



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio



Llywodraeth Cymru  
Welsh Government

## The Harbours Act 1964:

Section 14 Harbour Revision Orders

Section 16 Harbour Empowerment Orders

**Procedural Guidance for Wales  
2018**

## 1. Introduction

- 1.1. This guide provides advice to prospective applicants and other interested parties on the application process for obtaining a Harbour Revision Order (HRO) and Harbour Empowerment Order (HEO) in respect of harbours wholly in Wales other than reserved trust ports, under sections 14 or 16 of the Harbours Act 1964 (the 1964 Act). It constitutes guidance and any prospective applicant should obtain their own legal advice before making an application.
- 1.2. For the purposes of this guidance, HROs under section 14 and HEOs under section 16 shall both be referred to as harbour orders.

### The Welsh Government's Role

- 1.3. Following the transfer of specific functions under the Harbours Act 1964 by virtue of the Wales Act 2017, the Welsh Ministers are responsible for making various types of harbour orders, including
  - Section 14 Harbour Revision Orders (HROs)
  - Section 16 Harbour Empowerment Orders (HEOs)
- 1.4. Responsibility for the procedural elements of harbour orders will be shared between Welsh Government officials and, in certain cases, the Planning Inspectorate for Wales (the Inspectorate). The procedure for orders which do not contain works-related provisions (known as 'non-works orders', and listed in the first part of Annex A) will be administered by the Ports Policy team of the Welsh Government. The Ports Policy team's contact details are:

Ports Policy Team  
Transport and Digital Connectivity  
Climate Change and Rural Affairs Group  
Welsh Government  
Cathays Park  
Cardiff CF10 3NQ

Email: [AviationPortsAndLogistics@gov.wales](mailto:AviationPortsAndLogistics@gov.wales)

### The Planning Inspectorate's Role

- 1.5. The Planning Inspectorate is an Executive Agency of the Welsh Government. The Inspectorate is appointed by the Welsh Ministers to undertake the procedural elements for certain functions under the Harbours Act 1964 "the 1964 Act", related to "works" harbour orders, under paragraphs 7, 7A, 7B, 9A and 17 within Schedule 2 of the Act. These are detailed in part 2 of Annex A of this guidance. The Planning Inspectorate's contact details are:

Specialist Casework Team  
The Planning Inspectorate for Wales  
Crown Buildings  
Cathays Park

Cardiff CF10 3NQ

Tel: 0303 444 5940

Email: [wales@pins.gsi.gov.uk](mailto:wales@pins.gsi.gov.uk)

### Section 14 Harbour Revision Orders (HROs)

- 1.6. Orders under section 14 can be applied for by the harbour authority concerned in improving, maintaining or managing a harbour in the exercise and performance of statutory powers and duties, or by a person, or a body representing persons, having a substantial interest in the harbour. Under section 14(2) of the Act, a HRO shall not be made in relation to a harbour unless the Welsh Ministers are 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 of facilitating the efficient and economical transport of goods or passengers by sea. The order may be made for achieving all or any of the objects specified in Schedule 2 of the 1964 Act. A HRO can extend or modify existing statutory powers and/or authorise works.

### Section 16 Harbour Empowerment Orders (HEOs)

- 1.7. Orders under section 16 may be applied for by any person whose objectives are the improvement, maintenance or management of a harbour, or the construction of a new harbour for which they are seeking statutory powers where such powers do not already exist.
- 1.8. Any person wishing to undertake any of the above works may apply for one of these orders.

## 2. Other Consents (Works Orders)

- 2.1. It is the responsibility of the applicant to ensure that they have all of the necessary consents in place prior to undertaking any works proposed.
- 2.2. However, the Planning Inspectorate is willing to consider aligning the application for the harbour order along with any other consent that may be required. This may include an application for a Marine Licence from Natural Resources Wales or for Planning Permission from the relevant local authority [where the works fall outside the scope of 'permitted development' as authorised by the Town and Country Planning (General Permitted Development) Order 1995 (as amended)].
- 2.3. Where the proposal will require other consents we will work with the other consenting bodies and where practical agree a joint approach to an environmental assessment and issue a single scoping and screening response for a single Environmental Statement (ES) to cover all aspects of a project.
- 2.4. We would encourage applicants to consider this joint approach which could be of benefit to them in avoiding duplication of information to be provided.

### 3. The Pre-Application Stage

3.1 Pre-application advice can be obtained, which extends to informal advice to identify any fundamental issues as well as the procedural aspects of the process. It is recommended that you also seek independent legal advice.

### 4. Notice of Intention to Submit an Application

- 4.1. In accordance with Schedule 3, paragraph 3 to the 1964 Act, a person may not make an application for a harbour order which, directly or indirectly, authorises any project unless that person has given the Welsh Ministers formal notice in writing of their intention to submit an application and the Welsh Ministers have responded. Notification should be given at the earliest opportunity and must outline the name of the harbour and the nature of the proposal.
- 4.2. Before submitting an application, we encourage you to arrange a meeting to notify the Planning Inspectorate/Ports Policy team of your intention, and to discuss the process and your requirements.
- 4.3. If you are submitting a works order, the Planning Inspectorate will respond in writing stating whether or not the proposal will be subject to an Environmental Impact Assessment (EIA) and giving reasons for the decision. The response will include what the environmental impact assessment should cover possibly following consultation with environmental bodies. A formal application cannot be submitted until this response has been provided.

### 5. Pre-Application Consultation and Engagement

#### Importance of Early Engagement

- 5.1. The pre-application stage is a vital part of the application process for a harbour order. We strongly encourage applicants to engage in early dialogue with the Planning Inspectorate/Ports Policy team and with other stakeholders, both prior to and during the formal pre-application consultation phase. As a front-loaded process, in which engagement, consultation and any necessary environmental assessment must be carried out prior to making an application, it is important that applicants access helpful and timely advice about what they are required to do and when.
- 5.2. Pre-notification engagement is crucial to the effective operation of the harbour order application process. Thorough and meaningful engagement with communities, local planning authorities, statutory consultees and other interested parties in the early stages of a project gives applicants the opportunity to overcome issues that would otherwise not come to light until formal pre-application consultation is undertaken further along in the process. EIA and Habitats Regulations Assessment (HRA) processes should also be iterative and fully integrated with both pre-application engagement and formal pre-application consultation.
- 5.3. At an early stage, applicants should consider whether related licences or consents are required from other bodies, such as Natural Resources Wales. Applicants should

aim to 'twin-track' related consents with their harbour order. If the need for other licences or consents is not considered until late in the process, this could pose a significant risk, both for applicants, as those licences or consents may require changes to the proposed development, and also for the Welsh Ministers, when having regard to their duties under the Habitats Regulations.

- 5.4. In light of the above, we strongly encourage applicants to research and undertake best practice approaches, both when seeking pre-application consultation and when carrying out formal application consultation.
- 5.5. Prior to submitting the application, the applicant is strongly advised to consult on the proposed application for a period of at least six weeks.
- 5.6. Applicants should consult as widely as possible locally, and at an early stage, particularly where there may be works that impact on local environment and communities. Such consultees could include:
  - Relevant local authority(s)
  - Local Communities
  - Natural Resources Wales
  - The Centre for Environment, Fisheries and Aquaculture Science
  - Other relevant harbour authorities
- 5.7. As a minimum, the applicant is advised:
  - Consult specific **community consultees, specialist consultees** and any **relevant persons** (see Annex B),
  - Serve **written notice on owners or occupiers** of land adjoining the site, and
  - Display **site notices** in at least one place on or near the site
- 5.8. The exact nature of consultation and publicity will vary, depending on the proposal. Advice can be provided on who to consult and how they should be consulted.
- 5.9. Following the consultation period, it is helpful if the applicant can prepare a Consultation Report which provides details of how it consulted on the proposed application, the responses received, and how it has had regard to these responses.

## 6. Environmental Impact Assessment (EIA)

- 6.1. Where a harbour "works" order will empower any project categorised under the Environmental Impact Assessment Directive (85/337/EEC) on the assessment of the effects of certain projects on the environment, the Planning Inspectorate will inform the applicant of the requirements to provide an ES. An ES examines the impact of the proposals on the environment as outlined in the procedure in Schedule 3 of the 1964 Act.
- 6.2. The Directive categorises works projects under annex I and annex II. Annex I lists projects for which an EIA is mandatory. Annex II lists projects which will require an EIA only if their effects on the environment are likely to be significant.

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- 6.3. The information required for an ES (as identified at paragraph 8 of Schedule 3 to the 1964 Act) can take a considerable time to collect and analyse and applicants are advised to consult with Natural Resources Wales (NRW) and other environmental bodies at an early stage and to seek a screening decision as appropriate from the Planning Inspectorate early in the development of their proposals to minimise abortive work.
- 6.4. If it is determined that an EIA is required, a scoping opinion, which will guide the applicant on the issues the ES should address, will also be provided. In considering whether an EIA is required the Planning Inspectorate will consult with NRW, the Local Planning Authority and any other bodies considered appropriate.
- 6.5. An incomplete ES which does not provide the information required in the scoping opinion will delay the process and may be subject to additional consultation when completed/amended.
- 6.6. The Planning Inspectorate will also consider whether an Appropriate Assessment (AA) may be required under the Conservation of Habitats and Species Regulations 2017 which implement the requirements of the Habitats Directive (92/43/EEC) under which European sites are established as ? based on their importance as natural habitats.
- 6.7. These regulations require that any project be considered for its effect on a European site. If the effect is likely to be significant then an AA of the implications for the site must be undertaken by the Welsh Ministers. This assessment is to establish if the project, after inclusion of mitigation measures, is likely to adversely affect the integrity of the site. Information to inform an AA may be required even if an ES is not.
- 6.8. If such an adverse effect is found to be likely, the project can only be approved if there are no alternative solutions, if there are imperative reasons of overriding public interest for carrying out the project, and provided any necessary compensatory measures are secured preserving the overall coherence of European sites.

### Draft Orders

- 6.9. The Welsh Government's Ports Policy team may comment informally on draft orders but this will be provided on a discretionary basis. We advise that your draft order is accompanied by a note which details the reason for seeking each of the powers within the order, including reference to the relevant paragraph within Schedule 2 of the 1964 Act. Please contact the Ports Policy team for further information.

## 7. Formal Applications

- 7.1. An application for a harbour Order must be accompanied by:
  - Six copies of a draft of the proposed order;
  - Six copies of any map which, if the order is made in the form of the draft, will be annexed to it;
  - The relevant fee; and
  - Where necessary, an ES which includes the information outlined above.

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- 7.2. Along with supplying hard copies of the required documents an electronic copy of all application documents must be submitted.
- 7.3. In addition, all formal applications should be accompanied by a statement which sets out why the harbour order is necessary, how it meets the Welsh Government's relevant policy objectives and how the requirements set within the 1964 Act have been met. It should also contain a note which details the reason for seeking each of the powers within the harbour order, including reference to the relevant paragraph within Schedule 2 of the 1964 Act.
- 7.4. Please see Annex C of this Guidance for a checklist of these requirements.

## 8. Fees

- 8.1. The Welsh Ministers operate a fixed scale of charges for processing harbour orders. The fees are payable when a formal written application for an order is made. At present, the fees are:
  - £2,000 for an order the sole purpose of which is to amend the borrowing powers of an existing authority;
  - £4,000 for any other order that would not empower an authority to undertake works;
  - £6,000 for an order which expressly empowers an authority to undertake works where an EIA is not required;
  - £10,000 for an order which expressly empowers an authority to undertake works where it is decided that an EIA is required.
- 8.2. Payment should be made via BACS. Applicants should contact the Planning Inspectorate to confirm the bank details and reference to use for a BACS payment.
- 8.3. Your application will not be processed until the appropriate fee has been paid in full.

## 9. Public Notices

- 9.1. Once an application for a harbour order is made, the applicant will need to arrange for a notice advertising the application to be placed once in the London Gazette and once in each of two consecutive weeks in one or more local newspapers which are widely circulated. In some instances, you may also be directed to provide copies of the application to specific bodies.
- 9.2. The notice must comply with the requirements of paragraph 10 of schedule 3 to the 1964 Act and it is recommended that the wording of the notices is agreed with the Planning Inspectorate before the notice is published. In some cases there are additional advertising requirements, for example, where the harbour order would authorise the stopping up of a public right of way. If the notice fails to meet the requirements of the 1964 Act then you may be asked to re-advertise the application.
- 9.3. The applicant must send the Planning Inspectorate or the Ports Policy Team a copy of each of the publications containing the notice at the earliest opportunity.
- 9.4. The Ports Policy team and the Planning Inspectorate will consult such bodies as they consider appropriate.

## 10. Objections and Representations

### Registering an Objection or Representation

- 10.1. Organisations or individuals wishing to object to or make a representation about a harbour order must do so within the 42 day statutory period allowed for objections and representations. All objectors must state the grounds for their objection.
- 10.2. If an objection is received within the statutory period then objectors may be invited to submit further evidence during the written process and if an inquiry is to be held, present their case at an inquiry.
- 10.3. Any person or organisation is entitled to object to a harbour order, but where there is a large amount of objectors with the same grounds, we would recommend that individuals, where possible, liaise with each other and submit an objection on behalf of a local community or residents group. This would also be the case at an inquiry, where a selected person can speak on behalf of a group so as to keep the inquiry running efficiently and to minimise repetition.

### Resolution of Objections

- 10.4. Where objections to a harbour order are made, it is common for the applicant to negotiate with the objectors with a view to resolving the objections. The objections will be passed to the applicant to allow negotiations to continue until they are either resolved or there is no longer any progress possible.
- 10.5. There is no fixed timescale for this stage in the process and this will very much depend on the nature and scale of any objections received. The Planning Inspectorate will normally agree a time frame to review the status of the objections with the applicant at the end of the 42 day consultation period. Objections can be withdrawn at any time in writing.
- 10.6. Due to the Planning Inspectorate's role in delivering an impartial application process and Recommendation Report on 'works' orders, it is not appropriate to be involved in negotiations between the applicant and objectors. The Ports Policy team will however continue to work with the applicant and objectors towards an agreeable solution for both works and non-works orders.

## 11. The Welsh Language

- 11.1. The Welsh Government recognises the importance of the Welsh Language in building a nation where people take pride in, their communities, in the Welsh identity and language, and our place in the world. Legislation in Wales is enacted bilingually in Welsh and English.
- 11.2. Applicants must therefore submit their harbour order bilingually in English and Welsh. This includes in draft format when undertaking consultation as well as the final version which will be considered by the Welsh Ministers.



- 11.3. The Planning Inspectorate and Ports Policy team also recognise that stakeholders can express their views better in their preferred language of communication. Accordingly, we welcome all communications to us in Welsh or English.
- 11.4. Parties are welcome to speak in Welsh at an event organised on behalf of the Planning Inspectorate. In order to ensure that events are not adjourned or delayed it would be helpful if anyone wishing to participate in Welsh could inform the Inspectorate beforehand so that appropriate translation facilities can be provided.

## 12. Analysis and Decision Making

- 12.1. The Welsh Ministers will make a decision on the application. If there has been an inquiry, the appointed Inspector will make a recommendation in the form of a report which will be based on a consideration of all available information. This includes the application documents, responses from consultees and representations from the public, any outstanding objections and reports from an inquiry. The Welsh Ministers will have regard to the Inspectors recommendations when determining whether or not the application should be granted.
- 12.2. The Ports Policy team will send a copy of the Welsh Ministers' decision to all those who made an objection or representation to the harbour order. It will also be published on the Welsh Government's website along with the Inspector's report.
- 12.3. At this stage, if any minor amendments are required, which do not alter the nature of the order, the applicant will be contacted and, if they accept the amendments, they will be asked to submit a revised draft. In cases where more detailed amendments are required, the Welsh Ministers may not be in a position to make a decision on the order until the amendments are addressed. If substantial changes are required which alter the nature of the order, the Welsh Ministers may require applicants to re-consult on the proposal.
- 12.4. If the Welsh Ministers decide to make the order, a decision letter will be issued to the applicant, and will be copied to other persons or bodies the Welsh Ministers consider appropriate.
- 12.5. If the Welsh Ministers decide not to make the order, a decision letter to this effect will also be sent to the applicant and other persons or bodies the Welsh Ministers consider appropriate.

## 13. Harbour Order Decision Notice

- 13.1. The applicant must publish a confirmation notice in the London Gazette and the same local advertisement as the original notice, stating that the harbour order has been made, stating where a copy of the order can be viewed, when the order comes into operation and the procedure to challenge the validity of the order.
- 13.2. The applicant should send the Planning Inspectorate and Ports Policy team a copy of the published notice as soon as possible after publication.

## 14. Assembly Procedures

- 14.1. Under section 54 of the 1964 Act, after a decision has been reached by Welsh Ministers, the order will be made by statutory instrument and subject to annulment in pursuance of a resolution of the National Assembly for Wales.

## **15. How we use personal information**

- 15.1. Personal data can be received from the applicant, statutory consultees and other interested persons who provide representations. The personal data normally includes name and contact details and any other personal data included within their representations. The Inspectorate and Ports team will copy the representations received to the applicant.
- 15.2. All appeal documents and representations, including names and addresses, will be published on the Appeals Casework Portal.

## **16. Further information**

- 16.1. Further information about the Welsh Government and Planning Inspectorate's privacy policies can be found at <http://planninginspectorate.gov.wales/?lang=en> and <http://gov.wales/about/civilservice/how-we-work/facts-figures/privacystatement/?lang=en> or is available on request. If you have any queries about the Inspectorate's policy, or wish to request your personal data, then please contact the Inspectorate.

## Annex A – List of consultees

| <b>Consultees</b>  |
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| <ul style="list-style-type: none"><li>• Natural Resources Wales</li><li>• Maritime and Coastguard Agency</li><li>• Trinity House - General Lighthouse Authority</li><li>• Marine Policy Branch (Welsh Government)</li><li>• Crown Estate</li><li>• Local Planning Authority</li><li>• Local Highways Authority</li><li>• Local communities</li><li>• Other relevant Harbour Authorities</li><li>• The Harbour Authority (if not the applicant)</li><li>• The Health and Safety Executive</li><li>• Marine Conservation Society</li><li>• Royal Society for the Protection of Birds</li><li>• The Centre for Environment, Fisheries and Aquaculture Science</li><li>• Inshore Fisheries Conservation Authority</li><li>• Royal Yachting Association</li><li>• British Ports Association</li><li>• UK Major Ports Group</li><li>• UK Chamber of Shipping</li></ul> |

## **Annex B – Checklist**

### **Application checklist**

- An electronic copy of all application documents – draft order in word format.
- 6 hard copies of any maps or plans if larger than A3.
- One hard copy of Environmental Statement (ES) and any supporting documents if screened as required.
- Electronic copy of ES and supporting documents (on CD or memory stick).
- Purpose and effect notes covering all provisions in the draft order justifying why each power is being sought and the purpose each is expected to achieve.
- Condition surveys and or maintenance plans and costings if new authority or transfer order.

### **Application letter confirming:-**

- legal name of applicant (and their substantial interest if not the current authority for an existing harbour).
- relevant section of the Harbours Act 1964 under which the order is sought.
- the objects for which it is sought (HROs only - schedule 2 of the Act).
- general purpose of the order applied for.
- confirmation of date first notice will appear in the press.
- relevant fee.