

# Annex C-1: Application of Associated British Ports (ABP)

Associated British Ports' (ABP) application covers 18 of their harbours in England and Wales:

Barrow	Goole	King's Lynn	Silloth
Barry	Grimsby	Lowestoft	Swansea
Cardiff	Hull	Newport	Teignmouth
Fleetwood	Immingham	Plymouth	
Garston	Ipswich <sup>1</sup>	Port Talbot	

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<sup>1</sup> ABP have existing powers of general direction with respect to Ipswich which will require to be repealed if they proceed with designation under section 40A of the Harbours Act 1964 (see paragraphs 1.17 and 1.18 on page 15 of the consultation document and paragraphs 1.20 to 1.24 on pages 16 and 17 for more detail).



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(by email)

Our Ref:  
DMA  
WSH

Your Ref:  
MARI 016/003/0009

Date:  
30<sup>th</sup> June 2014

Dear Caroline,

**Harbour Directions: Joint Application in Respect of a Number of Ports in England and Wales owned by Associated British Ports (ABP)**

Further to our correspondence in March 2014, indicating our intention to seek Powers of Harbour Direction for a number of ABP ports, we are pleased to now submit our formal application to be designated with those powers (under sections 40A-40D of the Harbours Act 1964 (HA 1964) as inserted by section 5 of the Marine Navigation Act 2013).

This application is made on behalf of ABP acting as a Statutory Harbour Authority, and is made on the instruction of the ABP Board members in their capacity as "Duty Holder" for the SHA.

ABP is ultimately owned by ABP (Jersey) Limited, a limited liability company domiciled and incorporated in Jersey. However, under Part II of the Transport Act 1981 ABP is controlled by Associated British Ports Holdings Ltd (ABPH), a company formed by the Secretary of State. The directors of ABP (of which there must not be less than five nor more than thirteen) are appointed by ABPH, but ABPH has no power to give directions to the directors of ABP in respect of the execution of their powers and duties as a Harbour Authority. The directors of ABP while acting in their capacity as Harbour Authority are therefore the "Duty Holder" as defined by the Port Marine Safety Code.

ABP is the Statutory and Competent Harbour Authority for the following ports and harbours, although the precise nature of the arrangements varies according to local circumstances:

Ayr	Goole	King's Lynn	Southampton
Barrow	Grimsby	Lowestoft	Swansea
Barry	Hull	Newport	Teignmouth
Cardiff	Humber	Plymouth	Troon
Fleetwood	Immingham	Port Talbot	
Garston	Ipswich	Silloth	

**For the purposes of this application, Powers of Harbour Direction are sought for the following ports:**

Barrow	Goole	King's Lynn	Silloth
Barry	Grimsby	Lowestoft	Swansea
Cardiff	Hull	Newport	Teignmouth
Fleetwood	Immingham	Plymouth	
Garston	Ipswich	Port Talbot	

That is to say, powers are not being sought for the ports in Scotland (for which separate application will be made to Transport Scotland), and those ports already having Powers of General Direction (Southampton and Humber)

### **Contact Details**

This application, covering multiple ports, is being coordinated on behalf of the SHA by ABP's Marine Advisor to the Board. All enquiries and correspondence should be addressed to:

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### **Rationale for Application for Powers of Harbour Direction**

ABP was instrumental in the development of the Port Marine Safety Code, and has publicly committed to full compliance with all aspects of the code, including continuous improvement in the manner in which we conduct all of our marine operations.

The first substantive paragraph of the PMSC (section 1.2) requires harbour authorities to ensure that:

*"Duties to ensure the safety of marine operations are matched with general and specific powers to enable the authority to discharge these duties."*

Furthermore, section 3.3 states that:

*"Existing powers should be reviewed on a periodic basis by harbour authorities, to avoid a failure in discharging its duties or risk exceeding its powers."*

And section 3.4 recommends that:

*"Harbour authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not have them already."*

The majority of the ports for which application is being made, rely on very old legislation to regulate the movement of vessels within their respective statutory areas.

These are generally a combination of “enabling acts” and local byelaws. In almost all cases these are inaccessible documents, due to their age and the archaic terms and language used in their drafting. See table below for a general summary of enabling acts and byelaw dates.

Port	Primary Act	Current Byelaws
Barrow	Furness Railway Act, 1848	1985
Barry	Barry Dock and Railways Act 1884	1923
Cardiff	Bute Docks Act, 1865	1929
Fleetwood	The Preston and Wyre Railway and Harbour Act 1835	1982
Garston	St. Helens Canal and Railway Company Act 1846	1928 / 1980
Goole	Aire and Calder Navigation Act 1820	2006
Grimsby	Grimsby Haven Act 1825	1939
Hull	Kingston-upon-Hull Dock Act 1774	1927
Immingham	Humber Commercial Railway and Dock Act 1901	1929
Ipswich	The Port of Ipswich (transfer of undertaking) HRO 2002	1996
King's Lynn	King's Lynn Docks and Railway Act 1865	1935
Lowestoft	Norwich and Lowestoft Navigation Act 1827	1993
Newport	Newport Dock Act 1835	1923 (and additions)
Plymouth	Millbay Pier Act 1840	1894 / 1972
Port Talbot	Port Talbot Railways and Docks act 1894	1923 / 1927
Silloth	Carlisle and Silloth Bay Railway and Dock Act 1855	1893
Swansea	Swansea Dock Act 1847	1924
Teignmouth	Teignmouth Quays Harbour Revision Order 2004	1901

There is therefore a strong desire to update, and in some cases supplement the regulatory powers currently available, with modern directions which are fit for purpose and complement the obligations placed on ABP by our stated commitment to the PMSC.

Furthermore, while it is currently very unusual to resort to legal proceedings as a result of byelaw infringement, both internal PMSC audit, and external audit such as MCA “Health Checks” have identified that in some cases it would be very difficult to legally enforce some aspects of our local legislation designed to ensure safe navigation if the need arose, due to the outdated drafting.

Other factors which have persuaded ABP to apply for these powers include the need for appropriate legislation being consistently identified as a control measure in multiple risk assessments, as well as changing traffic conditions. For example the proliferation of wind farm support vessels in former fishing ports, or the establishment of marinas in otherwise unused docks.

While ABP is not seeking to make use of new powers in order to secure additional prosecutions, the authority clearly recognises that modern, clear and appropriate local

legislation (directions) makes it much easier for all harbour users to understand and comply with their own responsibilities to ensure safe navigation within our statutory areas.

### **Potential Conflicts between Harbour Directions and Existing Legislation**

ABP recognises that if powers are successfully obtained to make Harbour Directions, there will inevitably be conflicts with some existing local legislation, in particular those parts of the byelaws seeking to regulate navigation in the various harbours.

As regulation to ensure safety of navigation (and to ensure compliance with the PMSC) is seen as the primary objective in seeking these new powers, it would be the intention to use Harbour Directions to regulate all appropriate aspects of navigation within our harbours.

This would necessarily require removal of conflicting / duplicated requirements from the byelaws. However, as indicated in the table above, many byelaws are extremely dated, and seek to regulate many landside (non-navigational) aspects of the day to day use of ports which are no longer appropriate or relevant.

It would therefore be the intention of ABP, upon gaining "Designated Harbour Authority" status to begin a systematic review of each port's legislation, and in particular Byelaws, with the intention of modernising and greatly reducing the number of byelaws at each location, and transferring all sections intended to regulate safety of navigation to appropriate Harbour Directions.

It is NOT expected that any of the anticipated directions would conflict with, or require alteration to, any of our higher level "enabling legislation". However, ABP is currently undertaking a comprehensive review of all the legislation underpinning our marine responsibilities to ensure we are fully informed if, and when, we are able to introduce Harbour Directions.

Furthermore, it would NOT be our intention to seek to review all of our byelaws and introduce Harbour Directions at the same time for all ports. The process will be prioritised based on a risk assessed approach, taking into account identified issues at each port, traffic densities, and age / suitability of existing legislation (byelaws).

### **Consultation with Harbour Users**

All ABP ports take their obligations (formalised under section 3.12 of the PMSC) to consult harbour users, very seriously.

Each location (port) has established one or more stakeholder, or user groups to ensure all harbour users are consulted with respect to all matters involving the management and regulation of the harbour areas.

Typically these user groups will include representatives from:

- Shipping companies (vessel owners)
- Agents
- Tug and towage providers
- Mooring service providers
- Port Customers
- Port staff
- Pilots
- Regulatory bodies (MCA, EA, Police, GLA etc)

- Local lifeboat / rescue organisations
- Leisure users (Sailing, rowing, canoeing, and other clubs and organisations)
- Berth holders and marina operators
- Commercial fishing organisations
- Adjacent landowners / local authorities
- Adjacent Harbour Authorities
- Any other interested parties.

In some ports there may be a specific navigational stakeholder forum, but most of the smaller ports will facilitate general forums, typically one or more times a year, at regular intervals

In all cases a "Port Marine Safety Code update" will be a formal agenda item and all meetings are minuted and actions followed up.

At the majority of ABP ports, these meetings have already been used to explain the concept of Harbour Directions, and notice has been given to local stakeholders that ABP is seeking powers to enable us to make such directions. No objections have been received to date, although clearly these forums will become the key mechanism for us to engage with our harbour users and customers as and when we reach the stage of full consultation.

Due to the wide range of stakeholders across all of the ports, a full list is not attached to this application, but will be available upon request when it is required.

### **Code of Conduct Statement**

ABP was pleased to be involved in the industry group formed to develop the "Code of Conduct Statement" and is therefore able to give assurance that the Harbour Authority has signed up to the code, and will comply with the requirements therein.

#### **Statement:**

I confirm that the following resolutions of the Associated British Ports Harbour Authority were duly passed at a meeting of the Associated British Ports Harbour Authority on 25<sup>th</sup> February 2014. The harbour authority has had regard to the content of and agrees to comply with the code of conduct on harbour directions, in particular:

- a) to maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the code of conduct when required; and,
- b) to have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions. The Marine Advisor is authorised to apply to Welsh Minister / the Secretary of State for Transport / Scottish Ministers for Associated British Ports Harbour Authority to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964. (In respect of those ports listed in this application letter).

Name: Captain Philip Cowing (Marine Advisor to ABP Board)

Signed: 

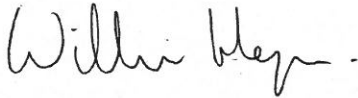
Date: 30<sup>th</sup> June 2014

**Conclusion**

On behalf of Associated British Ports, we trust that this application contains all of the detail required to progress our application to become a Designated Harbour Authority, and we look forward to being kept informed about the progress of the process.

In the meantime if any clarification or additional information is required please do not hesitate to contact the undersigned.

Yours sincerely  
for Marine Advisor



William Heaps

**Deputy Marine Advisor  
& Hydrographic Manager**