

Consultation on the draft Designation Orders implementing the Port Security Regulations 2009 (S.I. 2009/2048) at the Ports of Barrow, Cardiff, Cromarty Firth, Fowey, Oban, Peterhead, Plymouth, Shoreham and Troon (“the Listed Ports”).

SUMMARY OF RESPONSES



Department
for Transport

September 2013

Introduction

Background

1. This consultation concerned the implementation of EU Directive 2005/65/EC (hereafter “the Directive”) on enhancing port security. The purpose of the Directive is to improve security coordination in the wider port¹ area (as opposed to security at port facilities which is covered by Regulation (EC) 725/2004). The Directive was transposed into UK law by the Port Security Regulations 2009² (hereafter “the PSRs”) which came into force on 1 September 2009.
2. The PSRs require the establishment of Port Security Authorities (PSAs) at ports at which the requirements of the Directive apply (“in-scope ports”) and the appointment of a Port Security Officer (PSO). The Department’s port security compliance team has already been assisting some ports with the carrying out of the port security risk assessment (PSRA) and preparation of the port security plan (PSP) based on it. In the consultation further ports were invited to avail themselves of this assistance and a number have requested it. Once the PSP is in place the PSA will be responsible for implementing and maintaining it.
3. The boundary of the port and the designation of the Port Security Authority are set out in a Designation Order (DO) to allow the relevant provisions of the PSRs to be applied.

Informal consultation

4. Departmental port security policy officials carried out comprehensive pre-consultation discussions with key interested parties at the Listed Ports and followed this up with Stakeholder Workshops. Written comments were also invited subsequently from all interested parties.

¹ In Article 3.1 (Definitions) of Directive 2005/65/EC “port” means “any specified area of land and water, with boundaries defined by the Member State in which the port is situated, containing works and equipment designed to facilitate commercial maritime transport operations”.

² Statutory Instrument no. 2009/2048

Formal Consultation

1. This is the third formal consultation regarding the implementation of the Directive. The consultation document appended draft DOs for all the Listed Ports incorporating draft PSA boundary plans. Further batches of ports are currently being consulted upon and will continue until implementation is achieved at all the in-scope ports.
2. The consultation ran for 6 weeks (08 July 2013 to 16 August 2013). The consultation documentation was published on the Department's website (www.gov.uk/dft) as well as being sent by e-mail to relevant national organisations, and relevant parties at the Listed Ports.
3. A total of **17 responses** were received. The respondents are listed alphabetically in Annex 1. Figure 1 below shows the breakdown of respondents by category:-

Figure 1

Type of Company / Organisation	Number of responses
Port Operator	4
Micro / Small / Medium Enterprise	3
Private Company (<i>limited by guarantee</i>)	3
Government Dept / Local Government	2
Harbour Authority	2
Large Enterprise	2
Port Facility Operator	1

4. The majority of respondents replied using a proforma Consultation Response Form. This incorporated the 9 consultation questions on which the structure of this summary of responses is based. The comments from respondents replying by e-mail have been ascribed to the most relevant question. Not all the respondents replied to all of the questions, and response totals per question reflect this.

Consultation Responses

Q1. For each of the Listed Ports: are you content with the proposed boundaries as set out in the draft Designation Order (DO)? YES/NO - if not, please set out your reasons for disagreement and any suggested amendments:-

Total Responses	16	YES	6	NO	10	YES/NO not specified	0
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No PSA boundary issues are outstanding at the following 3 ports:

Cardiff
Cromarty Firth
Shoreham

However, a number of respondents had issues with the proposed PSA area of jurisdiction in the boundary plans attached to a number of the draft DOs: for example concerning the inclusion or exclusion of certain facilities or areas of land, and the question of unnecessary duplication if a port facility fell subject to another security regulatory regime.

These outstanding PSA boundary issues are currently being resolved at the following listed ports:

Barrow
Fowey
Oban
Peterhead
Plymouth
Troon

Q2. For each of the Listed Ports: are you content for the relevant Port Security Authority (PSA) to be designated at that port for the purposes of the Port Security Regulations 2009? YES/NO - if not, please set out your reasons for disagreement:-

Total Responses	14	YES	12	NO	2	YES/NO not specified	0
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Of those respondents registering a NO answer:

- One port respondent stated that they could not fulfil the statutory minimum membership as there were only 2 facilities and should be exempt from the programme.
- One port responded that one of the facilities that had been included should not because it was a military installation.

Q3. For each of the Listed Ports: are you content with the proposal that there are no port related areas for that port? YES/NO - if not, please set out your reasons for disagreement and suggest any port related areas you consider should be included with reasons:-

Total Responses	14	YES	13	NO	1	YES/NO not specified	0
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The 1 respondent registering a NO answer:

- Stated that consideration should be given to possible port related area located near to one of the proposed PSAs in northern England.

Q4. For each of the Listed Ports: are you content with the proposed working procedures for the PSA in Schedule 2 to the draft DO? YES/NO - if not, please set out your reasons for disagreement and suggest possible amendments to the Schedule.

Total Responses	14	YES	9	NO	2	YES/NO not specified	3
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Of the 2 respondents registering a NO answer:

- One port respondent stated that they could not fulfil the statutory minimum membership as there were only 2 facilities.
- One port respondent stated that they wish to explore the option of becoming incorporated, which would result in amended working procedures

Of the 3 respondents registering a YES/NO NOT SPECIFIED:

- These responses all came from the same organisation and the response given was that of “no comment”.

Q5. For each of the Listed Ports: are there other port facilities nearby that should be included within the PSA for that port? YES/NO – if so, please will you explain which facility/facilities and why?

Total Responses	14	YES	1	NO	13	YES/NO not specified	0
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Of the 1 respondent registering a YES answer:

- This respondent did not provide any further comments so DfT Officials are seeking clarification.

Q6. For each of the Listed Ports: will the establishment of a PSA at that port affect a micro, small or medium-sized business? YES/NO - if so, please will you explain how:-

Total Responses	13	YES	5	NO	5	YES/NO not specified	3
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Of the 5 respondents giving a YES answer:

- A number of the representatives from one of the major port group operators expressed the view that they cannot fully appreciate the impact upon micro, small or medium-sized businesses until the issue of charges had been resolved.
- One port commented that there are a variety of micro, small and medium-sized businesses within the port boundaries that could be affected by the resulting decisions and actions of an established PSA.

No cost estimates were provided in any of the YES responses

Of the 3 respondents registering a YES/NO NOT SPECIFIED:

- These responses all came from the same organisation and the response given was that of “no comment”.

Q7. For each of the Listed Ports: are you content with the start-up and per annum cost estimates provided in the Impact Assessment for the Port Security Authority, Port Security Officer, Port Security Assessment and Port Security Plan? YES/NO - if not, please set out your reasons and suggest alternative costs.

Total Responses	14	YES	7	NO	4	YES/NO not specified	3
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Of the 4 respondents giving a NO answer:

- One of the major port group operators considered that the consultation document did not provide a clear answer as to how the DfT or the consulted ports had arrived at the figures in the Impact Assessment so they could not comment as to their accuracy or impact on their facilities.
- One of the port operators commented that the figures relating to the PSO costs and the risk assessments for year 1 needed clarification and asked how they were calculated.

Of the 3 respondents registering a YES/NO NOT SPECIFIED:

- These responses all came from the same organisation and the response given was that of “no comment”.

None of the respondents provided any cost suggestions.

Q8. For each of the Listed Ports: do you have any general comments about the draft DO not covered in the above questions? YES/NO - if not, please provide below:-

Total Responses	15	YES	8	NO	7	YES/NO not specified	
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Of the respondents giving a YES answer:

- 3 port group operators responded in identical terms making the following general points:
 - It is the intention of the operator to consider the incorporation of Port Security Authorities and that they do not know whether or not this will impact upon the implementation timescales.
 - One of the ports should never have been included as one of the facilities voluntarily adopted the International Ship and Port Security regime as it is a domestic ferry service.
- A local government representative commented that the establishment of a PSA would not be achievable within the timescales but that draft documentation would be submitted.
- A large private company limited by guarantee stated that whilst they supported improvements to security and safety they had certain statutory obligations which would need to be considered.
- One of the ports reiterated the comment that one of the facilities was a military installation.

Q9. For each of the Listed Ports: would you like Departmental assistance (at no cost) with the preparation of the port security risk assessment and the port security plan? If so, can you commit to delivery of the assessment and the plan for approval soon after the DO coming into force, such that the respective approvals can be given by December 2013? Please provide your response below:-

Total Responses	14	YES	8	NO	2	YES/NO not specified	4
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Of those responding YES:

- One major port group operator provided the same response across 3 of the ports for which they are involved stating that they could commit, notwithstanding the issue of incorporation of the PSA.
- Two port operators stated that they could commit.
- Two port operators stated that they could commit and that work was already underway in producing the draft port security assessment and port security plan.
- One port commented that the regime may help to bring in new contracts.

Of those responding NO:

- Two stakeholders responded 'NO' but did not provide any further comment.

Of those responding YES/NO NOT SPECIFIED:

- 3 responses from the same organisation provided a 'no comment' answer.
- One organisation did not provide any further detail than choosing the 'YES/NO' option.

Consideration

The Department for Transport received 17 responses to this consultation.

Having worked very closely with the stakeholders prior to the launch of this consultation, the Department has been able to demonstrate a better appreciation of views and comments.

In conjunction with the individual stakeholders, the Department will endeavour to liaise and respond to their specific comments.

Our response to the general themes is detailed below:

As can be seen in the response to the consultation questions above, the majority of the respondents were content with the proposed boundaries as set out in the draft Designation Orders, although a significant number of the respondents did not agree with the proposed boundaries.

In the cases where there was request for a change to a boundary, this was actually a request for further clarification or minor amendments caused by changes in use and/or ownership.

DfT officials have been able to swiftly rectify the situation by working closely with the ports and taking forward a number of suggestions.

It has also been recognised by the Department that where there is a need to reduce the minimum number of members required to form a Port Security Authority this will be done on a case by case basis. This has arisen because of the difference in size of the ports, with some only having two facilities and the fact that the police and/or Government or parent Department/Agency representatives act as advisors and are not members of the PSA.

The Department wishes to reduce the regulatory burden and this includes the assessment of whether or not there are any potential port related areas. Sites which are already covered by an existing robust security regime such as critical national infrastructure, COMAH (Control of Major Accidents and Hazards) or under the direction or control of the Ministry of Defence will be assessed on an individual basis. However, it should be noted that military installations are exempt from the EC Directive and are therefore exempt from the UK regulations which transposed the Directive.

There were a couple of queries concerning possible port related areas. As port related areas are outside of the port security authority boundary, the establishment of a port related area would require extra measures. In order to reduce the regulatory burden on an industry which is central to the UK's economic growth, it has been determined that the establishment of a port related area will be assessed on an individual basis. If there are already existing security legislation and regimes in place, the Department will not be overlaying this with further regulation.

There was only one specific comment about a Port Security Authority being imposed in an area which is exempt from the Directive – that being an area under the direction and control of the Ministry of Defence and covering a military installation. Military installations are exempt from the Directive, so we have agreed with the proposal to remove this site from the programme.

There were no other port facilities which needed to be further included in the proposed Port Security Authorities.

A number of the stakeholders commented that it was their intention to consider the incorporation of their Port Security Authorities. Whether to incorporate a Port Security Authority is a decision for the PSA. However, if that decision is made, it must be the entire PSA that becomes incorporated. It is not acceptable for only part of a PSA to become incorporated. Furthermore, it must also be recognised that individual members and/or directors will be named and it is not acceptable for the member to be listed as a company. It is of course accepted that the member will actually be an employed representative from a port/facility/organisation.

Question 9 offered consultee ports assistance from the Department's port security compliance team (at no cost) in the preparation of the port security assessment and the port security plan based upon it. This is already underway at a number of the ports.

Next Steps

The Department will continue to engage with respondents and the relevant stakeholders at ports concerning their specific comments.

Over the next couple of months, the Designation Orders which have been agreed in principle will be progressed through the relevant government clearance processes before going through the parliamentary process.

Further discussions will take place with the remaining ports and groups of ports within this consultation batch to resolve any issues and/or discrepancies. These matters will be resolved to ensure that Designation Orders can be agreed and progress through the relevant clearance and parliamentary processes over the next month.

The European Commission's second 5-year Evaluation Report to the European Parliament and the Council required under Article 19 of the Directive is due on 15 December 2013. The Commission is currently taking a heightened interest Members States' compliance with the Directive and the effectiveness of the measures taken by States.

**DfT 2013-12 CONSULTATION ON IMPLEMENTATION OF PORT SECURITY DIRECTIVE (2005/65/EC)
ALPHABETICAL LIST OF RESPONDENTS**

1	Associated British Ports (ABP) Barrow - port group operator
2	ABP Cardiff-port group operator
3	ABP Plymouth - port group operator
4	ABP Troon - port group operator
5	Argyll and Bute Council - local government
6	ASCO Southbase Peterhead - large enterprise
7	Cattedown Wharves Ltd – Plymouth - port facility/facilities operator
8	Cromarty Firth – small enterprise
9	Garvel Clyde (Troon) Ltd (Forth Group Ltd) – micro/small/medium enterprise
10	INS (International Nuclear Services) – Barrow - large enterprise
11	Inver Energy (Cardiff Dock) – medium enterprise
12	Network Rail – Barrow-in-Furness – large private company limited by guarantee
13	Network Rail – Fowey – large private company limited by guarantee
14	Network Rail – Oban – large private company limited by guarantee
15	Peterhead Port Authority - harbour authority
16	Queen’s Harbour Master (QHM) Plymouth - /harbour authority
17	MOD - government