



Memorandum to the Transport Select Committee

Post Legislative Assessment of the Marine Navigation Act 2013

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

March 2017



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Introduction

1. This memorandum provides a post-legislative assessment of the Marine Navigation Act 2013¹ (the Act) and has been prepared by the Department for Transport for submission to the Transport Select Committee.
2. It will be published as part of the process set out in *Post-Legislative Scrutiny – the Government’s Approach*².

Objectives

3. The aims of this assessment are to:
 - allow Parliament to assess whether legislation is working as intended;
 - contribute to better regulation;
 - improve focus upon implementation and delivery; and
 - identify and disseminate best practice.
4. The Act received Royal Assent on 25 April 2013. It amends a number of other Acts relating to pilotage, harbour authorities, the General Lighthouse Authorities and the movement, mooring, manning and equipment of ships entering, leaving or within harbours as well as extending the geographical jurisdiction for Port Police Forces in England and Wales beyond the existing limit related to the boundary of the port. These provisions had been identified as requiring amendment following an internal review and were published, together with a number of other measures, as a Draft Marine Navigation Bill in 2008 for pre-legislative scrutiny³ and consultation with stakeholders. These processes confirmed that the existing legislation in these areas was out of date or imposed unnecessary regulatory costs or burdens.
5. The key objective of the Act’s provisions was therefore to enhance safety by ensuring that organisations which business relies on have the powers they need to operate effectively and also, where appropriate, to remove burdens on business by:

¹ Chapter 23.

² *Post-Legislative Scrutiny – the Government’s Approach*, CM 7320, March 2008. Available from www.gov.uk/government/publications/post-legislative-scrutiny-the-governments-approach

³ The Draft Marine Navigation Bill, Ninth Report of Session 2007-08, HC 709, July 2008 (available from www.publications.parliament.uk/pa/cm200708/cmselect/cmtran/709/709.pdf).

- enabling harbour authorities to be relieved of their statutory duties where ports are no longer commercially viable;
 - increasing flexibility in managing Pilotage Exemption Certificates (PEC);
 - easing the acquisition of general directions powers by harbour authorities;
 - enabling Port Police to carry out their enforcement duties effectively;
 - clarifying the jurisdiction of the General Lighthouse Authorities and their powers to mark wrecks electronically;
 - broadening the types of commercial activity which could be undertaken by General Lighthouse Authorities; and
 - introducing greater flexibility in the determination of ship manning standards.
6. Since the Act contains a number of amendments to existing legislation, the specific powers granted by each section, and the problems they seek to address, are explained in more detail below.

Section 1 – Power to remove Harbour Authorities pilotage functions

7. There was no process for relieving a competent harbour authority (CHA – as defined in the Pilotage Act 1987) of its legal duties to provide pilotage where activity at the port no longer warranted the provision of pilotage services.
8. Section 1 of the Act therefore provided the appropriate national authority with power to specify a harbour authority in England, Wales or Scotland as ceasing to be a CHA. This would mean that the harbour authority would no longer be required to carry out certain duties set out in the Pilotage Act 1987 including:
- keeping under review whether any and, if so, what pilotage services need to be provided for the safety of ships in its harbour or its approaches; and
 - whether pilotage should be compulsory.
9. The Secretary of State has published guidance⁴ on the circumstances in which a pilotage function removal order will be made.

Section 2 – Pilotage Exemption Certificates: extension of eligibility

10. Many harbours require ships traversing their waters to use a maritime pilot with appropriate experience. This generates additional costs for shipping companies although a harbour authority can grant a PEC where ships' officers have the required skills and knowledge to get their vessels into the harbour safely. However, restrictions on the granting, suspension and revocation of such certificates made this arrangement unnecessarily inflexible.
11. Section 2 amended the Pilotage Act 1987 to remove the restriction whereby only the master or first mate of a ship may hold a PEC. Now any deck officer of a ship may hold a PEC provided the relevant competent harbour authority is satisfied that they have the necessary skill, experience, local knowledge and sufficient knowledge of English to be capable of piloting one or more specified ships within its harbour.

⁴ See www.gov.uk/government/uploads/system/uploads/attachment_data/file/521831/guidance-harbour-closure-pilotage-function-removal-orders.pdf.

Section 3 – Pilotage Exemption Certificates: suspension and revocation

12. For the same reasons as the powers introduced under Section 2, Section 3 also extended the circumstances in which a competent harbour authority can, by written notice, suspend or revoke a PEC. For example, previous legislation would not have permitted immediate suspension of a PEC if the holder were found to be temporarily incapable of navigating a ship due to being under the influence of alcohol. The extension also prescribes four specific cases in which a harbour authority can suspend or revoke a PEC including where false information has been supplied or where professional misconduct is suspected.

Section 4 – Pilotage Notification

13. There was no offence under the Pilotage Act 1987 in circumstances where a ship did not give a pilotage notification before it was navigated in an area for which pilotage notification was in force.

14. Section 4 amended the Pilotage Act 1987 to create a new offence of failure to provide such notification by the master of a ship.

Section 5 – Procedure for Harbour Authorities to obtain powers to make directions for ships in their waters

15. Powers of general direction are conferred on some harbour authorities by the Acts or Orders establishing them. Such powers are a useful and efficient means to ensure safety and smooth operations. However, many harbour authorities lack them and would each need to apply for a Harbour Revision Order to obtain them. This can be a costly, and lengthy, process.

16. Section 5 amended the Harbours Act 1964 to enable the appropriate national authority, by order, to designate harbour authorities enabling them to give directions to ships within, entering or leaving their harbours. Such directions may relate to:

- the movement of ships;
- ship mooring or unmooring;
- ship equipment; or
- ship manning.

17. Before making a direction, a harbour authority must consult with users and publicise its contents for 28 days. The new provisions also made it an offence if the master of a ship fails to ensure compliance with any harbour direction.

Section 6 – Harbour Closure Orders

18. The Harbours Act 1964 only made provision for the partial closure of a harbour. Full closure could be achieved only by promoting a private Act of Parliament which was time-consuming and costly for both the harbour authority and taxpayers.

19. Section 6 amended the Harbours Act 1964 to provide the appropriate national authority with the power to make a closure order relieving the harbour authority of some, or all, of its statutory duties. In making a closure order, the appropriate authority must have regard to the underlying purpose which is defined as the “*the purpose of permitting or requiring harbour authorities to cease to maintain harbours which are no longer*”

commercially viable or necessary.” The Secretary of State has published guidance⁵ on the circumstances in which a closure order will be made.

Section 7 – Port Constables: Extension of jurisdiction

20. Six harbours in England have their own Port Police Forces. However, officers in those forces were previously limited to carrying out their duties within the port and within one mile of the port. This unnecessarily limited their ability to protect maritime businesses from crime.
21. Section 7 extended the geographic jurisdiction for Port Police Forces in England and Wales beyond the existing limit related to the boundary of the port where the Chief Officer of Police for the local Police Force gives their consent. By removing the jurisdiction limit, Port Police Forces are better able to carry out a range of policing tasks without the assistance of the Home Office Police Forces.

Sections 8 & 9 – General Lighthouse Authority areas and commercial activities

22. The three General Lighthouse Authorities (GLAs) for the UK and the Republic of Ireland were previously restricted in the extent to which they could reduce their operating costs by engaging in commercial operations where they have surplus capacity. This reduced their opportunity to earn income that could help keep down the level of Light Dues charged on ships visiting UK ports. The powers of GLAs to provide essential aids to navigation outside of UK territorial waters were also unclear.
23. Section 8 amended the Merchant Shipping Act 1995 to clarify the area in which each GLA may operate beyond territorial waters to include the UK’s Exclusive Economic Zone⁶, in which the UK has jurisdiction to prevent ship pollution.
24. Section 9 amended the Merchant Shipping Act 1995 to authorise GLAs to enter into agreements, with the Secretary of State’s approval, for:
 - others to use their assets;
 - provide consultancy; and
 - other services.

25. Section 9 also allows the GLAs to obtain reimbursement from the General Lighthouse Fund in respect of certain expenditure incurred in connection with such agreements. Any sums received by the GLAs under such agreements are paid into the General Lighthouse Fund.

Section 10 – Manning requirements for ships

26. There was little flexibility in the drafting of the provisions which determine the standards which must be met by seafarers in order for them to be qualified for the purposes of manning a ship.
27. Section 10 amended the Merchant Shipping Act 1995 to allow regulations or provisions to prescribe or specify conditions by reference to documents prepared by other people, including amended versions of such documents where the Secretary of State has approved those amendments.

⁵ See www.gov.uk/government/uploads/system/uploads/attachment_data/file/521831/guidance-harbour-closure-pilotage-function-removal-orders.pdf.

⁶ See www.gov.uk/government/uploads/system/uploads/attachment_data/file/346014/UK_Exclusive_Economic_Zone.pdf.

Section 11 – Marking Wrecks

28. There was a need to recognise innovations in technology that would allow harbour authorities and conservancy authorities, as well as the GLAs, to mark wrecks through the broadcast of relevant information on, for example, electronic devices and charts.
29. Section 11 amended the Merchant Shipping Act 1995 to facilitate the possibility of marking locations either with physical devices (such as buoys or lights) or by broadcasting relevant information.

Implementation

30. A number of new powers to make secondary legislation were inserted by the primary legislative amendments made by the Act as well as some clarifications of existing powers. These are explained below including any legislation which has been made under those powers.
31. Section 1 of the Act inserted a new subsections (4A) and (4B) into section 1 of the Pilotage Act 1987. This provides that the Secretary of State (for England and Wales) or Scottish Ministers (for Scotland) may remove a competent harbour authority's pilotage functions by naming it in a Pilotage Function Removal Order.
32. To date only one Pilotage Function Removal Order, the Yarmouth (Isle of Wight) Harbour Commissioners (Removal of Pilotage Functions) Order 2015⁷, has been made.
33. Section 5 of the Act inserted new section 40A into the Harbours Act 1964 which provides that the Secretary of State may designate harbour authorities with the power to give harbour directions.
34. To date, three orders have been made for England and Wales⁸ designating the harbour authorities for 29 harbours with the power to give harbour directions:
- Harbour Directions (Designation of Harbour Authorities) Order 2015⁹;
 - Harbour Directions (Designation of Harbour Authorities) (No. 2) Order 2015¹⁰; and
 - Harbour Directions (Designation of Harbour Authorities) Order 2016¹¹.
35. A further six harbour authorities have applied to be designated.
36. Section 6 of the Act inserted new subsection (17A) into the Harbours Act 1964 which provides that the Secretary of State or, where appropriate, Welsh or Scottish Ministers, with the power to make a Harbour Closure Order.
37. To date no harbour closure orders have been made although several expressions of interest have been received by the Department for Transport.
38. Section 10 of the Act inserted new section 4A into section 47 of the Merchant Shipping Act 1995 to clarify that the Secretary of State could include references to other

⁷ S.I. 2015/132 available from www.legislation.gov.uk/uksi/2015/132/contents/made.

⁸ This power has also been exercised in Scotland through the Harbour Authority Designation (Scotland) Order 2014 [Scottish S.I. 2014/166], available from www.legislation.gov.uk/ssi/2014/166/contents/made, which designated one harbour authority with the power to give harbour directions.

⁹ S.I. 2015/573 available from www.legislation.gov.uk/uksi/2015/573/contents/made as amended by the Harbour Directions (Designation of Harbour Authorities) (Amendment) Order 2016 [S.I. 2016/821] available from www.legislation.gov.uk/uksi/2016/821/contents/made.

¹⁰ S.I. 2015/1656 available from www.legislation.gov.uk/uksi/2015/1656/contents/made.

¹¹ S.I. 2016/820 available from www.legislation.gov.uk/uksi/2016/820/contents/made.

standards of competence or conditions for manning requirements for ships in regulations under subsection (1b).

39. This power has been used in conjunction with others within section 47 of the Merchant Shipping Act 1995 in making the Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015¹² and the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015¹³.

Consultation

40. The Department for Transport consulted with key industry and government stakeholders from 4 November to 5 December 2016. A total of 31 responses were received from a range of organisations including individual ports, port owners, Port Police Forces, representative organisations and the three GLAs. Given the scope of the Act, and the impact on both reserved activities and the devolution of powers contained in some of its provisions, Transport Scotland and the Welsh Government were also consulted. The responses in relation to each section are summarised below:

Section 1 – Power to remove Harbour Authorities pilotage functions

41. There was general agreement amongst stakeholders that these provisions were a useful addition. Responses from individual harbours, in particular, reported that it empowered them to react where risk assessments and other evidence indicated there would be no benefit, but additional cost, to the existing provision of pilotage services or continued regular reassessment where no change was anticipated. All those who had read, or were aware of the Secretary of State's guidance, indicated that it was clear and comprehensive and many stakeholders used the opportunity to highlight the vital importance of pilotage services as part of risk control strategies.

Section 2 – Pilotage Exemption Certificates: extension of eligibility

42. Although a small minority of stakeholders suggested that PECs should be restricted solely to Masters, the vast majority of responses welcomed the extension of the eligibility criteria. Ship owners, in particular, noted that the greater flexibility in rostering this offered could help to reduce fatigue especially in circumstances where extended pilotage was necessary.
43. Although only a small number of PECs had been issued to deck officers, and these mostly in relation to larger ports, there was no evidence to suggest that the extension of eligibility had impacted upon safety in any way. A number of responses suggested that, in their experience, rank was less important than experience but stressed the importance of individual harbours being able to make decisions based on local circumstances. Of those harbours which required pilotage, all indicated that they had reviewed and updated the relevant directions with ship owners noting that they had also updated any relevant guidelines or Pilotage Direction Manuals as appropriate.

Section 3 – Pilotage Exemption Certificates: suspension and revocation

44. Stakeholders reported that a small number of written warnings and, ultimately, suspensions had been issued with no compensation being offered in any of those cases. Harbour authorities reported that, although the powers had been used

¹² S.I. 2015/410 available from www.legislation.gov.uk/ukxi/2015/410/contents/made.

¹³ S.I. 2015/782 available from www.legislation.gov.uk/ukxi/2015/782/contents/made.

sparingly, they nevertheless believed them to be useful as they offered an enhanced ability to act in situations where enforcement was required as well as a further disincentive to deviate from the conditions of issue.

45. One stakeholder noted that all PEC holders were, effectively, suspended by proxy in some ports where, for example, fog routine was applied. This necessitated the embarkation of Port Pilots which, it was noted, had led to delays and additional costs.

Section 4 – Pilotage Notification

46. Stakeholders did not report any prosecutions being made under the new offences but those who commented felt that they were an important part of the harbour authorities' enforcement toolkit and were reasonable and proportionate to the offence.
47. Ship owners noted that it was critical for all ports and harbours to have an effective means of receiving notifications and to advertise these as some, particularly smaller, facilities had proved difficult to contact in advance.

Section 5 – Procedure for Harbour Authorities to obtain powers to make directions for ships in their waters

48. Stakeholders who had engaged with the process indicated that, once the power to issue directions had been gained, the process was certainly easier, quicker, simpler and cheaper and avoided the costly and protracted process involved in making a Harbour Revision Order. Many reported that the powers had been useful in reacting in a timely way should new issues or challenges arise.
49. However, a number of stakeholders noted that the definition of "ship" used within the Act meant that any directions issued were not applicable to the smaller vessels or personal watercraft which made up the bulk of users in their harbours. As a result, when directions were made, harbour authorities in particular noted that it was frequently necessary to retain or modify Byelaws to overcome this problem which added to the overall time and cost of making revisions.

Section 6 – Harbour Closure Orders

50. Although no stakeholders who responded had been through the process, several were considering closure following the introduction of the Act and reported that the guidance appeared to be clear and comprehensive. It was anticipated that the new process would be significantly quicker and cheaper than a Harbour Revision Order which a number of stakeholders indicated had represented an insurmountable barrier in the past due to the cost and level of bureaucracy involved.
51. Some stakeholders expressed concerns about the need to consider the broader implications of closure on the local community and that waterways or channels might be left unsupervised representing a potential danger to navigation. It is noted that these are all issues which are covered in the guidance, including the expectation that early consultation with local stakeholders and the relevant GLA, will be undertaken and the Secretary of State will take these into account before making any decision on closure.

Section 7 – Port Constables: extension of jurisdiction

52. Stakeholders indicated that the new powers had had a significant positive impact on the ability of Port Police Forces to respond to incidents and had been used on numerous occasions. The largest benefits have been in relation to traffic control,

searches of suspected criminal's home addresses and transfer of arrested persons to Home Office custody suites where officers are now self-sufficient and do not need to engage Home Office Force officers for assistance. Stakeholders also reported positive benefits accruing from public reassurance that officers were now able to uphold the law and protect local communities more effectively. Officers' professional development had also been enhanced through secondments with Home Office Forces with full powers of arrest where previously these were strictly limited in addition to facilitating joint operations.

53. Port Police Forces noted that many criminals were aware of the previous jurisdiction limits and, if they were not caught in the act, believed themselves to be safe once over a mile away from the port facilities. Recorded crime had also dropped noticeably since the new powers became available although it was recognised that there were many contributory factors to this success.
54. One stakeholder suggested that it may have been better to introduce these powers by enabling the local Home Office Force Chief of Police to determine the geographical extent and conditions which Port Police Forces could operate in outside of the previous one mile limit.

Sections 8 & 9 – General Lighthouse Authority areas and commercial activities

55. Stakeholders noted that the introduction of these powers had resulted in a number of positive benefits which were critical to navigation safety and to the protection of the marine environment. Whilst reaffirming that the statutory responsibilities of the GLAs were always given absolute primacy, the ability to utilise any spare capacity in their assets effectively and produce income for the General Lighthouse Fund were warmly welcomed as were the confirmation of jurisdiction and the facility to use modern aids to navigation systems.

Section 10 – Manning requirements for ships

56. Of those stakeholders who expressed a view, all were supportive and indicated that the change had introduced positive benefits particularly in respect of pilotage arrangements. However, whilst universally welcomed, some responses indicated that it was nevertheless critical to provide clarity as to which version of which standard was currently in force to facilitate compliance.

Section 11 – Marking wrecks

57. Stakeholders noted that there were a number of benefits to the ability of appropriate authorities using technology to mark wrecks and new dangers as well as physical marking. These included that information could be made available to mariners immediately through electronic marking and that this was easier to implement particularly in locations where it would be difficult and/or prohibitively expensive to provide a physical aid to navigation. However, a number of drawbacks were also highlighted including that such systems were not infallible, relied on vessels having the necessary equipment to detect them and an effective method of notification of any change, wreck locations needed to be accurately determined and that an electronic mark can never provide a visual aid.
58. Overall, stakeholders agreed that the Act had provided a useful complementary power providing the possibility of an immediate response to wrecks, outages and new

dangers but the drawbacks noted above meant that they were unlikely to entirely replace physical marks as the primary aids to navigation.

Other issues

59. The opportunity of consultation was used to ask stakeholders whether there was anything missing from the Act or if there were any other issues which they wished to raise. In addition to the definition of “ship” highlighted at paragraph 49 above, stakeholders also suggested that the Pilotage Act 1987 was itself overdue for review, that the Environmental Permitting (England and Wales) Regulations 2010¹⁴ should be amended to allow an exemption where a port or harbour had admitted a casualty vessel except where pollution was caused by negligence and that the Merchant Shipping Act 1995 should be amended to recognise that aids to navigation were not only provided by the GLAs and Local Light Authorities but also, for example, oil and gas platforms, offshore windfarms and aquaculture and provide those authorities with a statutory responsibility to supervise the provision of third party aids to navigation through improvement or prohibition notices. One stakeholder also suggested that the leisure section of the industry should be required to have a driving licence, insurance and a regular MOT equivalent to ensure the safety of their vessels and protection of third parties when in use.
60. The Department for Transport will consider all of these issues in the context of its on-going reviews of any relevant legislation in conjunction with other government departments where appropriate. Any proposals arising will be subject to consultation in due course.

Conclusion

61. Whilst the Act’s provisions were generally welcomed, there was disagreement amongst stakeholders as to its overall impact on navigation safety. A majority suggested that navigation safety had improved through the clarification and simplification of powers whilst a smaller number of stakeholders indicated that, in their view, there had been no obvious benefits. However, no stakeholders responded that there had been any adverse impacts and no evidence was supplied that the provisions of the Act have not met their intended objectives (although it is acknowledged that many of the powers it contains have yet to be tested to their full extent).
62. Due to an ever changing environment within the maritime world the Department for Transport will continue to keep the provisions of the Act under review to ensure that it remains fit for purpose and meets the expectations of those it affects.

¹⁴ S.I. 2010/675 (as amended). These Regulations are the responsibility of the Department for Environment, Food and Rural Affairs.

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