



Department  
for Transport

# Consultation on Guidance on Harbour Closure Orders and Pilotage Function Removal Orders for English harbours and Welsh non-fishery harbours

August 2015

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# Executive summary

## Introduction

1. Harbour authorities are responsible for managing and running safe and efficient harbours. Their powers are laid out in local Acts and Orders. Harbour authorities have particular responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and the protection of the port environment.
2. Under the non-statutory Port Marine Safety Code, developed collaboratively by industry and government, harbour authorities are encouraged to keep their powers under review and take action as necessary to ensure they are appropriate. In some cases this may mean relinquishing powers that are no longer necessary for the safe and economic operation of the harbour, for example if the harbour is no longer commercially viable owing to a sustained reduction in traffic.
3. The Marine Navigation Act 2013 created two new processes allowing the relevant administration in England, Wales and Scotland to make an order revoking a harbour authority's status as either a Harbour Authority as defined in the Harbours Act 1964 ("the 1964 Act"), generally known as a Statutory Harbour Authority, or a Competent Harbour Authority for the purposes of the Pilotage Act 1987 ("the 1987 Act"). This guidance does not apply in the Scottish context.
4. **The harbour closure order guidance is statutory guidance issued under section 17A(2) of the 1964 Act** which requires the Secretary of State to publish guidance about the circumstances in which a closure order will be made. As part of this, the Secretary of State must have regard to the 'underlying purpose', namely permitting or requiring harbour authorities to cease to maintain harbours which are no longer commercially viable or necessary. This guidance sets out how the requirement that the Secretary of State has regard to the underlying purpose of a harbour closure order will be implemented in practice and the information required to be provided by harbours applying for a closure order.

5. This document also provides non-statutory guidance on the process that will be followed for an Order to remove a harbour authority from the list of designated Competent Harbour Authorities for the purposes of the 1987 Act.
6. **This consultation seeks your views on a draft Guidance document (Annex E) which covers statutory guidance on the circumstances in which a harbour closure order will be made under section 17A of the 1964 Act and non-statutory guidance on the process for applying for a pilotage function removal order under section 1(4A) of the 1987 Act.**

## How to respond

The consultation period began on Tuesday 18 August 2015 and will run until Tuesday 13 October 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 the following link:

<https://www.gov.uk/dft#consultations>

or you can contact Caroline Wall at the below address if you need alternative formats (Braille, audio CD, etc.).

Please send consultation responses to:

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Maritime Commerce and Infrastructure Division  
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Phone number: 020 7944 6251

or

By e-mail: [ports@dft.gsi.gov.uk](mailto:ports@dft.gsi.gov.uk)

Please quote "Ports Guidance - DfT 2015-13" 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. Consultation on draft Guidance on Harbour Closure Orders and Pilotage Function Removal Orders.

- 1.1** This consultation seeks views on a Guidance document (Annex E) giving statutory guidance on the circumstances in which harbour closure orders will be made and additional guidance on the process for pilotage function removal orders.

## PART A: HARBOUR CLOSURE ORDERS

- 1.2** Section 6 of the Marine Navigation Act 2013<sup>1</sup> ("**the 2013 Act**") inserted new sections 17A-17F into the Harbours Act 1964 ("**the 1964 Act**") empowering the Secretary of State to make harbour closure orders. Hitherto, the 1964 Act did not provide for complete closure of a harbour by means of a Harbour Revision Order ("HRO"), only partial closure. A Harbour Authority that wished to close and/or cease to be a statutory harbour authority ("SHA"), that is to say a harbour authority as defined in the 1964 Act, would have to promote a local Act of parliament to achieve this, which could be both costly and time consuming.
- 1.3** In contrast, a Harbour Closure Order ("HCO") provides a relatively low cost and straightforward way of achieving this objective. While the Department does not anticipate many SHAs applying for these orders, they may be a useful and suitable approach for some.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2013/23/section/6>

- 1.4** Part A of the draft Guidance document is statutory guidance on harbour closure orders in fulfilment of the Secretary of State's obligation under section 17A(2) of the 1964 Act and explains the circumstances in which a harbour closure order will be made. In doing so, the Secretary of State must have regard to the underlying purpose of permitting or requiring SHAs to cease to maintain harbours which are no longer commercially viable or necessary.
- 1.5** This guidance is aimed at SHAs who wish to apply for a harbour closure order under section 17A(1)(a) of the 1964 Act, though sections 17A(1) (b) and (c) provide respectively for the Secretary of State to make a harbour closure order with the consent of the SHA or if the Secretary of State has consulted the SHA and is satisfied that they are unlikely to object.
- 1.6** Part A of Annex E is laid out as follows:

**Section 1** (pages 6 to 9) sets out the background to HCOs

**Section 2** (pages 10 to 13) on the content of a harbour closure orders adheres closely to the detailed provisions in sections 17B (Content of closure order), 17C (Harbour closure orders property etc) and 17F (Supplemental).

**Section 3** (pages 14 to 19) notes that section 17D(1) of the 1964 Act applies the procedure set out in Part 1 of Schedule 3 to the Act<sup>2</sup> to HCOs. It is the same procedure as for HROs but with modifications specific to some closure orders. The Secretary of State is empowered under the 1964 Act to recoup the costs of any inquiry or hearing held into an HCO which can be costly and the Department would seek to recoup any such costs. However, this approach will be kept under review as applications for HCOs are considered (see paragraph 3.4 of Part A of the guidance).

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1964/40/schedule/3/part/>



### **Question 1**

Are there any areas of the section of the guidance on harbour closure orders (Annex E Part A) where you think additional detail would be helpful?

YES/NO. If yes, please explain what additional detail you would like to see.

### **Question 2**

Are there any other organisations or types of organisations that should typically be included in the list of consultees (Annex E Part A, paragraph 3.12)?

YES/NO. If yes, please specify

## **Full or partial closure**

**1.7** An HCO may remove all the statutory functions of an SHA (full closure) or specified ones (partial closure). Partial closure of a viable harbour is not a matter for such an order, as it would not meet the statutory underlying purpose. An HRO under section 14 of the 1964 Act would be more appropriate. There is currently no fee for applying for a harbour closure order though the Department retains the right to do so under legislation (ref. paragraph 3.8 of Part A of the guidance, third bullet).

## **The underlying purpose that must be considered by the Secretary of State**

**1.8** In accordance with section 17A(2) of the 1964 Act the Secretary of State must have regard to the underlying purpose, as defined in section 17A(3), in determining whether or not to make a harbour closure order. The underlying purpose is defined in the legislation as the purpose of permitting or requiring SHAs to cease to maintain harbours which are no longer commercially viable or necessary. In practice, this means that the Secretary of State will consider

matters relating to whether the harbour is still commercially viable, and/or whether it is still necessary, which may include (but are not limited to) the following factors:

- (a) a change in the local economic area, reducing demand for the use of the harbour;
- (b) physical restrictions in terms of the size of vessels that can access its facilities making ongoing usage unviable;
- (c) a decline in the number of vessels using the area;
- (d) competition with other local ports;
- (e) a change in the type of vessels using the area.

**1.9** If a harbour is not commercially viable then the SHA may not be able to fulfil the duties and costs imposed on it by its statutory functions. This may cause dis-benefits to the SHA and those using or considering using the harbour. Accordingly, the Secretary of State may form the view that the underlying purpose test is met and that the harbour should be closed.

**Question 3**

Are you satisfied the guidance is sufficiently clear about the requirement for the Secretary of State to have regard to the underlying purpose set out in section 17A of the Harbours Act 1964 of permitting or requiring harbour authorities to cease to maintain harbours that are no longer commercially viable or necessary and the circumstances in which a closure order will be made (Part A of Annex E paragraphs 1.6 and 1.7)?

YES/NO. If no, please explain why.

## **An SHA's obligations under the general law**

- 1.10** As well as its functions under its own local statutes, an SHA also has duties and powers under the general law which need to be taken account of in a harbour closure order. For example, an SHA has responsibilities as a local lighthouse authority under section 193 of the Merchant Shipping Act 1995 ("the 1995 Act") to mark and light its harbour. It also has wreck marking and removal powers under section 252 of the 1995 Act.
- 1.11** There may also require to be provision made in the closure order in relation to pension schemes for an SHA's officers.

### **Question 4**

Reference is made to a harbour authority's responsibilities under general legislation as regards lighting and buoying, wrecks and pensions (Annex E Part A, paragraph 2.8). Are there any other generic responsibilities for harbour authorities under general legislation that we should highlight in the guidance as needing to be provided for in a harbour closure order?

YES/NO. If yes, please specify.

## **Statement of reasons**

- 1.12** Whilst not required by legislation it is strongly advised that the SHA, when applying for a closure order, includes a statement of reasons that explains:
- a) why there is a need for a closure order;
  - b) whether it is proposed to remove all the statutory functions or only certain ones;
  - c) the need for any transitional provisions;
  - d) the proposals for transfer of property, rights or liabilities;

e) an assessment of likely costs and benefits of its proposals (including, but not limited to, the impact on harbour users and others with an interest in the harbour or who may be affected by harbour closure).

The statement of reasons will need to explain the basis for each provision the SHA requires in the draft Order.

### Question 5

Is there any further information you think we should ask a harbour authority to provide in the requested statement of reasons (Annex E Part A, paragraphs 2.1 and 2.2)?

YES/NO. If yes, please specify

## PART B: PILOTAGE FUNCTION REMOVAL ORDERS

**1.13** Section 1 of the 2013 Act inserted new provisions into section 1 of the Pilotage Act 1987 ("**the 1987 Act**") which enable the Secretary of State to make an order relieving an SHA of its pilotage functions if they are no longer necessary in its area of jurisdiction as a "competent harbour authority" for the purposes of the 1987 Act.

**1.14** Part B of the Guidance (pages 18-20 of Annex E) sets out the background to the pilotage function and the responsibilities of competent harbour authorities, and, as there is no procedure set out in legislation for pilotage function removal orders, the intended process to be followed (paragraphs 4.8 to 4.11) in respect of such orders.

**1.15** To date one pilotage function removal order<sup>3</sup> has been made under section 1(4A) of the 1987 Act, which removed the competent harbour authority status of Yarmouth (Isle of Wight) Harbour Authority. The intended process for handling such orders set out in Part B of the Guidance document draws on the Department's experience of dealing with the Yarmouth

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<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2015/132/made>

case, albeit that it was a relatively straightforward case, pilotage services never having been provided at the harbour. Future applications may entail more factors that need to be taken into consideration before the Department can reach a decision on whether to grant an order.

- 1.16** The Guidance on pilotage function removal orders is necessarily less detailed than that for harbour closure orders as an order only needs to provide for the removal of a single function. In comparison with harbour closure orders, there are fewer detailed requirements as to content set out in law and there is no requirement on the Secretary of State to provide statutory guidance.

#### **Question 6**

Do you agree with the proposed process for a pilotage function removal order (Annex E Part B, paragraphs 4.8-4.11)?

YES/NO. If no, please state what elements you would alter, add or remove to the process.

#### **Question 7**

Should a competent harbour authority seeking a pilotage function removal order be required to provide any further information than that listed in at paragraph 4.9 of Annex E Part B?

YES/NO. If yes, please state what information and why you believe it should be required.

## **GENERAL**

### **Devolution**

- 1.17** Port policy legislation is a devolved matter. The Secretary of State in England will assess applications for harbour closure



orders or pilotage function removal orders for ports in England and non-fishery ports in Wales.

- 1.18** In the case of a fishery harbour in Wales, an SHA should liaise with the Welsh Government.
- 1.19** However the Government has announced its intention to devolve port development to the Welsh Government. The new primary legislation needed to achieve this, as part of a wide-ranging devolution settlement for Wales, was included in the Queen's Speech on 27 May 2015. A Wales Bill is currently under development.
- 1.20** This first edition of the Guidance document is drafted to accord with the current position in law regarding Wales.
- 1.21** The Scottish Ministers are responsible for all harbours in Scotland. Transport Scotland has been consulted regarding the drafting of this Guidance document so as to align the general Government approach to dealing with harbour closure and pilotage function removal orders. However, Transport Scotland will be issuing their own Guidance document tailored somewhat to reflect objectives in Scotland.
- 1.22** The legislation relating to both types of order covered by this guidance does not apply in Northern Ireland.

### **Question 8**

Do you have any other comments on Part A or Part B of the draft guidance (Annex E) not covered in questions 1-7 above, for example the Department's approach regarding inquiry/hearing costs and Order fees (see paragraphs 3.4 and 3.8 of Part A of the guidance)?

YES/NO. If yes, please give your comments

# What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing on Tuesday 13 October 2015. Paper copies will be available on request.

If you have questions about this consultation please contact:

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# Annex A: Impact assessment

- A.1** In the case of the statutory guidance on harbour closure orders, as the guidance clarifies what is set out in new sections 17A-17F of the 1964 Act rather than placing any new statutory duty on business to comply an impact assessment has not therefore been prepared.
- A.2** The guidance on pilotage function removal orders, elaborates a suggested process to be followed by a competent harbour authority for the purposes of the 1987 Act, given that there is no procedure set out in the legislation. As the process is not being imposed, no impact assessment has been prepared.

# Annex B: Full list of consultation questions

## Consultation questions on Part A of the Guidance (harbour closure orders)

### Question 1

Are there any areas of the section of the guidance on harbour closure orders (Annex E Part A) where you think additional detail would be helpful?

YES/NO. If yes, please explain what additional detail you would like to see.

### Question 2

Are there any other organisations or types of organisations that should typically be included in the list of consultees (Annex E Part A, paragraph 3.12)?

YES/NO. If yes, please specify

### Question 3

Are you satisfied the guidance is sufficiently clear about the requirement for the Secretary of State to have regard to the underlying purpose set out in section 17A of the Harbours Act 1964 of permitting or requiring harbour authorities to cease to maintain harbours that are no longer commercially viable or necessary and the circumstances in which a closure order will be made (Part A of Annex E paragraphs 1.6 and 1.7)?

YES/NO. If no, please explain why.

**Question 4**

Reference is made to a harbour authority's responsibilities under general legislation as regards lighting and buoying, and wrecks (Annex E Part A, paragraph 2.8). Are there any other generic responsibilities for harbour authorities under general legislation that we should highlight in the guidance as needing to be provided for in a harbour closure order?

YES/NO. If yes, please specify.

**Question 5**

Is there any further information you think we should ask a harbour authority to provide in the requested statement of reasons (Annex E Part A, paragraphs 2.1 and 2.2)?

YES/NO. If yes, please specify

**Consultation questions on Part B of the Guidance  
(pilotage function removal orders)****Question 6**

Do you agree with the proposed process for a pilotage function removal order (Annex E Part B, paragraphs 4.8-4.11)?

YES/NO. If no, please state what elements you would alter, add or remove to the process.

**Question 7**

Should a competent harbour authority seeking a pilotage function removal order be required to provide any further information than that listed in at paragraph 4.9 of Annex E Part B?

YES/NO. If yes, please state what information and why you believe it should be required.



## Consultation questions: general

### **Question 8**

Do you have any other comments on Part A or Part B of the draft guidance (Annex E) not covered in questions 1-7 above, for example the Department's approach regarding inquiry/hearing costs and Order fees (see paragraphs 3.4 and 3.8 of Part A of the guidance)?

YES/NO. If yes, please give your comments

# 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:

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Department for Transport  
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London SW1P 4DR

Email [consultation@dft.gsi.gov.uk](mailto:consultation@dft.gsi.gov.uk)

# Annex D: List of those consulted

British Ports Association (BPA)

The Crown Estate

Marine Management Organisation (MMO)

Maritime and Coastguard Agency (MCA)

National Federation of Fishermen's Organisations (NFFO)

National Resources Wales (NRW)

Natural England

Royal Yachting Association (RYA)

Trinity House

UK Chamber of Shipping (CoS)

UK Harbour Masters' Association (UKHMA)

UK Major Ports Group (UKMPG)

UK Maritime Pilots' Association (UKMPA)

Welsh Government

# Annex E: Guidance on Harbour Closure Orders and Pilotage Function Removal Orders

Please see separate Guidance document uploaded with this consultation document.