

EXPLANATORY MEMORANDUM TO

THE HARBOURS ACT 1964 (DELEGATION OF FUNCTIONS) ORDER 2010

2010 No. 674

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 The Order delegates, with effect from 1 April 2010, to the new Marine Management Organisation, established under the Marine and Coastal Access Act 2009, responsibilities currently belonging to the Secretary of State for Transport under the Harbours Act 1964 (“the 1964 Act”). The responsibilities are in respect of the making of Harbour Orders and Schemes under sections 14, 15, 15A, 16, 18 and 60 of the 1964 Act. Harbour Orders are the primary legislative mechanism for harbour authorities to seek to amend their current powers or constitutions and to seek approval for harbour works, or for new harbour authorities to be established.

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

3.1 None

4. Legislative Context

4.1 Section 42A of the 1964 Act was inserted by section 315 of, and Schedule 21 to, the Marine and Coastal Access Act 2009. It enables the Secretary of State to provide, by Order, for the delegation to another person of the functions listed in section 42A(9) of the 1964 Act. These relate to the making of Harbour Orders under sections 14, 15, 15A, 16 and 60 of the 1964 Act and harbour reorganisation schemes under Section 18 of the Act.

4.2 The Order designates the Marine Management Organisation as the person to whom the functions have been delegated. It also identifies, using the provision of section 42A (8) of the 1964 Act, those Harbour Orders which are excepted from the delegation as they are being retained by the Secretary of State for his decision.

5. Territorial Extent and Application

5.1 This Order extends to England and Wales.

6. European Convention on Human Rights

6.1 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*

7.1.1 The Marine and Coastal Access Act 2009 was a major piece of legislation aimed at putting in place better systems for delivering sustainable development of the marine and coastal environment. The establishment of a new body, the Marine Management Organisation (MMO), a Non-Departmental Public Body, was a key feature of that Act. The MMO will have a number of responsibilities: marine planning, marine licensing and enforcement, providing advice on marine issues, and fisheries management.

7.1.2 One aim of the MMO is, as far as practical, to provide a one stop shop for harbour authorities seeking permission for harbour developments. Such developments would generally need Harbour Orders. But, in addition, authorities will often require other permissions for such development (e.g. Food and Environment Protection Act licences). The intention behind the Marine and Coastal Access Act 2009 Act is to enable the MMO to deal with all these applications leading to a more streamlined regulation process. While further legislative changes are envisaged in 2011 to improve the new system further, this Order is not dependent on them.

7.1.3 To enable the MMO to deal with Harbour Orders, Schedule 21 to the Marine and Coastal Access Act 2009 inserts provisions into the 1964 Act which provide for the delegation to the MMO of functions currently undertaken by the Secretary of State for Transport. The MMO has now been established in Newcastle and the Secretary of State has determined that it is ready to take on the functions under all the provisions specified in the new 1964 Act provisions and the Order with effect from 1 April 2010. He has obtained the consent of the MMO to the delegation of the functions, as required by new section 42A of the 1964 Act.

- ***Consolidation***

7.2 The question of consolidation does not arise. It is not an amending instrument

8. Consultation outcome

8.1 The Department has consulted the MMO which has consented to the Order. No further consultation has been undertaken as the proposal was fully considered in consultation and debates during the passage of the Marine and Coastal Access Act.

9. Guidance

9.1 Apart from the delegation of functions to the MMO. This instrument does not change the procedure for applying for Harbour Orders. There is brief guidance about that available on the Department for Transport's website at <http://www.dft.gov.uk/pgr/shippingports/ports/harbourorders>, which will also appear on the MMO's website.

10. Impact

10.1. The impact on business, charities or the voluntary bodies is insignificant.

10.2 The impact on the public sector is insignificant.

10.3 An impact assessment of the effect that the 2009 Act will have on the costs of business and the voluntary sector has been produced. It is available on the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk. The delegation of these functions to the MMO was considered as part of the streamlining of processes available as a result of making the MMO a one stop shop and no

individual assessment was produced just for these functions. That assessment remains effective.

11. Regulating small business

11.1 The legislation does not require anything new of small businesses

12. Monitoring & review

12.1 The effectiveness with which the MMO carries out the functions delegated under the 1964 Act will be reviewed as part of the general review procedures contained within the Framework Document agreed by Government and the MMO.

13. Contact

13.1 Colin Morris at the Department for Transport, Tel: 0207 944 5077 or e-mail: colin.morris@dft.gsi.gov.uk can answer any queries regarding the instrument.