



Department  
for Transport

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

# **SUMMARY OF RESPONSES**

**January 2016**

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## 1. Introduction

1.1 In autumn 2015 The Department consulted on draft guidance covering two new processes created by the Marine Navigation Act 2013: harbour closure orders (HCOs) and pilotage function removal orders (PFROs).

1.2 The HCO guidance (Part A of the consultation document) is statutory guidance about the circumstances in which an HCO 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”. The draft HCO guidance sets out the following:

- how the requirement that the Secretary of State has regard to the underlying purpose of a harbour closure order will be implemented in practice
- the information that harbour authorities must provide when applying for an HCO
- the content of an HCO
- the procedure for HCOs

1.3 The draft HCO guidance also references the two instances when the Secretary of State would initiate an HCO (with the consent of the harbour authority, or if the Secretary of State has consulted the harbour authority and is satisfied that it is unlikely to object).

1.4 The PFRo guidance (Part B) is non-statutory guidance setting out the process that will be followed for an Order to remove a harbour authority from the list of designated competent harbour authorities (CHAs) for the purposes of the Pilotage Act 1987, thereby relieving it of its pilotage functions.

1.5 The Secretary of State for Transport is currently responsible for HCOs and PFROs for English harbours and non-fishery Welsh harbours. Welsh fishery harbours and Scottish harbours are respectively the responsibility of the Welsh and Scottish Governments. A draft Wales Bill was published on 20 October 2015 for pre-legislative scrutiny. If the Bill is passed through Parliament in its current form it will transfer responsibility for HCOs and PFROs for most non-fishery Welsh harbours to the Welsh Government.

## 2. Consultation

2.1 The consultation ran for 8 weeks from 18 August till 13 October 2015. The consultation documentation was published on the Gov.UK website ([www.gov.uk/government/consultations/harbour-closure-and-pilotage-function-removal-orders-draft-guidance](http://www.gov.uk/government/consultations/harbour-closure-and-pilotage-function-removal-orders-draft-guidance)) as well as being sent by e-mail to relevant national organisations.

2.2 A total of 11 responses were received from a range of organisations that have an interest in maritime and port matters. A full list of respondents can be found at Annex A. The majority of respondents replied using a proforma Consultation Response Form and some by e-mail. Not all of the respondents replied to all of the questions.

2.3 The 8 consultation questions are listed in Annex B.

## 3. Consultation outcome

The main themes arising from the responses are summarised below.

### **The environmental responsibilities of harbour authorities**

3.1 One respondent considered that the HCO guidance should make more explicit reference to the environmental responsibilities of harbour authorities under environmental legislation including the Conservation of Habitats and Species Regulations 2010, Wildlife and Countryside Act 1981 (as amended) and the Marine and Coastal Access Act 2009. In addition, many harbours lie within or close to natural, European and internationally designated statutory nature conservation sites including Sites of Special Scientific Interest, Marine Conservation Zones, Special Areas of Conservation, Special Protection Areas and Ramsar sites<sup>1</sup>. Accordingly, this body wished to see information on a harbour authority's environmental responsibilities in the background to the HCO guidance, and for the statement of reasons to be submitted by applicants to contain information on the environmental implications of harbour closure and whether any environmental responsibilities needed to be transferred to another body, with the consent of that body.

### **Harbour safety**

3.2 Several respondents emphasised the importance of considering safety when a harbour closure was contemplated, including the implications regarding the harbour authority's adherence to the Port Marine Safety Code (PMSC). Respondents considered that the statement of reasons should include details of the current

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<sup>1</sup> Ramsar sites are wetlands of international importance designated under the Ramsar Convention.

status of the applicant harbour authority's compliance with the PMSC, and any risk mitigation measures that would need to be taken, including whether another organisation should be identified which would be willing to take on the role of applying the principles of the PMSC in the harbour area.

### **Other responsibilities of harbour authorities**

3.3 Respondents were asked if there were any further responsibilities under general legislation for a harbour authority that should be provided for in an HCO, in addition to lighting and buoying, wrecks and pensions. Several respondents mentioned safety and environmental responsibilities which have been covered above. Other responsibilities mentioned by respondents were dredging, hydrographic surveying, maintaining navigation/flood defence structures and communications with harbour users including local notices to mariners and VHF communications. Also mentioned were responsibilities under security and contingency legislation and under oil spill and hazardous substances legislation.

### **Additional organisations to be consulted**

3.4 Consultees were asked to identify any other organisations that should typically be consulted in addition to those listed in paragraph 3.12 of the Guidance. Several respondents suggested that the Environment Agency should be added to the list. Other organisations suggested were the UK Major Ports Group, Local Resilience Forums, Local Emergency Services, and local stakeholders.

### **The “underlying purpose” in section 17A(3)(a)**

3.5 One respondent queried the interpretation of the wording “no longer commercially viable or necessary” which is part of the “the underlying purpose” to which the Secretary of State must have regard in producing HCO guidance.

## **4. Next steps**

4.1 The Department is currently reviewing the responses and how these might be reflected in the final version of the HCO/PFRO guidance which will be published in due course on the Gov.uk website.

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**LIST OF RESPONDENTS (TOTAL: 11)**

<b>Respondent</b>	<b>Type of Organisation</b>
Associated British Ports (ABP)	Port Group Operator
British Ports Association	Representative Organisation
Cornwall Council	Local Authority
Littlehampton Harbour Board	Harbour Authority
Maritime and Coastguard Agency (MCA)	Department for Transport Agency
Natural England	Statutory adviser to Government on natural environment in England
Nautilus International	Trade Union and Professional Organisation representing Masters, Officers, Cadets, Marine Pilots, Port Personnel and other Maritime Professionals
Port of London Authority	Harbour Authority
Royal Yachting Association	Representative Organisation for recreational boating
Trinity House	General Lighthouse Authority for England, Wales, Channel Islands and Gibraltar
UK Maritime Pilots Association	Representative Organisation

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CONSULTATION QUESTIONS

Harbour Closure Orders

**Question 1**

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

**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)?

**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, paragraphs 1.6 and 1.7)?

**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?

**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)?

## Pilotage Function Removal Orders

### **Question 6**

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

### **Question 7**

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

## General

### **Question 8**

**Do you have any other comments on Part A or Part B of the draft guidance 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)?**