

EXPLANATORY MEMORANDUM TO
THE NORTH DEVON DISTRICT COUNCIL HARBOUR AUTHORITY (REMOVAL
OF PILOTAGE FUNCTIONS) ORDER 2019

2019 No. 790

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 removes pilotage functions from the North Devon District Council Harbour Authority (“the Harbour Authority”), the harbour authority for Ilfracombe Harbour. It also amends the definition of the limits of Ilfracombe Harbour in the Ilfracombe Harbour Revision Order 1996 (S.I. 1996/2103) due to a cross-reference which does not operate correctly.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Part 1 of the Pilotage Act 1987 (c. 21) (“the Act”) provides that certain harbour authorities are competent harbour authorities (“CHAs”) and imposes on them certain duties in respect of harbour pilotage. These duties include keeping under review whether any, and if so what, pilotage services need to be provided in respect of its harbour and whether pilotage should be compulsory. Section 1(4A) of the Act, inserted by section 1 of the Marine Navigation Act 2013 (c. 23), enables the Secretary of State to remove a harbour authority’s CHA status by Order, so that it is no longer required to discharge the duties imposed by the Act.

- 6.2 This Order removes the CHA status of the Harbour Authority, which was the CHA for Ilfracombe Harbour. It also amends the definition of the limits of the harbour in the Ilfracombe Harbour Revision Order 1996 due to a cross-reference which does not operate correctly.

7. Policy background

What is being done and why?

- 7.1 Under section 2 of the Act, a CHA has a duty to keep under consideration whether pilotage services are required for its area and to provide such services as it considers are needed.
- 7.2 In 2016, the Harbour Authority reviewed its CHA powers and concluded that pilotage was not required at Ilfracombe Harbour in order to ensure safe navigation of the types of vessels which use the harbour and that there was no prospect of that situation changing. Furthermore, so far as the Harbour Authority could tell from their records, they had not employed pilotage services for over 40 years and none had been requested. Following its review, the Harbour Authority wrote to the Secretary of State in January 2017 and requested the removal of its status as a CHA.
- 7.3 Following consideration of the available evidence, and consultation as required by section 1(8A) of the Act, the Secretary of State concluded that removal of the Harbour Authority's CHA status would be appropriate. Further details regarding the consultation are included in section 10 below.
- 7.4 The Harbour Authority's status and functions as the statutory harbour authority ("SHA") for Ilfracombe Harbour are unaffected. SHAs are harbour authorities which have been given a range of statutory powers or duties for the purpose of improving, maintaining or managing a harbour. The statutory powers or duties are set out by Acts of Parliament that are specific to each authority in the form of local Acts, or in some cases harbour revision or empowerment orders made under the Harbours Act 1964 (c. 40).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c. 16).

9. Consolidation

- 9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 As part of the application process, the Harbour Authority carried out a preliminary local consultation on its proposal to apply to the Secretary of State for its CHA status be removed. There were no objections to the proposal from harbour users or other interested stakeholders and the two formal respondents both agreed that there would be no increase in risk to maritime safety at Ilfracombe Harbour if the Harbour Authority's CHA status were removed.
- 10.2 The Secretary of State, as part of his consideration of the Harbour Authority's application published a consultation paper in order to ensure that all appropriate

persons were consulted, as required under section 1(8A) of the Act. The consultation ran for six weeks from 7th January 2019 to 17th February 2019, which was considered to be an adequate time to undertake a question and response process and to gather information from all the local and national bodies which have an interest in the operation of Ilfracombe Harbour.

- 10.3 There were no objections to the proposal from harbour users or other interested stakeholders during the consultation. The two formal respondents both supported the Secretary of State's proposal to remove the Harbour Authority's CHA status. The consultation document and a summary of the responses received can be found online at: <https://www.gov.uk/government/consultations/ilfracombe-harbour-pilotage-function-removal-order>.
- 10.4 Having considered the responses to the consultation, the Secretary of State decided to make an Order removing the Harbour Authority's CHA status.

11. Guidance

- 11.1 No guidance will be issued in relation to the effect of this instrument because it does not make changes that affect businesses or others.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Harbour Authority will remain the SHA for Ilfracombe Harbour under the Harbours Act 1964. It will, therefore, retain legal responsibility for managing the harbour safely and efficiently. To assist understanding of those responsibilities, the Department for Transport and the Maritime and Coastguard Agency publishes the Port Marine Safety Code¹ ("PMSC") and related Guide to Good Practice². These documents explain those legal responsibilities and create national standards for every aspect of port and harbour safety and aim to enhance safety for those who use or work with ports, ships, passengers and the environment.
- 14.2 Application of the PMSC is voluntary but harbour authorities are required to self-certify compliance by notifying the Maritime and Coastguard Agency every three years, which can undertake an informal 'health check' visit if necessary. The PMSC encourages ports and harbours to keep their powers under review and to seek to amend these where this may be necessary to ensure safe and efficient operations.
- 14.3 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Nusrat

¹ See www.gov.uk/government/publications/port-marine-safety-code.

² See www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations.

Ghani MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate, taking into account the economic impact of the legislation, to include provision for review”.

15. Contact

- 15.1 Tim Alsop at the Department for Transport Tel: 07977 433012 or email: tim.alsop@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rod Paterson, Deputy Director for Maritime Policy, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.