

EXPLANATORY MEMORANDUM TO
THE WALES ACT 2017 (WELSH HARBOURS) (TRANSITIONAL PROVISIONS
AND SAVINGS) REGULATIONS 2018

2018 No. 278

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 instrument provides transitional arrangements for the transfer of functions related to Welsh harbours contained within the Wales Act 2017 (the Act). It permits the Secretary of State, or the Marine Management Organisation (MMO) using powers delegated to it, to continue consideration of, and to decide, applications made before the coming into force of the transfer, with the aim of avoiding duplication of effort and ensuring certainty for specific applicants as to who will decide their applications.

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 Section 29 of the Act transfers to the Welsh Ministers a number of functions relating to harbours that are wholly in Wales, other than reserved trust ports (as defined in the Act). The transfer will come into force on 1st April 2018, pursuant to the Wales Act 2017 (Commencement No. 4) Regulations 2017 (S.I. 2017/1179).
- 4.2 Those functions include functions exercisable under the Harbours Act 1964 (by virtue of section 29(2)(b) of the Act), under the Pilotage Act 1987 (by virtue of section 29(2)(f) of the Act) and under any local Act (section 29(2)(h) of the Act). Currently each of those functions are exercisable either by the Secretary of State, or by the MMO, pursuant to the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is Wales.

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 The Act sets out new devolution arrangements for Wales, including in relation to harbours. The Act transfers to Welsh Ministers a wide range of statutory functions relating to harbours wholly in Wales that are not reserved trust ports.
- 7.2 This instrument makes transitional and saving provision for those applications to exercise certain of the statutory functions subject to transfer under section 29 of the Act which are currently under consideration by the Secretary of State or MMO. Rather than transfer the decision for such applications to the Welsh Ministers, this instrument disapplies the transfer in such cases, with the result that the decision can be made by the body which received it. This is intended to prevent duplication of effort between the Department and the Welsh Government, and to provide certainty for applicants. Only a small number of applications are likely to be affected by these arrangements. Amongst the functions covered by the instrument are applications for Harbour Revision or Harbour Empowerment Orders to change the duties and powers of harbour authorities (the responsibility of the MMO), objections to harbour dues and confirmation of byelaws.

Consolidation

- 7.3 As this instrument does not make textual amendment to any other instrument, only applies in respect of a settled class of applications, and only for a brief period, the Department does not consider it appropriate to consolidate the instrument with any other instrument.

8. Consultation outcome

- 8.1 No formal consultation has been undertaken, but the Department has discussed and agreed the approach in this instrument with the MMO and the Welsh Government.

9. Guidance

- 9.1 As this instrument only applies in respect of a settled class of applications, and only for a brief period, general guidance has not been produced. The Department, MMO and Welsh Government have written to members of the Welsh Ports Group, the British Ports Association, the UK Major Ports Group, the Chamber of Shipping and the Royal Yacht Association to inform them of the approach it is taking.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument, as the purpose of the instrument is to preserve the status quo to applicants and, therefore, neither imposes additional costs or offers any savings.

11. Regulating small business

- 11.1 The legislation may apply to activities that are undertaken by small businesses. However as noted above there is expected to be no impact on them arising from it.

12. Monitoring & review

- 12.1 As this instrument does not regulate individuals, only applies in respect of a settled class of applications, and only applies for a brief period, a formal monitoring and review process is not necessary.

13. Contact

- 13.1 Tom Oscroft at the Department for Transport Telephone: 020 7944 3479 or email: tom.oscroft@dft.gsi.gov.uk can answer any queries regarding the instrument.