

CONSULTATION ON THE PROPOSED DESIGNATION ORDER FOR THE PORT OF DOVER AND PORT OF DOVER SECURITY AUTHORITY 2010

The purpose of this consultation is to ask those who may be affected by the contents of the Designation Order for any comments they may have on the draft Order for the Port of Dover and the Port of Dover Security Authority. This is attached at Annex A.

A list of consultees is provided at Annex B.

Introduction

The EU Directive on enhancing port security (65/2005/EC) was agreed in 2005 to extend the previous port security regime for EU Member States (EC Regulation 725/2004) from the ship/port interface to include the whole port area. This Directive was transposed into UK law in the Port Security Regulations 2009 (SI 2009/2048) which came into force on 1 September 2009.

The Port Security Regulations 2009 require the establishment of Port Security Authorities (PSAs) for qualifying ports across the UK. Each port's PSA will have responsibility for carrying out a port security risk assessment for the port and for implementing and maintaining the agreed port security plan developed following the risk assessment.

The Port Security Regulations extend the port security regime in the UK, from the previous position of looking just at the ship/port interface of a port facility, to a more holistic approach which looks at the whole port area (where it includes more than one facility) and also any 'port related areas' that may have an impact on the security of the port area.

The boundary of the port and the designation of the Port Security Authority are set out in a Designation Order to allow the relevant provisions of the Port Security Regulations 2009 to be carried out. The port security risk assessment that is to be carried out will identify any sub-areas within the port which may require further security and mitigation measures and these will be included in the port security plan.

Following the coming into force of the Designation Order the Port Security Authority must meet to appoint a chairperson and a Port Security Officer, along with agreeing the membership. The appointment of the PSA members will then need to be agreed by TRANSEC at the Department for Transport on behalf of the Secretary of State for Transport. The port security risk assessment must then be agreed and submitted for approval by the Secretary of State within nine months of the Designation Order coming into force. Within three months from the approval of the assessment the subsequent Port Security Plan must be submitted to TRANSEC for approval.

Consultation

The Department for Transport is seeking views on the attached draft Designation Order to delineate boundaries of the Port of Dover for the purposes of the Port Security Regulations 2009 and to designate the Port of Dover Security Authority.

Port Boundary

The Designation Order attached at Annex A seeks to designate the Port of Dover Security Authority for the Port of Dover as defined for the purposes of the Port Security Regulations 2009. The proposed port boundary for the Port of Dover is as defined in Schedule 1 of the Designation Order.

Once the Designation Order comes into force and the boundary is agreed the Port Security Regulations will have effect within it and the port security risk assessment will cover all commercial maritime operations within that boundary.

Are you content with the proposed boundaries for the Port of Dover?

Port Security Authority (PSA)

The EU Directive on enhancing port security (65/2005/EC) requires the setting up of Port Security Authorities which will then have responsibility for carrying out the port security risk assessment and for developing and maintaining the port security plan. This requirement was carried into the UK Port Security Regulations 2009.

The proposed PSA membership is not set out in the draft Designation Order. However, it must consist of at least three members, who will be appointed by the Secretary of State. The Port Facility Security Officers (PFSOs) for port facilities within the boundary will either need to be members of the PSA themselves, or must nominate a representative to be a member. A member of the PSA could be representing the owner or operator of a port facility, or the directed party of an AMSA facility (i.e. a party subject to a direction by the Secretary of State under Part III of the Aviation and Maritime Security Act 1990), or a port related area, or indeed any other person who has an interest in the security of the port.

The PSA must meet at least twice a year and will include other key local stakeholders including the police and the UK Border Agency (although this will in most cases be with 'observer' status rather than full membership of the PSA). The chairperson will be elected by the PSA although in many cases the chairperson will be the Port Security Officer, as also agreed by the PSA and approved by the Secretary of State.

The draft Designation Order looks to designate the "Port of Dover Security Authority" as the Port Security Authority for the Port of Dover for the purposes of Regulation 5 of the Port Security Regulations 2009.

Are you content for the "Port of Dover Security Authority" to be designated for the purposes of the Port Security Regulations 2009?

Port Related Areas

A port related area is any property or area of land which is outside of the port boundary but which will have an impact on the security of the port. An example of this would be if there is a freight holding facility beyond the port boundary where goods will then pass into the port for shipment.

If somewhere is designated as a port related area then even if it is not involved in a commercial maritime operation the Port Security Regulations will have effect. This means that for the purposes of the Regulations the PRA must designate a security manager to become a member of the Port Security Authority and to provide input to the risk assessment for the port and to maintain the port related area security plan. The full requirements for the PRA and Security Managers are set out in Schedule 1 of the Port Security Regulations 2009. Further guidance will be provided to PRA security managers once they have been appointed.

Following an initial risk assessment by the proposed Port of Dover Port Security Authority, referred to in the previous section, the draft Designation Order does not at present include any port related areas (PRAs). However, as the Port Security Regulations do allow for the establishment of port related areas, should they be deemed necessary, we would welcome views on whether you feel that there should be any port related areas included in the Designation Order.

Are you content with the proposal that there are no port related areas for the Port of Dover Port Security Authority?

Working procedure of the Port Security Authority

Schedule 2 of the Designation Order sets out the proposed working procedures and the constitution of the Port Security Authority. We would welcome your comments on the proposals and if there is anything that you feel should be amended or added. It is for the PSA to agree at its first meeting on the detailed terms of reference and working practices of the PSA. A suggested template will be made available to members of the PSA from TRANSEC in advance of the first meeting.

Are you content with the proposed working procedures for the Port Security Authority in Schedule 2?

Summary of questions

We welcome all views on the attached proposals for the Port of Dover Port Security Authority, however it would assist in the Department's analysis if, where possible, responses focussed on the questions as set out below.

1. Are you content with the proposed boundaries for the Port of Dover as set out in Schedule 1 of the Designation Order?

If not please set out your reasons for disagreement and any suggested amendments.

2. Are you content for the "Port of Dover Security Authority" to be designated for the purposes of the Port Security Regulations 2009?

If not please set out your reasons for disagreement.

3. Are you content with the proposal that there are no port related areas for the Port of Dover Port Security Authority?

If not please set out your reasons for disagreement and suggest any port related areas you feel should be included with reasons.

5. Are you content with the proposed working procedures for the Port Security Authority in Schedule 2?

If not please set out your reasons for disagreement and suggest possible amendments to the Schedule.

6. Do you have any general comments about the Designation Order not covered in the above questions?

Responses

If you have any comments on the draft Designation Order, these should be sent either by email to simon.goodwin@dft.gsi.gov.uk or by using the postal address below.

General enquiries about the proposed order should also be made to the same e-mail address. Electronic copies of the consultation documents are available on the DfT website www.dft.gov.uk. If you require the consultation in another format, such as large text, an audio tape, or any other alternative format, please contact the address below.

The consultation period began on 9 August 2010 and will run for six weeks until 20 September 2010. Please ensure that your response reaches us by that date. This public consultation process is being carried out for six weeks, rather than the more usual twelve weeks, due to the extensive discussions that have already taken place between parties likely to be affected by the Order and because a full public consultation for the Regulations themselves took place in 2008.

Please send consultation responses to:
Simon Goodwin
Maritime Security Policy
TRANSEC
Department for Transport
Southside
105 Victoria Street
London
SW1E 6DE

By email to: simon.goodwin@dft.gsi.gov.uk
Tel 0207 944 5148

Paper copies of the consultation papers can be obtained by contacting the above address or emailing your postal address to simon.goodwin@dft.gsi.gov.uk

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

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and 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 DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

What happens next?

A summary of responses will be published on the Department's website at www.dft.gov.uk/consultations/closed within three months of the consultation closing.

ANNEX

Code of Practice on Consultation

The Government has adopted a Code of Practice on consultations. The Code sets out the approach Government will take to running a formal, written public consultation exercise. While most UK Departments and Agencies have adopted the Code, it does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law).

The Code contains seven criteria. They should be reproduced in all consultation documents. Deviation from the code will at times be unavoidable, but the Government aims to explain the reasons for deviations and what measures will be used to make the exercise as effective as possible in the circumstances.

The Seven Consultation Criteria

1. **When to consult:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. **Duration of consultation exercises:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact:** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises:** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises:** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult:** Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A full version of the code of practice is available on the Better Regulation Executive web-site at: <http://www.bis.gov.uk/files/file47158.pdf>

If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

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76 Marsham Street
London, SW1P 4DR
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Annex B

Consultation list

Dover Harbour Board

Cemex UK

P&O Ferries

SeaFrance

Norfolkline

LD Lines

Kent Police

United Kingdom Border Agency (UKBA)

Maritime and Coastguard Agency (MCA)

State Veterinary Service (DEFRA)

Vehicle and Operator Services Agency (VOSA)

Dover District Council

Disabled Persons Transport Advisory Committee (DPTAC)