



Department
for Transport

Consultation on the amendment of the initial review date in port security designation orders for the following ports: Dover, Aberdeen, Grangemouth, Portland, Tees and Hartlepool and Workington (“the Listed Ports”)
DfT-2013-22

September 2013

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Foreword

Directive 2005/EC/65 on enhancing port security (“the Directive”) extended the existing robust port security regime beyond the immediate ship/port interface to the wider port area. The Directive was transposed by S.I. 2009 No. 2048 the Port Security Regulations 2009 (“the PSRs”).

The purpose of this consultation document is to seek comments on a proposal to extend the initial review date in the standard review clause in the Port Security Designation Orders for Dover, Grangemouth, Aberdeen, Portland, Tees and Hartlepool, and Workington (“the Listed Ports”) to the standard 5 years from the coming into force date.

The proposed review date extension does not in any way affect the main requirements under PSRs for port security authorities (“PSAs”) to be established at ports considered in scope of the Directive and for formally-designated PSAs, which includes the PSAs at the Listed Ports, to fulfil their obligations under it.

Links to relevant legislation:

Dover Designation Order (“DO”):

http://www.legislation.gov.uk/uksi/2011/3045/pdfs/uksi_20113045_en.pdf

Grangemouth DO

http://www.legislation.gov.uk/uksi/2012/2608/pdfs/uksi_20122608_en.pdf

Aberdeen DO:

http://www.legislation.gov.uk/uksi/2012/2607/pdfs/uksi_20122607_en.pdf

Grangemouth DO

http://www.legislation.gov.uk/uksi/2012/2608/pdfs/uksi_20122608_en.pdf

Portland DO:

http://www.legislation.gov.uk/uksi/2012/2609/pdfs/uksi_20122609_en.pdf

Tees and Hartlepool DO:

http://www.legislation.gov.uk/uksi/2012/2610/pdfs/uksi_20122610_en.pdf

Workington DO:

http://www.legislation.gov.uk/uksi/2012/2611/pdfs/uksi_20122611_en.pdf

PSRs:

http://www.legislation.gov.uk/uksi/2009/2048/pdfs/uksi_20092048_en.pdf

Directive

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:310:0028:0039:EN:PDF>

Executive summary

The purpose of this consultation document is to seek comments on a proposed extension of the initial review date in the standard review clause in the 6 Port Security Designation Orders which respectively established port security authorities (PSAs) at the ports of: Dover, Aberdeen, Grangemouth, Portland, Tees and Hartlepool, and Workington (“the Listed Ports”)

At present the initial review date in the Designation Orders (“DOs”) for the Listed Ports is 1st January 2014. According to the coming into force dates of the Orders, the length of the review period is therefore 1 year 11 months in the case of Dover and 1 year, 1 month and 11 days in the case of the other 5 ports. It is proposed to extend the deadline for the initial review in the Listed Ports’ DOs to 5 years from the coming into force date of each DO. This is to accord with the Coalition Government’s Better Regulation policy for legislation to include a statutory review provision requiring the implementation of the measure(s) to be formally reviewed within 5 years of the date the measure(s) came into force. The Listed Ports’ DOs already contain provision for subsequent reviews to occur every 5 years.

The extension of the date of the initial review in no way affects the obligations of the PSAs established at the Listed Ports under the Port Security Regulations 2009.

How to respond

The consultation period began on 9 September and will run until 22 October. The 6 week consultation period is considered sufficient given the narrow scope of the consultation. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at (web address) or you can contact (name) if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses:

By e-mail to:

MARITIMESECURITY@dft.gsi.gov.uk

Please quote

“Port Security Designation (Amendment) Order 2013 – DfT-2013- 22”

in the subject box.

Or

By post to:

Caroline Wall
Zone 2/32
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex D. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The proposals

Background

1. The EU Directive on enhancing port security (2005/65/EC) came into force on 14 December 2005. It extended the existing port security regime for EU Member States (Regulation (EC) No 725/2004 on enhancing ship and port security “**the EC Regulation**”) beyond the immediate ship/port interface to include the wider port area and any port-related areas. It takes into account any areas adjacent to the port that have an impact on security in the port. This Directive was transposed into UK law by the Port Security Regulations 2009 (S.I. 2009/2048 – “**the PSRs**”) which came into force on 1 September 2009.
2. The PSRs require the establishment of Port Security Authorities (“**PSAs**”) for qualifying ports across the UK. Under the PSRs as currently drafted, each port security authority has responsibility for carrying out a port security assessment and will also be responsible for developing, implementing and maintaining an agreed port security plan (“**PSP**”) based on the assessment.
3. PSAs are designated by means of Designation Orders made under section 2(2) of the European Communities Act 1972¹ ports. To date Orders have been made in respect of 15 ports, 11 of which have come into force (including the Listed Ports), and 4 which have still to come into force: A list of the ports and the date the related Designation Orders came/will come into force is at Annex A.

Rationale for proposed minor amendments

4. At present the periods for the Designation Orders for the 5 ports are too short for a meaningful review of the effectiveness of the implementation of the PSRs to take place:

Order	Into force date	Current Review Date	Review Period
Dover	31 January 2012	1 January 2014	1 yr 11 mths
Aberdeen	19 November 2012	1 January 2014	1 yr 1 mth and 11 days

¹ 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008(c.7).

Order	Into force date	Review Date	Review Period
Grangemouth	19 November 2012	1 January 2014	1 yr 1 mth and 11 days
Portland	19 November 2012	1 January 2014	1 yr 1 mth and 11 days
Tees & Hartlepool	19 November 2012	1 January 2014	1 yr 1 mth and 11 days
Workington	19 November 2012	1 January 2014	1 yr 1 mth and 11 days

5. PSAs are formally established as of the coming into force date of the Designation Order for a given port. The PSA must then hold at least 2 PSA meetings a year. At the inaugural PSA meeting, Department for Transport port security officials preside for the early stages of the meeting at which a Port Security Officer and Chair of the PSA (this can be the same person) is/are sworn in and the newly-appointed Chair then presides over the remainder of the inaugural meeting's business. With Department for Transport port security compliance inspectors actively assisting ports with the carrying out of the port security [risk] assessment ("PSRA") and the drawing up of the port security plan ("PSP") based on it, in the lead up to formal designation, it has frequently been possible for agreement and endorsement of the PSRA and PSP to be achieved at the inaugural meeting.

PSA MEETINGS HELD TO DATE AT THE LISTED PORTS

Port	Date of inaugural PSA meeting	No. of subsequent PSA meetings held
Dover	16 March 2011	9 and next one 10/10/13
Aberdeen	29 January 2013	1 and next one 19/09/13
Grangemouth	Not yet held	0
Portland	21 February 2013	0 – planned to hold further meeting before end 2013
Tees & Hartlepool	5 February 2013	1 and next tba Oct/Nov
Workington	15 January 2013	1 and next one 11/09/13

6. Just under 2 years (in the case of Dover), and just over 1 year (in the case of the 5 other Listed Ports) is considered too short a review period to adequately assess the effectiveness of the implementation of the PSRs those ports. It is, therefore, proposed to extend the review deadline in the Dos for the Listed Ports to 5 years from the coming into force date in each Order. This

accords with the Coalition Government's Better Regulation policy for legislation to include a statutory review provision requiring the implementation of the measure(s) to be formally reviewed within 5 years of the date the measure(s) came into force. The standard review provision in each of the Listed Ports Dos (article 4 in each case) already includes a requirement in article 4(5) for subsequent reports "to be published at intervals not exceeding 5 years."

7. The extensions of the initial review date in the Listed Ports' Dos will be effected by a draft Amendment Order:

"The Port Security Designation (Amendment) Order 2013" – **see Annex B**

The wording "**before 1st January 2014**" in article 4(4) of each of the Listed Ports' Dos will be replaced with:

"before 31st January 2017" in the case of Dover

"before 19th November 2017" in the case of the 5 other Listed Ports

In each case the date is 5 years from the coming into force date of each Listed Port's DO.

8. As well as aligning with the Coalition Government's Better Regulation policy, a 5 year period will allow for a more meaningful initial review of the effectiveness of the implementation of the PSRs at the Listed Ports. However, the proposed amendment to the initial review date of Listed Ports DOs in no way affects the obligations of the PSAs established at those ports under the PSRs.

9. Reviews under article 4 (Review) of the Designation Order for each of the Listed Ports, will be carried out by Department for Transport officials on behalf of the Secretary of State seeking such information as they may require from the port(s) in question approaching the due date.

Reconstitution of Grangemouth PSA (for information only)

10. The Amendment Order also effects further changes to the Grangemouth DO in view of Forth Ports Ltd, the operators of the Port of Grangemouth, having elected to reconstitute the Grangemouth PSA as a company limited by guarantee: "Port of Grangemouth Port Security Authority Limited". There are no requirements under the Directive, or the PSRs which transposed it, for PSAs to be constituted in a particular way – they can be unincorporated or incorporated – it is entirely the prerogative of the port operators in question.

Consultation questions

Q1. For the Listed Ports: Do you agree that the initial review date in the Designation Orders for the Listed Ports should be extended to 5 years from the date of coming into force of the respective Orders, in line with the Coalition Government's Better Regulation Policy?

If not, please give your reasons/alternative suggestions

Q2. For the Listed Ports: Do you have any general comments not covered by Question 1 above?

If so, please provide below

Impact Assessment

As the extension of the initial review date in the Listed Ports' Dos in no way affects the obligations of the PSAs established at those port under the PSRs, no Impact Assessment has been carried out.

What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing on (www.gov.uk/dft). Paper copies will be available on request.

Question and answer brief

Below is a list of frequently asked questions about these proposals. If you still have questions after you have read this section please contact:

Name: Caroline Wall

Address: Zone 2/32 Great Minster House,
33 Horseferry Road, London SW1P 4DR

Email: MARITIMESECURITY@dft.gsi.gov.uk

What is the Coalition Government's policy on the timing of reviews of legislative measures? Under the Coalition Government's Better Regulation policy, legislative measures that include a statutory review provision must be formally reviewed within 5 years of the date the measure came into force, and then regularly on a 5 year cycle.

Will the proposals affect the current implementation of the Port Security Regulations at ports considered in scope of the Directive?

No, the proposed minor amendments in no way change the main requirements of the PSRs that a Port Security Authority must be designated at all in-scope ports and a PSA boundary delineated, a Port Security Officer appointed, a port security assessment carried out and a port security plan based on it compiled, implemented and maintained.

Further background information can be found at (web address)

<https://www.gov.uk/government/policies/managing-the-risk-to-transport-networks-from-terrorism-and-other-crimes/supporting-pages/maritime-security>

Annex A – Port Security Designation Orders made to date

PORT SECURITY DESIGNATION ORDERS MADE TO DATE

Order	S.I. number	Date in force
The Port Security (Avonmouth Dock and Royal Portbury Dock and Port of Bristol Security Authority) Designation Order 2010	2010/319	19 th March 2010
The Port Security (Port of Dover) Designation Order 2011	2011/3045	31 st January 2012
The Port Security (Port of Aberdeen) Designation Order 2012	2012/2607	19 th November 2012
The Port Security (Port of Grangemouth) Designation Order 2012	2012/2608	19 th November 2012
The Port Security (Port of Portland) Designation Order 2012	2012/2609	19 th November 2012
The Port Security (Port of Tees and Hartlepool) Designation Order 2012	2012/2610	19 th November 2012
The Port Security (Port of Workington) Designation Order 2012	2012/2611	19 th November 2012
The Port Security (Port of Milford Haven) Designation Order 2013	2013/516	1 st May 2013
The Port Security (Ports of Swansea and Port Talbot) Designation Order 2013	2013/1652	2 nd August 2013
The Port Security (Port of Newhaven) Designation Order 2013	2013/1655	2 nd August 2013
The Port Security (Port of Falmouth) Designation Order 2013	2013/1656	2 nd August 2013
The Port Security (Port of Sullom Voe) Designation Order 2013	2013/2013	10 th September 2013
The Port Security (Port of Hull, New Holland, Immingham and Grimsby) Designation Order 2013	2013/2014	10 th September 2013
The Port Security (Ports of Liverpool and the Manchester Ship Canal) Designation Order 2013	2013/2181	3 rd October 2013
The Port Security (Port of Southampton) Designation Order 2013	[S.I. Registrar's No. awaited]	9 October 2013

Annex B – Port Security Designation (Amendment) Order

2013 No.

MERCHANT SHIPPING

MARITIME SECURITY

The Port Security Designation (Amendment) Order 2013

<i>Made</i>	- - - -	2013
<i>Laid before Parliament</i>		2013
<i>Coming into force</i>	- -	2013

The Secretary of State for Transport makes this Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽²⁾.

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to port security, measures relating to the safety of ships and the health and safety of persons on them, and maritime transport⁽³⁾.

Citation and commencement

1. This Order may be cited as the Port Security Designation (Amendment) Order 2013 and comes into force on [INSERT DATE] 2013.

Amendment of the Port Security (Port of Dover) Designation Order 2011

2. In the Port Security (Port of Dover) Designation Order 2011⁽⁴⁾, in article 4(4) (review), for “before 1st January 2014” substitute “before 31st January 2017”.

Amendment of the Port Security (Port of Aberdeen) Designation Order 2012

3. In the Port Security (Port of Aberdeen) Designation Order 2012⁽⁵⁾, in article 4(4) (review), for “before 1st January 2014” substitute “before 19th November 2017”.

Amendment of the Port Security (Port of Grangemouth) Designation Order 2012

4.—a) The Port Security (Port of Grangemouth) Designation Order 2012⁽⁶⁾ is amended as follows.

(1) In article 3 (designation of Grangemouth Port Security Authority)—

(a) for paragraph (1), substitute—

⁽²⁾ 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

⁽³⁾ S.I. 1993/595, 1994/757 and 2004/706.

⁽⁴⁾ S.I. 2011/3045.

⁽⁵⁾ S.I. 2012/2607.

⁽⁶⁾ S.I. 2012/2608.

“(1) For the purposes of the Port Security Regulations 2009⁽⁷⁾, Port of Grangemouth Security Authority Limited (company number 458041), a company limited by guarantee (“the Authority”), is designated as the port security authority for the port of Grangemouth.”;

(b) omit paragraph (2); and

(c) add the following paragraph—

“(3) The Authority is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and its property is not to be regarded as property of, or held on behalf of, the Crown.”.

(2) In article 4(4) (review), for “before 1st January 2014” substitute “before 19th November 2017”.

(3) Omit Schedule 2 (provision as to the Grangemouth Port Security Authority).

Amendment of the Port Security (Port of Portland) Designation Order 2012

5. In the Port Security (Port of Portland) Designation Order 2012⁽⁸⁾, in article 4(4) (review), for “before 1st January 2014” substitute “before 19th November 2017”.

Amendment of the Port Security (Port of Tees and Hartlepool) Designation Order 2012

6. In the Port Security (Port of Tees and Hartlepool) Designation Order 2012⁽⁹⁾, in article 4(4) (review), for “before 1st January 2014” substitute “before 19th November 2017”.

Amendment of the Port Security (Port of Workington) Designation Order 2012

7. In the Port Security (Port of Workington) Designation Order 2012⁽¹⁰⁾, in article 4(4) (review), for “before 1st January 2014” substitute “before 19th November 2017”.

Signed by authority of the Secretary of State for Transport

Date

Parliamentary Under Secretary of State
Department for Transport

⁽⁷⁾ S.I. 2009/2048.

⁽⁸⁾ S.I. 2012/2609.

⁽⁹⁾ S.I. 2012/2610.

⁽¹⁰⁾ S.I. 2012/2611.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the following orders—

- the Port Security (Port of Dover) Designation Order 2011 (S.I. 2011/3045);
- the Port Security (Port of Aberdeen) Designation Order 2012 (S.I. 2012/2607);
- the Port Security (Port of Grangemouth) Designation Order 2012 (S.I. 2012/2608);
- the Port Security (Port of Portland) Designation Order 2012 (S.I. 2012/2609);
- the Port Security (Port of Tees and Hartlepool) Designation Order 2012 (S.I. 2012/2610); and
- the Port Security (Port of Workington) Designation Order 2012 (S.I. 2012/2611).

Those six orders were part of a series of orders implementing Directive 2005/65/EC of the European Parliament and of the Council of 26th October 2005 (OJ L 310, 25.11.2005, p28-39) on enhancing port security at individual ports in the United Kingdom. The Directive was transposed in relation to the United Kingdom as a whole by the Port Security Regulations 2009 (S.I. 2009/2048).

The amendments change the date before which the first report following review of the order must be published by the Secretary of State. In each case, the date in the original order is replaced by a date falling five years after the date of commencement of the order.

An additional amendment is made to the Port Security (Port of Grangemouth) Designation Order 2012. This is to reflect the incorporation of the port security authority as a company (article 4(1), (2) and (4)).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Yvette Jacobs-Garrison at Zone 2/32, 33 Horseferry Road, London SW1P 4DR (Tel: 020 7944 5148; email: yvette.jacobs-garrison@dft.gsi.gov.uk) and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Annex C – Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available on the Better Regulation Executive website at

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/14 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Consultation principles

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

Six weeks is considered a sufficient length of time for this consultation given its narrow scope (the adjustment of the initial review date to 5 years from the coming into force date of 6 Port Security Designation Orders in line with the Coalition).

Annex D - List of those consulted

National Organisations

Association of Chief Police Officers (ACPO)
Associated British Ports (ABP)
Association of Port Health Authorities (APHA)
British Ports Association (BPA)
Downstream Fuel Association (DFA)
Home Office Immigration Enforcement
Maritime and Coastguard Agency (MCA)
Oil and Gas UK
Scottish Office
Welsh Office
Department for Regional Development, Northern Ireland (DRDNI)
Tank Storage Association (TSA)
UK Major Ports Group (UKMPG)
UKLPG
United Kingdom Petroleum Industry Association (UKPIA)

Dover

Dover Harbour Board
Cemex UK
P&O Ferries
DFDS Seaways
Dover District Council

Aberdeen

Aberdeen Harbour Board
Aberdeen Base – Maitland Quay
Dales Marine Services Ltd
Northlink Ferries Passenger Terminal
Seabase (Peterson SBS)
Pocra Quay (Peterson SBS)
Caledonian Oil
ASCO Torry Marine Base
Albert Quay

Grangemouth

Grangemouth Harbour Board
Grangemouth Community Council
Falkirk Council

BP Hound Point Marine Terminal
Forth Ports Grangemouth
Ineos Grangemouth
NuStar Grangemouth Ltd

Portland

Portland Harbour Board
Weymouth and Portland Borough Council
Dorset Police
Portland Port Ltd
Portland Bunkers International Ltd

Tees & Hartlepool

Middlesbrough Council
Hartlepool Borough Council
Able Seaton Port
Portrack Seafreight Ltd Bamletts Wharf
Clarence Lower Wharf
Cleveland Potash Terminal
Cochranes Wharf
Conoco Phillips Petroleum
Dawsons Wharf & North Sea Supply Base
INEOS Nitriles (UK) PLC
PD Teesport
PD Ports Hartlepool
Port Clarence Offshore Base
SSI Redcar Ore Terminal & Tarmac Jetty
SABIC UK Petrochemicals (North Tees)
SABIC UK Petrochemicals (South Tees)
Seal Sands Storage Ltd
Simon Storage Riverside Terminal
SSI N06 Berth
Teeside Gas Port
Vopak Terminal Teeside
Tarmac Wharf
Readman Steel Ltd
A&P Tees

Workington

Allerdale Borough Council
Cumbria County Council
Port of Workington
Port of Workington Berth 4