EXPLANATORY MEMORANDUM TO

THE HARBOUR DIRECTIONS (DESIGNATION OF HARBOUR AUTHORITIES) ORDER 2015

2015 No. 573

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This order designates the statutory harbour authorities in respect of ten harbours in England[1] and one non-fishery harbour in Wales[2], which are described in the Schedule to the Order, for the purpose of giving harbour directions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Harbours Act 1964 ("the 1964 Act") was amended by section 5 of the Marine Navigation Act 2013, which inserted new sections 40A to 40D. The new provisions 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 within their harbours in respect of movement, mooring, equipment and manning. This Order is the first such designation under section 40A of the 1964 Act but more will follow in the future as more harbour authorities elect to apply to be designated with the power to give harbour directions.

4.2 Until the 1964 Act was amended the only way in which harbour authorities could acquire the power to give general directions was through a harbour revision order under section 14 of the 1964 Act, or by means of a local Act.

5. Territorial Extent and Application

This instrument applies to harbour authorities in England and to the harbour authority of a non-fishery harbour in Wales which have applied 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 designate statutory harbour authorities in Scotland.

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[1] Cattewater, Chichester, Crouch, Dart, Falmouth Docks, Falmouth Harbour, Fowey, Heysham, Salcombe and Sutton Pool (Plymouth).

[2] Mostyn Docks.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 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.

7.2 Before the 1964 Act was amended the only ways a harbour authority could obtain the power to give (general) harbour directions were through a harbour revision order under section 14 of the 1964 Act, or by a local Act, both entailing costly and protracted processes.

7.3 The case for Government intervention in order to remove the costs and complications associated with acquiring the power to give harbour directions 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 harbour authorities to acquire the power to give harbour directions. Designation represents the second stage of Government intervention required to provide harbour authorities with the power to give harbour directions and is needed to realise the policy objective of deregulation and simplification.

- Consolidation

7.4 Consolidation is not relevant as this is the first Designation Order made by the Secretary of State under section 40A(4)(b) of the 1964 Act.

8. Consultation outcome

8.1 Given the nature of the subject matter and the fact that the applicant harbour authorities had carried out an informal consultation with their harbour users prior to submitting their applications, a targeted consultation exercise, carried out over a reduced 4 week period which closed on 16 January 2015, was considered appropriate.

8.2 A total of 19 responses were received to the consultation regarding the harbour authorities to be designated by this instrument. All responses fully supported the designation of those harbour authorities with the power to give harbour directions.

8.3 Consultees were also asked to comment on whether they were content with the Port User Group ("PUG") arrangements proposed by the applicant harbour authorities with respect to exercising the power to give harbour directions: these could be existing PUGs or, if no PUG was in place, would involve the setting up of one.

8.4 Respondents regarding Crouch Harbour Authority's ("CHA") application felt that the Crouch Harbour Advisory Committee ("CHAC"), a statutory committee, should act as the PUG, in preference to CHA's proposal to create a more focused group to discharge specific functions solely related to the introduction and management of harbour directions. After consideration of the arguments on both sides, the Department considers that CHA's proposal for a more focused PUG is more appropriate and representative of those likely to be affected by harbour directions, including recreational boating interests, which was the concern of the Royal Yachting Association ("RYA"). However, the Department has also been informed that all proposed harbour directions will be referred to and considered by the Advisory Committee as well as the PUG, before they are published.

8.5 The RYA also commented on the PUG arrangements at the other applicant harbour authorities. In some cases the RYA were content with existing PUG arrangements. In other cases their concerns have been met either by the addition of an RYA representative to the proposed PUG, or the creation of a PUG more focused on users of the harbour to be designated, and including representation of recreational boating interests. In Chichester Harbour, where there is an Advisory Committee, Chichester Harbour Conservancy's proposed PUG will comprise the marine members of its Advisory Committee.

8.6 Natural England commented on the applications of the English Harbour authorities and that of Mostyn Docks in so far as it affected English waters. They supported both the designation of the harbour authorities and their proposed PUG arrangements. In addition, Natural England said that as the majority of the harbour authorities were within, or close to, national, European and international designated statutory nature conservation sites, those harbour authorities, in the exercise of the harbour directions power, needed to be mindful of the applicable legislation protecting these sites as well as their general environmental duty under the 1964 Act. Natural Resources Wales echoed these points with respect to Mostyn Docks. The opportunity will be taken to convey this information on environmental duties to the respective harbour authorities on informing them of their designation.

9. Guidance

9.1 The Department issued *Harbour Directions Guidance*[3] in November 2013. 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.

[3] https://www.gov.uk/government/publications/harbour-directions

9.2 In addition, a National Directions Panel (NDP) was set up comprising the representative organisations of both harbour authorities and harbour users. The NDP issued *Supplementary Guidance: Code of Conduct on Harbour Directions*[4] in November 2013 to coincide with the issue of the Departmental guidance. 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 of Conduct and the statutory harbour authorities for all 11 harbours in respect of which the power is sought have done so - this included undertaking to set up an appropriate Port User Group. 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.

10. Impact

10.1 Designation with the power to give harbour directions is expected to have no adverse impact on harbour authorities. There will be a significant saving compared to the principal existing route to acquire the power to give directions, a harbour revision order under section 14 of the Act. As the Designation Order simply confers a power on the designated harbour authorities, it will not, of itself, have an impact on business, charities or voluntary bodies as harbour users. Harbour authorities have a statutory obligation to publicise proposed harbour directions for 28 days, which will give the opportunity for anyone to make objections or representations if they consider they will be adversely affected. It is not possible to predict the detail of such effects in advance, because effects are likely to vary according to the circumstances prevailing in particular harbours and the contents of the directions.

10.2 The impact of the Order on the public sector is expected to be minimal, as the Order will mean that the authorities will not need to apply for a Harbour Revision Order to achieve similar.

10.3 An impact assessment analysing the costs and benefits of this measure has been prepared. The IA is attached to this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

The legislation applies to the harbours referred to in paragraph 2, the harbour authorities for which are designated by this Order with the power to give harbour directions. Any harbour authority, irrespective of size can apply to be designated with the power to give harbour directions, but there is no obligation to do so.

12. Monitoring and review

12.1 The NDP (see paragraph 9.2) will act as focal point for issues arising from the granting and use of harbour direction powers and will oversee and make

[4] http://www.britishports.org.uk/sites/default/files/ndp_guidance_-_code_of_conduct_on_harbour_directions_-_november_2013.pdf

recommendations on the conduct of harbour authorities exercising the power. The Department attends NDP meetings.

12.2 As the Secretary of State may designate a harbour authority with the power to give harbour directions, it would also be possible for the Secretary of State to revoke the designation if there was sufficient evidence that the harbour authority was not using its power properly.

13. Contact

Caroline Wall at the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR, tel: 020 7944 6251 or email: caroline.wall@dft.gsi.gov.uk can answer any queries regarding the instrument.