

EXPLANATORY MEMORANDUM TO

THE PORT SECURITY (PORT OF HULL, NEW HOLLAND, IMMINGHAM AND GRIMSBY) DESIGNATION ORDER 2013

2013 No. 2014

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 identifies the port boundary for the Port of Hull, New Holland, Immingham and Grimsby for the purposes of the Port Security Regulations 2009 (S.I. 2009/2048) (Regulation 3). The Order also designates a port security authority for the Port of Hull, New Holland, Immingham and Grimsby for the purposes of regulation 5 of the Port Security Regulations.

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

None.

4. **Legislative Context**

4.1 Under Regulation (EC) 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (“the EU Regulation”) certain provisions of the International Maritime Organization’s International Convention for the Safety of Life at Sea (SOLAS) 1974 (as amended by the addition of a new Chapter XI-2) and of the International Ship and Port Facility Security Code (“the ISPS Code”) were incorporated into EU law. The aim of these measures was to enhance the security of ships used in international trade and certain domestic shipping and the security of the associated port facilities.

4.2 In 2005 the European Parliament and the Council adopted further legislation in the form of Directive 2005/65/EC of 26 October 2005 on enhancing port security (“the Directive”), so as to extend port security measures beyond the immediate “ship-port interface” (essentially the docking areas) covered by the EU Regulation and into the wider port area (including transport-related and other operational areas of the port). The Port Security Regulations 2009 (S.I. 2009/2048), which transposed the Directive in the United Kingdom, came into force on 1 September 2009.

4.3 This Order is a further one in a series of designation orders in respect of individual ports and port security authorities which have to be made in order to apply the security measures contained in the Port Security Regulations

2009 at relevant ports across the UK. To date, 11 designation orders have been made, 8 of which have come into force and 3 of which will come into force on 2 August 2013. The 11 orders are as follows:-

| <i>Order</i> | <i>S.I. number</i> | <i>Date in force</i> |
|--|--------------------|----------------------|
| The Port Security (Avonmouth Dock and Royal Portbury Dock and Port of Bristol Security Authority) Designation Order 2010 | 2010/319 | 19th March 2010 |
| The Port Security (Port of Dover) Designation Order 2011 | 2011/3045 | 31st January 2012 |
| The Port Security (Port of Aberdeen) Designation Order 2012 | 2012/2607 | 19th November 2012 |
| The Port Security (Port of Grangemouth) Designation Order 2012 | 2012/2608 | 19th November 2012 |
| The Port Security (Port of Portland) Designation Order 2012 | 2012/2609 | 19th November 2012 |
| The Port Security (Port of Tees and Hartlepool) Designation Order 2012 | 2012/2610 | 19th November 2012 |
| The Port Security (Port of Workington) Designation Order 2012 | 2012/2611 | 19th November 2012 |
| The Port Security (Port of Milford Haven) Designation Order 2013 | 2013/516 | 1st May 2013 |
| The Port Security (Ports of Swansea and Port Talbot) Designation Order 2013 | 2013/1652 | 2nd August 2013 |
| The Port Security (Port of Newhaven) Designation Order 2013 | 2013/1655 | 2nd August 2013 |
| The Port Security (Port of Falmouth) Designation Order 2013 | 2013/1656 | 2nd August 2013 |

Each designation order delineates the boundaries of a particular port for the purposes of the Directive, based on a port security assessment identifying all areas associated with the port which are relevant to port security and discussions with stakeholders during consultation. The orders also designate a Port Security Authority (“PSA”) for the delineated ports. Under regulation 3(5) of the Port Security Regulations 2009 (reflecting article 2(4) of the Directive), the provisions of the Directive and of the Port Security Regulations 2009 need not, however, be applied to ports where there is only one port facility and where the defined port area would not extend beyond the boundaries of that facility; in such a case the facility can continue to be

governed by the EU Regulation and is effectively exempted from the provisions of the EU Directive.

4.4 The reasons for this two-fold legislative structure – comprising the generally applicable Port Security Regulations 2009 and the port-specific designation orders – are explained in paragraphs 4.5 and 4.6 below.

4.5 The Port Security Regulations 2009 (“the Regulations”), which were made under powers contained in section 2(2) of the European Communities Act 1972, transpose the port security measures in the Directive which have general application across all relevant UK ports. It was not however considered practicable to include in the Regulations themselves the provisions required to apply those general measures at every relevant port in the UK. The provisions in question relate to the delineation of the boundaries of each relevant port and the designation of a PSA. To attempt to include these specific provisions for all the relevant ports in the Regulations themselves would have resulted in an impracticably long instrument containing numerous schedules of maps.

4.6 The possibility of including in the Regulations a power for the Secretary of State at a later stage to delineate the boundaries of each port, and to designate a PSA for each port, was considered. This option was rejected however because it was considered that it would involve unlawful legislative sub-delegation to the Secretary of State. By virtue of paragraph 1(1)(c) of Schedule 2 to the European Communities Act 1972, it is unlawful to include in an instrument made under section 2(2) of the Act a provision that sub-delegates power to *legislate* to another individual or body. (A power to give directions as to *administrative* matters is not regarded as a power to legislate. However, on the basis that the delineation of port boundaries and the designation of port security authorities would give rise to legal effects it was considered that these would be regarded as legislative rather than administrative acts.)

4.7 The identification of the port boundary in each designation order takes into account information resulting from the port security assessment undertaken in accordance with Annex I of the Directive, and views expressed by stakeholders during the consultation process. The boundary embraces the port facilities situated within the port, and the port areas that could have an impact on the security of the port.

4.8 Port operators are free to recommend whether the legal status of a PSA should be that of a body corporate or an unincorporated association. As a body corporate, a PSA would be a legal person in its own right separate and distinct from its individual members and could sue and be sued in its own name rather than in the names of its members. An incorporated PSA would also be able, if it wished, to employ staff or contract for services in its own name, and to obtain its own public liability or employers’ liability insurance. As an unincorporated association, the PSA would not be a legal person in its own right.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom (although its subject matter specifically concerns port operations in Hull, New Holland, Immingham and Grimsby).

6. European Convention on Human Rights

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

7. Policy background

7.1 The policy objectives of the Order are to identify a boundary for the Port of Hull, New Holland, Immingham and Grimsby for the purposes of the Port Security Regulations 2009 and to designate a Port Security Authority for the Port of Hull, New Holland, Immingham and Grimsby (to be named “the Humber Port Security Authority”).

7.2 As indicated in paragraphs 4.3 to 4.7 above, there is a need to legislate in this area in order to fulfil the UK’s obligation to implement the Directive; and the Government needs to make designation orders to allow the security measures contained in the Port Security Regulations 2009 to be applied at Hull, New Holland, Immingham and Grimsby.

7.3 There has not been a high level of public or media interest in the policy.

7.4 The legislation is politically and legally important as the Department for Transport advocates good security practice and this instrument is one of a series of port security designation orders which - in conjunction with the Port Security Regulations 2009 - provide the legal framework for extending port security measures to transport-related and operational areas in relevant ports beyond the immediate “ship/port interface”.

8. Consultation outcome

8.1 A designation order covering the establishment of a Port Security Authority encompassing the Humber ports of Hull, Goole, Immingham and Grimsby was included in the public consultation on a second batch of ports considered in scope of the Directive. The consultation was launched on 19 November 2012 and ran for six weeks until 4 January 2013. The reduced length of the consultation from the usual twelve-week period was agreed by Ministers and was due to the focused local nature of the consultation and the fact that the proposals were discussed with key stakeholders at the ports of Hull, Goole, Immingham and Grimsby prior to the wider public consultation.

8.2 An updated version of the consultation paper was issued on 6 December 2012 including revised plans for certain ports in the batch,

including Hull, Goole, Immingham and Grimsby. The proposed Humber PSA boundary extended from the port of Goole at the western extremity of the seaward harbour limits in the east. Consultees were explicitly asked whether there should be a single PSA covering all four ports. A further consultation question sought views on whether additional port facilities in the vicinity including other Humber estuary port facilities and those along the River Trent - which flows into the estuary - should be included within the PSA boundary.

8.3 The consultation elicited 15 responses including the operators of the four Humber Ports (Associated British Ports - ABP), a number of port facility/facilities operators located in the Humber estuary or along the River Trent, local police and local authority/enterprise. A significant number of respondents expressed a concern that the proposed extent of the Humber PSA is too large an area to be able to be managed efficiently. Other port facility/facilities operators in the Humber estuary and along the River Trent also queried the inclusion of their facility/facilities within the boundary.

8.4 Following extensive discussions with local stakeholders, the boundaries identified by this Order encompass a reduced PSA area as a result of the consultation. The PSA area extends from the Humber Bridge eastwards out to the seaward harbour limits including the ports of Hull, New Holland, Immingham and Grimsby. This corresponds to that part of the Humber Vessel Traffic Service (VTS) area which has 24-hour radar coverage and provides a Traffic Organisational Service. The VTS is compulsory for all seagoing vessels and craft entering the Humber. Vessels arriving for destinations in the Humber are obliged to give VTS Humber 2½ hours' prior notice of arrival and to report when passing various points in the VTS area, including points west of the Humber Bridge.

8.5 ABP and other port facility/facility operators falling within the revised PSA area are content with the revised proposal. The Department for Transport is satisfied that the reduced area is both easier to manage and will allow robust surveillance and monitoring of Humber vessel traffic throughout the estuary to its inner limits on the Rivers Ouse and Trent as well as fulfilling the requirements of the Directive.

9. Guidance

The Department has produced a Port Security Officers' Handbook for guidance on dealing with the port security assessment and port security plan. The guidance has been structured in a manner to reflect each of the stated requirements of the Regulations: these are given as objectives, with subsequent paragraphs indicating how they should be met.

10. Impact

10.1 The impact on business is not high as the UK implementation of the EU Regulation (and the activities of the existing Port Security Committee at Hull, New Holland, Immingham and Grimsby) have in practice already put in place the majority of the provisions of the Directive in operational terms. We

therefore anticipate that the coming into force of this Order will have only moderate operational impact at Hull, New Holland, Immingham and Grimsby and does not constitute a major policy change. There will be no impact on charities and voluntary bodies.

10.2 The additional impact on the public sector is not anticipated to be high as the police are already engaged in activity with regard to assisting ports to undertake multi-agency threat and risk assessments (“MATRA” assessments).

10.3 An Impact Assessment is attached to this Memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 Implementation of the Port Security Regulations 2009 is likely to apply in relation to a number of small businesses based at, or working within, the Ports of Hull, New Holland, Immingham and Grimsby. The port facilities based within the envisaged port boundary are already regulated by the Department for Transport under the existing port security regime. Under the current regime, these facilities also have Port Facility Security Plans in place which are regulated by the Department for Transport. These plans will feed into the wider Port Security Plan to be managed by the Port Security Authority for Hull, New Holland, Immingham and Grimsby under the new legislation.

11.2 The Port Security Regulations 2009 recognise the need to avoid overburdening smaller ports by allowing a number of port facilities to combine under the umbrella of a single port security authority, thereby taking advantage of economies of scale.

11.3 The Department undertook a full consultation on the draft Port Security Regulations in 2008, including all port operations of which many would be classified as small businesses. No particular concerns emerged from these operations. There was support for the combination of smaller ports under single umbrella port security authorities.

12. Monitoring & review

12.1 Once the Order is in force and the Port Security Authority designated for the ports of Hull, New Holland, Immingham and Grimsby, the Department for Transport will continue its enforcement programme to ensure compliance with the Port Security Regulations 2009, and thereby complying with the UK’s obligations under the Directive. The guidance has been structured in a manner to reflect each of the stated requirements of the Port Security Regulations 2009: these are given as objectives, with subsequent paragraphs indicating how they should be met. In the meantime, the current compliance and enforcement programmes will continue.

12.2 The Department for Transport has a dedicated team of Compliance Security Inspectors who regularly monitor and review their respective port

areas according to Departmental policy. Their offer of assistance (at no cost) in carrying out the port security risk assessment and in drawing up the port security plan based on it has been taken up by a number of the ports considered in-scope of the Directive.

12.3 The Order contains a standard review clause in accordance with the Coalition Government's Better Regulation principles. The review clause stipulates that the first report following this review must be published within five years from the coming into force of the designation order.

13. Contact

Caroline Wall at the Department for Transport (Tel: 020 7944 6251 or e-mail: caroline.wall@dft.gsi.gov.uk) can answer any queries regarding the instruments.