

EXPLANATORY MEMORANDUM TO
THE HARBOUR DIRECTIONS (DESIGNATION OF HARBOUR AUTHORITIES)
ORDER 2017

2017 No. 279

1. Introduction

- 1.1 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

- 2.1 This Order designates the statutory harbour authorities in respect of 5 harbours in England¹ and one non-fishery harbour in Wales², which are described in the Schedule to the Order for the purpose of giving harbour directions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 or entering or leaving their harbours in respect of movement, mooring, equipment and manning. Prior to this amendment 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.
- 4.2 To date 4 harbour directions Orders³ have been made under section 40A of the 1964 Act together designating the statutory harbour authorities for 29 harbours in England and Wales with the power to give harbour directions, completing the initial round of applications to be designated. This is the fifth such Order, and will take the total number of harbours with direction-making powers to 35.

¹ Exeter, Plymouth, St Mary’s (Isles of Scilly), St Mawes, and Tor Bay.

² Neath

³ <http://www.legislation.gov.uk/uksi/2015/573/made>
<http://www.legislation.gov.uk/uksi/2015/1656/made>
<http://www.legislation.gov.uk/uksi/2016/820/made>
<http://www.legislation.gov.uk/uksi/2016/821/contents/made>

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is for 5 harbour authorities in England and 1 harbour authority of a non-fishery harbour in Wales which have applied to be designated with the power to give harbour directions.
- 5.3 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

- 6.1 As the instrument is subject to 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 appropriate in respect of Designation Orders, as they designate discrete harbour authorities such that they are able to exercise powers set out in primary legislation.

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 6 week period which closed on 5 December 2016, was considered appropriate.

- 8.2 The consultation covered a second round of applications (6 in total) received from harbour authorities to be designated with the power to give harbour directions (see paragraph 2.1 above).
- 8.3 Six responses were received, from both national organisations (the Royal Yachting Association (“RYA”) and Trinity House) and users of the harbours concerned.
- 8.4 The consultation asked whether respondents considered the harbour authorities concerned to be fit and proper bodies to be designated with the power to give harbour directions. The majority of respondents supported or did not object to the designation of the applicant harbour authorities. One objection was received in relation to the proposed designation of Exeter City Council (“ECC”). The Department has taken the view that the concern raised relates to the potential future exercise of harbour direction powers by ECC, rather than their fitness to hold such a power. The ability to make harbour directions is subject to a number of safeguards, such as an obligation to comply with the Harbour Directions Code of Conduct⁴ and consultation requirements, and is subject to removal by the Secretary of State. Accordingly, this Order designates ECC in respect of Exeter Harbour.
- 8.5 In addition, consultees were 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.
- 8.6 The RYA commented on the PUG arrangements at all 6 harbours though their response was treated as a single response. The PUGs for all 6 applicant harbour authorities either had representation for the RYA, or agreed to a RYA representative being a member of the PUG, satisfying the RYA’s wishes.
- 8.7 Concerns were raised by harbour users in relation to the constitution of the PUG at one harbour (Exeter), as result of which membership of that PUG has since been widened.
- 8.8 A full summary of the consultation can be found online at:
<https://www.gov.uk/government/consultations/harbour-directions-power-2nd-round-applications-for-designation-of-english-and-non-fishery-welsh-harbour-authorities>

9. Guidance

- 9.1 The Department issued *Harbour Directions Guidance*⁵ 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*⁶ 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

⁴ See section 9 below.

⁵ <https://www.gov.uk/government/publications/harbour-directions>

⁶ <http://www.rya.org.uk/SiteCollectionDocuments/Legal%20docs/NDP%20Guidance%20-%20Code%20of%20Conduct%20on%20Harbour%20Directions%20-%20Nov2013.pdf>

directions are asked to sign an Assurance Statement that they will abide by the Code of Conduct and ABP has 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, 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 consult representatives of users of the harbours and 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 authorities will not need to apply for a Harbour Revision Order to achieve similar.
- 10.3 An impact assessment regarding the costs and benefits of this measure has been prepared and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. 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. Designating a harbour authority in this way removes the costs and complications associated with acquiring the power to give harbour directions via a harbour revision order or a local Act, and allows harbour authorities to regulate the areas within their jurisdiction in a flexible and responsive manner.

12. Monitoring & 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 has observer status on the NDP.

13. Contact

- 13.1 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.