

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

**PROPOSED SWANSEA (CLOSURE OF PRINCE  
OF WALES DOCK) HARBOUR REVISION  
ORDER 202[0]**

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

**ASSOCIATED BRITISH PORTS**

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## **1. INTRODUCTION**

- 1.1 This statement relates to the application by Associated British Ports (“ABP”) for the proposed Swansea (Closure of Prince of Wales Dock) Harbour Revision Order [ 202[X] (“the HRO”). ABP is the statutory harbour authority for the Port of Swansea and the Prince of Wales Dock within the Port.
- 1.2 The application, made in a letter to Welsh Ministers dated 2<sup>nd</sup> September 2020 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 £4,000.00;
  - (e) A Welsh translation of the HRO, and
  - (f) Copies of the following legislation:
    - Swansea Harbour Act 1874;
    - Swansea Harbour Act 1894;
    - Swansea Harbour Act 1901.
- 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 (“the 1964 Act”) which in Wales have been transferred to Welsh ministers by the Wales Act 2017
- 1.4 The HRO provides for the closure of the Prince of Wales Dock. It provides for ABP’s statutory responsibilities to cease in relation to the dock and all rights of navigation to cease in relation to the dock and removes the obligation to maintain navigational access to the dock from the rest of the Port of Swansea. The closure is required to support the management of the Port of Swansea in an efficient and economical manner for the purpose of section 14(2) (b) of the Harbours Act and as recommended in the Port Marine Safety Code.

## **2. ASSOCIATED BRITISH PORTS AND THE PRINCE OF WALES DOCK**

- 2.1 ABP is the statutory harbour authority for the Port of Swansea, of which the Prince of Wales Dock forms part, as well as for a number of other ports around the United Kingdom. It was reconstituted under the Transport Act 1981 as the statutory successor to the British Transport Docks Board which was created in 1962 on the dissolution of the British Transport Commission (in turn established in 1947 following the nationalisation of ports covered by the railway and canal companies). The harbour undertaking inherited from the British Transport Docks Board includes the powers and duties conferred by local legislation in relation to the Port of Swansea.
- 2.2 The Prince of Wales Dock was originally authorised by the Swansea Harbour Act 1874. It was extended by the Swansea Harbour Act 1894 and further responsibilities were conferred by the Swansea Harbour Act 1901. The functions in relation to the dock originally conferred on the Swansea Harbour Trustees, then passed to the Great Western Railway Company before passing to British Transport Commission as mentioned above.

### **3. THE PORT MARINE SAFETY CODE AND MARINE PLANS**

- 3.1 As the harbour authority for the Port of Swansea, the Port Marine Safety Code (November 2016) published by the Department for Transport and endorsed by the devolved administrations (“the Code”) applies to ABP as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. 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.”*

- 3.2 The Code requires harbour authorities to keep their powers and jurisdiction under review and take account of the various mechanisms such as harbour orders which are available to amend statutory powers in an authority’s local legislation. In accordance with this requirement ABP has reviewed its powers at the Port of Swansea and

concluded that it is unnecessary to continue to maintain the Prince of Wales Dock for port use and that it is desirable in the interests of safety to close navigation between the operational port to a water area which is no longer being maintained for that purpose.

- 3.3 Harbour authorities are required by section 58 of the Marine and Coastal Access Act 2009 to have regard to the Marine Policy statement and relevant marine plans in making decisions. The HRO is not authorising any development and it is not considered that it directly engages the Marine Policy Statement or any of the policies contained in the Welsh Marine Plan, the relevant marine plan made for the purpose of section 51 of the Marine and Coastal Access Act 2009. However by releasing land which is no longer required for operational port use the effect of the HRO would be to facilitate achieving the objectives 1 and 2 of the plan, i.e. supporting the sustainable development of the Welsh marine areas, contributing to a thriving Welsh economy by encouraging economically productive activities and profitable and sustainable businesses that create long term employment at all skill levels.

#### **4. THE HARBOURS ACT 1964**

- 4.1 Section 14 of the 1964 Act 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 the 1964 Act. The matters set out in Schedule 2 to the 1964 Act 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.”*

- 4.2 Section 14(2)(a) of the 1964 Act 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 Section 14(2B) of the 1964 Act provides:

*“Nothing in subsection (2)(b) of this section shall prevent the making of an order for facilitating—*

*(a) the closing of part of the harbour,*

*(b) a reduction in the facilities available in the harbour, or*

*(c) the disposal of property not required for the purposes of the harbour,”*

if the appropriate Minister is satisfied that the making of the order is desirable on grounds other than those specified in that subsection.”

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

4.5 The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. The closure 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 the 1964 Act 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 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,

and to the extent that section 14(2)(b) is not satisfied in any event, section 14(2B) applies in this case since the making of the order is also desirable on grounds other than the

interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

## **5. NEED AND JUSTIFICATION FOR HRO**

- 5.1 The Prince of Wales Dock is part of the original Swansea Dock system. Over its history it has served the export of locally mined minerals such as coal and metals. In a similar way to many such docks the Prince of Wales Dock has seen the demise of raw material export. In more recent times the dock had been associated with the import of sea dredged aggregates but this activity has now been relocated to other more suitable facilities within the last 2 years. These factors combine with the Prince of Wales Dock physical limitations (in particular, the need to access the Dock by navigating through the narrow communication passage) and the abundance of other more suitable and available port facilities within the rest of the Port and locally and make it unlikely that there would ever be a need for those facilities in the future. In addition, the once port operational land that surrounds the Prince of Wales Dock was sold to Welsh Government in 2002 which adds to the fact that the dock would not have a port operational use or demand in the future. There is currently no use of the dock for port purposes, and the only current use is for the purposes of water sport activities, a non-port use which is not affected by the closure of the dock.
- 5.2 When the port operational land was transferred to Welsh Government in 2002 the waters and walls of the Prince of Wales Dock were included in an option in favour of Welsh Government which they now wish to take up. The option is predicated on a successful HRO to remove the waters of Prince of Wales Dock from what will be the remaining operational Port.
- 5.3 Welsh Government has developed significant parts of the land around the Prince of Wales Dock for the benefit of the public. The proposed HRO will facilitate further such development and benefit in terms of the land and leisure use of the waters of the Prince of Wales Dock.
- 5.4 Closing the dock is both desirable in the interest of the efficient and a economic management of the port since it removes the obligation to maintain a facility within the port for which there is no need, and in the wider public interest in that it will allow more productive use of the land.

5.5 The HRO would authorise the Prince of Wales Dock to be closed and provide for it to cease to form part of the Port of Swansea. In consequence of this, the HRO would also extinguish rights of navigation within the dock and provide for all duties and obligations imposed on AB Ports with respect to the dock to cease to have effect. The HRO would also provide powers to remove vessels from the Prince of Wales Dock to enable a permanent closure. An explanation and the need for, each substantive article of the HRO is set out below.

### **Article 3 (Closure of Prince of Wales Dock)**

5.6 This article authorises the closure of the Prince of Wales Dock and provides that at the time of the closure, ABP's responsibilities under the legislation which authorised the dock or relate to it are to cease. This article also extinguishes any right of navigation in the dock as well as the duty on ABP to maintain the navigational channel which currently gives access to the Dock from the King's Dock.

5.7 As explained above the dock is not used for shipping operations. The land around the Dock is no longer port operational land and no longer in the demise of ABP. The waters of the Prince of Wales Dock are presently contiguous with the Kings Dock and Queens Dock which will remain an operational port. A physical closure is intended between the Prince of Wales Dock and Kings Dock to protect the remaining operational port of Swansea from unintended consequences of potential development of the land around the Prince of Wales Dock, which could impact upon the impoundment and environmental protection of the remaining Port of Swansea. The HRO will not authorise the physical closure and this will be subject to separate planning permission sought by the relevant authority should development be brought forward.

### **Article 4 (Repeal of local legislation)**

5.8 This article provides for the local legislation which authorised the Prince of Wales dock (including the agreements scheduled to that legislation) or which otherwise relates to it, to cease to have effect. This is consequential on article 3 which removes the responsibilities in relation to the dock. The article excludes from repeal the provisions which authorised the diversion of water into the Swansea docks. It is required so that the waters of the Prince of Wales Dock continue to be managed in respect of water exchange and the quality of the waters within the Prince of Wales Dock. The proposed permanent closure between the Prince of Wales Dock and Kings Dock will have a



mechanically closable culvert system established in the Kings Dock part of the remaining operational Port. Powers to divert water into and out of the Prince of Wales Dock will need to be retained to enable this facility to operate.

- 5.9 This falls within the scope of section 14(3) of the 1964 Act because it is the repeal of local legislation which is consequential on the other provisions of the Order. Alternatively it also fits within section 14 (2A) as the repeal of local legislation which is unnecessary.

**Article 5 (Notice of closure and removal of vessels from the Prince of Wales Dock) and Article 6 (As to vessels entering Prince of Wales Dock)**

- 5.10 Following a positive determination of the HRO and the extinguishing of present powers over the waters, powers to direct and remove vessels from the Prince of Wales Dock will be required in order to effect the required permanent closure of the dock. Article 5 provides for advance notice to be given that the dock is to be closed and requiring any vessels which are in the dock to be removed. ABP is given powers to remove any vessels have not been removed by that date.
- 5.11 Article 6 contains a similar power for ABP to be able to remove any vessels which enter the dock after the date of the statutory closure. This is required so as to be able to remove any vessels that may go into the dock between statutory and physical closure.
- 5.12 Both of these provisions fall within the scope of section 14(3) of the 1964 Act as supplementary provisions which are requisite or expedient for the purpose of the HRO.

**6. CONCLUSION**

For the reasons explained above it is considered that the closure of the dock and the consequential and supplementary provisions of the HRO are 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 the 1964 Act and/ or the requirements of section 14(2B) and are desirable in the general public interest.