

Regulatory Triage Assessment

Title of regulatory proposal	Designation of six further harbour authorities with the power to give harbour directions
Lead Department/Agency	Department for Transport
Expected date of implementation	April 2017
Origin	Domestic
Date	17 June 2016
Lead Departmental Contact	Tom Oscroft
Departmental Triage Assessment	Deregulation (fast track)

Rationale for intervention and intended effects

To better regulate shipping and improve safety within their harbour area, Statutory Harbour Authorities (SHAs) need the power to give harbour directions (to masters of ships) to control movements, mooring and unmooring, manning and equipment of ships in their harbour. Until 1 October 2013 the only way to acquire this power was to apply for a harbour revision order (**HRO**) under the Harbours Act 1964 (**HA 1964**) which is a long, costly and bureaucratic process.

The case for Government intervention has already been subject to parliamentary and public scrutiny during the passage of the Marine Navigation Bill (RPC12-DfT-1526). Section 5 of the resulting Marine Navigation Act 2013 inserted new sections into the HA 1964 which provide a quicker and cheaper mechanism than that of an HRO, by which the Secretary of State may designate SHAs with the power to give (general) harbour directions. The power, once acquired, represents a further tool in an SHAs' regulatory armoury for it to use to eliminate or mitigate risks identified in its harbour, alongside byelaw-making and other powers.

Government intervention is required for the Secretary of State to legally confer the power to give general directions on SHAs who may apply to be so-designated. They are not obliged to – the change is permissive.

This RTA covers formal applications to the Secretary of State for Transport to be designated with the power to give harbour directions received from the SHAs for 5 English harbours and 1 Welsh non-fishery harbour (the designation of fishery SHAs in Wales and SHAs in Scotland with the power is respectively the responsibility of the Welsh and Scottish Ministers).

Of the 6 SHAS:

- 3 are publicly-owned (sometimes termed “municipal ports”),

- 1 is a Trust Port¹
- 1 is a private company; and
- 1 is a Duchy, empowered by legislation dating back to the 19th Century to run a harbour in the Isles of Scilly.

This is the second round of applications to be designated under the new HA 1964 provisions and was launched in response to demand from the port industry. There were 29 applications in the first round and all applicant SHAs were approved for designation. The RTA for the first round of applications for the harbour directions power was confirmed as being deregulatory by the RPC (RPC14-FT-DFT2222) and therefore suitable for the fast track on 14 October 2014. The related validation Impact Assessment prepared (DfT00323) was validated by the RPC as being Zero Net Cost (RPC14-ft-DFT-2222(2))9 April 2015.

Viable policy options (including alternatives to regulation)

The policy 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 harbour. SHAs obtaining the enabling power to give harbour directions will have a direct impact on business only when the powers are used to regulate shipping and improve safety in their harbour where a need is identified and they consider the benefits outweigh the costs.

SHAs cannot give harbour directions without the statutory power to do so: designation under section 40A of the HA 1964 provides a simpler, quicker and less costly alternative to that of promoting an HRO and also complements the Government's localism agenda to enable decision-making to be made at local level without requiring involvement by the Secretary of State.

Initial assessment of business impact

Benefits

- **Deregulation:** to date around 64 out of 175 SHAs in the UK currently have the power to give general directions. This measure gives others the option to acquire harbour directions through the designation process which is a swifter and less costly and complex mechanism than an HRO, which entails an application fee of £4,000 plus the costs of their legal advisers. 29 SHAs opted for the cheaper, quicker designation route during the first round of applications.
- **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.
- **More agile response to problems:** as the timeframe for publicising harbour directions is short (28 days) SHA's can more speedily address problems identified in the harbour through risk assessment.

¹ A Trust Port is not a "Trust" in the usual sense of the word. It is a body (often a Board of Commissioners) created by, or under local legislation for the purpose of running the harbour. There are no shareholders or owners. Trust Ports operate for the benefit of the harbour and its stakeholders. Stakeholders generally include the local community.

- **Enhanced competitiveness of UK Maritime sector:** acquiring the power to give harbour directions will reduce the administrative and regulatory burden on the industry, with a corresponding reduction in costs, improving competitiveness, safety and impact on the environment.
- A validation Impact Assessment (IA) was completed for the initial round of applications:
http://www.legislation.gov.uk/ukia/2015/272/pdfs/ukia_20150272_en.pdf
 A single HRO application would cost £27,000, the discounted cost-saving to the industry over 10 years, assuming a rate of 5 HRO applications over 10 years if the s40A designation route was not available would be £117,000 (see paras 5.15-5.16 and Table 4 of the IA). The estimated cost of a s40A designation per application is £1,100. As the cost-saving to industry was based on an initial round of 31 applications, it would need to be correspondingly scaled down for the second round where only 6 applications have been received. However, the cost to industry would likewise be reduced.
- **Standard approach ensuring a national standard of effectiveness:** applicant SHAs, as part of their application are asked to sign an Assurance Statement that they will abide by a Harbour directions Code of Conduct order as agreed by industry representatives in an industry-led National Directions Panel (NDP) which retains an ongoing oversight of SHA's use of the power.
- The Department does not charge a fee for designating an SHA with the power to give harbour directions.

Costs

- 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. This occurs when risk assessment identifies problems which it determines require the giving of a harbour direction to remedy. Also 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: this could be as cheap and simple as an SHA sending an e-mail to harbour users and other relevant local/regional stakeholders stating their intention to apply for the power and what it would entail, and placing a notice on its website
- In complying with the harbour directions Code of Conduct SHAs were asked to submit details of the outcome of consulting harbour 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 Code of Conduct. This did involve a cost but SHAs could minimise the cost and avoided the long, costly and bureaucratic process of promoting an HRO.

One-in, Three-out status

Designating SHAs with the power to give harbour directions is a permissive measure and falls within the scope of OI30, as an Out. It is deregulatory because it will simultaneously designate the SHAs for 6 harbours who hitherto would only have been able to acquire the power by individually promoting an HRO, if they considered the benefits outweighed the considerable costs. Because it is a permissive change we can assume that benefits are at least equal to costs, according to BRFM (1.9.20/1.9.21). In electing to apply, the SHAs have determined that the benefits of acquiring the power of harbour directions under section 40A of the HA 1964 will outweigh the costs.

Rationale for Triage rating

We believe that the designation process should qualify for the fast track procedure as a deregulatory measure which provides a simplified, significantly less costly mechanism for acquiring the power to give harbour directions as an alternative to an HRO. It also represents the conferring of an enabling power which does not of itself impact industry or the voluntary sector. The RTA for the first round of applications for the harbour directions power was confirmed as being deregulatory by the RPC (RPC14-FT-DFT2222) and therefore suitable for the fast track on 14 October 2014. The related validation Impact Assessment prepared (DfT00323) was validated by the RPC as being Zero Net Cost (RPC14-ft-DFT-2222(2))9 April 2015.

Departmental signoff (SCS):	Signature Linda Willson
	Date
Better Regulation Unit signoff:	Signature Chris Simon
	Date 22/06/2016
Economist signoff (<i>senior analyst</i>):	Signature Jonathan Saks
	Date

Supporting evidence

The policy issue and rationale for Government intervention

A successful maritime industry is vital to the UK's economic wellbeing; to sustain and encourage it the Department seeks to agree with industry an appropriate level of regulation to promote safe and efficient operations and protect the environment from pollution. In line with the Government's deregulatory agenda it is important to identify and remedy deficiencies where legislation is out of date or imposes unnecessary costs and complications to allow the maritime sector to operate more competitively and cost-effectively.

At present, in order to obtain the power to give (general) harbour directions, an SHA is obliged to apply for a harbour revision order (**HRO**) under the Harbours Act 1964 (**HA 1964**) which is a long, costly and bureaucratic process. Statutory harbour authorities are created under local Acts (or a harbour empowerment order under HA 1964) that provides them with the powers to build, operate and maintain a port on a commercial basis. SHAs may be privately owned, or free-standing bodies with no owners or shareholders (usually known as 'trust ports' and akin to companies limited by guarantee) or under local authority ownership. Whatever the ownership model all are expected to operate on a commercial basis with no state support.

The case for Government intervention in order to remove the costs and complications associated with acquiring the harbour directions power has already been subject to parliamentary and public scrutiny during the passage of the Marine Navigation Bill. This represented the initial stage of Government intervention to simplify the process for SHAs to acquire the power. The Marine Navigation Act 2013 inserted new provisions into the Harbours Act 1964 (HA 1964 – see Annex for reproduced text) enabling the Secretary of State to make a simple order, involving no fee, to designate SHAs desiring the power (they are not obliged to apply for it). Designation represents the second stage of Government intervention required to empower SHAs to give harbour directions. In the second round of applications, the SHAs for 5 harbours in England and 1 non-Fishery harbour in Wales have submitted applications to be designated with the power to give harbour directions

The procedure for giving harbour directions under section 40A of the HA 1964 (to publicise proposed directions for 28 days) does not require the involvement of the Secretary of State, meaning they can be put in place more quickly than byelaws which require to be confirmed by the Secretary of State.

An SHA designated under section 40A of the HA 1964 can give harbour directions for the purposes of the movement, mooring and unmooring, manning and equipment of ships. "Ship" where used as noun is defined in the HA 1964 as including "every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968". The Court of Appeal has held that to mean "used in navigation" a vessel must be used to make ordered progression from one place to another and does not therefore include personal water craft.

Ports in the UK abide by the Department's (voluntary) Port Marine Safety Code (PMSC) and associated Guide to Good Practice which applies to port marine operations the well-established principles of risk assessment and safety management systems which helps the SHA determine if it needs to augment its statutory powers in order to mitigate risks identified. For those SHAs not in the first round of applications,

there will be the opportunity to apply to the Secretary of State to be so-designated in the future if they consider they need to acquire the power to give harbour directions.

Policy objectives and intended effects

The policy objective of introducing a simpler, quicker and less costly means for an SHA to acquire the power to give harbour directions is to remove regulatory and administrative burdens on SHAs and ensure that they have the powers they need to operate effectively.

The Department published Harbour Directions Guidance in November 2013, which sets out the requirements of the Secretary of State before a harbour authority is included in a harbour directions designation order. This includes giving an Assurance Statement that they will abide by a Harbour Directions Code of Conduct as agreed by industry representatives in the National Directions Panel which retains an ongoing oversight of designated SHAs' use of the power. The Code of Conduct sets out a recommended process for consulting harbour users, provides model directions for harbour authorities, and sets out a dispute resolution process.

Policy options considered, including alternatives to regulation

The policy option being proposed is to designate applicant SHAs with the power to give harbour directions for the movement, mooring and unmooring, manning and equipment of ships in their harbour under section 40A of the HA 1964. This is a simpler, quicker and less costly means for SHAs to acquire the power than through an HRO.

As the purpose of empowering the Secretary of State to designate harbour authorities with the power to give harbour directions is a simplification measure, it would frustrate the stage 1 process of introducing a simplified route to obtain powers and present a step backwards towards the previous regime whereby an HRO would be the only means of acquiring powers of general direction.

Expected level of business impact

SHAs acquiring the power to give harbour directions will have a direct impact on industry only when they choose to use it to regulate shipping and improve safety in their harbour, where a need is identified and they consider the benefits outweigh the costs.

Benefits

- **Deregulation:** SHAs not yet having the power to give (general) harbour directions (around 64 out of 175 SHAs in the UK currently have the power of general directions) are now able to acquire it through the designation process which is a swifter and less costly and complex mechanism than an HRO. The designation Order for the second round applications will simultaneously designate the 6 applicant SHAs.
- **Simplification:** once the power is acquired, the procedure for giving harbour directions is simpler and quicker than for securing an amendment to a harbour authority's byelaws as harbour directions do not require confirmation by the Secretary of State

- More agile responsiveness: Ports in the UK abide by the Department's (voluntary) Port Marine Safety Code (PMSC) and associated Guide to Good Practice which applies to port marine operations the well-established principles of risk assessment and safety management systems. The simplified procedure involved in giving harbour directions, as against promoting an HRO, or amending byelaws means that where a risk is identified which it is considered could be mitigated by a harbour direction that direction could quickly be put in place to address a problem. In addition, harbour authorities determining they have a need to acquire the harbour directions power in the future through the PMSC risk assessment process can apply to be so- designated in a shorter timescale.
- Enhanced competitiveness of UK Maritime sector: The Maritime sector's direct contribution to the economy is estimated at between £8.0bn and £13.8bn. Acquiring the power to give harbour directions will reduce the administrative and regulatory burden on the industry, with a corresponding reduction in costs, improving competitiveness, safety and impact on the environment.
- Standard approach ensuring a national standard of effectiveness: Applicant SHAs, as part of their application are asked to sign an Assurance Statement that they will abide by a harbour directions code of conduct order as agreed by industry representatives in the National Directions Panel (NDP) which retains an ongoing oversight of designated SHAs use of the power. The Code sets out a recommended procedure for consulting harbour users, provides model harbour directions, and sets out a dispute resolution process.
- The Department charges no fee for designating an SHA with the power to give harbour directions.

Costs

- Acquiring and using the power to give harbour directions will result in a reduced financial and regulatory burden on applicant SHAs. There will be cost associated with consulting harbour users, and publicising proposed harbour directions. This is extremely difficult to quantify as the designation will confer a power which an SHA will only exercise at a later stage when risk assessment identifies problems which it determines require the giving of a harbour direction to remedy. The harbour directions provisions are not prescriptive regarding how an SHA chooses to publicise a proposed harbour so they have the discretion to minimise that cost.
- The PMSC risk assessment process is ongoing and enables problems to be identified and addressed, which could include giving a harbour direction if that was considered necessary to remedy the problem.
- The current designation will confer the power on the SHAs 6 harbours which have different local circumstances and mix of traffic. It is not possible to predict when or how often a designated SHA will exercise that power which does not of itself have an impact on harbour users. .
- Promoting an HRO to acquire enabling powers of general direction is a long, costly and bureaucratic process for which SHAs now have simpler, quicker and less costly alternative. The Marine Management Organisation, to which the Secretary of State has delegated responsibility for administering the HRO

procedure 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 publishing statutory notices, drafting impact assessments and public consultation including negotiation with stakeholders who have lodged objections.

- The British Ports Association (BPA), based on their experience and anecdotal information from their members, estimate the costs of obtaining an HRO can be in the region of £30,000 to £60,000² depending on the complexity of the Order. This does not include the costs of a public Inquiry. The costs of a PI 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).
- Breach of a harbour direction is an offence liable on summary conviction to a fine not exceeding level 4 on the standard scale. A compliant SHA would incur no penalty.

We consider this measure to be de-regulatory and an Out under One-In, Three Out. However, it is not possible to quantify the “Out” as it is not possible to predict when a designated SHA will choose to exercise the harbour directions power being conferred. Therefore it is difficult to use this as a compensating “Out”. The validation IA for the first round of applications was validated by the RPC as being Zero Net Cost.

² Taken from IA produced in 2012 for the Marine Navigation Bill, article 5 of which, when enacted as the Marine Navigation Act 2013, inserted the harbour directions provisions into the Harbours Act 1964