

Title: DESIGNATION OF STATUTORY HARBOUR AUTHORITIES WITH THE POWER TO GIVE HARBOUR DIRECTIONS IA No: DfT00323 Lead department or agency: Department for Transport Other departments or agencies:	Impact Assessment (IA)
	Date: 03/03/2015
	Stage: Validation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
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Summary: Intervention and Options	RPC Opinion: Awaiting scrutiny
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?
£0.08m	£0.08m	-£0.01m	Yes Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

A successful maritime industry is vital to the UK economy: to sustain and encourage it the Department seeks to agree with industry an appropriate level of regulation to promote safe and efficient operations and environmental protection. Statutory harbour authorities' (SHAs) risk assessments associated with compliance with the Government's non-statutory Port Marine Safety Code have identified that the power to give harbour directions would be a useful tool to mitigate risks identified. The Department recently introduced section 40A of the Harbours Act 1964 as a simpler, quicker and cheaper means of acquiring these powers than the previous route (obtaining a Harbour Revision Order). The current problem under consideration is whether the Secretary of State should approve applications by 31 SHAs to be designated under section 40A.

What are the policy objectives and the intended effects?

The policy objective for approving these applications is to confer the SHAs with powers to give harbour directions for the movement, manning and equipment of ships. This provides an additional tool alongside existing powers (including powers to introduce byelaws) to tackle problems in their harbour. Applications under section 40A are significantly less costly and time-consuming than the Harbour Revision Order approach (which is likely to be prohibitive for many SHAs).

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

DO NOTHING: non-approval of these applications under Section 40A is likely to mean that many SHAs do not seek powers of direction under the alternative Harbour Revision Order process.

OPTION 1 (PREFERRED): An Order would be made by the appropriate Minister designating applicant SHAs with the power to give harbour directions under new section 40A of the Harbours Act 1964 obviating the need for an HRO. The harbour directions power is a useful additional tool alongside their existing powers (e.g. byelaws) for SHAs to address problems. The procedure for giving harbour directions is far less cumbersome than that for harbour byelaws which must be confirmed by the Secretary of State. A NON-LEGISLATIVE OPTION was rejected as this would have meant that no SHAs would be designated under section 40A (stage 2 of the process to realise the policy objective), leaving them the costly single option of an HRO to acquire the general directions power

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A (see section 10.1)					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ **John Hayes** _____ Date: 05/03/2015

Summary: Analysis & Evidence

Policy Option 1

Description: Designate applicant SHAs with the power to give harbour directions under new section.40A of the Harbours Act 1964

FULL ECONOMIC ASSESSMENT

Price Base 2014	PV Base 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.004	High: £0.434	Best Estimate: £0.082

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.031	0	0.031
High	0.038	0	0.038
Best Estimate	0.035	0	0.035

Description and scale of key monetised costs by 'main affected groups'

Assuming all 31 harbour authorities' applications for powers of direction under section 40A are **accepted**, the total cost per applications is estimated to be £1.1k (range £1.0k-1.1k). This includes costs associated with consulting on their intention to acquire powers, admin costs associated with drafting an application letter and familiarisation costs after the new powers have been accepted.

Other key non-monetised costs by 'main affected groups'

None identified

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.004	0.034
High	0	0.053	0.465
Best Estimate	0	0.013	0.117

Description and scale of key monetised benefits by 'main affected groups'

Assuming all 31 harbour authorities' applications for powers of direction under section 40A are **rejected**, we assume that only 5 SHAs are assumed to apply for powers of direction using the HRO route over the next 10 years (with the remaining 26 assumed not to apply for powers of direction). These applications are estimated to cost £27k (range £8k-106k) per harbour authority (breakdown of costs in Table 3).

Other key non-monetised benefits by 'main affected groups'

The acquisition of the new power will provide SHAs with an additional tool with which to regulate ships using their harbours and mitigate risks. This will lead to an overall enhancement of harbour safety and environmental protection. In addition exercising powers of direction is a quicker and simpler process than introducing new bylaws.

Key assumptions/sensitivities/risks

Discount rate

3.5%

The policy is permissive so it is not possible to estimate if and how SHAs will exercise their powers. As a consequence the benefits from exercising these powers have not been monetised.

Given uncertainties about the number of SHAs requiring a public enquiry under the HRO route it is assumed that 0%, 12% and 100% require and enquiry under the high, best and low scenarios respectively.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £:			In scope of OITO?	Measure qualifies as
Costs: 3,113	Benefits: 10,542	Net: 7,428	Yes	Zero Net Cost

Evidence Base (for summary sheets)

1. Problem under consideration;

1.1 A successful maritime industry is vital to the UK economy: to sustain and encourage it the Department seeks to agree with industry an appropriate level of regulation to promote safe and efficient operations. Statutory harbour authorities' (SHAs) risk assessments associated with compliance with the Government's non-statutory Port Marine Safety Code have identified that the power to give harbour directions would be a useful additional tool to mitigate risks identified alongside their existing statutory powers such as byelaw-making powers. The existing route to acquire the harbour directions power (a harbour revision order (HRO) under section 14 of the Harbours Act 1964) is complex and for some SHAs prohibitively expensive. Designation under new section 40A of the Harbours Act 1964 is a simpler, quicker and cheaper means of acquiring the power.

1.2 Stage 1 of the process has already been achieved with the insertion of new sections 40A to 40D of the Harbours Act 1964¹. They provide a new, simplified mechanism by which SHAs can be designated with the power to give harbour directions as an alternative to promoting an HRO.

1.3 The current problem under consideration is whether individual SHAs should be designated under section 40A (stage 2). Currently 31 harbours in England and non-fishery harbours in Wales have applied under section 40A². One harbour is publicly owned, 24 are companies limited by guarantee and 6 are private trust entities, akin to companies. The companies and trust entities can be of any size; some companies are SHAs for several harbours whereas others will be small or micro organisations. Annex A gives a list of the 31 harbours and an indication of business size. The purpose of this impact assessment is to inform the Department's decision whether to approve these applications.

Consultation outcome

1.4 Given the nature of the subject matter and the fact that the applicant harbour authorities had carried out an informal consultation with their harbour users prior to submitting their applications to be designated with the power to give harbour directions, a targeted consultation exercise, carried out over a reduced 4 week period which closed on 16 January 2015, was considered appropriate.

1.5 A total of 22 responses were received to the consultation regarding the applications from the SHAs for 31 Harbours. Since the consultation was launched applications in respect of 2 of those harbours have been withdrawn by Associated British Ports (ABP – Ipswich and Teignmouth Quays). All responses fully supported the designation of those harbour authorities with the power to give harbour directions.

1.6 Consultees were also asked to comment on whether they were content with the Port User Group ("PUG") arrangements proposed by the applicant harbour authorities with respect to exercising the power to give harbour directions: these could be existing PUGs or, if no PUG was in place, would involve the setting up of one.

1.7 Respondents regarding Crouch Harbour Authority's ("CHA") application felt that the Crouch Harbour Advisory Committee ("CHAC"), a statutory committee, should act as the PUG, in preference to CHA's proposal to create a more focused group to discharge specific functions solely related to the introduction and management of harbour directions. After consideration of the arguments on both sides, the Department considers that CHA's proposal for a more focused PUG is more appropriate and representative of those likely to be affected by harbour directions, including recreational boating interests, which was the concern of the Royal Yachting Association ("RYA"). However, the Department has also been informed that all proposed harbour directions will be referred to and considered by the Advisory Committee as well as the PUG, before they are published.

1.8 The RYA also commented on the PUG arrangements at the other applicant harbour authorities. In some cases the RYA were content with existing PUG arrangements. In other cases their concerns have been met either by the addition of an RYA representative to the proposed PUG,

¹ Amended by Section 5 of the Marine Navigation Act (2013)

² The designation of fishery SHAs in Wales and SHAs in Scotland is respectively the responsibility of the Welsh and Scottish Ministers.

or the creation of a PUG more focused on users of the harbour to be designated, and including representation of recreational boating interests. In Chichester Harbour, where there is an Advisory Committee, Chichester Harbour Conservancy's proposed PUG will comprise the marine members of its Advisory Committee. Further clarification is needed and is being sought from ABP regarding the composition of the PUGs for their remaining 16 harbours to be able to respond fully to the RYA's comments on those harbours.

1.9 Following the consultation, the SHAs for 11 of the 29 remaining harbours will be designated by an Order which will come into force on the first common commencement date (CCD – 6 April 2015). Designation of the SHAs for the remaining 18 harbours (including ABP's 16 remaining harbours) will be by a second Order timed to come into force by the second CCD (1 October 2015). This is not because there are any issues of principle regarding their designation but because their legislation is more complex and extra time is needed in order to compose entries for the Schedule to the Order describing the harbours by reference to that legislation. In ABP's case, it will also allow additional time to liaise with them and with the RYA who commented and sought clarification on their PUG arrangements to reach a satisfactory conclusion.

1.10 Natural England commented on the applications of the English Harbour authorities and that of Mostyn Docks in so far as it affected English waters. They supported both the designation of the harbour authorities and their proposed PUG arrangements. In addition, Natural England said that as the majority of the harbour authorities were within, or close to, national, European and international designated statutory nature conservation sites, those harbour authorities, in the exercise of the harbour directions power, needed to be mindful of the applicable legislation protecting these sites as well as their general environmental duty under the 1964 Act. Natural Resources Wales echoed these points with respect to Mostyn Docks. The opportunity will be taken to convey this information on environmental duties to the respective harbour authorities on informing them of their designation.

Comparison of procedure

1.11 Table 1 below shows the procedure for acquiring powers under section 40A against the Harbour Revision Order route. That the section 40A route is simpler and more flexible means that more harbour authorities might decide to acquire and exercise this power.

1.12 Once designated with powers SHAs can choose whether to exercise these powers or draft byelaws to achieve their business and environmental needs. In some cases making harbour byelaws could be longer and costlier than exercising harbour direction powers, hence the intervention will help give SHAs flexibility of choice and potential for cost savings. Table 2 compares the procedure for harbour byelaws with that for exercising the power to give harbour directions under new section 40A of the 1964 Act.

Table 1: Comparison of old and new power acquisition process

Available means for an SHA to acquire the power to give (general) harbour directions	
Harbour Revision Order = the only means available prior to new section 40A being inserted in the 1964 Act in 2013 (see adjacent column).	New Section 40A of the Harbours Act 1964 empowering the Secretary of State to designate SHAs with the power to give harbour directions
<ul style="list-style-type: none"> • An HRO is a type of subordinate legislation available under the 1964 Act and can be used for a number of purposes including to confer additional powers on an SHA, such as the power to give general directions An SHA would have to make an individual application and would incur a fee of £4,000 for a non-works HRO • The services of Parliamentary Agents (Solicitors specialising in the drafting of legislation) is usually required to draw up the draft HRO which are costly and time-consuming (see paras 5.2 and 5.3 below) • There are very prescriptive procedural requirements for applying for an HRO which are set out in Part 1 of Schedule 3 to the 1964 Act, the handling of which has been delegated to the Marine Management Organisation (MMO), a non-departmental public body <ul style="list-style-type: none"> ○ The applicant would have to arrange for a notice to be published in the London Gazette and a local advertisement containing certain prescribed information about the HRO, where it is available for inspection and giving a period of 42 days during which any person, so desiring, may object to the Order ○ If valid objections were not resolved a public enquiry could be needed, again very costly (see para 5.3 below) and requiring legal input. 	<ul style="list-style-type: none"> • There are no stipulated procedural requirements for applying to be designated with the new power of harbour direction, it can be done by letter, and there is no requirement for statutory notices to be published. This vastly reduces the amount of time and costs involved • Under new section 40A, The Secretary of State can, by Order, designate SHAs wishing to apply for it, the power to give harbour directions for the movement, mooring, manning and equipment of ships • The Department produced guidance in November 2013 asking applicant SHAs to include information under three headings in their application letter (their rationale for needing the power, the outcome of consultations with their harbour users on the SHA acquiring the power, and details of any proposal for repealing any local statutory provision (such as a harbour byelaw) which conflicted with a proposed harbour direction) • Less legal assistance would be needed as an industry-led National Directions Panel has been set up which has issued very detailed guidance on consulting harbour users, a dispute resolution procedure, and a set of model harbour directions for SHAs to use • There is no fee chargeable to an SHA for applying to be designated with the section 40A power • A number of SHAs can be simultaneously designated with the power.

Table 2: Comparison of procedure for making byelaws and exercising harbour directions

Procedure for making harbour byelaws	Procedure for making (exercising) harbour directions under section 40A
<ul style="list-style-type: none"> • Legal assistance would be required to prepare a new set of byelaws • Informal consultation with users is recommended as is submission of an early draft to the Department for review from the policy and legal perspective. Typically a set of byelaws will undergo a number of iterations until the Department considers they are in a suitable state to be formally signed and sealed by the SHA. • After sealing, harbour byelaws must be advertised locally for one month (average cost around £260³), and copies made available for inspection. Objections/representations are invited • Subject to there being no objections or representations, or once any outstanding objections or representations have been resolved, the SHA is legally obliged to apply formally to the Secretary of State for the byelaws to be confirmed • With the greater legal input required drawing up byelaws is more expensive than drawing up harbour directions, and the iterative process of successive drafts means that it takes around a year for byelaws to be made, and longer if there are objections to resolve. 	<ul style="list-style-type: none"> • The National Directions Panel has prepared a model set of harbour directions to assist harbour authorities when they come to exercise their harbour directions power. • All applicant harbour authorities have signed up to a Harbour Directions Code of Conduct drawn up by the National Directions Panel. This recommends 2 weeks advance informal consultation with the port user group on proposed harbour directions • Under section 40B (Procedure) of the 1964 Act, harbour authorities must then publicise proposed harbour directions for 28 days which allows objections or representations to be made. This can be by “such arrangements as they think appropriate” (for instance advertising in Lloyd’s List Online) so there is the opportunity to minimise costs • The Code of Conduct sets out a dispute resolution process if there are objections to proposed harbour directions. • If there are no objections, or any disputes have been resolved, the SHA can make the harbour direction directly after the 28 period and at the same time must publish a notice stating the making of a harbour direction in a newspaper specialising in shipping news • There is no Secretary of State involvement in the proposing or making of harbour directions • The timescale for making harbour directions is considerably less than for harbour byelaws (a couple of months if there are no disputes, and a further 2 to 4 months if there are)

2. Rationale for intervention

2.1 The case for Government intervention has already been subject to parliamentary and public scrutiny during the passage of the Marine Navigation Bill. Section 5 of the resulting Marine Navigation Act 2013 inserted new sections into the Harbours Act 1964 which provide a quicker, simpler and cheaper mechanism than that of a harbour revision order (HRO) under section 14 of the Harbours Act 1964, by which the Secretary of State may designate SHAs with the power to give (general) harbour directions. Once the power to give harbour directions is acquired, the related procedure would not require Secretary of State involvement so harbour directions can be put in place much more quickly than harbour byelaws which require his confirmation.

2.2 A second stage of Government intervention is now required for the Secretary of State to legally confer the power to give harbour directions on SHAs who have applied to be so-designated in order to achieve the policy objective of providing SHAs with a simpler, cheaper and quicker means of acquiring the harbour directions power .

2.3 SHAs are not obliged to seek the power - the change is permissive.

2.4 Applications to be designated with the power to give harbour directions under new section

³ Figure based on DfT consultation with industry stakeholders

40A of the Harbours Act 1964 have been received from the SHAs for 25 harbours in England and 6 non-fishery harbours in Wales (see Annex A).

3. Policy objective

3.1 The policy objective for approving these applications is to confer the SHAs with powers to give harbour directions for the movement, manning and equipment of ships. This provides an additional tool alongside existing powers (including powers to introduce byelaws) to tackle safety and environmental problems in their harbour. Applications for powers of direction under section 40A are significantly less costly and time-consuming than the Harbour Revision Order approach (which is likely to be prohibitive for many SHAs).

4. Description of options considered (including do nothing);

Do nothing

4.1 Electing to do nothing would leave existing burdens and bureaucracy in place and not therefore fulfil the policy objective. It would also mean the costs which the 31 SHAs applying for designation have incurred so far will be sunk without achieving the objective.

Option 1

4.2 The option being proposed is to designate applicant SHAs with the power to give harbour directions to control movements, mooring and unmooring, manning and equipment of ships in their harbours which completes stage 2 of the process of giving SHAs a simpler mechanism to acquire the harbour directions power. Designation under section 40A of the Harbours Act 1964 provides a simpler, quicker and less costly alternative to that of promoting an HRO and is, therefore, the **preferred option**. Once the power is acquired, the procedure for giving harbour directions is much less cumbersome than that for harbour byelaws which need to be confirmed by the Secretary of State.

Non-legislative option

4.3 Non-legislative options for conferring harbour direction powers are likely to leave harbour users and stakeholders with inadequate protection and therefore were not considered at stage 1 of the process of offering an alternative route to acquiring powers. . Additionally given that the intervention in this IA is to complete the process of stage 1 applications a non-legislative option would not achieve the desired policy outcome.

5. Monetised and non-monetised costs and benefits of each option (including administrative burden)

Do nothing and non-legislative options

5.1 As discussed, a non-legislative option will not provide adequate protection for harbour users and stakeholders. A do nothing option will not fulfil the policy objective of removing unnecessary burdens on business and ensuring that the organisations that businesses rely on have the powers to operate effectively. This would mean that in order to obtain the powers to give general directions an SHA would need to promote an HRO which is a long, costly and bureaucratic process and an SHA would need to consider whether the benefits outweighed the costs before embarking on this process.

5.2 Electing to Do Nothing would frustrate the stage 1 process of introducing a simplified route to obtain powers and presents a step towards the previous regime. Under the old rules the Marine Management Organisation has delegated responsibility for administering the HRO procedure and charges a fee of £4,000 for a non-works HRO. The SHA promoting the HRO will also bear the cost of legal fees and administrative costs associated with complying with the very prescriptive requirements set out in Part 1 of Schedule 3 to the Harbours Act 1964 (publishing statutory notices, drafting impact assessments and public consultation including negotiating with stakeholders who have lodged objections).

5.3 The HRO process is lengthy and very costly. We estimate that the costs of acquiring an HRO are in the region of £8,000 - £26,000, with detailed explanations below. These costs do not include the costs of a public inquiry. The costs of a public inquiry into an HRO promoted by the Dover Harbour Board in 2011 came to just over £84,000 made up of Inspector fees (around,

£30,500), venue hire (around £8,750) and legal representation costs (around £45,000)⁴. For the sake of simplicity we round this estimate to £80,000 to avoid spurious accuracy. Under the do nothing option, we would expect five SHAs to seek the HRO route over the course of the next ten years .

5.4 Estimates from the Marine Navigation Act 2013 Impact Assessment found the cost of drawing up the legal text of the HRO was between £2,700 and £21,000, based on the cost of lawyers' time. Furthermore, the public notification of the HRO was estimated to cost £250 and a notification in the London Gazette estimated at £70.

5.5 Lastly, we must consider the likely proportion of HRO applications that would have required a public inquiry. Evidence from the MMO website suggests that of the last 33 HRO applications they have received, 4 went to a public inquiry, a rate of 12%. Hence in the central scenario we assume that 12% of applications for HRO will result in a public enquiry, with high and low assumptions of 100% and 0% respectively.

5.6 We therefore estimate that the average cost per HRO application between £8k-106k, with a central estimate of £27k (see table 3).

Preferred Option 1 – to designate applicant SHAs with the power to give harbour directions

Unquantified Benefits

5.7 **Simplification:** Once the power is acquired, the procedure for giving harbour directions is simpler and quicker than for making or amending harbour byelaws as harbour directions do not require confirmation by the Secretary of State. Also, detailed guidance was issued by a newly formed industry-led National Directions Panel including a set of model harbour directions, advice on the consultation of harbour users and a dispute resolution procedure making it easier and quicker for designated SHAs to familiarise themselves with use of the new power, saving on resource costs

5.8 **Standard approach ensuring a national standard of effectiveness:** Applicant SHAs as part of their application were asked to sign an Assurance Statement that they would abide by a harbour directions code of conduct order. The code of conduct was agreed by the National Directions Panel (NDP). The NDP will retain an ongoing oversight of designated SHAs' use of the power. All applicant SHAs signed the Assurance Statement.

5.10 **More agile response to problems when exercising powers:** as the timeframe for publicising harbour directions is short (28 days) SHAs can more speedily address problems identified in their harbours through risk assessment. If there were no objections the SHA could proceed to make the harbour direction and publish a notice of having done so in a newspaper specialising in shipping news – there is no recourse to the Secretary of State. If there were objections, the National Directions Panel's guidance has set out a local dispute resolution process to help SHAs deal efficiently with any objections and then proceed to making and publishing a notice without referral to the Secretary of State. By contrast, for byelaws, application would have to be made to the Secretary of State for Transport as confirming authority (Table 2). On average, it takes around a year for a set of byelaws to be worked into a form suitable for being made and then advertised – this can be longer if an SHA's existing byelaws are very outdated and involves much greater legal costs to the SHA.

5.11 **Enhanced competitiveness of UK Maritime sector:** The costs to an SHA of acquiring the power to give harbour directions are significantly lower under new section 40A of the Harbours Act 1964 enabling a greater number of SHAs to realise the benefits. The high short-term cost of promoting an HRO would have far outweighed any long-term benefits. This creates a more level playing field for SHAs enabling them to compete more effectively. This will have an overall beneficial effect on the competitiveness of the UK maritime sector as a whole.

Quantified benefits

5.12 **Deregulation:** only around 35 out of 175 SHAs in the UK currently have the power to give general directions. This measure gives other SHAs the option to acquire it through the designation process which is a swifter and less costly and complex mechanism than other means (HRO under Harbours Act 1964) and therefore avoids the steep costs for promoting an HRO (see paragraph 5.3

⁴ Figures provided by Port of Dover

above).

5.13 Assuming all 31 harbour authorities' applications for powers of direction under section 40A are rejected (the do nothing scenario), we assume that only 5 SHAs will apply for powers of direction using the HRO route over the next 10 years. This counterfactual has been chosen as 35 SHAs have sought HROs since 1964 when the Harbours Act became law. On average this is a rate of around 0.7 HROs per year. For simplicity we have assumed therefore that one SHA would use the HRO route every other year. It is assumed that the remaining 26 SHAs would not have pursued the HRO route on the basis of high costs. This section sets out the cost savings to these 5 harbour authorities from not having to apply for powers of direction using the HRO route assuming their applications for powers of direction under section 40A are rejected (reported as a monetised benefit on page 2).

5.14 As set out in Table 1, there are no prescriptive requirements on SHAs applying for the power to give harbour directions under section 40A of the Harbours Act 1964. Departmental Guidance asked SHAs intending to apply for the power to carry out an informal consultation with their harbour users with feedback on the results forming part of the SHA's application for the harbour directions power. However, individual SHAs could choose the manner in which they undertook their consultation exercise enabling them to minimise the costs. Some of the applicant SHAs put a consultation link on their website and notified harbour users of the link by e-mail, inviting them to respond if they so wished. Others sent detailed e-mails to their harbour users e-mail list which was at negligible cost. Other applicant SHAs convened meetings of their existing port user groups to discuss the intended acquisition of the harbour directions power. Several SHAs placed notices in local newspapers which ranged in cost according to the length of the notice from around £90 to £250⁵ but this was an elective rather than an imposed cost.

5.15 Table 3 gives the cost of obtaining an HRO. We have assumed the cost of administration and familiarisation are roughly equivalent with the admin and familiarisation cost of the Section 40A route. Administration costs are estimated at £110 - £305 per application and familiarisation costs are estimated at around £650. A more detailed explanation of the derivation of these estimates is below.

Table 3: Costs of acquiring powers under old Harbour Revision Order process for a single application

Initial application fee	£4,000
Drawing up legal text of HRO	£2,700 - £21,000
Public notification of HRO	£250
Public notification in the London Gazette	£70
Public enquiry (if applicable) ⁶	£80,000
Familiarisation costs	~ £650
Admin costs	£110 - £305
Low estimate	~ £8,000
Upper estimate	~ £106,000
Best estimate costs (assuming 12% of applications require a public enquiry)	~ £27,000

Table 4: Monetised benefits

Year	Cost savings to 5 SHAs (best estimate)	Cost savings (discounted)
1	£26,731	£26,731
2	£0	£0
3	£26,731	£24,955
4	£0	£0
5	£26,731	£23,295
6	£0	£0

⁵ Figures based on consultation with industry stakeholders

⁶ Some HRO proceedings end up with a requirement for a public enquiry as part of their dispute resolution process. This will only apply in some circumstances

7	£26,731	£21,746
8	£0	£0
9	£26,731	£20,301
10	£0	£0
TOTAL	£134,600	£117,000
TOTAL (low estimate)	£38,900	£34,000
TOTAL (high estimate)	£531,000	£465,000

5.16 This means that the quantified benefits of the intervention equal the savings from the five SHAs we estimated would have used the HRO route, plus the unquantified benefits covered in paragraphs 5.7 to 5.11. Using a 3.5% discount factor each year in line with HM Treasury Green Book principles, the cost savings equal £34,000 - £465,000 over 10 years with a best estimate of £117,000. The lower and upper limits reflect a range of £8,000 - £106,000 per HRO.

Costs of acquiring and exercising the harbour directions power.

5.17 Acquisition of the harbour directions power by an SHA will not impact on harbour users until that SHA chooses to exercise the power. However, in their stated rationale for needing the power (part of the required information sought from applicant SHAs), a number of SHAs cited acquisition of the harbour directions power as a useful mitigation measure for risks identified in their risk assessments associated with their compliance with the Department's non-statutory Port Marine Safety Code. That being the case, it is likely that a number of harbour authorities, once designated, will exercise the power in the near future.

5.18 In complying with the harbour directions Code of Conduct, SHAs were asked to submit details of the outcome of consulting harbour users, or state when and how they intended to consult users. SHAs were at liberty to consult harbour users as they saw fit as this was promulgated as good practice in Department for Transport non-statutory harbour directions guidance and in the National Direction Panel's Guidance including the Harbour Directions Code of Conduct. This did involve a **consultation** cost but SHAs could minimise that cost as the manner in which they chose to consult was not prescribed, and they could avoid the long, costly and bureaucratic process of promoting an HRO (see paragraph 5.3 above).

5.19 Once an SHA has proposed a harbour direction there will be costs associated with consulting harbour users, and publicising proposed harbour directions. This is difficult to quantify as the designation will confer a power which an SHA will exercise at a later stage when risk assessment identifies problems which it determines require the giving of a harbour direction to remedy. However, a number of the applicant SHAs have identified harbour directions as a mitigation measure in respect of risks/issues identified in their harbours and are therefore likely to exercise the newly acquired power early on.

5.20 The legislation gives an SHA the discretion to publicise a proposed harbour direction by such means as they think appropriate rather than the very prescriptive procedural requirements for HROs enabling them to keep costs to a minimum. Once a harbour direction is given an SHA will be required to place a notice in a newspaper specialising in shipping news – the minimum cost of £1,500 for advertising in Lloyd's List Online (the notice would appear twice in the Lloyd's List e-newspaper and also go in daily brief and classifieds for 2 weeks⁷) would be sufficient to fulfil their statutory obligation. There are no further costs after this nor any involvement of the Secretary of State, such as there is for byelaws. There would be legal costs for drawing up new sets of byelaws and a protracted process of multiple iterations of the Byelaws until the Department could consider them fit to be made by the SHA. An SHA would then need to place an advertisement in a local newspaper giving at least a month for objections/representations to be made. If there were objections/representations extra time would be added while these were resolved before application could be made to the Secretary of State for the Byelaws to be confirmed.

5.21 It is possible that some harbour authorities would have concluded that their existing powers were sufficient and that it was not, therefore, necessary to augment their powers at this stage by applying for the harbour directions power.

⁷ Figures based on consultation with stakeholders and market research

5.22 Another factor which may have had a bearing on whether an SHA would seek the power is that the new harbour directions power applies to "ships"⁸, as defined in section 57(1) the Harbours Act 1964. In relation to the similar definition in the Merchant Shipping Act 1995, the Court of Appeal held that a vessel 'used in navigation' is one used to make ordered progression over the water from one place to another and does not include craft (such as a personal water craft) simply used for having fun on the water without the object of going anywhere. If the particular problem to be addressed by an SHA was in relation to the conduct of personal water craft there would be no benefit in applying for the harbour directions power under new section 40A of the Harbours Act 1964. This is one of the issues that will be considered in the post-implementation legislative review of the Marine Navigation Act 2013, section 5 of which inserted the new provisions into the Harbours Act 1964. A view will be taken on whether the limitation of the section 40A harbour directions power to "ships" as opposed to the more widely defined "vessels" is serving as a deterrent to harbour authorities applying for the power.

5.23 In general terms, the Government would not seek to impose a new power on harbour authorities, but allow them the discretion to determine their need for the power before applying which they are best placed to do.

5.24 If a master of a ship fails to ensure compliance with harbour directions without reasonable excuse this is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale (currently £2,500). This is comparable to the applicable penalty for breach of a harbour byelaw. Masters of ships complying with harbour directions would not incur this penalty and the same would apply in respect of byelaws.

Familiarisation costs

5.25 Familiarisation costs for SHAs embarking for the first time in the exercise of the new powers will be minimised as harbour authorities applying to be designated have been consulted and the industry-led National Directions Panel has issued detailed guidance including a model set of harbour directions for harbour authorities to use, advice on consulting harbour users and a dispute resolution procedure. This is an initial cost which will only apply when an SHA first acquaints itself with the procedure for giving harbour directions.

5.26 Familiarisation costs are in respect of the extra time needed to understand the new rules and implement them, including any training for personnel responsible for drawing up harbour directions, and any costs of obtaining some initial advice, for example legal guidance.

5.27 The new procedure has few prescriptive requirements, is simpler to complete and detailed guidance is available. Familiarisation costs are likely to be very small and it is difficult to determine how much administrative resource will be required for this simplified process. In the interests of proportionality we have not quantified familiarisation costs on SHAs.

5.28 Liaison with harbour masters suggested that, once granted, they would present or brief relevant stakeholders and port user groups about the new powers. Using salary estimates from the Annual Survey of Hours and Earnings we estimate these costs at approximately £650 per application⁹.

Admin costs

5.29 As above, the simplified new procedure requires few steps to implement and the admin costs involved are likely to be small and marginal for the existing administrative staff at harbour authorities. The steps are also fairly simple, involving less formal consultation and notification of the intention to acquire power. It is important to remember that SHAs will seek this new route if they believe the benefits of doing so outweigh the costs. In the interests of proportionality we have not quantified the admin costs; but it is important to acknowledge they must be small if SHAs pursue the new approach.

5.30 Liaison with harbour masters found that the administration costs of writing a letter of

⁸ "ship", where used as a noun, includes every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968;

⁹ 35-40 hours of senior managers time (SOC category 12) at £16.60 per hour. Estimates from 2014 provisional Annual Survey of Hours and Earnings, <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2014-provisional-results/index.html>

application under the Section 40A route cost around £110 - £305 per application¹⁰. This was typically the cost of one day of a senior manager’s time, plus possibly discussion at advisory committees and other internal processes. Estimates for salary costs were taken from the Annual Survey of Hours and Earnings.

Table 5: Costs of acquiring powers under new Section 40A process per application

Informal consultation (see paragraph 5.13)	£250
Familiarisation costs	~ £650
Admin costs	£110 - £305
Low estimate	~ £1,000
Upper estimate	~ £1,200
Best estimate (mid-point)	~ £1,100

5.31 We recognise that some of the applications that may be received for power acquisition under the new section 40A process are due to new demand that could be expected from the cheaper cost of the process. Thus some of the demand may come from harbour authorities with less complex needs for powers, whose benefits would also have been smaller. Therefore, under this option we assume all 31 SHAs apply to acquire powers and would incur costs such as those in Table 4.

5.32 The total costs of acquiring powers are estimated at £34,565 (31 x £1,100) for the SHAs, all incurred in the first year of implementation. Since these costs are incurred in the first year of implementation the net present cost is also £34,565.

6. Risks/assumptions

6.1 The policy is permissive so it is not possible to estimate if and how SHAs will exercise their powers. As a consequence the benefits from exercising these powers have not been monetised.

6.2 Given uncertainties about the number of SHAs requiring a public enquiry under the HRO route it is assumed that 0%, 12% and 100% require and enquiry under the high, best and low scenarios respectively.

7. One-in, Two-out and Equivalent Annual Net Cost to Business (EANCB)

7.1 Consistent with sections 1.9.20-21 of the Better Regulation Framework Manual, designating SHAs with the power to give harbour directions is a permissive measure in that harbour authorities are not being compelled to obtain this designation. We would only expect SHAs to seek designation where there will be net benefits to business. Therefore, we assume that the benefits of obtaining a designation are at least equal to any associated costs.

7.2 This measure is in scope of One-in, Two-out and deregulatory because it will simultaneously designate the SHAs for 31 harbour who hitherto would only have been able to acquire the power by individually promoting an HRO, if they considered that the benefits outweighed the considerable costs. Of the 31 harbours, 30 are privately-owned SHAs (24 owned by private companies, 6 are “self-owning” independent statutory bodies). SHAs have applied for the powers providing evidence that they think this is beneficial to them.

7.3 The EANCB is used to calculate the direct impacts of a policy on business, annualised over the life of the policy. The preferred option has a direct impact on the 24 privately owned SHAs in England and Wales that have applied for designated powers. That is, in the absence of this regulation, these SHAs would not have otherwise sought designated powers.

7.4 Using the impact assessment calculator on the gov.uk website, we have inputted the costs to business (£7,750 incurred in year 0) against the benefits profile covered in Table 5. The calculator has computed an Equivalent Annual Net Cost to Business of -£34,527, which we have

¹⁰ 6-8 hours of “Managers and Directors in Transport” (SOC category 1161) at £19.43 per hour, plus half an hour of 18-20 senior manager time (SOC category 12) at £16.60 per hour

rounded to -£0.03m.

7.5 While we estimate that the business net present value is £0.38m, we consider that the appropriate OITO classification is Zero Net Cost. This is because fundamentally the measure is a permissive change and only those SHAs that believe they get a net benefit from acquiring and using powers. There is also uncertainty around the monetisation of costs and benefits on SHAs.

8. Wider impacts

8.1 The new powers of direction are now much cheaper and easier to obtain and will better equip SHAs to regulate ship traffic in their harbours and to address safety risks/issues identified, including from the risk assessment they undertake as part of their compliance with the Department's non-statutory Port Marine Safety Code.

8.2 The simplified procedural arrangements for harbour directions, as compared to harbour byelaws which must be confirmed by the Secretary of State (in practice the delegated authority of the Secretary of State) means that safety risks and issues (and other risks/issues, e.g. environmental ones) can be more swiftly addressed.

8.3 Overall harbour safety will be enhanced and environmental impacts reduced, and in a quicker timescale than before.

9. Small and micro business assessment

9.1 An SHA is eligible to apply to be designated with the power to give harbour directions under new section 40A of the Harbours Act 1964 irrespective of whether it is a micro, small, medium or large business. Small and micro businesses are therefore not exempt of the measure since this is a beneficial and permissive deregulatory change.

10. Review

10.1 There is no statutory review clause in the designation order which will confer a power on SHAs rather than impose a regulatory burden on them. However, there are arrangements in place to safeguard harbour users and ensure the responsible use of the power to give harbour directions.

10.2 New section 40B of the HA 1964 governs the procedure applicable to harbour directions. This provides that as well as consulting on whether an SHA should have the power to make harbour directions, that SHA must consult users before a harbour direction is proposed subsequently publicise it for 28 days.

10.3 The Government stated during the passage of the Marine Navigation Bill that it would expect any SHA seeking powers of harbour direction to abide by a Code of Conduct as agreed by industry representatives. The National Directions Panel (NDP) was set up comprising industry representatives¹¹ in which the Department participates.

10.4 The NDP issued Supplementary Guidance: Code of Conduct on Harbour Directions in November 2013¹² to coincide with the issue of Departmental guidance on the subject. As required under the Code, any SHAs that wish to be designated with the power to give harbour directions are asked to sign an assurance statement that they will abide by the Code and all applicant SHAs have done so as part of their application. The Code sets out a recommended process of consultation with port users, provides model directions for SHAs and sets out a dispute resolution process.

10.5 The NDP will have an ongoing role as focal point for issues arising from the use of harbour directions powers and oversee and make recommendations on the conduct of harbour authorities exercising the power. There is also an option for the Secretary of State to remove the designation if there was sufficient evidence that an SHA was not using its power well.

11. Summary and preferred option with description of implementation plan.

11.1 New provisions in the Harbours Act 1964 enable the Secretary of State to designate applicant SHAs with the power to give harbour directions through a much simpler, quicker and less

¹¹ British Ports Association, Royal Yachting Association, British Tugowners Association, UK Chamber of Shipping, National Federation of Fishermen's Organisations and the UK Major Ports Group.

¹² http://www.britishports.org.uk/sites/default/files/ndp_guidance_-_code_of_conduct_on_harbour_directions_-_november_2013.pdf

costly process than that of an HRO under the Harbours Act and as such it is a deregulatory measure.

11.2 **Preferred Option 1** is to proceed to designate applicant SHAs with the power to give harbour directions under section 40A of the Harbours Act 1964. This is because this is the only option to fulfil the policy objective of reducing the regulatory burden on SHAs to do nothing would mean that the only route for an SHA to acquire the power of general direction would remain the protracted, costly and bureaucratic process of promoting an HRO. Option 1 also delivers cost savings to SHAs and as a result it encourages more SHAs to seek these powers. There is a quantified net present value of £82,000 over 10 years.

11.3 The NDP will monitor designated SHAs' use of the harbour directions to ensure it is being used responsibly.

11.4 The Designation Order is included in the Government's Ninth Statement of New Regulation (SNR9) and is planned to come into force on 6 April 2015. The Order will confer the power but the measure will only impact on harbour users when the designated SHAs make harbour directions.

HARBOUR DIRECTIONS POWER: LIST OF 31 HARBOURS THE STATUTORY HARBOUR AUTHORITIES (SHAs) WHICH HAVE APPLIED TO BE DESIGNATED

SHA	Category	Business size
Associated British Ports (ABP) Goole	Private company-owned harbour	Large
ABP Grimsby	Private company-owned harbour	Large
ABP Hull	Private company-owned harbour	Large
ABP Immingham	Private company-owned harbour	Large
ABP Barrow	Private company-owned harbour	Large
ABP Fleetwood	Private company-owned harbour	Large
ABP Garston	Private company-owned harbour	Large
ABP Ipswich	Private company-owned harbour	Large
ABP Kings Lynn	Private company-owned harbour	Large
ABP Lowestoft	Private company-owned harbour	Large
ABP Plymouth (Mill Bay)	Private company-owned harbour	Large
ABP Silloth	Private company-owned harbour	Large
ABP Teignmouth (Quays)	Private company-owned harbour	Large
ABP Barry	Welsh non-fishery, private company-owned harbour	Large
ABP Cardiff	Welsh non-fishery, private company-owned harbour	Large
ABP Newport (South Wales)	Welsh non-fishery, private company-owned harbour	Large
ABP Port Talbot	Welsh non-fishery, private company-owned harbour	Large
ABP Swansea	Welsh non-fishery, private company-owned harbour	Large
Cattewater	Trust ports	Small
Chichester	Trust ports	Small
Crouch	Trust ports	Micro
Dart	Trust ports	Small
Falmouth Docks and Engineering Company	Private company-owned harbour	Large
Falmouth Harbour Commissioners	Trust ports	Small
Fowey	Trust ports	Small
Hayle	Private company-owned harbour	Micro
Mostyn	Welsh non-fishery, private company-owned harbour	Small
Peel Ports (PP) Manchester Ship Canal	Private company-owned harbour	Large
PP Heysham	Private company-owned harbour	Large
Salcombe	Local authority owned	N/A
Sutton (Plymouth)	Private company-owned harbour	Small

n.b.

(1) the Scottish Ministers are responsible for designating SHAs for Scottish harbours

(2) the Welsh Ministers are responsible for designating SHAs for Welsh fishery harbours