



Department for Transport

██████████
Riverside West
Littlehampton
West Sussex
BN17 5DL

Mike Alcock
Deputy Director
Maritime Freight and Port Policy
Department for Transport
GREAT MINSTER HOUSE
33 HORSEFERRY ROAD
LONDON SW1P 4DR

DIRECT LINE:

Web Site: www.dft.gov.uk

31 March 2022

Dear ██████████

**HARBOURS ACT 1964 SECTION 31
OBJECTION FROM ARUN YACHT CLUB LTD, LITTLEHAMPTON YACHT CLUB LTD,
BROOMER FARM TRADING LTD TRADING AS LITTLEHAMPTON MARINA,
LITTLEHAMPTON FERRY COMPANY LTD
TO CHARGES LEVIED BY LITTLEHAMPTON HARBOUR BOARD FROM 1 APRIL 2018 TO 31
MARCH 2019 AND 1 APRIL 2019 TO 31 MARCH 2020**

DECISION BY THE SECRETARY OF STATE FOR TRANSPORT

Contents	Page
Introduction	1
Main Issues	3
Summary of Secretary of State's Decision	3
The Objector's case	3
Littlehampton Harbour Board's case	5
Statutory Framework	5
Policy Guidance	6
The Secretary of State's Consideration	8
Conclusion	11
Secretary of State's Decision	11
Annex 1- Planning Inspectorate Report to The Secretary of State 22.02.22	Separate document

Introduction

1. On 29 March 2018, you raised objections with the Secretary of State for Transport ("the Secretary of State") in relation to charges levied by Littlehampton Harbour Board ("LHB") under the right of objection process provided for in section 31 of the Harbours Act 1964 ("the 1964 Act") to charges levied by LHB.

2. On 4 October 2018, the Department sent you a letter advising that some, but not all, of the objections could be addressed under section 31 of the 1964 Act. You subsequently submitted amended formal objections on 1 November 2018 to the Secretary of State.
3. As required by section 31(3) of the 1964 Act, you published notice of the objection in a local newspaper on 15 November 2018. The notice invited representations from interested parties to the Secretary of State within 42 days. There were 29 representations received and LHB also provided a written response to the objection.
4. Unfortunately, there was a delay in reaching a decision before LHB published the Harbour Dues for 2019-2020 due to the pressure of the Covid-19 pandemic and changes in staffing.
5. LHB published a schedule of Harbour Dues for the following year and on 25 March 2019 you lodged a further set of objections to the Secretary of State in relation to certain vessel and passenger dues imposed by LHB for 1 April 2019 - 31 March 2020. A notice was published in the Littlehampton Gazette on 18 May 2019 inviting representations. The representation period ran until 28 June 2019 and 2 representations were lodged.
6. As required by section 31(4) of the 1964 Act, the Secretary of State proceeded to consider whether a decision could be made without causing an inquiry to be held. Having carefully considered the objections, representations and written responses, the Secretary of State was not satisfied that he could properly reach a decision in this matter on the evidence before him without causing an inquiry to be held.
7. On 10 September 2021 a Pre-Inquiry Meeting (PIM) took place, which you as the representative for the Objectors and the Ferry Company attended.
8. For an inquiry concerning Harbour Dues, there are no procedural rules. Using Planning procedures as a broad guide, all the parties agreed to make relatively standard arrangements for the production of statements of case, statements of common ground, proof of evidence, procedure at the Inquiry, and a site inspection after the Inquiry.
9. At the inquiry, it was agreed that there were three main issues. In relation to Issues 1 and 2, the objections span both years. The arguments raised relating to the 2018-2019 charges are referred to as Issues 1 and 2 and the arguments raised in relation to 2019-2020 charges are referred to as Issues 1A and 2A.
10. Objections on behalf of the Ferry Company for Issue 3 were represented separately at the Inquiry. The Harbour Dues the Ferry Company dispute are miscellaneous harbour and passenger dues for the ferry operating in the harbour.
11. The Inquiry sat for three days on 12-14 October 2021. It was held as a virtual event. LHB, the Main Objectors and the Ferry Company were the only parties to give evidence. The Planning Inspector attended a site visit accompanied by representatives for the three parties after the close of the Inquiry on 11 November 2021.
12. The Planning Inspectorate issued a detailed report to the Secretary of State [see Annex 1] containing a description of Littlehampton Harbour and its operations, a summary of the cases presented, and their conclusions and recommendations.

13. The Secretary of State's decision in this matter has been made carefully considering all the relevant representations, evidence presented at the Inquiry, the Planning Inspectors report and applying the relevant statutory and policy framework applicable for the financial years 2018/19 and 2019/20. The Secretary of State has not taken account of any representations, evidence, or legislative and policy changes relating to subsequent financial years as the objection before him for determination relates only to charges imposed by LHB for the financial years 2018/19 and 2019/20.

Main Issues

14. The main issues to be considered and the grounds upon which the objections were lodged are as follows:

- a. Issue 1: Having regard to the provisions in s.31(2)(b)(ii) of the 1964 Act, whether the Harbour Dues relating to pleasure craft and charter vessels should be imposed at a rate lower than that imposed by LHB. The Objectors argue that the increase in Harbour Dues on pleasure craft and charter vessels for 2018-2019 was disproportionate and unreasonable and the charges should be 8% below the published dues.
- b. Issue 1A: For the year 2019-2020, the Objectors' position is that Harbour Dues relating to pleasure craft and charter vessels should be reduced by removing the 8% above inflation effect of the 2018-2019 increases and set a rate of no more than an increase of 2.4% on the rates that the Secretary of State determines should be charged for the year 2018-2019.
- c. Issue 2: Having regard to the provisions in s.31(2)(b)(ii) of the 1964 Act, whether Harbour Dues relating to all categories of vessels should be imposed at a rate lower than that imposed by LHB. The Objectors' position is that, irrespective of Issue 1, Harbour Dues for 2018-2019 on all categories of vessels are excessive and should be reduced to a level of no more than 50% of the 2017-2018 charges.
- d. Issue 2A: For 2019-2020 the Objectors' position is that the Harbour Dues on all categories of vessels should be reduced and be no more than an increase of 2.4% on the rates that the Secretary of State determines should be charged for the year 2018-2019.
- e. Issue 3: Having regard to the provisions in s.31(2)(b)(i) of the 1964 Act, whether dues on passengers using the ferry operating wholly within the harbour can be imposed. This argument is raised on the ground that the charge ought not to be imposed at all.

Summary of the Secretary of State's Decision

15. For the reasons given below, the Secretary of State has decided not to uphold your objections for the financial years 2018/19 and 2019/2020 and to approve the disputed charges in accordance with section 31(6)(a) of the 1964 Act.

The Objector's case

16. The Secretary of State has given full consideration to the detailed points raised by you in addition to representations made by other interested parties as summarised in paragraphs 5.1 to 5.78 of the Planning Inspectorate (PINS) Report [Annex 1].

Summary of your position in regards Issue 1:

17. The objection lodged against the 2018/19 charges relate to pleasure craft and charter vessels and was expressed on the ground in section 31(2)(ii) of the 1964 Act, that the charges ought to be imposed at a lower rate.
18. Your case referenced the result of a court ruling in October 2017 in which LHB was denied the opportunity to continue to receive the unlawful receipt of Harbour Dues on mooring pontoons which they had enjoyed since 1929. It was noted that during the year 2017-2018 LHB had received approximately £4,300 from these unlawful receipts.
19. It is your case that in setting their Harbour Dues for 2018-2019, LHB decided to recover the whole of the approx. £4,300 they had “lost” from this unlawful source by increasing the Harbour Dues only for pleasure craft and charter vessels by 8%, over and above the 3% inflationary increase that they applied elsewhere.
20. You, as the Objector raised whether it is “fair and equitable that your discrete group of harbour users should be required to make up all (or even some) of the income that LHB had been receiving from this unlawful source?” Your view is that it is not fair and that such an imposition is unreasonable.
21. **Summary of your position in regards Issue 1A:**
Your case in relation to Issue 1A is that, for the year 2019-2020, whatever dues the Secretary of State determines for 2018-2019 should be increased in line with inflation at the rate actually imposed by LHB for that year, namely 2.4%. It is your position that should Issue 1 be found in your favour, that only an inflationary increase would be necessary the following year, in line with the majority of increases LHB had applied to their other charges for that year.
22. **Summary of your position in regards Issue 2:**
It is your position that the Harbour Dues charged on pleasure craft and charter vessels were already substantially in excess of Harbour Dues being levied on leisure users at all other nearby harbours even before the increases imposed in 2018-2019 as dealt with in Issue 1/1A. Those increases only further escalated the concerns expressed by leisure harbour users.
23. You, the Objectors remain firmly of the view that LHB’s charges should be broadly comparable to those at Langstone, Chichester and Shoreham Harbours, all of which are within a 25-mile radius of Littlehampton, which is the maximum realistic distance that the majority of prospective users of Littlehampton Harbour would be expected to travel to their boat.
24. During the course of the Inquiry, attention turned to the Inspector’s Report on a s31 challenge relating to commercial and cargo dues at Langstone Harbour (LangHB) that had been determined in June 2010.
25. You, the Objectors wished to concentrate on the parts of the report in relation to comparisons between harbours that were debated at that Inquiry; specifically where it was being alleged that the Harbour Board had been applying different policies between commercial and leisure users or to the merits of different distances between ports as to whether they could truly be regarded as comparable.
26. You wished to make the point that, in 2010, it appeared that LangHB was setting its Harbour Dues for leisure craft by direct comparison with its nearest harbour, which is Chichester. You believe that when setting Harbour Dues at Littlehampton, it is reasonable to expect LHB to have

some regard to the rates being set at competitor ports and you believed that Langstone, Chichester and Shoreham should all be considered.

27. Summary of your position in regards Issue 2A:

As with Issue 1A, it is your position that, for the year 2019-2020, whatever dues is determined for 2018-2019 should be increased in line with inflation at the rate of CPI imposed by LHB for that year, namely 2.4%.

28. The Ferry Company's position in regards Issue 3:

Objection is taken to the Part 8 Services and Miscellaneous charges to the charge "Ferry operating in harbour". The charge recorded against this entry in the schedule of charges is "At the Board's discretion, Annual Charter Harbour Dues or Passenger Dues per passenger at a rate agreed in advance by the LHB".

29. The Ferry Company contend that this is a passenger due, creating a charge for the year, at an unspecified rate and due to Littlehampton Ferry being the only ferry in the harbour, the charge appears to be aimed directly at them. It creates a charge for the year to be exercised at the Board's discretion. The charge has a direct bearing on the ferry's financial viability and therefore Littlehampton Ferry have a substantial interest in the charge. The Ferry Company also submitted that the charge on passengers on the ferry is unlawful on the basis it does not fall within section 58 of the 1927 Act.

LHB's case

30. The case for LHB that the 2018/19 and 2019/20 charges should be approved by the Secretary of State is summarised at paragraphs 4.1 to 4.118 of the PINS Report [Annex 1]. The Secretary of State has given full consideration to the detailed points raised by LHB.

The Statutory framework

31. The relevant legal provisions to be considered are set out at paragraphs 2.2 2.4 of the PINS Report [Annex 1].

32. Section 26 of the 1964 Act provides for the setting of harbour charges and s.26(2) in particular states that "Subject to the following provisions of this Act... a harbour authority shall have power to demand, take and recover such ship, passenger and goods dues as they think fit...". Although s.27 stipulates that certain charges of certain harbour authorities "shall be such as may be reasonable", s.27(2)(a) excludes ship, passenger and goods dues from this requirement.

33. The process for considering an objection to harbour charges is provided for in section 31 of the 1964 Act. The 1964 Act does not specify the test(s) to be applied in determining whether an objection under section 31 is made out. The Secretary of State will therefore consider the merits of the dues imposed.

34. Section 33 Harbours Docks and Piers Clauses Act 1847 places a statutory duty on LHB to keep Littlehampton Harbour open for the shipping and unshipping of goods and passengers. The Littlehampton Harbour and Arun Drainage Outfall Act 1927 (the 1927 Act) and the West Sussex County Council Act 1972 (the 1972 Act) are particularly relevant:

- a. Section 38 of the 1927 Act provides that "the Harbour Board shall within three years from the appointed day reconstruct renew and repair and thereafter maintain the western pier and the eastern and western entrance walls of the harbour to the south of the bridge at Littlehampton erected by Littlehampton Council...".

- b. Section 39 of the 1927 Act provides that “The Harbour Board shall be deemed to be the drainage authority for the purposes of the land drainage Act 1861 1918 and 1926 of that portion of the River Arun within the harbour below Littlehampton Toll Bridge and have sole jurisdiction to the exclusion of all other persons or bodies whether statutory or otherwise in drainage matters within such limits and shall maintain and keep open the harbour as an outfall for the waters of the River Arun...”
- c. Section 41 of the 1927 Act sets out various activities that the Harbour Board is able to undertake to enable it to perform its functions.
- d. Section 16 of the 1972 Act transferred certain powers to the river authority provided that “(b) ...the Harbour Board shall have power to carry out within the said part of the harbour below the new bridge such drainage works as the Harbour Board may consider necessary for the purposes of maintaining the harbour, being drainage works that the river authority is not willing to undertake.”
- e. Section 21 of the 1972 Act sets out the duty of the Harbour Board to: “secure that, taking one year with another, the revenues of the Harbour Board are, so far as reasonably practicable, not less than sufficient to meet their outgoings properly chargeable to revenue account (other than expenditure incurred in respect of any such works as are referred to in paragraph (b) of the proviso to section 16 (Transfer of functions under Land Drainage Acts) of this Act”.

Policy Guidance

35. The relevant policy documents applicable to the determination of the objections to LHB’s charges imposed for the financial year 2018/19 and 2019/20 are:

36. “Modernising Trust Ports Second Edition 2009 (MTP2)” .MTP2 superseded MTP which was produced following a review of trust ports and involved a detailed scrutiny of the trust port sector with specific regard to standards of corporate governance and the accountability of its operations. MTP2 provides guidance to assist all trust port boards to meet standards of independence, openness and accountability. MTP2 was withdrawn in March 2018, but all parties agreed at the Inquiry that the following paragraphs provided relevant guidance on Commercial Accountability:

“Trust Port boards should transact port business in the interest of the whole community of stakeholders openly, accountably and with commercial prudence. Trust Ports should be run as commercial businesses, seeking to generate a surplus which should be ploughed back into the port, or otherwise directed towards the interests of the port’s stakeholders. The Government expects Trust Ports to be operated efficiently and effectively, and to generate a commercially acceptable rate of return.

Harbour Dues must be set at a level that allows for proper maintenance of the Trust Port’s harbour and/or conservancy duties, and geared to attaining the target level of profitability. Harbour Authorities in general have a duty to publish standard dues tariffs.

There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user. Users are first and foremost customers of the port, and the proceeds from their custom should be utilised prudently to maximise benefit to all stakeholders and in the best and most effective interest of the future of the Trust Port.”

37. The Port Marine Safety Code, October 2009 (PMSC) includes a summary of the legal duties and powers of harbour authorities. It also outlines the measures which harbour undertakings

must adopt to fulfil their duties in accordance with the agreed national standard. Paragraphs 4.17-4.20 of the PMSC deal with collecting dues:

“4.17 Harbour authorities have powers to collect Harbour Dues and pilotage charges from users and should raise enough to provide resources to enable them to pay for the discharge of their statutory functions. The level of dues and charges should be properly accounted for and brought to the notice of those persons likely to be interested.

4.18 Members of the Harbour Board and/or the duty holder are responsible for ensuring that adequate resources are provided to its officers to enable them to operate the policies, procedures and systems effectively. This includes adequate resource for training. There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user.

4.19 A competent harbour authority may make reasonable charges in respect of the pilotage services it provides. Such charges may be applied to vessels with an authorised pilot aboard and to vessels where the deck officer holds a pilotage exemption certificate in respect of the area and vessel in question.

4.20 The harbour authority’s power to levy dues and pilotage charges is subject to a statutory right of objection to the relevant Minister.”

38. Ports Good Governance Guidance, Department for Transport, March 2018 includes the principle that Trust Ports are commercial businesses and should be operated efficiently, effectively, and prudently to generate a commercially acceptable rate of return. Harbour Dues are covered in Section 2 as follows:

“2.45 Section 26 of the Harbours Act 1964 gives statutory harbour authorities the powers to levy ship, passenger and goods dues on those using the harbour. SHAs can also levy other charges for the provision of specific services, such as the licensing or provision of a mooring.

2.46 Harbour Dues should be set at a level that allows for, at least, proper maintenance of a harbour and to meet conservancy and other duties. Harbour Dues may also need to allow for a return on investments. SHAs have a duty to publish standard dues tariffs.

2.47 There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user. Users are first and foremost customers of a port. For Trust Ports, the proceeds from their custom should be utilised prudently to maximise benefit to all stakeholders and in the best and most effective interest of the future of the Trust Ports.”

39. 2.14 Section 3 - Commercial accountability, compliance and strategic reviews includes the following principles:

- *“ Trust Ports are commercial businesses and should be operated efficiently, effectively and prudently to generate a commercially acceptable rate of return.*
- *Performance indicators are a useful tool for assessing a Trust Port’s efficiency and performance over time. They are also useful for stakeholders as part of holding Trust Ports to account.*

- *Trust Port boards should review their governance arrangements to check that they remain in line with the best practice and standards in this guidance. Where necessary, revised arrangements should be put in place.*
- *Trust Ports should have a system to consider complaints from stakeholders about governance issues as well as other matters arising from the port's activities.*
- *Trust Ports with an annual turnover of at least £10m (2017 prices) should periodically conduct a strategic review to check that the Trust Port model remains the best one to deliver its strategic vision and objectives, including investment requirements. These reviews should also consider alternative options where necessary."*

40. Paragraph 3.40 expands:

"Trust Ports are commercial businesses and so must aim to generate a financial surplus. Trust Ports should establish a target level of return for existing activities as well as new investments, including an appropriate element for contingency and risks. When pursuing a target for returns, Trust Ports should set Harbour Dues and other charges and assess investments at commercial and competitive rates, neither exploiting its status as a Trust Port to undercut competitors nor abusing a dominant position in a market. Trust Port boards should carry out their functions and tasks in the interest of all stakeholders in a transparent and accountable way".

41. 2.16 Commercial accountability is addressed in paragraphs 4.20 and 4.21 as follows:

"4.20 Where LAs provide a substantial or continuing subsidy to a SHA, or any subsidiary engaged in port related operations, the authority should seek to establish and implement a strategy to put port operations on a commercial basis wherever this is possible.

42. 4.21 LA SHAs should set Harbour Dues and other charges that allows sufficient revenue to meet its statutory responsibilities for the safe and efficient operation of the harbour, as well as other statutory obligations including in relation to conservancy."

The Secretary of State's Consideration

43. The Secretary of State has fully considered the content of the PINS report at Annex 1, the legislative framework and policy guidance referred to above. The key areas of focus in order to reach a determination on the objections include:

- Government Port Policy;
- Whether the Harbour Dues are fair and equitable;
- Competitiveness and comparisons with harbour dues at other harbours;

These are considered in turn below.

Government Port Policy

44. Government policy for ports is significant when assessing harbour charges in the context of section 31 objections. A summary of the key principles to be applied was referenced in the PINS report at paragraphs 2.11 to 2.16. The following principles are particularly noteworthy: -

Trust Port boards should transact port business in the interest of the whole community of stakeholders openly, accountably and with commercial prudence (MTP2 paragraph 1.2.1)

Trust Ports should be run as commercial businesses, seeking to generate a surplus which should be ploughed back into the port, or otherwise directed towards the interests of the port's stakeholders (MTP2 paragraph 1.2.1)

The Government expects Trust Ports to be operated efficiently and effectively, to generate a commercially acceptable rate of return (MTP2 paragraph 1.2.1). Port developments and port operations should not in general need public subsidy.

Harbour authorities should raise enough [through Harbour Dues and pilotage charges] to provide resources to enable them to pay for the discharge of their statutory functions (PMSC paragraph 4.17)

Harbour Dues must be set at a level that allows for, at least, the proper maintenance of the Trust Port's harbour and/or conservancy and other duties, (MTP2 paragraph 1.2.4 and PGGG paragraph 2.46)

Harbour Dues should be set at a level geared to attaining the target level of profitability (MTP2 paragraph 1.2.4) and may also need to allow for a return on investments (PGGG paragraph 2.46)

When pursuing a target for returns, Trust Ports should set Harbour Dues and other charges and assess investments at commercial and competitive rates, neither exploiting its status as a Trust Port to undercut competitors nor abusing a dominant position in a market (PGGG paragraph 3.40)

There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user. (see for example MTP2 paragraph 1.2.5, and PGGG paragraph 2.47)

Users are first and foremost customers of the port, and the proceeds from their custom should be utilised prudently to maximise benefit to all stakeholders and in the best and most effective interest of the future of the Trust Port (MTP2 paragraph 1.2.5 and PGGG paragraph 2.47)

A Trust Port is a valuable asset presently safeguarded by the existing board whose duty is to hand it on in the same or better condition to succeeding generations who are the ultimate stakeholder (PGGG paragraph 3.4).

Are the Harbour Dues fair and equitable?

45. The Inquiry explored the approach LHB had taken in setting the Budget and Schedule of Charges, the context in which the disputed Schedule of Charges were set, the Board's reasoning, and LHB's response to the Objectors' contentions. This is detailed in the PINS report [Annex 1] in Paragraphs 4.6-4.17. On review, the Secretary of State agrees that the approach taken is logical and prudent, which carefully considers the needs of stakeholders, and the consequences of increasing charges and dues on different stakeholder groups, and that LHB strove to reach fair and equitable increases for all users.

46. LHB's evidence detailed key challenges they faced when setting its budget and schedule of charges, fees and dues for the disputed years and their reasoning. The Inspector summarised that the decision to increase the disputed Harbour Dues by 11% was taken in the context of a series of other charge increases and the 2018/19 Schedule of Charges did not result in a disproportionate impact on the Objectors and that in fact, the Objectors are among the least affected by the overall increase in charges. The Secretary of state accepts the Inspector's overall recommendation that the disputed Harbour Dues are fair and equitable.

Competitiveness and comparisons with harbour dues at other harbours

47. The Secretary of State takes the view that current government policy and guidance is that dues should be set that are commercial and competitive but there is no requirement that they should be set having regard to, or competitive with, rates set by adjacent ports.
48. The Secretary of state supports the Inspector's observation that reducing public subsidy to establish and implement a strategy to put port operations on a commercial basis wherever possible is a current policy aim. Where Harbour Dues may be higher than those at other ports within a 25-mile radius does not necessarily mean that they are excessive or uncompetitive.
49. It was noted in the PINS report that each port has different and diverse sources of income with different financial circumstances and the evidence before the Inquiry was not sufficient to fully evaluate all of the possible differences.
50. The difficulty in making comparisons between ports was highlighted in the Inquiry by further reference to a previous challenge under s31 of the 1964 Act relating to LHB's Schedule of Charges for 1990-1991 where the Secretary of State noted that the Inspector found "that it was not possible to make comparisons with dues and charges of other ports of comparable size in the area due to the widely different facilities and conditions applying to each".
51. Based on the evidence presented at the inquiry, the Secretary of State concludes that the Harbour Dues on pleasure crafts form a relatively modest part of the overall cost of keeping a boat at Littlehampton in comparison with other costs.

The Secretary of State notes that LHB sought to keep Harbour Dues competitive with judicious calls on the precept and that there was no evidence to substantiate a claim that LHB had abused a dominant position in the market. The Secretary of State accepts that the evidence that Harbour Dues for pleasure craft and leisure vessels are not competitive is not compelling.

52. Drainage and the Apportionment of expenditure

The Secretary of State acknowledges the Objector's position that more of LHB's expenses should be accounted for as drainage works to be set against the precept, whereby West Sussex County Council and Arun District Council would share LHB's land drainage function costs. This would then show a surplus in LHB's accounts rather than a deficit and these costs would not then be passed onto harbour users by way of Harbour Dues.

53. The Secretary of state has carefully reviewed the evidence and statements presented in the PINS report [see Annex 1] paragraphs 7.53-7.81, noting the points relating to the 1990 Inquiry apportionment, and accepts the detailed explanations and supporting evidence presented regarding competitiveness, drainage works and accounting methods.
54. The following additional matters were also raised:
- Time period to which a Secretary of State Direction can be applied;
 - Power of the Secretary of State to order a rebate;
 - Other matters for consideration.

These are considered in turn below:

Time period to which a Secretary of State Direction can be applied

55. The Secretary of State notes that you seek a direction that charges for the year 2020-2021 (and any subsequent years) should increase each year by no more than the rate of inflation.

56. Given that the objections relate to charges for 2018/19 and 2019/20, the Secretary of State is not minded to issue a direction on this matter.

57. Power of the Secretary of State to order a rebate

Whilst s31(6)(b) of the 1964 Act gives the Secretary of State the power to give the harbour authority "... such direction with respect to the charge as would meet objection thereto..." there is nothing in the Act to provide for the Secretary of State to prescribe how LHB should meet that objection. In any event, given that the Secretary of State has not found in favour of the objections, it is not necessary for the Secretary of State to issue a direction on this matter.

Other Matters for consideration

58. As per paragraphs 7.110 to 7.114 of the PINS report [Annex 1], the Secretary of State considers the Inspector to have made reasonable conclusions on the matters concerning LHB's stakeholder engagement, the future operation of the port, representations to the press notices addressed at inquiry, concerns regarding the EA's policy and approach and the weight attached to LHB's accounts for the disputed charge years.

Conclusion

59. Following on from the above, the Secretary of State has decided, in his judgment, to approve the harbour charges levied by LHB in 2018/19 and 2019/20 in accordance with section 31(6)(a) of the 1964 Act.

60. The Secretary of State has carefully reviewed the PINS Report containing your objections, LHB's response and other representations, the statutory legal framework and the port policy principles set by Department for Transport.

61. It follows that the Secretary of State approves the recommendation of the Inspector concerning Issues 1 and 1A, that LHB's budget setting process for 2018-2019 was logical and appropriate, that it carefully considered the needs of stakeholders, the consequences of increasing charges and dues on different stakeholder groups and strove to reach fair and equitable increases for all users. The claim that the additional 8% charge Harbour Dues for pleasure craft and charter vessels was unfair is not well founded.

With regards to Issues 2 and 2A, the Secretary of State has fully reviewed and considered your objections under s31(2)(b)(ii) of the 1964 Act that, irrespective of Issue 1, Harbour Dues relating to all categories of vessels for 2018-2019 were uncompetitive, excessive, and should be reduced to a level of one third or no more than 50% of the 2017-2018 charges. The Secretary of State accepts the Inspector's conclusion that the evidence was not persuasive to find in favour of the Objectors. It follows that the Secretary of State approves the recommendation of the Inspector that it is not necessary that Harbour Dues for all vessels for the year 2019-2020 should be reduced to a level of no more than 50% of the 2017-2018 charges.

62. With regards to Issue 3, the Secretary of State has fully reviewed and considered the claim by the Ferry Company under s31(2)(b)(ii) of the 1964 Act that Harbour Dues on passengers of the ferry operating within the harbour ought not to be imposed at all. The Secretary of State acknowledges that the Ferry Company's objection raises a question of law which is outside the scope of this Inquiry under section 31 of the 1964 Act and is therefore dismissed.

Secretary of State's Decision

63. In accordance with Section 31(6)(a) of the 1964 Act, the Secretary of State hereby gives notice to LHB of approval of the disputed charges in Issues 1, 1A, 2 and 2A contained within the 2018/19 and 2019/20 Schedule of Charges. The period during which the approval is to have effect is subject to a limit of 12 months from 1 April 2018 to 31 March 2019 in respect of the 2018/19 charges and a limit of 12 months from 1 April 2019 to 31 March 2020 in respect of the 2019/20 charges.
64. A copy of this letter with the PINS report at Annex 1 is being sent to LHB and other interested parties.

Yours sincerely,

Mike Alcock

Deputy Director, Freight and Ports Maritime Policy
On behalf of the Secretary of State for Transport