

Title: IA No: DfT00176 Lead department or agency: <u>Department for Transport</u> Other departments or agencies: <u>N/A</u>	Impact Assessment (IA) Date: 03/10/12 Stage: Final Source of intervention: Domestic Type of measure: Primary legislation Contact for enquiries: Michael Read-Leah michael.read-leah@dft.gsi.gov.uk 020 7944 2559
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Summary: Intervention and Options	RPC: Green
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
NQ	NQ	NQ	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?
 A successful maritime industry is vital to the UK's economic well-being; to sustain and encourage it the Department seeks to agree with industry an appropriate level of regulation to promote safe and efficient operations and protect the environment from pollution. It is necessary to keep existing legislation under review to ensure that it remains proportionate and up-to-date. Working with ports, the General Lighthouse Authorities (GLAs), and others in the industry, we have identified a number of specific areas where legislation is out-of-date or imposes unnecessary costs and complications; primary legislation is required to tackle these deficiencies.

What are the policy objectives and the intended effects?
 The policy objective is to remove burdens on business and ensure that the organisations that businesses rely on have the powers they need to operate effectively. The intended effects are to: enable harbour authorities to be relieved of their duties where ports are no longer commercially viable; increase flexibility in managing Pilotage Exemption Certificates; ease the extension of general directions powers to harbour authorities that do not yet have them; enable port constables to carry out enforcement duties effectively; clarify the jurisdiction of the GLAs and their power to mark wrecks electronically, and broaden the type of commercial activity they can undertake; and simplify the amending of manning requirement standards.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Do nothing: This approach would leave existing burdens and bureaucracy in place. Two policy options have been considered. Option 1) Primary Legislation: New primary legislation is required to amend existing Acts of Parliament, and without it harbour authorities, port constables, the GLAs, and the Secretary of State must continue to act within the Law as it stands. Option 2) Primary Legislation (excluding Pilotage Exemption Certificates, PECs): As (1) but without the three clauses relating to the granting, use, suspension and revocation of PECs. Option 1 is the preferred option as the net benefit is expected to be higher.
 Discounted options: 1) The use of a Legislative Reform Order (LRO) was considered. Some of the issues covered by the Bill could be handled through an LRO, but not those which affect restrictions on public bodies, which is the subject of some clauses in the Bill. 2) No non-legislative option is open given the objective is to remove burdens arising from existing legislation.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 07/2017

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Stephen Hammond _____ Date: _____ 08/10/12 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce the Marine Navigation (No.2) Bill

FULL ECONOMIC ASSESSMENT

<u>Price Base</u> Year: NA	<u>PV Base</u> Year: NA	<u>Time Period</u> Years: NA	<u>Net Benefit (Present Value (PV)) (£m)</u>		
			<u>Low: NQ</u>	<u>High: NQ</u>	<u>Best Estimate: NQ</u>

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

1) Powers to immediately suspend or revoke a PEC would be introduced. Where a PEC is suspended, shipping companies would incur additional costs. In particular, if there is no other PEC holder on board the vessel able to pilot it, then the owner or operator of the vessel would need to pay for the services of a pilot. 2) GLAs would incur additional costs, for example, if they purchase additional assets to broaden the type of commercial activity they undertake.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

Description and scale of key monetised benefits by 'main affected groups'

Due to the limitations of the available evidence base, it has not been possible to monetise any of the benefits that have been identified in this impact assessment.

Other key non-monetised benefits by 'main affected groups'

1) Shipping companies would benefit from increased flexibility in who may be issued with a PEC. Savings are likely to arise from avoiding the costs of paying overtime to other PEC holders or, in extreme cases, taking a pilot. 2) It is expected that GLAs would only broaden the type of commercial activity they undertake if the benefits outweigh the costs. 3) Extending the geographic jurisdiction of port constables would enable enforcement resources to be used more effectively.

Key assumptions/sensitivities/risks

Discount rate (%)

NA

The clauses regarding PECs are considered to be in scope of OIOO. Given the comparative rarity of occasions when a PEC is suspended or revoked, it is expected the direct benefits to business from the increased flexibility in who may be issued with a PEC would outweigh the direct costs to business from these clauses. Therefore, it is considered that Policy Option 1 would qualify as an OUT, although given the limitations of the available evidence base, it has not been possible to quantify the scale of this OUT.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	Yes	OUT

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce the Marine Navigation (No.2) Bill except for the clauses regarding Pilotage Exemption Certificates

FULL ECONOMIC ASSESSMENT

Price Base Year NA	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

Description and scale of key monetised costs by 'main affected groups'

Due to the limitations of the available evidence base, it has not been possible to monetise any of the costs that have been identified in this impact assessment.

Other key non-monetised costs by 'main affected groups'

GLAs would incur additional costs, for example, if they purchase additional assets to broaden the type of commercial activity they undertake.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

Description and scale of key monetised benefits by 'main affected groups'

Due to the limitations of the available evidence base, it has not been possible to monetise any of the benefits that have been identified in this impact assessment.

Other key non-monetised benefits by 'main affected groups'

1) It is expected that GLAs would only broaden the type of commercial activity they undertake if the benefits outweigh the costs. 2) Extending the geographic jurisdiction of port constables would enable enforcement resources to be used more effectively.

Key assumptions/sensitivities/risks

Discount rate (%)

NA

The clauses in the Marine Navigation (No.2) Bill regarding PECs would not be introduced under Policy Option 2. Therefore, it is considered that Policy Option 2 would have no direct impact on business and it is considered to be out of scope of OIOO.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	No	NA

Evidence Base (for summary sheets)

1. Policy Background

In May 2008, the Department for Transport (“the Department”) published a Draft Marine Navigation Bill¹ (“the draft 2008 Bill”) for pre-legislative scrutiny and consultation among interested parties. The Bill was intended to improve port safety, enhance and clarify the powers of the General Lighthouse Authorities, and implement the International Convention on the Removal of Wrecks 2007. The Department’s response to the consultation² was published in October 2008.







The Transport Select Committee sought oral and written evidence from a wide range of stakeholders and published their report³ in July 2008. The Department’s response⁴ was published in October 2008. The Committee “broadly welcomed the provisions set out in the draft Bill” and the Department sought legislative time to progress the clauses (taking into account recommendations from the Committee).

Also in 2008, the Department reviewed the arrangements for port police within England and Wales (there are no port police forces in Scotland, but there are two in Northern Ireland, of which one (Belfast) contributed to the review). Extensive consultation took place with the port police and port management, the Port Police Chief Officers Association, and the Assistant National Coordinator Ports Policing (Protective Security) to gather information. The review made a number of recommendations⁵, one of which was that a further improvement to port police operational capacity could be achieved by a legislative change to increase their geographical jurisdiction.

Following the 2010 General Election, the clauses in the draft 2008 Bill were reviewed to identify those that met the Government’s deregulatory and support for business agenda so they could be pursued. The provisions relating to the International Convention on the Removal of Wrecks were enacted through a private member’s bill last year, and the Department engaged interested parties (including the British Ports Association, UK Major Ports Group, Chamber of Shipping, UK Maritime Pilots Association, and Royal Yachting Association) about the remaining clauses.

The Marine Navigation (No.2) Bill

Following the private member’s bill ballot in May 2012, Sheryll Murray MP expressed an interest in taking forward a set of clauses from the draft 2008 Bill and port police review covering:

-  Easier process for harbour authorities to close or relinquish their responsibilities for pilotage
-  Greater flexibility for the provision, suspension and revocation of Pilotage Exemption Certificates, balancing the financial and safety interests of harbour authorities and shipping companies
-  Easier process for designating which harbour authorities have powers of general direction to maintain efficient harbour operations
-  Extension in the geographic jurisdiction of ports police constables
-  Clarification of powers of the General Lighthouse Authorities and enhanced powers to engage in commercial activities
-  Simplification of the way in which regulations on manning requirements are made

The Bill received its First Reading on 20 June as the Marine Navigation (No.2) Bill; its Second Reading is scheduled for 19 October. More detail on the practical effect of the clauses in this Bill and the costs and benefits of each are set out in this Impact Assessment (IA). We have sought up-to-date advice from industry bodies in assessing these costs and benefits, as well as drawing from published documents and the work undertaken during 2008.

Before turning to the content of the IA, the next section provides a full glossary of the technical terms and abbreviations used therein.

¹ <http://www.official-documents.gov.uk/document/cm73/7370/7370.pdf>

² <http://webarchive.nationalarchives.gov.uk/tna/20100927131008/http://www.dft.gov.uk/consultations/archive/2008/marinenavbill/responses.pdf>















³ <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmtran/709/709.pdf>

⁴ <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmtran/1104/1104.pdf>





⁵ <http://www.ppcoa.org/Accountability%20and%20Standards%20of%20the%20Port%20Police%20Forces.pdf>

2. Definitions and relevant legislation





Some specialist maritime terminology is used in this Evidence Base; these terms are explained below:

-  **Aids to Navigation (AtoN):** Means such as lighthouses, buoys, beacons, electronic signals and markers, which provide a guide for mariners to avoid dangerous waters and safely use designated shipping lanes.
-  **Competent Harbour Authority (CHA):** A harbour authority with duties to assess the need for pilotage and powers to provide the appropriate pilotage services and impose pilotage directions as necessary to maintain safe navigation. CHAs are a sub-set of Statutory Harbour Authorities, but an authority may cover a wider geographical area as a CHA (including the area of several SHAs).
-  **Designated Harbour Authority (DHA):** A term to be established by this Bill to identify harbour authorities with the powers of general direction.
-  **General Lighthouse Authority (GLA):** A body that provides aids to navigation for shipping in coastal waters. There are three GLAs for the British Isles (Trinity House for England, Wales, the Channel Islands and Gibraltar; Northern Lighthouse Board for Scotland and the Isle of Man; Commissioners of Irish Lights for all of Ireland). Their activities are paid for out of the General Lighthouse Fund.
-  **General Lighthouse Fund (GLF):** This Fund is administered by the Secretary of State to pay for the activities of the General Lighthouse Authorities. Its income is mainly derived from the payment of Light Dues, supplemented by investment income, the profits from any commercial work carried out by the GLAs, and a grant from the Irish government to cover half the costs of the Commissioners of Irish Lights' activities in the Republic of Ireland.
-  **General Directions:** Power to issue directions in relation to all vessels in a harbour area either in response to a particular occurrence or as a standing instruction to all, or specified types of, shipping.
-  **Harbour Closure Order (HCO):** A process to be established by this Bill to relieve a harbour authority of the duty to keep its harbour open and maintained, thereby effectively allowing it to "close" its harbour.
-  **Harbour Revision Order (HRO):** Process available to harbour authorities to confer, amend, repeal, or consolidate powers and duties to facilitate the efficient management of the port through an order under the Harbours Act 1964 made by the Secretary of State or, since 2010, the Marine Management Organisation (MMO).
-  **Light Dues:** A charge levied on vessels using UK and Irish ports paid into the General Lighthouse Fund to support the work of the General Lighthouse Authorities. Most commercial vessels pay a rate per net registered ton (currently 41p) up to a maximum tonnage, and for a maximum of nine voyages per annum. Some, mainly small, types of vessel pay a flat annual charge. Light dues rates for the UK are determined by the Secretary of State on an annual basis, drawing on advice from the GLAs and the shipping industry.
-  **Local Lighthouse Authority (LLA):** A body that provides aids to navigation to assist shipping using its waters, for example a port, and which is funded through charges levied on those vessels, for example harbour dues. The General Lighthouse Authorities inspect and report on the aids to navigation provided by LLAs.
-  **Merchant Shipping Notice (MSN):** A notice to mariners conveying mandatory information that must be complied with under UK legislation; they relate to Statutory Instruments and contain the technical detail of such regulations.
-  **Pilotage:** The requirement that a vessel be under the charge of an authorised maritime pilot or holder of a Pilotage Exemption Certificate, who has the required skills, experience and local knowledge to safely navigate a vessel in specific waters.
-  **Pilotage Directions:** A direction given by a Competent Harbour Authority making it compulsory for a vessel over 20 metres in length (or 47.5 metres for fishing boats) to be subject to pilotage; these directions may vary according to type of vessel, geographical area, or other circumstances.
-  **Pilotage Exemption Certificate (PEC):** A mechanism that provides for suitably qualified crew (currently only the master or first mate may be authorised) to pilot their vessel instead of being




compelled to use a maritime pilot provided by the Competent Harbour Authority. This reduces costs for vessels that regularly use a harbour where pilotage directions are in force.

-  **Port Constables:** Eight UK ports (Belfast, Bristol, Dover, Felixstowe, Larne, Liverpool, Tilbury, and Tees & Hartlepool) have their own private police force. Port constables are sworn into office by a Justice of the Peace on the nomination of the harbour authority, and upon being sworn in, have all the rights and responsibilities of a police constable, but only within the port area and up to one mile distant around the port.
-  **Port Marine Safety Code (PMSA):** A non-statutory code developed with the maritime industry to improve safety in UK ports and to enable harbour authorities to manage their marine operations to nationally agreed standards⁶.
-  **[International Convention for the] Safety of Lives at Sea (SOLAS):** Generally regarded as the most important of all international treaties concerning the safety of merchant ships, SOLAS was first adopted in 1914 in response to the *Titanic* disaster. The main objective of SOLAS is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Chapter V identifies certain navigation safety services (including aids to navigation) which should be provided by contracting governments.
-  **Statutory Harbour Authority (SHA):** A body with statutory powers and duties relating to the improvement, maintenance and management of a harbour area. They operate under local Acts of Parliament or orders made under the Harbours Act 1964. They may be public/municipal, private or not-for profit ("trust port") bodies.

Harbour authorities have access to a number of different powers (listed below) to regulate ship movements within their harbours. The use of all these powers is governed by the authority's formal risk assessment, and supports the safety management system. The master or pilot of a vessel is not obliged to obey directions if he believes that to do so would endanger the vessel. It is therefore essential that the use all of these powers are clearly based on an assessment of the safety of the harbour and vessels using it.

-  **Byelaws:** provide a general framework for rules of navigation which apply to all vessels (including speed limits, defining fairways⁷, anchorages⁸, etc) and which can be treated as unlikely to require frequent or short term amendment.
-  **Special Directions:** Special directions may be given by the harbour master⁹; these are time and vessel specific and most apt for operational purposes and emergencies. Some harbour authorities have more effective powers of general direction (as described above)
-  **Pilotage Directions:** as described above.
-  **Dangerous Vessel Directions:** these are a special case, and permit a harbour master to remove a vessel from the harbour in clearly defined circumstances; he/she may be overruled by the Secretary of State.

The Bill seeks to amend three existing Acts of Parliament. These are:

-  **Harbours Act 1964 (HA64)**¹⁰: Establishes a mechanism for the Secretary of State to make orders to secure harbour efficiency etc.
-  **Merchant Shipping Act 1995 (MSA95)**¹¹: Part VIII sets out the powers and duties of the General Lighthouse Authorities; section 47 provides a power to make regulations on manning requirements.
-  **Pilotage Act 1987 (PA87)**¹²: Establishes Competent Harbour Authorities, their powers and duties in respect of pilotage, and the Pilotage Exemption Certificate system.

⁶ <http://assets.dft.gov.uk/publications/topics/ports-4/pmsc.pdf>

⁷ A navigable channel in a river or harbour

⁸ An area off the coast that is suitable for a ship to anchor

⁹ A harbourmaster is an official responsible for enforcing the regulations of a particular harbour or port, in order to ensure the safety of navigation, the security of the harbour and the correct operation of the port facilities.

¹⁰ <http://www.legislation.gov.uk/ukpga/1964/40/contents>

¹¹ <http://www.legislation.gov.uk/ukpga/1995/21/contents>

¹² <http://www.legislation.gov.uk/ukpga/1987/21/contents>

3. Problem under consideration

A successful maritime industry is vital to the UK's economic well-being; to sustain and encourage it the Department seeks to agree with industry an appropriate level of regulation to promote safe and efficient operations and protect the environment from pollution. It is necessary to keep existing legislation under review to ensure that it remains proportionate and up-to-date. Working with ports and others in the industry, we have identified a number of specific areas where legislation is out-of-date or imposes unnecessary costs and complications. In line with the Government's deregulatory agenda and desire to promote economic growth, it would be desirable to address these anomalies. The problems that the Bill seeks to address are:

3.1. Closure of harbours and removal of unwanted pilotage powers

The Harbours Act 1964 (HA64) provides the Secretary of State with powers to amend local legislation relating to harbours by secondary legislation. These powers are limited to only:

- ✎ Closure of part of a harbour;
- ✎ Reducing facilities available in the harbour; and,
- ✎ Disposal of facilities not required.

The HA64 does not include a power for a harbour to be closed completely. There is no straightforward legal process for harbour authorities to be relieved of their legal powers and duties when the port becomes uneconomic.

At present, when a harbour needs to be permanently closed to traffic, this can only be achieved by promoting a private Act of Parliament, which is both time-consuming and costly for the harbour authority and the Department. A lack of commercial activity is likely to result in very little income received to invest in the maintenance of the harbour and also little need for the provision of services and facilities, and yet, the harbour authority will remain under the same statutory duty to maintain and carry out other functions in relation to the harbour. It goes without saying that a harbour authority which is facing financial difficulties is unlikely to have the resources to promote a Bill for closure of the harbour.

The last Bill to close a harbour was the Colchester Borough Council Act 2001; as detailed in the draft 2008 Bill consultation (link at footnote 1), the whole process took three years and incurred legal fees of £120,000 as well as administration costs in the Department.

Similarly, there is no simple process for a harbour authority to divest itself of Competent Harbour Authority (CHA) status. The Pilotage Act 1987 (PA87) enables harbour authorities to apply to become a CHA, with consequent powers and duties in respect of the provision of marine pilotage, to ensure the safe passage of vessels through the geographical area of the CHA. There is, however, no procedure provided to enable a CHA to relinquish this status, leaving owners of disused facilities open to the risk of legal challenge for not having carried out their statutory duties.

3.2. Pilotage Exemption Certificates (PEC)

Currently, a PEC may only be granted to "any person who is *bona fide* the master or first mate of any ship...", subject to the CHA being satisfied as to that person's skill, experience, local knowledge and relevant knowledge of the English language. Although the term master has been used for many years, the term first mate is gradually ceasing to be used. In considering an alternative formulation, it seems to be unnecessarily restrictive to specify specific job titles when the legislation already requires that a PEC holder is suitably qualified and experienced. It is the capability of the individual that should be the primary concern when issuing a PEC.

In other respects, the current legislation is too loose in permitting a PEC holder subject to a suspension or revocation procedure owing to incompetence or misconduct to continue using the PEC until the process of notification and making of representations is complete. We do not collect any data on the frequency with which authorities investigate incidents, nor how many investigations result in suspensions as these are internal matters for harbour authorities. Furthermore, there is no procedure for collecting the information which relates to matters that are entirely the responsibility of harbour authorities. However, we are aware of some incidents which were potentially very serious.

For example, the collision between a dredger and the Thames Barrier in October 1997 occurred while the mate registered with the Port of London Authority as the current PEC holder was asleep in his cabin. Fortunately, in this instance, the Barrier suffered only superficial damage, but such an

incident highlights the possibility of expensive damage to property, interruption of trade, and risks to the effective management of tidal waters in the River Thames.

Incidents such as this where there have been irregularities in the use of a PEC, albeit rare, indicate that there is a need for CHAs to be able to respond quickly to deal with any suspected misuse of PECs or if the holder of a certificate no longer meets the required standard.

3.3. General Directions by harbour authorities

Currently, some harbour authorities have powers of General Direction within the private acts of Parliament by which they were established, or have sought them through Harbour Revision Orders (HRO) under the HA64. The British Ports Association (BPA) has provided the Department with an estimate that, of the approximately 120 commercial cargo handling harbour authorities in the UK, between half and two-thirds do not currently have the powers of general direction. In relation to the importance placed on safety management in the ports sector, the BPA estimate that almost all of those ports without the powers of general directions would look to make use of them in some way if they were more easily available.

Currently, for those Statutory Harbour Authorities (SHAs) that do not have the enabling powers for general directions and wish to implement general directions they would need to promote an HRO. This is a long, costly and bureaucratic process for individual harbour authorities to obtain. We intend to provide a means that simplifies the process for SHAs to acquire such powers that will help ensure safe and efficient operations within the harbour area.

In practice an HRO is usually promoted by a harbour authority on a range of issues which may include constitutional matters, works to be carried out on infrastructure as well as obtaining powers for general direction.



General directions are used to control vessels and improve safety within the harbour. A harbour authority may give directions to vessels within their harbour, for example to impose speed limits which are required to be complied with for reasons of navigational safety. General directions may relate to the movement of vessels, mooring and unmooring, equipment and the manning of vessels.

Some of the functions of general directions can be performed using byelaws, but the byelaw process is cumbersome, requires legal representation and may take between one to five years before they can be confirmed by the Secretary of State. As an example, in the case of Harwich Haven it was found that of the 77 byelaws in place prior to 2003, 42 could be replaced by general directions. Harwich maintained that the effective regulation of marine activity could be safely accomplished without the need for a lengthy and expensive revision of their byelaws¹³. General directions, by comparison can be introduced in a shorter timescale as long as they have been drafted ensuring they are fit for purpose, have been advertised and consulted on by the harbour authority for at least 28 days. They do not have to be confirmed by the Secretary of State.

3.4. Extension of the geographic jurisdiction of port constables powers

There are eight ports police forces in the UK (Belfast, Bristol, Dover, Felixstowe, Larn, Liverpool, Tilbury and Tees and Hartlepool), whose powers are enshrined in legislation over 100 years old. Ports police constables are, as prescribed by legislation, limited to carry out their enforcement duties within the port and within one mile of the port. Over the years it has become apparent that this limit on their geographic jurisdiction is not appropriate for today's workload, as it can delay resolution of any investigation, and is a burden on the resources of both ports and local police forces as they have to duplicate personnel to pursue even the simplest of tasks outside the one-mile limit.

There are a range of routine policing tasks for which port constables need assistance from the local police force, but which may be classed as a low priority for the local force and are not an efficient use of resources when a port constable could undertake the task just as well if suitably empowered:

-  Conducting an investigation outside the geographic limit into crimes that have been committed within the port or in connection with the port.
-  Transporting someone who has been detained to a custody facility outside of the mile jurisdiction. Some crimes which the port police deal with (such as drink driving within port boundaries) require visits to a police station with a custody suite for processing, and to use various items of electronic equipment. Some of these stations are over a mile away.

¹³ As quoted in the draft 2008 Bill consultation (link at footnote 1).

- ☞ Attending a Court outside their area of jurisdiction, either to transport an alleged offender there or to appear as a witness.
- ☞ Directing traffic outside the boundary of the port in order to assist the Home Office police; usually where a build up has arisen because of port activity.

Effective policing of a port can help reduce the costs of crime to the businesses operating within the port, as offences are promptly dealt with.

3.5. Powers of General Lighthouse Authorities (GLAs)

3.5.1 Area of operations

The GLAs operate approximately 40 installations outside the UK's twelve-mile territorial sea limit at an annual cost of approximately £0.9 million¹⁴. In some instances, lighthouses, buoys and beacons are at a considerable distance from the main coastline but stand on rocks that are considered to be UK territory (although the majority of buoys and beacons are floating rather than land based).

The GLAs maintained Aids to Navigation (AtoN) outside territorial waters long before the expression "adjacent seas and islands" was introduced. Indeed, they maintained over 250 AtoN outside territorial waters as late as the mid 1980s prior to territorial waters being extended from 3 miles to 12. The GLAs discharge the UK and Irish Governments' obligations under the International Convention for the Safety of Life at Sea 1974 (SOLAS) in respect of AtoN provision. These responsibilities extend beyond territorial waters, and some of those marks are provided in respect of internationally recognised vessel traffic separation schemes. There would consequently be serious implications for the safety of the mariner and the environment if AtoN provision and wreck marking and dispersal were restricted to territorial waters.

It is important to ensure, and the National Audit Office requires this clarity, that the GLAs have the necessary full powers to operate outside of territorial waters and incur expenditure that is financed by the UK's General Lighthouse Fund (GLF), in order that they may respond quickly and effectively to extra-territorial wreck incidents.

3.5.2 Marking wrecks

Existing legislation requires the marking of wrecks by the use of buoys and lights, but is silent on the GLAs power to use other techniques in addition. As mariners increasingly rely on new technology when navigating, for example systems like the Global Positioning System (GPS), it is important to ensure that the GLAs have clear legal authority for their use of electronic warnings to mark wrecks as well as the more traditional methods.

The GLAs are already exploiting technological developments that have made it possible to deploy an electronic Aid to Navigation in a matter of minutes well in advance of physical marks, which may take hours before a vessel can be on site to lay them. This is a particular advantage in areas of high traffic density, for example the Dover Strait, where earliest possible marking is essential. In heavy sea conditions or where physical marking is difficult or where there is drifting wreckage or flotsam, an electronic mark may be used ensuring that the mariner is warned of danger where it may not be possible to lay physical aids.

For example, the wreck of the car carrier *Tricolor*, in the Dover Strait, saw over 100 vessels entering the exclusion zone around the wreck with three further vessels hitting the wreck despite conventional buoys having been deployed and warnings broadcast on VHF radio. The first of these secondary collisions led to an escape of oil that affected seabirds in three countries¹⁵. The addition of electronic marks may have enhanced the marking of this obstruction and averted these incidents.

3.5.3 Commercial activity

The GLAs are restricted in their commercial operations despite demand for their expertise in the provision of AtoN and related maritime functions. The GLAs have carried out work for other marine organisations for many years, for example hiring out their vessels or leasing properties on land, but under existing legislation can only use spare capacity in the organisations to do so.

As the GLAs have improved the efficiency of their operations and so reduced resources (e.g. staff, property), there is less spare capacity available to provide these services. The GLAs continue to sell

¹⁴ Advice from Trinity House and Northern Lighthouse Board; includes direct operational costs plus an estimate of staff and vessel overheads attributable to these aids to navigation.

¹⁵ Advice from Trinity House; the news story about the incident is at: <http://news.bbc.co.uk/1/hi/uk/2620641.stm>

off their properties (including lighthouse cottages) when operational requirements no longer require them. Property is retained when connected to operational facilities where an adjacent owner might prejudice their navigational use. Other facilities, such as those on rocks and islands, have no intrinsic value for resale. Potential business for the GLAs is lost because they cannot acquire additional resources to meet the needs of potential customers. Though small, the income from commercial operations supports the GLAs' principal work of providing coastal AtoN for mariners, and reduces the financial demands made on UK shipping through the levying of light dues.

The main operations involve the use of their six ships to support other statutory authorities' operations by maintaining AtoN as well as the use of the considerable surplus accommodation on the GLA lighthouse estate. This allowed the GLAs to utilise any spare capacity involving ships and accommodation without reference back to the Department subject to an annual report of the contracts involved and income generated and copies of the contracts being made available. The Department and the GLAs now have considerable experience in the operation of the existing provisions of the Merchant Shipping Act 1995 (MSA95). A couple of areas have been identified where the effectiveness of the operation could be improved:

- a. When undertaking contractual work for third parties the GLAs may only enter into agreement to utilise spare capacity in their assets but cannot use the GLF to purchase additional assets, or to bring in additional staff, to use purely for the purpose of exploiting spare capacity in an asset. This would increase the number of opportunities through which the GLAs can offer their services to other bodies thus utilising their wide expertise to greater benefit. This is not just a financial arrangement, as the GLAs are expert at analysing and determining the most appropriate solutions to many marine based issues. There may therefore be an increase in the quality of some installations or projects with consequential benefits to the mariner in terms of facilitating safer passage. Also, the additional monies earned by the GLAs would further offset the costs of running the GLAs to the shipping industry.
- b. The GLAs are further restricted because although human resources may be used to support the exploitation of an asset, they are not assets in themselves under the MSA95 which precludes the GLAs from entering into consultancy work except in a research and development capacity. In addition because of the GLAs' worldwide reputation for competence in the marine industry there is potential for their knowledge and guidance to be provided to a wider field of interested parties. Again, as well as augmenting the GLAs' income and offsetting running costs for shipping, there are benefits in terms of the enduring quality of the advice to end customers.

Consequently, it would be desirable to permit the GLAs to purchase assets, or to hire staff or consultants, with a view to entering into agreements to exploit spare capacity in other existing assets in order to generate income for the GLF.

3.6. Streamline the making of regulations on manning requirements

The MSA95 contains various regulation-making powers which authorise references to external documents, for example a Merchant Shipping Notice (MSN) or, preferably, an industry-agreed standard. This is beneficial because external documents are not subject to the same formal language requirements as a Statutory Instrument so can be drafted in a way that is more accessible and industry-friendly. They can also be updated and replaced more quickly in the light of changing circumstances. However, this provision is not currently available for Section 47 of the MSA95 – the power to make regulations on manning requirements – which could also benefit from the flexibility of making ambulatory references¹⁶ to non-legislative instruments.

4. **Rationale for intervention**

The Department's review of maritime legislation, including as part of the Red Tape Challenge, has identified a number of opportunities for improving existing primary legislation. The legislative amendments identified to tackle the problems described above would succeed in delivering strategic ministerial and departmental objectives, namely:

¹⁶ An "ambulatory reference" allows a statutory instrument to be read as if references to other documents therein are references to the instruments as amended from time to time. This obviates the need for amending regulations each time an amendment is made to the document concerned. This practice is permitted by section 1A of the European Communities Act 1972 (as inserted by section 16 of the Legislative and Regulatory Reform Act 2006).

- ✎ Eliminating unwanted regulatory and administrative burdens on the maritime industry thereby enhancing the competitiveness of the overall UK maritime sector.
- ✎ Simplifying maritime regulation to allow the maritime sector to operate more competitively and cost-effectively.
- ✎ Reducing public expenditure in support of deficit reduction.

Acting on these issues is important because maritime and UK ports are vital to our economic well-being. In 2010, UK ports handled 512 million tonnes of goods, the value of which was around £340 billion. This represents about 95% of the total volume of UK import and export trade, and 75% of its value. 23 million international passengers used UK ports in 2009. Some 70,000 people were estimated in 2010 to be working on port related activities or on the port estate; in addition, estimates of indirect employment (supplying goods and services to companies engaged in port activity) and induced employment (associated with expenditure resulting from those who derive incomes from ports) ranged from 18,000 to 96,000. Our national economy needs a thriving ports industry.¹⁷

In tackling the issues identified, very few alternatives other than new primary legislation exist because amendments are required to current primary legislation, primarily the MSA95. The draft Bill tackles three main interlinked areas, all of which are designed principally to improve the operations of some of the bodies that have the statutory task of managing safety and aids to navigation. The three areas cover: management of harbours and pilotage; port constables; and the GLAs

5. Policy Objective

The policy objective is to remove burdens on business and ensure that the organisations that businesses rely on have the powers they need to operate effectively. The intended effects are to: enable the closure of harbours and removal of unwanted pilotage powers; increase flexibility in managing PECs; ease the extension of general directions powers to harbour authorities that do not yet have them; extension of the geographic jurisdiction of port constables so they may carry out their enforcement duties effectively; clarify the powers the GLAs, including their geographic jurisdiction and power to mark wrecks electronically, and broaden the type of commercial activity they can undertake; and streamline the making of manning requirement standards.

6. Description of the policy options considered

6.1. Do Nothing

This would not contribute to the policy objective to remove burdens on business and ensure that the organisations businesses rely on have the powers they need to operate effectively. Although it is unlikely that there would be significant problems arising from continued inaction in the short-term, the risks of managing harbours would continue at their current level and the potential for expensive accidents occurring in connection with the improper use of a PEC would remain. Whilst no measures can completely eradicate risk, the Government could rightly be criticised for failing to take sensible and proportionate steps to reduce it.

6.2. Policy Option 1 - Primary Legislation including Pilotage Exemption Certificate provisions

New primary legislation is required to amend existing Acts of Parliament, and without it harbour authorities, port constables, the GLAs, and the Secretary of State must continue to act within the laws as they stand. Consequently, no non-legislative option is open given the objective is to remove burdens arising from existing legislation. The proposed legislation is proportionate, will have no significant adverse impact on any relevant bodies and will enable port constables and the GLAs to fulfil their statutory functions effectively. It also offers the opportunity to reduce the risk of potentially expensive accidents involving the improper use of a PEC. This is the preferred option.

6.2.1 Closure of harbours and removal of unwanted pilotage powers

The Government wishes to provide a proportionate legislative solution in a situation where, for example, Harbour Authorities are on the brink of insolvency or in financial difficulties and therefore unable or otherwise unwilling to continue to invest in the upkeep of the harbour, particularly where

¹⁷ The statistics used in this paragraph are sourced from the National Policy Statement for Ports, published by the Department in January 2012 and available at: <http://assets.dft.gov.uk/publications/national-policy-statement-for-ports/national-policy-statement-ports.pdf>

the harbour is no longer used for the purposes of shipping and unshipping of goods, and the embarking and landing of passengers for which it was established. By employing the proposed power for the Secretary of State to make a Harbour Closure Order (HCO), it is envisaged that steps would be taken to reassign responsibilities for safety in harbours where the infrastructure existed (and may be important for uses such as flood prevention) but was no longer required for marine purposes.

The intention is that a power to close a harbour by order would be exercised rarely, in circumstances where the Harbour Authority was unable or otherwise unwilling to continue the maintenance of the harbour and the exercise of its functions in relation to the harbour and had been unsuccessful in finding a body to whom it could transfer its functions. There is no intention to approve a closure order where the harbour genuinely remains viable, either for commercial traffic, fishing or recreational activities or a mixture of these marine activities. Guidance will be published by the Department about the circumstances in which a closure order can be made and this will cover the reasons for applying for an order.

For example, in the case of Colchester Harbour it was closed using a Private Act (the Colchester Borough Council Act 2001 – “the 2001 Act”) because trade at the harbour declined rapidly between 1988 and 1991 and, despite the efforts of the Council to improve the economies in its harbour operations, those operations continued to make substantial deficits. Colchester Harbour recorded the following deficits¹⁸:

Financial Year	1994-95	1995-96	1996-97	1997-98	1998-99
Deficit (£)	176,500	123,200	147,600	213,600	258,600

As detailed in the 2001 Act, the Council was advised that there was no reasonable prospect of maintaining and managing the harbour otherwise than at a continuing loss which would have to continue to be subsidised from the general revenues of the Council. In liaison with port users and stakeholders the decision was taken by the Council to close the Harbour. This is the kind of situation in which the proposed powers would be beneficial.

The power would not be used to close harbours that continue to be viable or necessary on the basis that a Harbour Authority no longer wishes to continue managing the harbour or wishes to make room for the land to be developed for non-marine purposes. In such circumstances the Department would seek to persuade the existing authority that its purposes would be better served by finding a willing transferee. The Bill would place a statutory requirement on the Department to publish guidance about the circumstances in which a closure order could be made. Although the guidance would not have legal force, there would be a presumption that it should be followed.

Similarly, the bill would provide the Secretary of State with an order-making power to permit CHAs to relinquish unwanted pilotage powers. Where circumstances have developed such that there is no longer any need for compulsory pilotage at a particular harbour then the CHA may, following consultation with stakeholders and others with an interest in the port, seek to relinquish their powers. The process would be initiated by the CHA.

6.2.2 Pilotage Exemption Certificates

The Government wishes to see a package of measures on pilotage that balance the desire to increase flexibility in who may be issued with a PEC, reflecting modern shipping practices, with appropriate safeguards that ensure cases of incompetence or misconduct can be responded to quickly, protecting safety of shipping in CHA areas.

The Government proposes to make a provision which will allow the CHA to issue a certificate to any suitably qualified and experienced person who will actually navigate the vessel as a *bona fide* crew member and who satisfies the requirements of the CHA. This change would assist shipping companies in ensuring that properly qualified personnel are available to pilot ships and help to remove the temptation to stretch duty hours so as to ensure that a PEC holder remains on duty for an extended period instead of taking a rest period.

At the same time, CHAs would receive the necessary powers to immediately suspend or revoke a PEC in cases of incompetence or misconduct relating to the capability of the holder to pilot the ship. As noted above, the current situation leaves the holder free to use the PEC while the procedure for

¹⁸ Figures listed in the preamble to the 2001 Act, available at: <http://www.legislation.gov.uk/ukla/2001/2/enacted>

the CHA to notify him about suspension or revocation to and give him reasonable opportunity of making representations is in progress. To ameliorate the effect of this change, CHAs would have discretion to make compensation payments where it was found that the statutory notice was issued in circumstances where it subsequently accepts that it was not appropriate to do so. Some may already have this power in their constitutions but the measure will ensure consistent coverage.

Consequent on the changes proposed, the existing offence of misusing a PEC would be amended such that when the master of a ship reported to a CHA that a PEC was being used, the identity of the PEC holder undertaking the pilotage would need to be reported. This is not considered to be a new burden as vessels are already required to report to the CHA that a PEC is being used.

6.2.3 General Directions by harbour authorities

The proposed measure would provide a power for the Secretary of State to specify the harbour authorities that may issue general directions (referred to in the draft Bill as “harbour directions”) to better regulate shipping within their harbour. Some harbour authorities have already taken this power by means of HROs, but a standard approach would ensure a national standard of effectiveness, and complement the Government’s localist agenda to enable decision making to be made a local level without requiring involvement by the Secretary of State.

If enabling provisions are approved, subsequent secondary legislation would be taken forward specifying the harbour authorities concerned, a process which would be subject to public consultation and the usual scrutiny that applies to such legislation.

Harbour authorities will not be obliged to implement general directions. It will remain a matter for individual harbour authorities to decide whether it is appropriate for them to promote general directions. The British Ports Association has informed the Department that harbour authorities welcome this measure as it is deregulatory in nature.

6.2.4 Extension of the geographic jurisdiction of port constables powers

The Department sees merit in extending the geographic jurisdiction for ports police constables beyond the current one-mile limit. The proposed measure would enable a port constable to act outside that limit insofar as it related to policing purposes connected with their port, and only with the agreement of the local police force. By doing so it will provide effective enforcement; reduce the burden on local Home Office Police forces to assist with routine tasks; and bring legislation up-to-date with modern policing priorities. It will impose no obligations on ports police forces to operate beyond the existing one-mile limit, but will give them the flexibility to do so when required to investigate offences within the port.

This proposal applies only to the six ports police forces in England. Any extension to the jurisdiction of harbour police for the two relevant ports in Northern Ireland is a devolved matter and falls within the legislative competence of the Northern Ireland Assembly. It will be for the Department of Justice in consultation with other key stakeholders whether it wishes to bring forward equivalent legislative provision in Northern Ireland.

6.2.5 Powers of General Lighthouse Authorities

Although the origins of the GLAs are rooted in history, their powers and management have from time to time been brought up-to-date. The Government considers that there is now a need to do this again in the light of developments in technology and financial systems, to ensure that they are properly equipped to carry out their statutory functions.

Firstly, it is important to ensure (and the National Audit Office requires this clarity), that the GLAs have the necessary full powers to operate outside of territorial waters and incur expenditure that is financed by the GLF. This will ensure they can continue to respond quickly and effectively to extra-territorial wreck incidents, thereby meeting the UK’s international obligations under SOLAS.

Secondly, an amendment to the MSA95 is proposed to provide clarity that the authorities charged with the duty of marking wrecks (the GLAs and Local Lighthouse Authorities (LLAs)) may do so by using up-to-date technology as well as traditional buoys and beacons. This will ensure that they can continue to mark wrecks electronically, which enable the authorities to react to incidents quickly since electronic warnings can be implemented instantly, as opposed to physical markers which need specialist equipment to install.

Thirdly, the measures proposed would enhance and clarify the GLAs’ powers to enter into agreements that would allow them to maximise the use of the assets (equipment, buildings etc) that are required to meet their statutory responsibilities; ensure that GLA spare assets can be deployed to

better effect by improving powers to utilise spare resources in staff; and provide a power to permit the GLAs to acquire, with the approval of the Secretary of State, additional assets and resources to maximise the return on works. The income from additional commercial activities will contribute to the GLF and reduce the need for funding from shipping through Light Dues.

6.2.6 Streamline the making of regulations on manning requirements

The proposal would enable the Secretary of State to make ambulatory references to non-legislative instruments when making regulations under section 47 of the MSA95. This would provide the flexibility to express the relevant technical standards and conditions in language which is more readily understood by the industry and potential applicants, and also the flexibility to make changes to the standards automatically when they are updated without the need for new legislation.

The MSA95 already contains various regulation making powers which authorise such references to external documents – for example, section 85(5)(a) in relation to safety regulations which allows provision “in terms of any document which the Secretary of State or another person considers relevant from time to time”. In practice, such references to external documents are usually references to MSNs issued by the Secretary of State through the Maritime and Coastguard Agency (MCA), which are a well established means for the Department and MCA to communicate with stakeholders.

6.3. Policy Option 2 - Primary Legislation excluding Pilotage Exemption Certificate provisions

This option would include the measures described under Option 1, with the exception of provisions on PECs (described in section 6.2.2). Though the Department considers that these provisions are on balance beneficial, they received greater challenge than the other elements of the draft 2008 Bill. The decision on whether to proceed with Option 1 or Option 2 will be made as part of discussions with Sheryll Murray MP as her private member’s bill proceeds.

6.4. Discounted option - Legislative Reform Order

Some of the issues covered by the Bill could be handled through a Legislative Reform Order (LRO), but not those which reduce burdens on public bodies which is the subject of some clauses in the Bill. Therefore, only a portion of the measures covered could satisfactorily be dealt with through this option; we consider that the only parts of the Bill that could be taken forward using a LRO are the provision of powers to make orders that permit or require harbour authorities to stop maintaining harbours that are no longer commercially viable or necessary; or state that a harbour authority is no longer a CHA with the powers and duties imposed by the PA87.

Consequently, pursuing this option would mean that either some of the benefits of Options 1 or 2 would fail to be delivered, or that two twin procedures would be required – a LRO for some measures and a Bill for the remainder. Because of the additional administrative costs to the Department this would entail, this is not considered to be a cost-effective option and is not discussed further in this IA.

6.5. Discounted option - Non-legislative options

No non-legislative option is open given that the objective is to remove burdens arising from existing primary legislation.

7. Costs and benefits of Policy Option 1

Due to the limitations of the available evidence base, it has not been possible to monetise some of the costs and benefits of Policy Option 1 that have been identified in this IA. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided.

7.1. Closure of harbours and removal of unwanted pilotage powers

7.1.1. Costs

The provisions in the Bill provide the Secretary of State with powers to make an order closing a harbour or removing CHA status. In itself, the creation of these powers would impose no additional costs on any individual or organisation. Consequently, it is considered that the creation of these powers would have no direct impact on business.

However, should the existence of these powers result in any additional harbours seeking to close or relinquish pilotage powers in the future compared to what would happen in their absence under the Do Nothing scenario, then there would be additional costs associated with making the necessary orders. Further information on these costs is presented in sections 7.1.1.1 and 7.1.1.2 below.

In addition, as detailed in section 6.2.1, the Department will be required to draft guidance about the circumstances in which an HCO could be made, which will result in minor administrative costs for the Department.

7.1.1.1. Harbour Closure Orders

The provisions in the Bill provide enabling powers that will simplify the procedure to close a harbour. If a harbour authority chooses to promote an HCO then there will be costs associated with drafting the Order and the winding up of the Harbour including selling off its assets etc.

It is very rare that a harbour needs to be permanently closed to traffic. We expect that substantial efforts to find alternative uses will continue to be made, and indeed the retention of harbours and docks often feature in regeneration schemes, since the harbour or dock is often an essential part of the scheme (Albert Dock Liverpool, London Docklands, etc). However, it is likely there are a few harbour authorities that would wish to take advantage of this new simplified procedure. In consultation with the British Ports Association (BPA), we estimate that there may be perhaps one to two applications for HCOs a year for a few years following enactment of the Bill. However, it is for individual harbour authorities concerned to consider the merits of seeking to close the harbour, after considering their options and assessing the costs and benefits of either closing a harbour or retaining it.

At present closure of a harbour can only be achieved by promoting a private Act of Parliament. The last one was the Colchester Borough Council Act 2001, for which the whole process took three years and incurred legal fees of £120,000 which were borne by the promoter of the private act, as well as administration costs in the Department¹⁹. However, it is expected that the cost of an HCO would be less than obtaining a Private Act.


The process of obtaining an HCO will be similar to those for obtaining an HRO. Therefore, we can make an estimate of the cost of obtaining an HCO by using costs associated with promoting and obtaining an HRO. Drafting of an HCO to close down a harbour completely should be relatively straightforward there may however be more complex provisions to govern the winding up process of the harbour.

An HRO is promoted by individual harbour authorities and the costs are borne by the promoter of the HRO, legal fees and administrative costs associated with publishing statutory notices, drafting impact assessments including environmental impact assessments and public consultation including negotiating with stakeholders who have lodged objections.

According to the BPA, based on their experience and anecdotal information from their members, for a harbour authority the costs associated with obtaining an HRO can be in the region of £30,000 to £60,000. The BPA has indicated that their estimate includes the fees charged by the Marine Management Organisation (MMO) which range from £2,000 to £10,000²⁰, with the rest being legal fees paid to Parliamentary Agents/lawyers. This estimate from the BPA does not include costs associated with a public inquiry (see below).

The Department is not able to validate the calculation of the estimated range of costs provided by the BPA due to the limitations of the available evidence base. For example, we do not have access to any other evidence on the total costs of legal advice/drafting that would be incurred by a harbour authority. In addition, we do not have any evidence on costs associated with stakeholder engagement exercises or costs associated with the harbour authority instructing their lawyers.

However, the Department does have some information about the costs of some aspects of obtaining an HRO from separate sources. This information is presented below, although given the limitations of the available evidence base described above, it should be noted that the information that we have obtained only provides a partial picture of the overall costs of obtaining an HRO:

 A harbour authority will instruct a lawyer to draft an HRO. There are a limited number of legal firms, licensed by the Houses of Parliament, who specialise in drafting HRO's and Private Acts of Parliament. The Department does not have access to information on the fees charged by these legal firms. However, information obtained by the Department in 2010 from a number of other legal firms indicates that legal fees differ depending on the seniority and expertise of the lawyer employed. This information indicated that the fees were between £90-£500 per hour.

¹⁹ As quoted in the draft 2008 Bill consultation (link at footnote 1).

²⁰ <http://marinemanagement.org.uk/licensing/harbour/fees.htm>

The Department is unable to cite here the legal firms who provided the information as it was provided on a 'commercial in confidence' basis.

- ✎ Based on information from the Department's Legal team, and purely in respect of drafting a simple HRO, we estimate it could take between 10 and 12 hours to produce a first draft with further drafting and amendments taking another 20-30 hours.
- ✎ Fees charged by the MMO to assess, provide advice and process an HRO application are currently set between £2,000 and £10,000 (see footnote 20). Currently, the MMO charge £4,000 for an order that would not empower an authority to undertake works and £10,000 for an application if the harbour required works including environmental impact assessment.

The information that the Department has obtained suggests that the legal costs in respect of drafting a simple HRO could be in the region of £2,700 to £21,000 depending on the type of lawyer that is employed²¹, although the most likely point in this range is not known as we do not have any information on the type of lawyer that is most likely to be employed and it should be noted that the fees charged by the legal firms who specialise in drafting HRO's and Private Acts of Parliament could fall outside of this range. In addition, based on the information from the MMO, MMO fees would be between £4,000 and £10,000. This information therefore suggests that the total costs of these aspects of obtaining an HRO would be between £6,700 and £31,000. However, it should be noted that these estimates would be higher for a more complex HRO. Furthermore, as explained above, this information only provides a partial picture of the overall costs of obtaining an HRO. Therefore, it should be noted that the scope of these estimates differs from the estimated range of costs provided by the BPA.

There could be additional costs if a Public Inquiry (PI) is required. Depending on the time it takes to hear and consider all of the evidence put forward, a PI can prove costly. Costs incurred in holding a PI include: hire of a suitable venue; legal fees; hospitality; administrative costs such as photocopying; costs of the inspector; and other associated costs for those presenting evidence. In evaluating the costs of a PI, we know the following:

- ✎ The standard daily amount for an Inspector under the Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000 is £630 per day.
- ✎ The most recent Port related PI, held in 2011 into the harbour dues charged by Dover Harbour Board for 2010 and 2011, took place over 10 days. The total costs for the Inspector was £30,478.99.
- ✎ Cost of venue to hold the inquiry, including administrative costs i.e. photocopying, printing and equipment hire, totalled £8758.75.
- ✎ The total costs (not including costs of the Harbour Authority's legal representation) associated with this particular inquiry was around £45,000. Legal Representation at the Section 31 Dover Harbour Board Public Inquiry was attended by Senior Lawyers.

It should be noted that usually an HRO would be lengthy because it may cover constitutional matters and other issues, which might involve a number of objections being lodged which the harbour authority needs to get withdrawn before the HRO can be confirmed. If objections can not be resolved a PI will be instigated.

A single issue HRO is more straightforward and would cost far less than a complex HRO. The Department anticipates that the costs associated with drafting and promoting an HCO would be more akin to those. An HCO should be more straightforward especially in the case of a defunct harbour the HCO will specify what is being wound up, residual matters of ownership and disposing of assets etc. We do not anticipate that a PI would be convened if the necessary consultation with stakeholders and those with an interest has taken place.

7.1.1.2. Orders removing CHA status

Similar principles to those mentioned above for HCOs would also apply in respect of orders removing CHA status. There would be administrative costs involved for both the harbour authority and the Department in applying for and processing of Orders. It is anticipated that these would be at the lower end of the scale of those detailed above for HROs given that the content would be much

²¹ The low estimate assumes a lawyer at £90 per hour and that drafting of an HRO would take a total of 30 hours, and the high estimate assumes a lawyer at £500 per hour and that drafting of an HRO would take a total of 42 hours.

simpler and only likely to be sought where pilotage requirements have already significantly reduced or vanished so there would be little need for lengthy inquiry. In 1998, the Department published its *Review of the Pilotage Act 1987*; paragraph 21.02 reported that, of the 127 CHAs established by the PA87, “evidence to the review suggests that something over twenty are not active”. We consider that this remains a reasonable estimate of the number of CHAs that might wish to seek an order.

7.1.2. Benefits

In itself, the creation of these powers would result in no additional benefits for any individual or organisation. Consequently, it is considered that the creation of these powers would have no direct impact on business.

However, as it is expected that the cost of an HCO would be less than obtaining a Private Act (see section 7.1.1), it is expected that the power to make an HCO would benefit any harbours seeking to close that would have taken forward a Private Act in the absence of this power under the Do Nothing scenario, although we have no evidence that any harbours are currently planning to take forward a Private Act. Nonetheless, for such a harbour, the available evidence can be used to estimate the order of magnitude of the potential cost savings. On the basis of the evidence presented in section 7.1.1, if it is assumed that the cost of obtaining a Private Act would be £120,000, but that the cost of an HCO would be £30,000 to £60,000, this indicates that the savings to such a harbour could be of the order of magnitude of £60,000 to £90,000.

Furthermore, should the existence of this power result in any additional harbours seeking to close in the future compared to what would happen in the absence of this power under the Do Nothing scenario, we would expect that any harbour authority applying for an order would only do so if they consider that the benefits outweighed the costs. The expected benefits would be removal of risk of legal challenge for non-maintenance of the harbour or pilotage provision (as appropriate).

Whilst the effect of an order closing a harbour or removing CHA status would be to remove duties from a harbour authority that would be costly for the harbour authority to undertake, it is expected that in practice the reason that an authority has applied for such an order will be that it is no longer resourced or capable of carrying out those functions and the work has not been effectively carried out for a considerable length of time. Hence, it is not expected that there would be a cost saving associated with the harbour authority no longer being required to undertake these functions. Nevertheless, as noted above, the authority would be protecting itself from possible legal challenges for not having carried out its statutory duties.

7.2. Pilotage Exemption Certificates

7.2.1 Costs

7.2.1.1. Costs associated with increased flexibility in who may be issued with a PEC

CHAs may receive more applications for PECs to process, which could increase their administrative costs. There is no evidence on the likely number of additional applications, so it has not been possible to monetise these costs in this impact assessment. However, it is considered that in most cases (other than perhaps the largest ships or specific types of vessel) other crew members are unlikely to have the competences that they would know would be required by the CHA in order to be issued with a PEC. Under the PA87, CHAs are permitted to charge such fees as they consider reasonable for meeting the administrative costs. So, any costs would be passed on to the shipping companies who would be seeking to benefit from the change. Examples of fees charged by CHAs for the initial examination and issue of a PEC include £300 at Belfast and £150 at Southampton; subsequent renewals or amendments of a PEC cost much less at both ports²².

7.2.1.2. Costs associated with powers to immediately suspend or revoke a PEC in cases of incompetence or misconduct relating to the capability of the holder to pilot the ship

Although we do not collect any data on the suspension of PECs, we understand from a sample of CHAs that the numbers are relatively small. One port has confirmed in confidence that over the past five years there have been two occasions on which they have suspended a PEC; this compares with a total of 60 active PEC holders for the port. In addition, a major port reported just one suspension in the last ten years.

²² Fees at these ports are published online at: <https://www.belfast-harbour.co.uk/uploads/pdf/1325851130--100793-BH-Schedule-of-Charges-2012-2.pdf> and http://www.southamptonvts.co.uk/Pilotage/Pilot_Exemption_Certification/

Where a PEC is suspended, if there is no other PEC holder on board the vessel able to pilot it, then the owner or operator of the vessel would have to pay the CHA for providing its own pilot. In those circumstances, throughout the currency of the current statutory notice period for representations before the suspension takes effect at least, it is reasonable to expect that additional expenditure would be incurred. Based on published scales of charges for pilotage services, this is likely to be in the order of £100-£4,000 per act of pilotage, with a wide range between small and large ports, and different sizes and types of vessel²³. However, it is not possible to estimate the number of acts of pilotage that may be affected for each PEC holder that is suspended given that this calculation would vary wildly depending on whether the person was working on a roll on-roll off ferry operating in and out of a port three times a day or on a container ship that might visit three times a year.

Where a PEC is suspended, there would also be some other small operational and administrative costs for the shipping company for whom the PEC holder works, since they may have to consider alternative arrangements, although no evidence is currently available on these costs. There would be possibly some further administrative costs for the harbour authority suspending the PEC immediately but these are likely to be insignificant compared to the overall costs of suspending a PEC, although again, no evidence is currently available on these costs.

Given the limitations of the available evidence base described above, it has not been possible to monetise these costs in this impact assessment. Nonetheless, it should be noted that, in most cases, this would be a cost arising from wrongdoing.

Where it was found that the statutory notice was issued in circumstances where it subsequently accepts that it was not appropriate to do so, the decision on whether to pay compensation would be for the CHA to determine on commercial grounds balancing the cost against the need to retain the goodwill of their customers as well as the actual circumstances that led to the suspension of the certificate. However, just as incidents requiring suspension of a PEC are rare, it is considered that cases of mistaken suspension would be even less frequent.

7.2.1.3. Costs associated with change in reporting requirements

No change in costs are anticipated as a result of the change in what the master of a ship intending to use a PEC must report to the CHA when they enter an area where pilotage directions apply, because they are already required to report and will have the information readily available; instead of reporting they are using a PEC, they will instead report whose PEC they are using.

7.2.2 Benefits

7.2.2.1 Benefits associated with increased flexibility in who may be issued with a PEC

Savings to shipping companies are likely to arise from avoiding the costs of paying overtime to PEC holders or, in extreme cases, taking a pilot where the PEC holder is unable to carry out his functions safely, for example due to having worked excessive hours. Where a shipping company is able to avoid taking a pilot the savings could be as much as £4,000 per voyage in the larger ports although for smaller ports and vessels the figure would be much lower, down to around £100 (valuations drawn from the same sources used for section 7.2.1.2). However, as there is no evidence available on the likely number of additional PECs that would be issued, it has not been possible to monetise these benefits in this impact assessment.

Improvements in the safety of navigation are also likely given the reduced likelihood of PEC holders working overtime when fatigued with consequent impacts on their capability to pilot a vessel effectively. The result could be a reduced risk of accidents and thereby potential savings in the environmental and financial costs of dealing with accidents. Fatigue is recognised as a major cause of marine accidents; in a 1998 survey of 2500 seafarers, nearly half the sample felt that their working hours presented a danger to safe operations on their vessel²⁴. However, given the lack of quantitative evidence, it has not been possible to monetise these benefits.

7.2.2.2. Benefits associated with powers to immediately suspend or revoke a PEC in cases of incompetence or misconduct relating to the capability of the holder to pilot the ship

In section 3.2, reference was made to a collision between a dredger and the Thames Barrier in October 1997 which involved irregularities in the use of a PEC; such an incident highlights the

²³ Examples of the scale of pilotage charges in different places and for different vessels may be seen in those of the Port of London Authority and Torridge District Council (for Bideford Harbour), available online at: http://www.pla.co.uk/pdfs/pp/2012_Charges_-_web2.pdf and <http://www.torridge.gov.uk/index.aspx?articleid=2537>

²⁴ <http://www.seafarersfatigue.com/>

possibility of expensive damage to property and interruption of trade that can arise. In the case of the *Sea Empress* at Milford Haven in February 1996, the cost of pollution clearance and salvage operations was around £60million²⁵ (although that particular incident would not have been prevented by this proposed measure). The Standard P&I Club estimates that over a recent ten-year period, insurance claims cost the Protection and Indemnity industry, which provide marine insurance, US\$15 billion. Over 65% of this sum was for incidents in which humans played the dominant part²⁶.

The aim of the measure is to minimise the risk of potentially costly incidents that might arise where there are reasonable grounds to suspect that the holder of a PEC no longer meets the qualification criteria that the CHA has determined to be necessary for safe navigation within its harbour. Such incidents represent a cost to other businesses whose activities may be directly affected in an accident, or indirectly through disruption or non-availability of facilities.

Given the lack of quantitative evidence, it has not been possible to monetise these benefits. Nonetheless, it is considered that any benefits to business would be classified as indirect impacts on business.

7.3. General Directions by harbour authorities

7.3.1 Costs

The provisions in the Bill provide the Secretary of State with the power to make an order designating those harbour authorities that have powers of general direction. In itself, the creation of this power would impose no additional costs on any individual or organisation. Consequently, it is considered that the creation of this power would have no direct impact on business.

However, should the existence of this power result in any additional harbours obtaining the powers of general direction in future years compared to what would happen in the absence of this power under the Do Nothing scenario, there would be additional costs. Further information on these costs is presented below.

Whether a harbour authority wishes to be designated with the powers of general directions is a matter for them. There will be no fees charged by the Department for a harbour authority that applies to the Department to be designated with the powers of general direction in secondary legislation. If a harbour authority subsequently decides to implement general directions for the benefit of navigational safety, they will incur costs associated with drafting of the general directions, ensuring they are fit for purpose.

There are roughly 175 SHAs in England and Wales which handle most of the total cargo that enters the country, along with a significant number of passengers. Of these, we know of 21 SHAs that have taken the power to give general directions by means of local legislation; the majority have not.

In 2008, we were aware of some 35 authorities who either were considering or applying for an HRO. Of these, 3 were to clarify their status constitutionally/financially, 5 were major port redevelopments (where the authority already has powers of general direction, for example Grimsby), and a further 5 were for construction projects. There were 4 HROs which would confer, among other measures, the power to give general directions. For other SHAs to acquire powers of general direction that could be used to support efforts to comply with the *Port Marine Safety Code* would be a slow and expensive process. Before proceeding with any subsequent secondary legislation, the Department will consult fully to confirm which harbour authorities seek powers of general direction.

The costs to a harbour authority of seeking to be included in the Designated Harbour Authority (DHA) order are expected to be less than the current costs incurred in seeking powers of General Direction through an HRO or amending byelaws. This is because subsequent secondary legislation will be taken forward by the Department and will list the harbour authorities who wish to obtain powers of general directions. As a matter of good governance the Order/legislation will be kept under review and updated when it is deemed appropriate (depending on the need it is likely that a review of the designated orders will take place every two years). When a harbour authority has been designated as having general directions the harbour authority can then introduce general directions, if they wish to do so, after the relevant procedures have been completed as prescribed by legislation.

As detailed in the Summary of Responses to the Consultation on the draft 2008 Bill (link at footnote 2), the Department proposes to provide guidance on the need and process of obtaining the power.

²⁵ Figure given in evidence by Chartered Institute of Logistics and Transport, available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/948/948vv98.htm>

²⁶ http://www.dft.gov.uk/mca/the_human_element_a_guide_to_human_behaviour_in_the_shipping_industry

The guidance will also cover the purposes for which a direction may be given, the requirement for consultation with harbour users; the guidance will also provide model harbour directions.

The cost of HROs is discussed in detail in section 7.1.1 above. In 2010, the MMO took over the responsibility for processing HROs from the Department. They charge a fee of between £2,000 and £10,000 to cover the cost of processing HROs; the precise fee is dependent on the size and complexity of the Order (link at footnote 16). We are aware that this barely covers the cost incurred by the MMO in processing even the simplest of HROs. Harbour authorities nearly always apply for an HRO for a number of issues including constitutional changes, power to borrow, dredge, undertake construction etc. On top of the fees charged by the MMO for processing HRO, there are the legal costs incurred by the harbour authority. These fees will vary considerably with the complexity of the HRO. Costs associated with HROs and PIs are detailed above in section 7.1.1.

7.3.2 Benefits

In itself, the creation of this power would result in no additional benefits for any individual or organisation. Consequently, it is considered that the creation of this power would have no direct impact on business.

However, as the costs to a harbour authority of seeking to be included in the DHA order are expected to be less than the current costs incurred in seeking enabling powers of General Direction through an HRO or amending byelaws (see section 7.3.1), it is expected that this power would benefit any harbours seeking powers of General Direction that would have taken forward an HRO or amending byelaws in the absence of this power under the Do Nothing scenario. Indeed, the BPA has indicated that the industry views granting ports the powers of general direction and removing the Department from the marine side of the Byelaw application process as a welcome simplification measure, because:

- ☞ General directions usually apply to all vessels at all times, obviating the need to make numerous repetitive special directions (special directions are specific to vessels or relate to individual circumstances, whereas general directions are wider in nature); and
- ☞ General directions can be modified without recourse to Government advice and processes, and are therefore cheaper and quicker.

7.4. Extension of the geographic jurisdiction of port constables

7.4.1 Costs

The proposed change would affect only the six ports police forces in England. These forces would not be compelled to act beyond the current one-mile limit but, within the parameters set out in section 6.2.4, would have the flexibility to do so if they wished and this was agreed with the local police force. Therefore, there would no additional direct costs to the ports police forces concerned.

7.4.2 Benefits

If ports police forces choose to take up the flexibility to act over a wider geographic area, a number of benefits have been identified. These are benefits are therefore discussed qualitatively below. Due to the lack of quantitative evidence, it has not been possible to monetise these benefits. Nonetheless, it is considered that any benefits to business would be classified as indirect impacts on business.

Relying on local police forces to assist ports police constables is not an efficient use of their limited resources. Extending the geographic jurisdiction of port constables will reduce costs incurred by local police forces in providing assistance for tasks that could easily be undertaken by port constables if they had the necessary powers.

In 2011, in one of the port police areas the local police force closed their custody office that was within the port police one mile jurisdictional limit. In line with reviewing resources and making savings numerous custody facilities round that particular county were consolidated. This has impacted on the Ports Police for that particular port. For example, in order for the Ports Police Officer to take an alleged offender to the nearest custody facility (which in this case is 7 miles away from the port), a Home Office Police Officer has to assist the Ports Police Officers and re-arrest the person in order to escort the prisoner to the nearest custody facility or further afield if there is no space at the local custody office.

In the investigation of criminal offences there is often a need to conduct a search of alleged offender's home address to find evidence connected with the offence for which they have been arrested. Unless their address falls within the one mile jurisdictional limit again, the Ports Police

Officers have to rely on the local Home Office Police Officers to carry out such a search. Depending on the local police force priorities, resources and incidents there may not be a Home Office police officer available to assist.

We anticipate that both the local Home Office Police Force and the Ports Police Forces will continue to work together. By extending the geographical jurisdiction of the Ports Police Officers, it will benefit the local police force and the local community by enabling finite enforcement resources to be used more effectively (i.e. routine policing tasks carried out by the ports police officers in connection with the port without having to rely on the local police force).

7.5. Costs and benefits of provisions relating to General Lighthouse Authorities

7.5.1 Costs

The extension of commercial powers is intended to exploit existing spare capacity. Any costs incurred in enabling this exploitation would be recovered through the income arising from the hire or sale agreement that prompts it, and actions would not be undertaken if costs could not be recovered. Given that no evidence on the potential for such agreements is available, it has not been possible to monetise these costs.

Whilst no direct costs to business from the provisions relating to GLAs have been identified, the reduction in restrictions on GLAs' ability to engage in commercial activity will permit additional competition in the maritime services market, and other relevant markets. There is the potential for businesses in these markets to face increased competition from GLAs, and consequently the potential for there to be indirect impacts on those businesses that face increased competition from GLAs. However, no quantitative evidence on these potential impacts is currently available. The impacts on competition are discussed further in the Competition Assessment in Section 11.3

In relation to the provisions clarifying the legal position regarding the provision of AtoN outside the UK's twelve-mile territorial sea limit and the electronic marking of wrecks, in both cases no change to existing practice is anticipated, so there is no change in costs, either directly for GLAs and LLAs, or indirectly for light dues and harbour dues payers.

7.5.2 Benefits

7.5.2.1. Benefits associated with provisions regarding commercial activity

In all cases the beneficiary of the contracts would be the GLF and this would have the effect that the call on light dues from shipping could be reduced. This might permit a reduction in light dues (or avoid an increase; in 2010, the Government committed not to increase light dues for at least three years) so that operators of shipping calling at UK ports would therefore have reduced costs which they could pass on to consumers in the form of lower shipping costs and, ultimately, retail prices. An increase in income of £2 million would be equivalent to a penny reduction in the light dues rate.

In 2010-11 the GLAs' income from commercial activities was £3.5 million²⁷, and although the scale of commercial operations by the GLAs to utilise their spare capacity can, by definition, only ever be a small part of their work, there is always pressure from the shipping industry to minimise light dues so any additional contribution from other sources will be welcome.

Nonetheless, given the lack of quantitative evidence, it has not been possible to monetise these benefits in this impact assessment.

7.5.2.2. Benefits associated with provisions regarding area of operations and marking wrecks

In both these cases, no change to existing practice is anticipated, so while the provision of AtoN outside the UK territorial limit and the electronic marking of wrecks are beneficial to mariners in helping to protect shipping from dangers and avoid accidents and pollution, there are no additional benefits to the shipping industry arising from these measures. For the GLAs, there is a legal and accounting benefit from providing clarity about their powers to act in these matters, helping to protect them from possible legal challenge or qualification of accounts.

7.6. Streamline the making of regulations on manning requirements

7.6.1 Costs

The power in the Bill would enable the Secretary of State, when making use of her existing power to make regulations on manning requirements, to refer to standards set out in other documents. The

²⁷ <http://assets.dft.gov.uk/publications/general-lighthouse-fund-report-2011/glf-annual-report.pdf>

creation of this power would impose no additional costs on any individual or organisation; existing manning requirements would not be changed by enactment of this measure. Consequently, it is considered that the creation of this power would have no direct impact on business.

7.6.2 Benefits

The creation of this power would result in no additional benefits to any individual or organisation. Consequently, it is considered that the creation of this power would have no direct impact on business.

However, should this power be used in the future, the benefits of being able to make regulations in this manner, which is already applied to other regulation making powers in the maritime field, are that it:

- ☞ Reduces the costs to the Department associated with making new regulations when industry standards are amended; and,
- ☞ Is more straightforward for businesses to understand and apply industry standards than interpret statutory instruments written to legal principles.

7.7. Summary of costs and benefits of Option 1

In summary, the likely costs and benefits of the measures proposed in Policy Option 1 are:

- ☞ Shipping companies would benefit from a cost saving resulting from the flexibility provided by permitting other crew members to have a PEC. This benefit is balanced by the potential additional costs from having to pay for pilotage services when a PEC holder has been suspended. It is expected that these additional costs will be smaller than the benefits described above given the comparative rarity of occasions when a PEC is suspended or revoked. Furthermore, where there has been wrongdoing, it is arguable that the shipping company should not be benefitting from the use of a PEC.
- ☞ The creation of the enabling powers regarding harbour closures, revoking CHA status, and obtaining powers of general direction would have no direct impact on business. However, these enabling powers would provide the opportunity for harbour authorities to use less expensive processes for harbour closures, revoking CHA status, or obtaining powers of general direction. Harbour authorities will use these new powers where they consider that the benefits outweigh the costs.
- ☞ Similarly, a number of benefits have been identified where ports police forces use their extended geographic jurisdiction.
- ☞ For the three GLAs, the benefits from additional commercial activity are expected to outweigh the additional costs.

8. Costs and benefits of Policy Option 2

Option 2 is as per Option 1, but omits the provisions relating to PECs (described in section 7.2). Consequently the costs and benefits of Option 2 are the same as those described in all the other sections of section 7 of this IA.

9. Risks and assumptions

9.1. Do Nothing

The main risk to doing nothing arises from the continued exposure of organisations to unexpected costs and legal difficulties when trying to undertake their activities. For example: harbour authorities responsible for uneconomic facilities being open to challenge for not fulfilling their statutory duties or providing pilotage facilities; exposure of ports and port users to safety and pollution risks arising from marine accidents involving holders of PECs who are going through the statutory suspension or revocation process; etc. These risks are unpredictable but are likely to be financially costly should they arise and interfere with the ability of the organisation concerned to carry out work relating to their priority activities.

9.2. Policy Option 1 - Primary Legislation including Pilotage Exemption Certificate provisions

Port closures have been relatively rare occurrences, but there is a risk that by making it easier to do so, there would be a spike of demand for closure orders or orders to remove CHA status, with consequent resource implications for the Department.

9.3. Policy Option 2 - Primary Legislation excluding Pilotage Exemption Certificate provisions

Omitting the provisions on PECs would leave unchanged the potential risks to marine safety and pollution from accidents involving PEC holders who have been given notice of suspension or revocation but for whom the statutory notice period has not concluded. It also assumes that the shipping industry will continue to arrange manning to abide by the existing restriction on the issuing of PECs or seek the use of maritime pilots when no PEC-holder is available for work.

10. One-In, One-Out

The table below considers the status of each substantive clause in the Bill for the purposes of One-In, One-Out (OIOO):

Clause	Topic	Consideration	Status
2 *	Grant of Pilotage Exemption Certificates to any qualified crew member (Section 7.2)	Enables a CHA to grant a PEC to any crew member who meets its requirements for skills and experience. This change is deregulatory as it reduces the restrictions on PECs and is expected to result in a net direct benefit to business.	In scope; an "out"
3 *	Suspension and revocation of Pilotage Exemption Certificates (Section 7.2)	Additional costs would be incurred by a vessel operator when a crew member's PEC had been suspended. However, in most cases, this would be a cost arising from wrongdoing, which is out of scope for OIOO. Where a PEC is wrongly suspended/ revoked by a CHA, there would be direct costs to business that are in scope of OIOO.	In scope ²⁸ ; an "in" (expected to be less than the "out" from clause 3)
4 *	Notification of entry into an area where pilotage directions apply (costs and benefits discussed in Section 7.2)	Clarifies existing offence of misusing a Pilotage Exemption Certificate consequent on changes made under clauses 3 and 4.	In scope; zero net cost
1	Relinquishing Competent Harbour Authority status (Section 7.1)	These clauses provide the Secretary of State with powers to make orders and secondary legislation that would follow their own regulatory clearance processes when OIOO status would be assessed. They have no direct impacts on business.	Out of scope
5	Powers of general direction for harbour authorities (Section 7.3)		
6	Closure of harbours (Section 7.1)		
7	Extension of the geographic jurisdiction of port constables (Section 7.4)	These clauses enable port constables and the GLAs greater freedom to act in certain ways, but do not require them to do so. They have no direct impacts on business.	Out of scope
9	Commercial activities of the General Lighthouse Authorities (Section 7.5)		

²⁸ "In scope" only in cases where a PEC is wrongly suspended or revoked, imposing a cost on the vessel operator.

Clause	Topic	Consideration	Status
8	Geographic jurisdiction of the General Lighthouse Authorities (Section 7.5)	These clauses provide clarity on the legal basis for work done by the GLAs already. They have no direct impacts on business.	Out of scope
11	Electronic marking of wrecks (Section 7.5)		
10	Enabling references to external documents in regulations on manning requirements for ships (Section 7.6)	Would simplify the drafting and updating of future regulations on manning requirements – it does not impact on existing manning requirements or the existing regulations. It has no direct impacts on business.	Out of scope

Note: * Clauses 2, 3, and 4 would be omitted under Policy Option 2.

The clauses relating to PECs (Clauses 2, 3 and 4) are considered to be in scope of OIOO. Consequently, Policy Option 1 is considered to be in scope of OIOO and Policy Option 2 is considered to be out of scope of OIOO.

With regards to the OIOO status of Policy Option 1, Clause 3 is expected to result in a net direct benefit to business, and Clause 4 is expected to result in a direct cost to business in relation to cases where a PEC is wrongly suspended or revoked by a CHA (however, assuming that the power provided by Clause 4 is in most cases used correctly, most of the additional costs would arise from wrongdoing and so be out of scope of OIOO).

Given the comparative rarity of occasions when a PEC is suspended or revoked, it is expected that the direct benefits to business from the increased flexibility in who may be issued with a PEC would outweigh the direct costs to business from these clauses, i.e. the “OUT” is larger than the “IN”. In the Department’s consultations with the ports industry, it has been supportive of both clauses. Therefore, it is considered that Policy Option 1 would represent an OUT overall for the purposes of OIOO, although given the limitations of the available evidence base, it has not been possible to quantify the scale of this OUT.

11. Wider impacts

11.1. Small Firms Impact Test

We do not consider that the provisions of the draft Bill would have a significant impact on small businesses because, as demonstrated in this IA, there is relatively limited impact on any business.

11.2. Micro Businesses

Micro businesses are not exempted from this Bill because the measures have relatively limited impact on any business (as demonstrated in this IA), but that the net impact is expected to be deregulatory and beneficial to business, so it is reasonable to allow micros to benefit from that deregulation along with larger businesses.

11.3. Competition Assessment

The proposed new mandatory measures would not place an additional burden on any new firms that would not also apply to existing firms. The reduction in restrictions on the GLAs’ ability to engage in commercial activity will permit additional competition in the market for maritime services, and other relevant markets; there would be no preferential treatment for the GLAs, or promotion of their services, that would unfairly impact on competitors within that market.

11.4. Environmental & Carbon Impact

None of the measures in the draft Bill is likely to have any adverse environmental or carbon impact. The potential environmental savings from the avoidance of even one major maritime incident are very large, in the order of many millions of pounds.

11.5 Race, Disability and Gender Impact Assessment

This draft Bill has been assessed for relevance and no measures are likely to have any variation in impact on different groups; an Equalities Impact Assessment is not required.

11.6 Human Rights

We believe that the Minister would be able to make the following statement “In my view the provisions of the Marine Navigation Bill are compatible with the Convention rights.”

12. Summary and preferred option

The deregulatory and devolutionary measures included in the Marine Navigation (No.2) Bill – the Policy Option 1 in this IA – represent proportionate improvements to current maritime legislation. They will have no significant adverse impact on any relevant body. Instead, they offer the opportunity to reduce costs and risks for harbour authorities, will enable port constables and the GLAs to fulfil their statutory functions more effectively, and should reduce the risk of potentially expensive accidents involving the improper use of a PEC. Therefore, this is the preferred option.

13. Post Implementation Review (PIR)

As a matter of good governance the Department will carry out a PIR within five years of Royal Assent. The review will reflect on the effectiveness of the provisions and will be ongoing from the date of implementation. The review will look at how the legislation is being applied and whether the policy objectives have been met. In particular we will ask for feedback from the ports and shipping industry, and the General Lighthouse Authorities, to evaluate benefits that have been realised.

14. Regulatory Policy Committee (RPC) opinion

The RPC awarded a ‘Green’ rating to the ‘One-In, One-Out (OIOO)’ assessment presented in the IA, but had several comments on the analysis and evidence presented in the IA. The changes that have been made to the IA in response to the RPC’s comments are set out below.

The RPC commented that as the IA presents some information on the costs of applying for closure of a harbour under the existing system and how these would fall under the proposed Clause 6 of the Bill, this would appear to have presented an opportunity to provide a monetised estimate of the saving. In response, the order of magnitude of the potential cost savings for such a harbour has been estimated in Section 7.1.2.

The RPC also commented that the IA should have set out how PIR would strengthen the evidence base to support future monetisation. In response, Section 13 has been added to the IA.

In addition, in relation to Clause 9 of the Bill which provides for GLAs to expand their commercial activities, the RPC commented that the IA could have explained why it was not possible for GLAs to sell its “considerable surplus accommodation“, how these activities remain consistent with EU competition law and whether there would be any impact on business. In response, some further information has been added to Sections 3.5.3 and 7.5.1.