



Department
for Transport

Harbours Act 1964 section 40A: Consultation on the applications of the statutory harbour authorities for 26 harbours in England and 5 non-fishery harbours in Wales for their designation with the power to give harbour directions

DfT 2014-31

December 2014

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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.
3. Once the power is acquired, the harbour directions mechanism provides harbour authorities with a less unwieldy mechanism than that of Byelaws, which require to be confirmed by the Secretary of State, to control movements, mooring and unmooring, manning and equipment of "ships" (as defined in the Harbours Act 1964) in their harbours.
4. **This consultation seeks your views on applications from the statutory harbour authorities for 26 harbours in England and 5 non-fishery harbours 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 the harbour authorities for all 31 harbours 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.
7. One of the applicant harbour authorities (Associated British Ports - ABP - in respect of Ipswich) has existing powers of general direction which overlap with the harbour directions powers which would be conferred under section 40A of the Harbours Act. If ABP are designated with the power to give harbour directions under new section 40A of the Harbours Act 1964 in respect of Ipswich its existing powers of general direction at Ipswich (see paragraphs 1.17-1.23 below) would need to be repealed.

How to respond

The consultation period began on Monday 15 December 2014 and will run until Friday 16 January 2015. 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 [web address] 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 document and the consultation letter on the Department's website.

Please send consultation responses to:

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or

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

Please quote "Harbour directions - DfT 2014-31" 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 E. 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.

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 (see Annex to Annex A below) 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. This is a simpler, far less costly means for a harbour authority to acquire the power than applying for an HRO.
- 1.3** Harbour directions are made in respect of "ships"¹, as defined in section 57(1) (interpretation) of the HA 1964. In relation to the similar definition in the Merchant Shipping Act 1995, the Court of Appeal 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 "ship", where used as a noun, includes every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968;

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;
- 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.

The proposals

1.6 We are aware of 35 out of 175 statutory harbour authorities in the UK who currently have provision for the giving of general directions in their local statutes. The new provisions inserted in the Harbours Act 1964 by the Marine Navigation Act 2013 will give all statutory harbour authorities the opportunity to apply for the power to give harbour directions but does not oblige them to seek this power.

1.7 This consultation concerns the consideration of applications to be designated with the power to give directions received from the statutory harbour authorities for 26 harbours in England and 5 non-fishery harbours 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.

1.8 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>

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.

1.9 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.

1.10 A **National Directions Panel (NDP)** was set up whose membership comprises the following six organisations:

British Ports Association (BPA)

Royal Yachting Association (RYA)

British Tugowners Association (BTA)

UK Chamber of Shipping

National Federation of Fishermen's Organisations (NFFO)

UK Major Ports Group (UKMPG)

The Department for Transport attends NDP meetings.

1.11 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 statutory harbour authorities for all 31 harbours in respect of which the power is sought have 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.

1.12 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.

1.13 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.

1.14 Harbour authorities wishing to acquire the power to give harbour directions were asked to submit expressions of interest to the Department for Transport by the end of April 2014 and applications proper by the end of June. 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; and
- The views of harbour users with respect to the suitability of that particular harbour authority applying to the Department to be designated in the Order, if they have been sought already or, if not, a statement of when and how they will be consulted.

1.15 Applications were received from the statutory harbour authorities for the following 31 harbours:

Associated British Ports (ABP) Goole

ABP Grimsby

ABP Hull

ABP Immingham

ABP Barrow

ABP Fleetwood

ABP Garston

ABP Ipswich

ABP Kings Lynn

ABP Lowestoft

ABP Plymouth (Mill Bay)

ABP Silloth
ABP Teignmouth (Quays)
ABP Barry²
ABP Cardiff²
ABP Newport (South Wales)²
ABP Port Talbot²
ABP Swansea²
Cattewater
Chichester
Crouch
Dart
Falmouth Docks and Engineering Company
Falmouth Harbour Commissioners
Fowey
Hayle
Mostyn
Peel Ports (PP) Manchester Ship Canal
PP Heysham
Salcombe
Sutton (Plymouth)

1.16 The applications for harbour directions are at Annexes C-1 (single application from Associated British Ports - ABP - covering 18 of their ports in England and Wales) to C-14.

² Welsh non-fishery harbour

Note regarding Ipswich overlapping powers

- 1.17** The statutory harbour authority for Ipswich (ABP) already has the power in its local statutes to give general directions with respect to that harbour. There is considerable overlap between these existing powers and the harbour directions powers which would be conferred by section 40A of the HA 1964. An authority designated under section 40A would have all the powers described in that section. This does not allow a harbour authority to be designated with some, but not all, of the listed purposes in section 40A(2) . Therefore an authority cannot be partially designated. Nor, if the existing powers cover only part of a harbour, can the section 40A powers be applied to only the part of the harbour not covered by existing powers - they must be applied to the entire harbour.
- 1.18** Equally, overlapping powers would create a problem, as this would mean potentially creating two offences for the same misdemeanour.
- 1.19** ABP's existing powers of general direction with respect to Ipswich are set out in section 60(1) of the Ipswich Dock Act 1971(text reproduced below with the provisions that overlap with the purposes for which harbour directions may be made under section 40A(2) of the HA 1964 highlighted yellow):
- "Directions to a vessel at a dock or quay*
- 60. (1) The Commission may give directions applicable to all vessels, or to a specified class of vessels, in a dock or at a riverside quay operated by it for the purpose of ensuring the safety of vessels in the dock, or at the quay, preventing injury to persons at, or to property at, or forming part of the dock or quay, or of securing the efficient conduct of the business carried on at the dock or quay, and, without prejudice to the generality of the foregoing, such directions may relate to*
- (a) the movement, berthing or mooring of a vessel;*

- (b) *the dispatch of its business at the dock or quay;*
- (c) *the disposition or use of its appurtenances or equipment;*
- (d) *the use of its motive power;*
- (e) *the embarking or landing of passengers;*
- (f) *the loading or discharging of cargo, fuel, water or ship's stores;*
- (g) *the use of ballast;"*

1.20 The section 60(1) powers apply to the "Dock"³ and "riverside quays" (the latter is not a defined term), but not the whole of "the port" as defined in the 1971 Act⁴.

1.21 Section 62(1) of the Ipswich Dock Act is a related enforcement provision.

1.22 The Ipswich Dock Act 1971 refers to the "Commission", the Ipswich Dock Commission, which was renamed the Ipswich Port Authority by S.I 1976 No. 2136 the Ipswich Port Authority Order 1973. The Ipswich Port Authority was privatised by order in 1997 following a direction given by the Secretary of State under Section 10(3) of the Ports Act 1991 and its statutory powers and duties transferred to Ipswich Port Limited a successor company for the purposes of Part 1 of the Ports Act 1991. S.I. 2002 No. 3269 designated ABP as the harbour authority for Ipswich and effected the transfer of the port undertaking and the company's statutory powers and duties, including its powers of general direction, to ABP.

Resolution of overlapping powers issue

1.23 Section 40A(7) of the HA 1964 provides that the designation order may amend or repeal any statutory provision of local application which is inconsistent with the power to give harbour directions or unnecessary as a result of the power.

³ "dock" means the dock belonging to the Commission and includes locks, basins and cuts forming part of the dock.

⁴ "the" port means the port, harbour and dock of Ipswich and any part of the river between Stoke Bridge and a line drawn across the river from Shotley Point to Fagborough Cliff.

If ABP were to be designated in respect of Ipswich, this section would need to be used to repeal its existing powers of general direction with respect to Ipswich and related provisions affected by the powers conferred by designation. Any directions given in reliance on those powers would cease to have effect.

The Designation Order

1.24 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 C-1 to C-14) to be fit and proper bodies to be designated with the power to give harbour directions?

YES/NO - if no, please give your reasoning

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 C-1 to C-14)

YES/NO - if 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?

YES/NO - if yes, please provide your reasoning.

Procedure for harbour directions

- 1.25** 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.
- 1.26** 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.
- 1.27** 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.

1.28 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

1.29 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 £2,500⁵.

Port Marine Safety Code (PMSC)

1.30 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

1.31 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.

1.32 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.

⁵ Criminal Justice Act 1991 section 17 (Increase of certain maxima)

1.33 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.

What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing on Friday 16 January 2015. 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 Regulatory Policy Committee (RPC) Confirmation that the measure is deregulatory and the Reducing Regulation Committee has given clearance to consult on the measure.

Regulatory Triage Assessment

Title of regulatory proposal	Designation of harbour authorities with the power to give harbour directions
Lead Department/Agency	Department for Transport
Expected date of implementation	SNR 9
Origin	Domestic
Date	29 September 2014
Lead Departmental Contact	Ellen Duffy
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 to give harbour directions (to masters of ships) to control movements, mooring and unmooring, manning and equipment of ships in their harbour. At present, in order to obtain the power to do this they are obliged 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 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. This procedure would not require Secretary of State involvement so they can be put in place much more quickly than through byelaws which require his confirmation.

Government intervention is now 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.

The SHAs for 32 harbours in England and non-fishery harbours in Wales have submitted formal applications to the Secretary of State to be designated (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 these only one SHA is publicly owned. The remaining 31 are privately owned (24 are companies limited by guarantee and 7 are private trust entities, akin to companies).

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: We are aware of 35 out of 175 SHAs in the UK who currently have the power to give general directions. This measure gives the others the option to acquire it through the designation process which is a swifter and less costly and complex mechanism than other means (HRO under HA 1964).

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.

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 a newly formed National Directions Panel (NDP) which will retain an ongoing oversight of designated harbour authorities 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 a harbour authority will exercise at a later stage 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.

In complying with the harbour directions Code of Conduct SHAs were asked to submit details of the outcome of consulting harbour users, or state when and how they intended to consult 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, Two-out status

Designating SHAs with the power to give harbour directions is a permissive measure and falls within the scope of OITO, as an Out. It is deregulatory because it will simultaneously designate the SHAs for 32 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). 24 private sector HAs have applied for the powers providing evidence that they think this is beneficial to them.

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.

Departmental signoff (SCS):	Signature
	Linda Willson
Better Regulation Unit signoff:	Date
	29/09/2014
Better Regulation Unit signoff:	Signature
	Chris Simon
Better Regulation Unit signoff:	Date
	29/09/2014

Economist signoff (senior analyst):	Signature Jamie Coventry
	Date 29/09/2014

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. The SHAs for 32 harbours in England and non-Fishery harbours in Wales have submitted

applications to be designated in the first such order. Of these 24 are private companies, 7 are privately owned trust ports, while one is owned by a district council.

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 sets out the requirements of the Secretary of State before a harbour authority is included in a harbour directions designation order including giving an Assurance Statement that they will abide by a Harbour Directions Code of Conduct as agreed by industry representatives in a newly formed National Directions Panel which will retain 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 appear perverse not to proceed to the second stage of actual designation of harbour authorities desiring the power in order to achieve the deregulatory outcome.

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 (we are aware of 35 out of 175 SHAs in the UK who 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 current designation order will simultaneously designate the statutory harbour authorities at 32 harbours with the power.

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 a short 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 a newly formed National Directions Panel (NDP) which will retain an

ongoing oversight of designated harbour authorities 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 of 32 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 £60,000 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, Two 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”.

Amendments to the Harbours Act 1964 by section 5 of the Marine Navigation Act 2013

5. Harbour directions.

After section 40 of the Harbours Act 1964 insert—

“Harbour directions

40A Directions

(1) A designated harbour authority may give directions (“harbour directions”) in respect of ships—

- (a) within their harbour, or
- (b) entering or leaving their harbour.

(2) A harbour direction may relate to— .

- (a) the movement of ships;
- (b) mooring or unmooring;
- (c) equipment (including nature and use);
- (d) the manning of ships.

(3) A harbour direction may require the master of a ship to provide information to a specified person in a specified manner.

(4) “Designated harbour authority” means—

- (a) a harbour authority for a fishery harbour in Wales who are designated by order of the Welsh Ministers,
- (b) a harbour authority for any other harbour in England or Wales who are designated by order of the Secretary of State, and

(c) a harbour authority for a harbour in Scotland who are designated by order of the Scottish Ministers.

(5) A harbour direction is subject to any direction under section 52 of the Harbours, Docks and Piers Clauses Act 1847 (directions by harbour master).

(6) A harbour authority may not give a harbour direction which conflicts with an enactment.

(7) An order designating a harbour authority may amend or repeal any statutory provision of local application which the person making the order thinks is—

(a) inconsistent with the power to give harbour directions, or

(b) unnecessary as a result of the power.

40B Procedure

(1) Harbour directions must be in writing.

(2) Before giving harbour directions a harbour authority must consult such representatives of users of the harbour as the authority think appropriate.

(3) A harbour authority must make such arrangements as they think appropriate for publicising a proposed harbour direction for at least 28 days before it is given.

(4) A harbour authority must—

(a) make harbour directions available for inspection, and

(b) supply a copy to anyone who requests it.

(5) A harbour authority may charge for the supply of copies.

(6) As soon as is reasonably practicable after giving a harbour direction the harbour authority must publish a notice in a newspaper specialising in shipping news—

(a) stating that a harbour direction has been given, and

(b) giving details of the arrangements for the inspection and supply of copies of harbour directions.

40C Enforcement.

(1) The master of a ship must ensure that harbour directions are complied with.

(2) Breach of subsection (1) without reasonable excuse is an offence.

(3) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

40D Supplemental.

(1) Harbour directions—

(a) may make provision that applies generally or only in relation to specified circumstances, areas, periods or descriptions of ship, and

(b) may make different provision for different circumstances, areas, periods or descriptions of ship.

(2) Harbour directions may be varied or revoked by subsequent harbour directions.

(3) In section 40A—

“mooring” includes casting anchor, and

“unmooring” includes weighing anchor.”

(2) In section 54 (orders and regulations) at the end insert—

“(5) A power of the Secretary of State or Welsh Ministers to make an order under section 40A is exercisable by statutory instrument.

(6) A statutory instrument containing an order under section 40A—

(a) if made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament,

(b) if made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

(3) In section 57(1) (interpretation) insert at the appropriate place—

““master”, in relation to a ship, means the person who has command or charge of the ship for the time being;”.

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 C-1 to C-14) to be fit and proper bodies to be designated with the power to give harbour directions?

YES/NO - if no, please give your reasoning

Question 2

Are you content with the port-user group arrangements proposed at the 31 harbours for which harbour directions applications have been made (see Annexes C-1 to C-14)

YES/NO - if 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?

YES/NO - if yes, please provide your reasoning.

Annex C-1: Application of Associated British Ports

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

Associated British Ports (ABP) application to be designated with the power to give harbour directions is made in respect of:

13 harbours in England: Goole, Grimsby, Hull, Immingham, Barrow, Fleetwood, Garston, Ipswich⁶, Kings Lynn, Lowestoft, Plymouth (Mill Bay), Silloth, and Teignmouth Quays.

5 non-fishery harbours in Wales: Barry, Cardiff, Newport (South Wales), Port Talbot and Swansea.

⁶ ABP has existing powers of general direction with respect to Ipswich which will require to be repealed if they proceed with designation under section 40A of the Harbours Act 1964 (see paragraphs 1.17 to 1.23 above for more detail).

Annex C-2: Application of Cattewater Harbour Commissioners

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

Annex C-3: Application of Chichester Harbour Conservancy

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

Annex C-4: Application of Crouch Harbour Authority

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

Annex C-5: Application of Dart Harbour and Navigation Authority

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

Annex C-6 - Application of Falmouth Docks and Engineering Co.

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

Annex C-7: Application of Falmouth Harbour Commissioners

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

Annex C-8: Application of Fowey Harbour Commissioners

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

Annex C-9: Application of Hayle Harbour Authority Ltd

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

Annex C-10: Application of Mostyn Docks Ltd

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

Annex C-11: Application of Heysham Port Ltd (Peel Ports)

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

Annex C-12: Application of the Manchester Ship Canal Company Ltd (Peel Ports)

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

Annex C-13: Application of South Hams District Council for Salcombe Harbour

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

Annex C-14: Application of Sutton Harbour Company (Plymouth)

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

Annex D - 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 1/14 Great Minster House
London SW1P 4DR

Email consultation@dft.gsi.gov.uk (Please do not send consultation responses to this e-mail address)

Consultation principles

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

- departments should explain what responses they have received and how these have been used in formulating policy'

This consultation is for a reduced 4 week period as the applicant harbour authorities have conducted consultations with their harbour users and other relevant stakeholders regarding their intention to seek the power to make harbour directions and summarised the outcome as part of their application. Additionally an industry-led National Directions Panel is in place, has issued a Code of Conduct, and will oversee the exercise of the power once conferred on the applicant harbour authorities.

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 (BTA)

National Federation of Fishermen's Organisations (NFFO)

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).