



Department
for Transport

Harbours Act 1964 section 40A: Consultation on a second round of applications from harbour authorities to be designated with the power to give harbour directions

DfT 2016-19

Moving Britain Ahead

November 2016

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Executive summary

Introduction

- 1 The Harbours Act 1964 was amended by section 5 of the Marine Navigation Act 2013 which inserted new sections 40A-40D inclusive which provide a mechanism by which the Secretary of State may, by order, designate harbour authorities with the power to give harbour directions for the regulation of ships in harbours in respect of movement, mooring, equipment and manning.
- 2 Statutory harbour authorities may apply to be designated under the new provisions with the power to give harbour directions, though are not obliged to. This is simpler and far less costly than acquiring the power through a harbour revision order under the Harbours Act 1964. The power, once acquired, is only exercisable within a harbour authority's limits of jurisdiction set out in its own legislation, *or over ships entering or leaving that jurisdiction*.
- 3 The power to give harbour directions is a useful additional tool in a harbour authority's regulatory armoury for use alongside its other statutory powers such as byelaw-making powers for eliminating/mitigating risks identified in the harbour. The procedure for harbour directions is simpler and quicker than that for byelaws which require to be confirmed by the Secretary of State, allowing the harbour authority to address problems identified more quickly.
- 4 **This consultation seeks your views on a second round of applications from the statutory harbour authorities for 5 harbours in England and 1 non-fishery harbour in Wales to be designated with the power to give harbour directions.** It is the responsibility of the Welsh Ministers to designate any Welsh fishery harbours with the power to give harbour directions, and the responsibility of the Scottish Ministers to so designate statutory harbour authorities in Scotland.
- 5 The Department issued Harbour Directions Guidance in November 2013. At the same time, in response to a request from both Houses during the passage of the Marine Navigation Bill through Parliament, a National Directions Panel, comprising bodies representative of harbour authorities and harbour-users, issued *Supplementary Guidance: Code of Conduct on Harbour Directions* which includes a recommended process of consultation with port users, provides model directions for harbour authorities, and sets out a dispute resolution process.
- 6 Harbour authorities seeking to acquire the power to give harbour directions are required to give a signed Assurance Statement that they will adhere to the *Code of Conduct* and all 6 harbour authorities applying

to be designated with the power have done so. The National Directions Panel will have an ongoing role to monitor the conduct of designated harbour authorities in their exercise of the power. As the Secretary of State may designate a harbour authority with the power of harbour directions, he/she would also be able to remove the designation if there was sufficient evidence that the harbour authority was not using its power well.

How to respond

The consultation period began on Monday 24 October 2016 and will run until Monday 5 December 2016. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at www.gov.uk/dft or you can contact [contact details] if you need alternative formats (Braille, audio CD, etc.).

We have provided an optional downloadable Consultation Response Form which is co-located with this consultation and the consultation letter on the Department's website (www.gov.uk/dft).

Please send consultation responses to:

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Port Governance Branch

Maritime Commerce and Infrastructure Division

Department for Transport

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Phone number: 020 7944 6251

or

By e-mail: harbourdirections@dft.gsi.gov.uk

Please quote "Harbour directions - DfT 2016-19" and the name of the relevant harbour(s) in the subject box.

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

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

Freedom of Information

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

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

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

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

1. Background

- 1.1 The statutory powers and duties which apply to individual harbour authorities are set out in their local legislation which may be local Acts of Parliament, or orders made under the Harbours Act 1964 ("HA 1964"), most commonly harbour revision orders (HROs). These local Acts and orders set out the powers, functions and duties of the harbour authorities which they exercise through harbour masters appointed by them for that purpose.
- 1.2 The HA 1964 was amended by section 5 of the Marine Navigation Act 2013 ("MNA 2013") which inserted new sections 40A-40D inclusive. Those sections provide a mechanism by which the Secretary of State may, by order, designate harbour authorities with the power to give harbour directions for the regulation of ships in harbours in respect of movement, mooring, equipment and manning. This is a simpler, far less costly means for a harbour authority to acquire the power than applying for an HRO. The power, once acquired, is only exercisable within a harbour authority's limits of jurisdiction set out in its own legislation, or over ships entering or leaving that jurisdiction. .
- 1.3 Harbour directions are made in respect of "ships", which are defined as being 'every description of vessels used in navigation', as well as seaplanes whilst on water, and hovercraft¹. In relation to the similar definition in the Merchant Shipping Act 1995, the Court of Appeal² held that a vessel 'used in navigation' is one used to make ordered progression over the water from one place to another, and does not include craft (such as a personal water craft) simply used for having fun on the water without the object of going anywhere.
- 1.4 Harbour directions may be made for the movement, mooring and unmooring, manning and equipment of ships. For example harbour directions could be used:
 - to prescribe where and how ships are to moor or move within the harbour;
 - to regulate the use of navigation channels;

¹ Section 57(1) (interpretation) of the HA 1964

² R v. Goodwin [2005] EWCA Crim 3184

- to ensure effective communication with the harbour master by requiring certain ships to have working radio equipment or sufficient experienced crew; and,
- to ensure that ships have certain equipment in working order.

Harbour directions may also make provision that applies generally or only in relation to specified circumstances, areas, periods or descriptions of ship, and may make different provision for different circumstances, areas, periods or descriptions of ships.

- 1.5 Prior to these amendments harbour authorities had three possible legislative means to regulate their respective harbours, if their legislation so provided: byelaws, which are subject to confirmation by the Secretary of State; special directions, which provide the power to issue directions in relation to specific ships in the harbour area; and general directions which provide the power to issue directions in relation to the management of ships in the harbour area generally.

2. The Proposals

- 2.1 The new provisions inserted in the Harbours Act 1964 (HA 1964) by the Marine Navigation Act 2013 (MNA 2013) gives all statutory harbour authorities (SHAs) the opportunity to apply for the power to give harbour directions but does not oblige them to seek this power. Hitherto, the power of general direction could only be acquired through a harbour revision order, a protracted and costly process. The designation of the SHAs for 29 harbours was approved in the first round of applications. A second round of applications to be designated with harbour directions under section 40A of the HA 1964 was launched in October 2015 in response to demand from the port industry.
- 2.2 **This consultation concerns the consideration of second round applications to be designated with the power to give directions received from the statutory harbour authorities for 5 harbours in England and 1 non-fishery harbour in Wales.** It is the responsibility of the Welsh Ministers to designate any Welsh fishery harbours with the power to give harbour directions, and the responsibility of the Scottish Ministers to so designate statutory harbour authorities in Scotland.
- 2.3 The Department for Transport issued *Harbour Directions Guidance* in November 2013 which can be found at the following link:
<https://www.gov.uk/government/publications/harbour-directions>
- 2.4 This is non-statutory guidance but is aimed at providing assistance to harbour authorities as to the requirements of the Secretary of State before an authority is included in a harbour directions designation order.
- 2.5 In response to questions raised by members of both Houses of Parliament in relation to appropriate safeguards for the exercise of the harbour directions-making powers, the Government made clear in Parliament during the passage of the Marine Navigation Bill that it would expect any harbour authority seeking to take advantage of the powers to agree to abide by a code of conduct as agreed by industry representatives.
- 2.6 A **National Directions Panel (NDP)** was set up whose membership comprises the following six organisations:
 - British Ports Association
 - Royal Yachting Association
 - British Tugowners Association
 - UK Chamber of Shipping
 - National Federation of Fishermen's Organisations

- UK Major Ports Group

The NDP includes observers from the Department for Transport/Devolved Administrations

- 2.7 The NDP issued *Supplementary Guidance: Code of Conduct on Harbour Directions* ([here](#)) in November 2013 to coincide with the issue of the Departmental guidance (see above). Under the Code, harbour authorities wishing to be designated with the power to give harbour directions are asked to sign an Assurance Statement that they will abide by the Code and the 6 applicant SHAs have all done so. The Code sets out a recommended process of consultation with port users, provides model directions for harbour authorities, and sets out a dispute resolution process.
- 2.8 The NDP will act as focal point for issues arising from the granting and use of harbour direction powers and oversee and make recommendations on the conduct of harbour authorities exercising the power.
- 2.9 As the Secretary of State may designate a harbour authority with the power of harbour directions, he/she would also be able to remove the designation if there was sufficient evidence that the harbour authority was not using its power well.
- 2.10 Harbour authorities wishing to join the second round of applications to be designated with the power to give harbour directions were asked to submit expressions of interest to the Department for Transport by the end of January 2016 and formal applications by end March/early April 2016. The following information was requested in applications:
 - A rationale covering why the power to make harbour directions was needed.
 - Details of any proposal for amending or repealing any statutory provision of local application which would be inconsistent with the power to give harbour directions, or unnecessary, if that power is conferred; and/or (as appropriate) a statement of intention for amending and/or revoking any existing byelaws or directions that might otherwise conflict with harbour directions.
 - The outcome of consultations with harbour users with respect to suitability of the harbour authority applying to the Department to be designated with the power to give harbour directions and on what the power will cover.
 - Details of the composition of the existing port user group (PUG) or the proposed composition if a PUG is to be set up for the purpose.
 - A signed Statement of Assurance that the harbour authority will abide by the NDP Harbour Directions Code of Conduct, as explained above.
 - A list of relevant local or regional organisations and e-mail contact details for use in this consultation.

2.11 Applications were received from the SHAs for the following 6 harbours:

- Exeter (Exeter City Council)
- Neath (Neath Port Authority)³
- Plymouth (Plymouth City Council)
- St Mary's Isles of Scilly (Duchy of Cornwall)
- St Mawes (St Mawes Pier & Harbour Company)
- Tor Bay (Torbay Council)

2.12 The applications for harbour directions are at Annexes D-1 to D-6.

Note regarding the St Mary's Isles of Scilly

2.13 As noted on page 2 of the Duchy of Cornwall's application in respect of St Mary's Harbour Isles of Scilly (Annex D-1) it has a pending application for a harbour revision order which if made would confer the Duchy with the powers of general direction. The harbour directions powers available under section 40A of the HA 1964 are of the nature of general directions. In view of this the Department and the Duchy will closely monitor progress of the Order and this application to ensure that the powers granted are not duplicated.

The Designation Order

2.14 Conferral of the power to give harbour directions would be by means of a simple Designation Order made by the Secretary of State in exercise of his powers under section 40A of the HA1964.

The Consultation Questions

Question 1

Do you consider the statutory harbour authorities for the harbours for which applications have been made (see Annexes D-1 to D-6) to be fit and proper bodies to be designated with the power to give harbour directions?

YES/NO - please give your reasoning

³ Welsh non-fishery harbour

Question 2

Are you content with the port-user group arrangements proposed at the harbours for which harbour directions applications have been made (see Annexes D-1-to D-6)
YES/NO - please give your reasoning

Question 3

Do you have any further comments about designating the statutory harbour authorities for the harbours for which applications have been made with the power to give harbour directions not covered in Questions 1 and 2?

Procedure for harbour directions

- 2.15 This consultation concerns the designation of the applicant harbour authorities with the **power** to give harbour directions. Once a harbour authority has been designated with the power and proposes to give a harbour direction, it must follow the procedure set out in section 40B of the HA 1964, as inserted by the MNA 2013. Section 40B(1) stipulates that harbour directions must be in writing.
- 2.16 Section 40B(2) requires a harbour authority to consult such representatives of users of the harbour as the authority think appropriate before giving harbour directions. In signing up to the NDP's non-statutory *Code of Conduct on Harbour Directions* (see earlier under paragraphs 1.9 to 1.12) harbour authorities undertake to carry out informal consultation at the earliest possible stage when considering the introduction of harbour directions before proceeding to the formal consultation under section 40B(2) if it is determined that only harbour directions will deliver the desired outcome.
- 2.17 A harbour authority must publicise a proposed harbour direction for at least 28 days before it is given through such arrangements as they think appropriate and make available a copy for inspection as well as supplying a copy to anyone who requests it. Section 6.3 of the *Code of Conduct* sets out a dispute resolution procedure to be followed if there are objections to harbour directions proposed and the port user group (PUG) has an important role to play in the resolution process.
- 2.18 Section 40B(6) requires a harbour authority as soon as reasonably practicable after giving a harbour direction to publish a notice in a newspaper specialising in shipping news stating that a harbour direction has been given and giving details of the arrangements for inspection and supply of copies.

Enforcement of harbour directions

- 2.19 Section 40C (Enforcement) creates a criminal offence where a master of a ship fails to ensure compliance with harbour directions without

reasonable excuse. This is punishable on summary conviction by a fine not exceeding level 4 on the standard scale, currently £2,500⁴.

Port Marine Safety Code (PMSC)

- 2.20 To enhance safety in UK ports, and to enable individual harbours to manage their marine operations to nationally agreed standards, the Department for Transport has published the Port Marine Safety Code (and the associated Guide to Good Practice) online at:
www.gov.uk/government/publications/port-marine-safety-code
- 2.21 Developed and maintained by representatives from across the ports and shipping sectors, the PMSC provides guidance on every aspect of port marine safety, and its principles help ports to protect workers, ships, passengers and the environment.
- 2.22 The PMSC applies to port marine operations the well-established principles of risk assessment and safety management systems. It recommends that harbour authorities keep their powers under review and, if necessary, seek powers to direct ships to support the effective management of their harbour waters.
- 2.23 The PMSC is not mandatory under legislation, but it does represent a shared view of what is good practice, and adherence with the Code where practicable will support safe marine operations. There is, therefore, a strong expectation that all ports (regardless of their size or legal status) should act consistently with the Code.

⁴ Section 37 Criminal Justice Act 1982, as amended by Criminal Justice Act 1991 section 17 (Increase of certain maxima)

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on Monday 5 December 2016.

Paper copies will be available on request.

If you have questions about this consultation please contact:

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Annex A: Regulatory Triage Assessment

- A.1 As a deregulatory measure the designation order qualifies for the fast track procedure in the Government's Better Regulation clearance process. As such it requires less scrutiny than standard regulatory proposals before cabinet committee clearance. The attached Regulatory Triage Assessment (RTA) form has been prepared and it has received confirmation from Departmental Analysts that the measure is deregulatory. Clearance has been received from the Reducing Regulation Committee to consult on the measure.

Regulatory Triage Assessment

Title of regulatory proposal	Designation of six further harbour authorities with the power to give harbour directions
Lead Department/Agency	Department for Transport
Expected date of implementation	April 2017
Origin	Domestic
Date	17 June 2016
Lead Departmental Contact	Tom Oscroft
Departmental Triage Assessment	Deregulation (fast track)

Rationale for intervention and intended effects

To better regulate shipping and improve safety within their harbour area, Statutory Harbour Authorities (SHAs) need the power to give harbour directions (to masters of ships) to control movements, mooring and unmooring, manning and equipment of ships in their harbour. Until 1 October 2013 the only way to acquire this power was to apply for a harbour revision order (HRO) under the Harbours Act 1964 (HA 1964) which is a long, costly and bureaucratic process.

The case for Government intervention has already been subject to parliamentary and public scrutiny during the passage of the Marine Navigation Bill (RPC12-DfT-1526). Section 5 of the resulting Marine Navigation Act 2013 inserted new sections into the HA 1964 which provide a quicker and cheaper mechanism than that of an HRO, by which the Secretary of State may designate SHAs with the power to give (general) harbour directions. The power, once acquired, represents a further tool in an SHAs' regulatory armoury for it to use to eliminate or mitigate risks identified in its harbour, alongside byelaw-making and other powers.

Government intervention is required for the Secretary of State to legally confer the power to give general directions on SHAs who may apply to be so-designated. They are not obliged to – the change is permissive.

This RTA covers formal applications to the Secretary of State for Transport to be designated with the power to give harbour directions received from the SHAs for 5 English harbours and 1 Welsh non-fishery harbour (the designation of fishery SHAs in Wales and SHAs in Scotland with the power is respectively the responsibility of the Welsh and Scottish Ministers).

Of the 6 SHAS:

3 are publicly-owned (sometimes termed “municipal ports”),

1 is a Trust Port⁵

1 is a private company; and

⁵ A Trust Port is not a “Trust” in the usual sense of the word. It is a body (often a Board of Commissioners) created by, or under local legislation for the purpose of running the harbour. There are no shareholders or owners. Trust Ports operate for the benefit of the harbour and its stakeholders. Stakeholders generally include the local community.

1 is a Duchy, empowered by legislation dating back to the 19th Century to run a harbour in the Isles of Scilly.

This is the second round of applications to be designated under the new HA 1964 provisions and was launched in response to demand from the port industry. There were 29 applications in the first round and all applicant SHAs were approved for designation. . The RTA for the first round of applications for the harbour directions power was confirmed as being deregulatory by the RPC (RPC14-FT-DFT2222) and therefore suitable for the fast track on 14 October 2014. The related validation Impact Assessment prepared (DfT00323) was validated by the RPC as being Zero Net Cost (RPC14-ft-DFT-2222(2))9 April 2015.

Viable policy options (including alternatives to regulation)

The policy option being proposed is to designate applicant SHAs with the power to give harbour directions to control movements, mooring and unmooring, manning and equipment of ships in their harbour. SHAs obtaining the enabling power to give harbour directions will have a direct impact on business only when the powers are used to regulate shipping and improve safety in their harbour where a need is identified and they consider the benefits outweigh the costs.

SHAs cannot give harbour directions without the statutory power to do so: designation under section 40A of the HA 1964 provides a simpler, quicker and less costly alternative to that of promoting an HRO and also complements the Government's localism agenda to enable decision-making to be made at local level without requiring involvement by the Secretary of State.

Initial assessment of business impact

Benefits

Deregulation: to date around 64 out of 175 SHAs in the UK currently have the power to give general directions. This measure gives others the option to acquire harbour directions through the designation process which is a swifter and less costly and complex mechanism than an HRO, which entails an application fee of £4,000 plus the costs of their legal advisers. 29 SHAs opted for the cheaper, quicker designation route during the first round of applications.

Simplification: once the power is acquired, the procedure for giving harbour directions is simpler and quicker than for making or amending harbour byelaws as harbour directions do not require confirmation by the Secretary of State.

More agile response to problems: as the timeframe for publicising harbour directions is short (28 days) SHA's can more speedily address problems identified in the harbour through risk assessment.

Enhanced competitiveness of UK Maritime sector: acquiring the power to give harbour directions will reduce the administrative and regulatory burden on the industry, with a corresponding reduction in costs, improving competitiveness, safety and impact on the environment.

A validation Impact Assessment (IA) was completed for the initial round of applications:

http://www.legislation.gov.uk/ukia/2015/272/pdfs/ukia_20150272_en.pdf A single HRO application would cost £27,000, the discounted cost-saving to the

industry over 10 years, assuming a rate of 5 HRO applications over 10 years if the s40A designation route was not available would be £117,000 (see paras 5.15-5.16 and Table 4 of the IA). The estimated cost of a s40A designation per application is £1,100. As the cost-saving to industry was based on an initial round of 31 applications, it would need to be correspondingly scaled down for the second round where only 6 applications have been received. However, the cost to industry would likewise be reduced.

Standard approach ensuring a national standard of effectiveness: applicant SHAs, as part of their application are asked to sign an Assurance Statement that they will abide by a Harbour directions Code of Conduct order as agreed by industry representatives in an industry-led National Directions Panel (NDP) which retains an ongoing oversight of SHA's use of the power.

The Department does not charge a fee for designating an SHA with the power to give harbour directions.

Costs

There will be costs associated with consulting harbour users, and publicising proposed harbour directions. This is difficult to quantify as the designation will confer a power which an SHA will exercise at a later stage. This occurs when risk assessment identifies problems which it determines require the giving of a harbour direction to remedy. Also the legislation gives an SHA the discretion to publicise a proposed harbour direction by "such means as they think appropriate" rather than the very prescriptive procedural requirements for HROs: this could be as cheap and simple as an SHA sending an e-mail to harbour users and other relevant local/regional stakeholders stating their intention to apply for the power and what it would entail, and placing a notice on its website

In complying with the harbour directions Code of Conduct SHAs were asked to submit details of the outcome of consulting harbour users. SHAs were at liberty to consult harbour users as they saw fit as this was promulgated as good practice in Department for Transport non-statutory harbour directions guidance and in the Code of Conduct. This did involve a cost but SHAs could minimise the cost and avoided the long, costly and bureaucratic process of promoting an HRO.

One-in, Three-out status

Designating SHAs with the power to give harbour directions is a permissive measure and falls within the scope of OI3O, as an Out. It is deregulatory because it will simultaneously designate the SHAs for 6 harbours who hitherto would only have been able to acquire the power by individually promoting an HRO, if they considered the benefits outweighed the considerable costs. Because it is a permissive change we can assume that benefits are at least equal to costs, according to BRFM (1.9.20/1.9.21). In electing to apply, the SHAs have determined that the benefits of acquiring the power of harbour directions under section 40A of the HA 1964 will outweigh the costs.

Rationale for Triage rating

We believe that the designation process should qualify for the fast track procedure as a deregulatory measure which provides a simplified, significantly less costly mechanism for acquiring the power to give harbour directions as an alternative to an HRO. It also represents the conferring of an enabling power which does not of itself impact industry or the voluntary sector. The RTA for the first round of applications for the harbour directions power was confirmed as being deregulatory by the RPC (RPC14-FT-DFT2222) and therefore suitable for the fast track on 14 October 2014. The related validation Impact Assessment prepared (DfT00323) was validated by the RPC as being Zero Net Cost (RPC14-ft-DFT-2222(2))9 April 2015.

Departmental signoff (SCS):	Signature Linda Willson
	Date 20/06/16
Better Regulation Unit signoff:	Signature Chris Simon
	Date 22/06/2016
Economist signoff (senior analyst):	Signature Jonathan Saks
	Date 17 June 2016

Supporting evidence

The policy issue and rationale for Government intervention

A successful maritime industry is vital to the UK's economic wellbeing; 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. In line with the Government's deregulatory agenda it is important to identify and remedy deficiencies where legislation is out of date or imposes unnecessary costs and complications to allow the maritime sector to operate more competitively and cost-effectively.

At present, in order to obtain the power to give (general) harbour directions, an SHA is obliged to apply for a harbour revision order (HRO) under the Harbours Act 1964 (HA 1964) which is a long, costly and bureaucratic process. Statutory harbour authorities are created under local Acts (or a harbour empowerment order under HA 1964) that provides them with the powers to build, operate and maintain a port on a commercial basis. SHAs may be privately owned, or free-standing bodies with no owners or shareholders (usually known as 'trust ports' and akin to companies limited by guarantee) or under local authority ownership. Whatever the ownership model all are expected to operate on a commercial basis with no state support.

The case for Government intervention in order to remove the costs and complications associated with acquiring the harbour directions power has already been subject to parliamentary and public scrutiny during the passage of the Marine Navigation Bill. This represented the initial stage of Government intervention to simplify the process for SHAs to acquire the power. The Marine Navigation Act 2013 inserted new provisions into the Harbours Act 1964 (HA 1964 – see Annex for reproduced text) enabling the Secretary of State to make a simple order, involving no fee, to designate SHAs desiring the power (they are not obliged to apply for it). Designation represents the second stage of Government intervention required to empower SHAs to give harbour directions. In the second round of applications, the SHAs for 5 harbours in England and 1 non-Fishery harbour in Wales have submitted applications to be designated with the power to give harbour directions

The procedure for giving harbour directions under section 40A of the HA 1964 (to publicise proposed directions for 28 days) does not require the involvement of the Secretary of State, meaning they can be put in place more quickly than byelaws which require to be confirmed by the Secretary of State.

An SHA designated under section 40A of the HA 1964 can give harbour directions for the purposes of the movement, mooring and unmooring, manning and equipment of ships. "Ship" where used as noun is defined in the HA 1964 as including "every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968". The Court of Appeal has held that to mean "used in navigation" a vessel must be used to make ordered progression from one place to another and does not therefore include personal water craft.

Ports in the UK abide by the Department's (voluntary) Port Marine Safety Code (PMSC) and associated Guide to Good Practice which applies to port marine operations the well-established principles of risk assessment and safety management systems which helps the SHA determine if it needs to augment its statutory powers in order to mitigate risks identified. For those SHAs not in the first round of applications, there will be the

opportunity to apply to the Secretary of State to be so-designated in the future if they consider they need to acquire the power to give harbour directions.

Policy objectives and intended effects

The policy objective of introducing a simpler, quicker and less costly means for an SHA to acquire the power to give harbour directions is to remove regulatory and administrative burdens on SHAs and ensure that they have the powers they need to operate effectively.

The Department published Harbour Directions Guidance in November 2013, which sets out the requirements of the Secretary of State before a harbour authority is included in a harbour directions designation order. This includes giving an Assurance Statement that they will abide by a Harbour Directions Code of Conduct as agreed by industry representatives in the National Directions Panel which retains an ongoing oversight of designated SHAs' use of the power. The Code of Conduct sets out a recommended process for consulting harbour users, provides model directions for harbour authorities, and sets out a dispute resolution process.

Policy options considered, including alternatives to regulation

The policy option being proposed is to designate applicant SHAs with the power to give harbour directions for the movement, mooring and unmooring, manning and equipment of ships in their harbour under section 40A of the HA 1964. This is a simpler, quicker and less costly means for SHAs to acquire the power than through an HRO.

As the purpose of empowering the Secretary of State to designate harbour authorities with the power to give harbour directions is a simplification measure, it would frustrate the stage 1 process of introducing a simplified route to obtain powers and present a step backwards towards the previous regime whereby an HRO would be the only means of acquiring powers of general direction.

Expected level of business impact

SHAs acquiring the power to give harbour directions will have a direct impact on industry only when they choose to use it to regulate shipping and improve safety in their harbour, where a need is identified and they consider the benefits outweigh the costs.

Benefits

Deregulation: SHAs not yet having the power to give (general) harbour directions (around 64 out of 175 SHAs in the UK currently have the power of general directions) are now able to acquire it through the designation process which is a swifter and less costly and complex mechanism than an HRO. The designation Order for the second round applications will simultaneously designate the 6 applicant SHAs.

Simplification: once the power is acquired, the procedure for giving harbour directions is simpler and quicker than for securing an amendment to a harbour authority's byelaws as harbour directions do not require confirmation by the Secretary of State

More agile responsiveness: Ports in the UK abide by the Department's (voluntary) Port Marine Safety Code (PMSC) and associated Guide to Good Practice which applies to port marine operations the well-established principles of risk assessment and safety management systems. The simplified procedure involved in giving harbour directions, as

against promoting an HRO, or amending byelaws means that where a risk is identified which it is considered could be mitigated by a harbour direction that direction could quickly be put in place to address a problem. In addition, harbour authorities determining they have a need to acquire the harbour directions power in the future through the PMSC risk assessment process can apply to be so- designated in a shorter timescale.

Enhanced competitiveness of UK Maritime sector: The Maritime sector's direct contribution to the economy is estimated at between £8.0bn and £13.8bn. Acquiring the power to give harbour directions will reduce the administrative and regulatory burden on the industry, with a corresponding reduction in costs, improving competitiveness, safety and impact on the environment.

Standard approach ensuring a national standard of effectiveness: Applicant SHAs, as part of their application are asked to sign an Assurance Statement that they will abide by a harbour directions code of conduct order as agreed by industry representatives in the National Directions Panel (NDP) which retains an ongoing oversight of designated SHAs use of the power. The Code sets out a recommended procedure for consulting harbour users, provides model harbour directions, and sets out a dispute resolution process. The Department charges no fee for designating an SHA with the power to give harbour directions.

Costs

Acquiring and using the power to give harbour directions will result in a reduced financial and regulatory burden on applicant SHAs. There will be cost associated with consulting harbour users, and publicising proposed harbour directions. This is extremely difficult to quantify as the designation will confer a power which an SHA will only exercise at a later stage when risk assessment identifies problems which it determines require the giving of a harbour direction to remedy. The harbour directions provisions are not prescriptive regarding how an SHA chooses to publicise a proposed harbour so they have the discretion to minimise that cost.

The PMSC risk assessment process is ongoing and enables problems to be identified and addressed, which could include giving a harbour direction if that was considered necessary to remedy the problem.

The current designation will confer the power on the SHAs 6 harbours which have different local circumstances and mix of traffic. It is not possible to predict when or how often a designated SHA will exercise that power which does not of itself have an impact on harbour users. .

Promoting an HRO to acquire enabling powers of general direction is a long, costly and bureaucratic process for which SHAs now have simpler, quicker and less costly alternative. The Marine Management Organisation, to which the Secretary of State has delegated responsibility for administering the HRO procedure charges a fee of £4,000 for a non-works HRO. The SHA promoting the HRO will also bear the cost of legal fees, and administrative costs associated with publishing statutory notices, drafting impact assessments and public consultation including negotiation with stakeholders who have lodged objections.

The British Ports Association (BPA), based on their experience and anecdotal information from their members, estimate the costs of obtaining an HRO can be in the region of

£30,000 to £60,000⁶ depending on the complexity of the Order. This does not include the costs of a public Inquiry. The costs of a PI into an HRO promoted by the Dover Harbour Board in 2011 came to just over £84,000 made up of Inspector fees (around, £30,500), venue hire (around £8,750) and legal representation costs (around £45,000).

Breach of a harbour direction is an offence liable on summary conviction to a fine not exceeding level 4 on the standard scale. A compliant SHA would incur no penalty.

We consider this measure to be de-regulatory and an Out under One-In, Three Out.

However, it is not possible to quantify the “Out” as it is not possible to predict when a designated SHA will choose to exercise the harbour directions power being conferred.

Therefore it is difficult to use this as a compensating “Out”. The validation IA for the first round of applications was validated by the RPC as being Zero Net Cost.

⁶ Taken from IA produced in 2012 for the Marine Navigation Bill, article 5 of which, when enacted as the Marine Navigation Act 2013, inserted the harbour directions provisions into the Harbours Act 1964

Annex B: Full list of consultation questions

Question 1

Do you consider the statutory harbour authorities for the harbours for which applications have been made (see Annexes D-1 to D-6) to be fit and proper bodies to be designated with the power to give harbour directions?

YES/NO - please give your reasoning

Question 2

Are you content with the port-user group arrangements proposed at the 6 harbours for which harbour directions applications have been made (see Annexes D-1 to D-6)

YES/NO - please give your reasoning

Question 3

Do you have any further comments about designating the statutory harbour authorities for the harbours for which applications have been made with the power to give harbour directions not covered in Questions 1 and 2?

Annex C: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

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

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Annex D-1: Application of Exeter City Council

See separate document uploaded on the Department's website (www.gov.uk/dft) with this consultation document.

Annex D-2: Application of Neath Port Authority

See separate document uploaded on the Department's website (www.gov.uk/dft) with this consultation document.

Annex D-3: Application of Plymouth City Council

See separate document uploaded on the Department's website (www.gov.uk/dft) with this consultation document.

Annex D-4: Application of the Duchy of Cornwall

See separate document uploaded on the Department's website (www.gov.uk/dft) with this consultation document. This application is made in respect of St Mary's Harbour, Isles of Scilly.

Annex D-5: Application of St Mawes Pier and Harbour Company

See separate document uploaded on the Department's website (www.gov.uk/dft) with this consultation document.

Annex D-6: Application of Torbay Council

Tor Bay Harbour includes the enclosed harbours of Brixham, Paignton and Torquay. See separate document uploaded on the Department's website (www.gov.uk/dft) with this consultation document.

Annex E: List of those consulted

National

Welsh Government

Scottish Government

Royal Yachting Association

UK Chamber of Shipping

UK Major Ports Group

British Ports Association

British Tugowners Association

National Federation of Fishermen's Organisations

Trinity House

Local

The applicant harbour authorities have supplied contact details for relevant local stakeholders to whom the consultation paper and supporting documents will be sent at the time of publication of this consultation document on the Department's website (www.gov.uk/dft).