



Department  
for Transport

# Post Implementation Review: Report on the Key Findings of the review of UK's implementation of Directive 2005/65/EC on enhancing port security

[DfTPIR019]

**Moving Britain Ahead**

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*On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.*

## Introduction

- 1.1 This report provides an overview of the Post Implementation Review (PIR) of the UK's transposition of Directive 2005/65/EC on enhancing port security ("the Directive") into domestic law. The Directive complements the security measures introduced by Regulation (EC) 725/2004 on enhancing ship and port facility security ("the EC Regulation") covering individual port facilities<sup>1</sup> where the immediate "ship/port interface" occurs by making an entire port (as opposed to a port facility) subject to a security regime in order to obtain maximum protection for maritime and port activities.
- 1.2 At national level, the Directive was transposed into UK law by SI 2009/2048 the Port Security Regulations 2009<sup>2</sup> ("the PSRs"). Minor amendments were effected to the PSRs by SI 2013/2815 the Port Security (Amendment) Regulations 2013<sup>3</sup>. The PSRs set out the main requirements of the Directive to delineate the boundary of a "port" for the purposes of the Directive (encompassing the individual port facilities covered by the EC Regulation), to designate a Port Security Authority (PSA) and appoint a Port Security Officer (PSO) for each, and to develop, review and maintain a Port Security Plan (PSP) based on a port security (risk) assessment (PSRA).
- 1.3 Prior to implementation of the Directive at local, port, level, a port security assessment was carried out by the Department for Transport (DfT) maritime security compliance inspectors at every port in the UK. If a port had a single port facility and the boundary of the port was found to be co-terminus with the boundary of that facility, the requirements of the Directive were effectively "switched off" as there was no additional port area to be encompassed. Thirty-three ports were found to be in-scope of the Directive at which PSAs were designated and PSA areas of jurisdiction delineated via 33 individual Designation Orders (DOs) implemented in a series of batches. Of the approximately 400 port facilities in the UK, almost 250 are encompassed within the 33 defined PSA areas.
- 1.4 PSA Members comprise Port Facility Security Officers (PFSOs) and senior harbour authority personnel such that their PSA-related duties constitute only a very small proportion of their everyday duties.
- 1.5 The entire suite of legislation implementing the Directive is listed in Annex B of the PIR (Ref: DfTPIR019).
- 1.6 The PIR evaluates the effectiveness of our actions and decisions set out in the standard format Impact Assessments<sup>4</sup> (IAs) now the Directive has been transposed and operational for a period of time. It covers:

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<sup>1</sup> There are a number of different types of port facility e.g. Cruise Terminals, Roll-on Roll Off Ferry Terminals, Container Terminals, Chemical, Oil and Gas Terminals and Other Bulk Cargo terminals.

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2009/2048/made>

<sup>3</sup> <http://www.legislation.gov.uk/uksi/2013/2815/made>

<sup>4</sup> [http://www.legislation.gov.uk/ukia/2012/401/pdfs/ukia\\_20120401\\_en.pdf](http://www.legislation.gov.uk/ukia/2012/401/pdfs/ukia_20120401_en.pdf)

- the extent to which the policy has achieved its original objectives;
- whether the objectives remain valid;
- whether there have been any unintended consequences;
- whether government intervention is still required;
- what scope there is for simplification, improvement or deregulation; and
- whether compliance levels indicate that the enforcement mechanism chosen is appropriate.

## Background

- 1.7 The International Maritime Organisation ("the IMO") responded to the attacks of September 2001 in the USA by developing security requirements for ships and port facilities to counter the threat of acts of terrorism. These special measures to enhance maritime security were adopted by the IMO, in 2002 and amended the 1974 International Convention for the Safety of Life at Sea ("the SOLAS Convention) to which the UK is a party and established the International Ship and Port Facility Security Code ("the ISPS Code"). The measures came into force on 1 July 2004.
- 1.8 The EC Regulation forms the basis for the harmonised interpretation, implementation and Community monitoring of the ISPS Code. The Regulation makes mandatory all of Part A and a number of recommendations introduced into Part B of the ISPS Code.
- 1.9 The Directive was introduced to complement the EC Regulation by improving security coordination between port facilities and the wider port area beyond the individual facilities.

## UK's approach to the PIR

- 1.10 DfT, with the approval of the Regulatory Policy Committee Secretariat has adopted the approach that it would be sensible to have a combined PIR covering both the PSRs as amended, and the 33 Designation Orders to allow an overall appraisal of implementation of the Directive in the UK and to avoid multiple, essentially repetitious PIRs. A review covering the legislation implementing the Directive in its entirety has the added benefit of synchronising future 5 year review dates which currently range between 31 January 2017 to 5 August 2020.
- 1.11 A light touch review was adopted as the initial IAs estimated the cost to business as relatively low. Port facilities encompassed within the boundaries of the PSAs, each of which are businesses in their own right, are beyond the scope of this PIR as they are bound by the EC Regulation rather than the Directive.
- 1.12 Also, the requirements introduced by the Directive, as implemented by the PSRs were not thought to be risky or contentious as there was already a level of coordination in security arrangements at the in-scope ports through Port Security Committees established following the introduction of the ISPS Code.

## Format of the review

- 1.13 Since the Directive has been transposed, monitoring of compliance with the PSRs and DOs has been integrated into the DfT's overall maritime security inspection regime (which includes inspection of individual port facilities) undertaken by its team of maritime security inspectors and they and other DfT officials have attended PSA meetings on an ad hoc basis. Information from the compliance monitoring of the PSAs has been used in preparing the PIR as have the views of policy officials in Maritime Security and Resilience Division.
- 1.14 The standard 5 year review clause inserted in the implementing legislation stipulates that in carrying out the review the Secretary of State must have regard to how the Directive is implemented in other EU Member States (MS). Accordingly a questionnaire (reproduced at Annex D to the PIR) was sent to other EU Member States to elicit this information, 9 of whom responded.
- 1.15 Stakeholder views were collected through consultation with those affected by the Directive. A separate questionnaire (reproduced at Annex C to the PIR) was sent out to over 500 key maritime security stakeholders in the UK including PSOs at the in-scope ports, Port Facility Security Officers, representative trade bodies in the port sector, members of the National Maritime Security Committee (Industry) - NMSC(I) and other government departments (OGDs) with an interest in port security matters. Forty-one responses were received from PSOs/PFSOs which together covered 18 of the 33 designated ports. No comments were received from OGDs, NMSC(I) members or trade bodies.

## Key findings

- 1.16 The attached PIR explains the outcome of the review in detail but the **key findings** can be summarised as follows:
- The UK has successfully fulfilled all its obligations under the Directive and implemented the minimum requirements at the 33 in-scope ports at which PSAs were created, PSOs appointed, the PSA area delineated and PSPs drawn up based on PSRAs. The PSA areas delineated encompass almost 250 port facilities out of approximately 400 in the UK.
  - The majority of PSAs accepted the proffered assistance from DfT's team of maritime security compliance officers in the carrying out of the initial PSRA and compiling a PSP based on it, thereby reducing their initial financial outlay.
  - Monitoring of compliance with the Directive by DfT maritime security inspectors has demonstrated a high standard of compliance by PSAs.
  - Three out of 4 of the 40 respondents to the UK questionnaire felt that implementation of the Directive had improved risk management at their port. This suggests that the objective of enhancing port security in the wider port area may have generally been met and remains valid.
  - In general, officials who were involved in the implementation and ongoing monitoring of the Directive agreed that there had been a somewhat more joined up approach to security coordination in locations where the Directive applied. It was felt that meetings of the PSA provided a useful opportunity for the representatives of port facilities to discuss security matters, share ideas and best practice as well as providing a platform for conducting joint security exercises.

- The attendance of other government agencies with a role in security such as the Police and Border Force at PSA meetings was considered beneficial in providing a rounded consideration of security when they have participated.
- It was noted that the Directive follows a "one size fits all" approach applying equally at comparatively small ports with 2 facilities and at large ports with over 50 port facilities. The general view was that the benefits of the Directive were more evident at larger ports with multiple facilities.
- Six respondents to the UK questionnaire said that their port had experienced greater costs for security and training, bureaucracy and responsibilities as a result of the implementation of the Directive. However, they could not quantify this cost as it was difficult to separate out the cost attributable to the PSA from the cost to operators of port facilities of complying with the EC Regulation. PFSOs at the individual port facilities, for example, require ISPS training and the cost of this is attributable to the EC Regulation rather than the Directive and therefore payable by the facility operator rather than the PSA.
- Of the 33 PSAs created, 29 were established as unincorporated entities and 4 as companies limited by guarantee. Four respondents to the UK questionnaire said that prior to the establishment of the PSA they had had concerns about their liabilities beyond their immediate port facilities. The Directive does not stipulate what kind of an entity a PSA should be. The DfT is of the view that both the unincorporated and incorporated models for the PSA have operated well in practice so it is entirely up to individual PSAs as to whether they incur the additional cost of setting up a company. Despite initial concerns, liability does not appear to have been an issue following the establishment of the PSAs.
- From the cost information received from UK respondents, the actual costs were similar to what was anticipated in the original IAs or lower. The only exception to this was one port, referred to as Port 6, which elected to have a more formal structure for its PSA with more functions, and a fee structure for members. Members accrued economies of scale from this approach but much of the additional cost was attributable to the operators of the individual port facilities at Port 6 arising from the EC Regulation rather than from the Directive.
- Regarding the questionnaire to other EU MS none of the 9 MS responding provided any cost information. It is not unreasonable to assume that the 7 MS making use of existing entities incurred reduced implementation costs as a result. While the 33 PSAs in the UK were technically new entities, the existence of Port Security Committees meant that in-scope ports were not starting completely from scratch and so may have borne less costs.
- The PSRAs carried out at the PSA's established under the Directive, did not demonstrate a need for additional security measures beyond those at the individual port facilities, covered by the EC Regulation, to be included in the PSP and therefore resulted in minimal additional burden and cost to the PSAs.

## Next steps

1.17 This PIR found that the Directive and its implementing legislation are for the most part working adequately in the UK and the objectives have largely been met. PSAs have been established at 33 ports considered in scope of the Directive and the essential requirements of the Directive have been implemented at those ports. It has

led to a somewhat better level of cross-port coordination of security and most respondents felt that the management of risk in the port had improved as a result.

- 1.18 The principal business of the port occurs at the individual port facilities whose operators must abide by security requirements under the EC Regulation, not the PSRs and DOs which implemented the Directive; therefore moderate burden is imposed on those facilities as a result of the PSRs.
- 1.19 Policy officials have been reviewing the current system of multiple statutory instruments. Each DO sets the boundary of the port and designates the PSA. To effect a change to the port boundary as a result of the opening or closing of a port facility, or to change the constitution of a PSA, say from unincorporated to incorporated can, at present, only be achieved by another Statutory Instrument. This is an inflexible, cumbersome and time-consuming process.
- 1.20 The preferred option to improve on the current method would be to grant the Secretary of State powers to implement the Directive via administrative action. This would require primary legislation and an appropriate legislative opportunity is sought.

**Maritime Security Compliance & Ports Policy Branch**

**DfT/Maritime Security & Resilience Division**

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