that the powers exercisable across the extended harbour limits and thereby the jurisdiction of the harbour authority are consistent.
- 5.16 Article 14(2) provides that the existing byelaws will not apply to the added area. This is because they are not relevant to the area in question.
- 5.17 Article 14(3) provides that no ship, goods or passenger dues are chargeable in respect of those ships which pass through or anchor within the added area on their way to and from a place outside Port Talbot Harbour. This is to prevent additional charges being paid by traffic passing to other ports through the added area and anchorage site.

6. CONCLUSION

For the reasons explained above it is considered that the extension of the limits of Port Talbot Harbour is desirable in the interests of securing the management of the harbour in an efficient and economical manner and both satisfy the requirements of Section 14(2)(b) of HA 1964 and are desirable in the general public interest.