

EXPLANATORY MEMORANDUM TO
THE HARBOUR DIRECTIONS (DESIGNATION OF HARBOUR AUTHORITIES)
(No. 2) ORDER 2015

2015 No. 1656

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This order designates the statutory harbour authorities in respect of 10 harbours in England¹ and 4 non-fishery harbours in Wales², which are described in the Schedule to the Order, for the purpose of giving harbour directions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Harbours Act 1964 (“the 1964 Act”) was amended by section 5 of the Marine Navigation Act 2013 which inserted new sections 40A to 40D. The new provisions provide a mechanism by which the Secretary of State may, by order, designate harbour authorities with the power to give harbour directions for the regulation of ships within their harbours in respect of movement, mooring, equipment and manning. The harbour authorities for an initial 11 harbours³ were designated by S.I. 2015 No. 573 which came into force on 6 April 2015. This Order is the second designation under section 40A of the 1964 Act and will designate 14 out of the remaining 18 harbours consulted on. The remaining harbours will be the subject of a later order, when the outstanding issues have been resolved.

4.2 Until the 1964 Act was amended the only way in which harbour authorities could acquire the power to give general directions was through a harbour revision order under section 14 of the 1964 Act, or by means of a local Act.

¹ **Associated British Ports** – ABP - harbours (Fleetwood, Goole, Grimsby, Immingham, Kings Lynn, Lowestoft, Plymouth (Millbay) and Silloth) and **Peel Ports** (Manchester, including the Manchester Ship Canal, and Runcorn – treated as one harbour for the purposes of the consultation as they are effectively run as one but separate entries have been made in the Schedule to the designation order to reflect the approach in the legislation).

² ABP: Barry, Cardiff, Port Talbot and Swansea.

³ Cattewater, Chichester, Crouch, Dart, Falmouth Docks, Falmouth Harbour, Fowey, Heysham, Mostyn Docks, Salcombe and Sutton Pool (Plymouth).

5. Territorial Extent and Application

This instrument applies to the harbour authorities for 10 harbours in England and 4 non-fishery harbours in Wales, which have applied to be designated with the power to give harbour directions. It is the responsibility of the Welsh Ministers to designate any Welsh fishery harbours with the power to give harbour directions, and the responsibility of the Scottish Ministers to designate statutory harbour authorities in Scotland.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 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.

7.2 Before the 1964 Act was amended the only ways a harbour authority could obtain the power to give (general) harbour directions were through a harbour revision order under section 14 of the 1964 Act, or by a local Act, both entailing costly and protracted processes.

7.3 The case for Government intervention in order to remove the costs and complications associated with acquiring the power to give harbour directions 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 harbour authorities to acquire the power to give harbour directions. Designation represents the second stage of Government intervention required to provide harbour authorities with the power to give harbour directions and is needed to realise the policy objective of deregulation and simplification.

- Consolidation

7.4 Consolidation is not relevant as this is the only the second such Designation Order made by the Secretary of State under section 40A(4)(b) of the 1964 Act. The position will be reviewed as more Orders are made.

8. Consultation outcome

8.1 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, a targeted consultation exercise, carried out over a reduced 4 week period which closed on 16 January 2015, was considered appropriate.

8.2 The consultation covered the first batch of applications (29 in total) received from harbour authorities to be designated with the power to give harbour directions which included the 11 harbour authorities already designated (see paragraph 4.1 above). Six out of the total of 19 responses to the consultation are relevant to the 14 harbours covered by this instrument. Five responses were from national level respondents (UK Chamber of Shipping, Marine Management Organisation, Trinity House, Natural England, and the Royal Yachting Association (RYA)) and the sixth a joint response from Suffolk Coastal and Waveney District Councils in respect of ABP's harbour at Lowestoft. All 6 respondents supported or had no objection to the designation of the harbour authorities for the remaining 18 harbours.

8.3 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.

8.4 The RYA commented on the PUG arrangements at all of the harbours for which applications had been made though their response was treated as a single response. The RYA were content with the PUG arrangements at Peel Ports Manchester Ship Canal harbour. Further clarification has been obtained from ABP regarding PUG arrangements at their harbours. ABP has advised that stakeholder consultation is a fundamental pillar of their Port Marine Safety Code compliance at all their harbours, including those for which designation with the power to give harbour directions is sought. The Department is satisfied that ABP are aligning the PUGs at their designated ports with the requirements in the Harbour Directions Code of Conduct to which they have signed up and will include monitoring compliance with the Code in their port audit procedures.

8.5 Natural England commented on the applications of the English Harbour authorities. 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. The substance of Natural England's response was reproduced in the Summary of Responses to the consultation which has been uploaded to the Department's website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441428/harbour-directions-summary-responses.pdf

The opportunity will be taken to convey this information on environmental duties to ABP and Peel Ports on informing them of their designation.

9. Guidance

9.1 The Department issued *Harbour Directions Guidance*⁴ in November 2013. This is non-statutory guidance, but is aimed at providing assistance to harbour authorities as to the requirements of the Secretary of State before an authority is included in a harbour directions designation order.

9.2 In addition, a National Directions Panel (NDP) was set up comprising the representative organisations of both harbour authorities and harbour users. The NDP issued *Supplementary Guidance: Code of Conduct on Harbour Directions*⁵ in November 2013 to coincide with the issue of the Departmental guidance. Under the Code, harbour authorities wishing to be designated with the power to give harbour directions are asked to sign an Assurance Statement that they will abide by the Code of Conduct and both ABP and Peel Ports have done so - this included an undertaking to set up an appropriate Port User Group. The Code sets out a recommended process of consultation with port users, provides model directions for harbour authorities, and sets out a dispute resolution process.

10. Impact

10.1 Designation with the power to give harbour directions under the new section 40A of the 1964 Act, is expected to have no adverse impact on harbour authorities. There will be a significant saving compared to the principal existing route to acquire the power to give directions, through a harbour revision order under section 14 of the Act. As the Designation Order simply confers a power on the designated harbour authorities, it will not, of itself, have an impact on business, charities or voluntary bodies as harbour users. Harbour authorities have a statutory obligation to publicise proposed harbour directions for 28 days prior to making, which will give the opportunity for anyone to make objections or representations if they consider they will be adversely affected. It is not possible to predict the detail of such effects in advance, because effects are likely to vary according to the circumstances prevailing in particular harbours and the contents of the directions.

10.2 The impact of the Order on the public sector is expected to be minimal, as the Order will mean that the harbour authorities will not need to apply for a Harbour Revision Order to obtain similar powers .

⁴ <https://www.gov.uk/government/publications/harbour-directions>

⁵ http://www.britishports.org.uk/sites/default/files/ndp_guidance_-_code_of_conduct_on_harbour_directions_-_november_2013.pdf

10.3 An impact assessment analysing the costs and benefits of this measure has been prepared. The IA is attached to this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

The legislation applies to the harbours referred to in paragraph 2, the harbour authorities for which are designated by this Order with the power to give harbour directions. Any harbour authority, irrespective of size can apply to be designated with the power to give harbour directions, but there is no obligation to do so.

12. Monitoring and review

12.1 The NDP (see paragraph 9.2) will act as focal point for issues arising from the granting and use of harbour direction powers and will oversee and make recommendations on the conduct of harbour authorities exercising the power. The Department attends NDP meetings.

12.2 As the Secretary of State may designate a harbour authority with the power to give harbour directions, it would also be possible for the Secretary of State to revoke the designation if there was sufficient evidence that the harbour authority was not using its power properly.

13. Contact

Caroline Wall at the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR, tel: 020 7944 6251 or email: caroline.wall@dft.gsi.gov.uk can answer any queries regarding the instrument.