**EXPLANATORY MEMORANDUM TO**

**THE HARBOUR DIRECTIONS (DESIGNATION OF HARBOUR AUTHORITIES) ORDER 2016**

**2016 No. 820**

## 1. Introduction

1.1 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

2.1 This order designates the harbour authorities in respect of three harbours in England[1] and one harbour (non-fishery) 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 Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

***Other matters of interest to the House of Commons***

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

## 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. The harbour authorities for an initial 11 harbours[3] were designated by the Harbour Directions (Designation of Harbour Authorities) Order 2015 (S.I. 2015/573) which came into force on 6th April 2015. The harbour authorities for a further 14 harbours[4] were designated by the Harbour Directions (Designation of Harbour Authorities) (No.2) Order 2015 (S.I. 2015/1656). This Order is the third designation under section 40A of the 1964 Act and will designate the harbour authorities for harbours at Barrow, Garston, Hull and Newport (South Wales). Hayle Harbour Authority which had the problem of a partial overlap in its local legislation with the section 40A powers has elected to withdraw from the process. There will also be more Orders in future as more harbour authorities elect to apply to be designated as

[1] Barrow, Garston and Hull.
[2] Newport (South Wales).
[3] Cattewater, Chichester, Crouch, Dart, Falmouth Docks, Falmouth Harbour, Fowey, Heysham, Mostyn Docks, Salcombe and Sutton Pool (Plymouth).
[4] Barry, Cardiff, Fleetwood, Goole, Grimsby Docks, Immingham, King's Lynn, Lowestoft, Plymouth (Millbay) Docks, Port Talbot, Silloth and Swansea, Manchester and Runcorn Docks.

having the power to give harbour directions (a second call for applications was issued in October 2015 in response to demand from the port industry).

4.2 Until the 1984 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. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is for three harbours in England (Barrow, Garston and Hull) and one harbour (non-fishery) in Wales (Newport (South Wales)).

5.3 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.

## 6. European Convention on Human Rights

6.1 As the instrument is subject to 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 way 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 what is now the Marine Navigation Act 2013. 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 The Department does not consider that consolidation of this Order with previous or future harbour designation orders is necessary.

## 8. Consultation outcome

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

8.2 The consultation covered the first batch of applications (29 in total) received from harbour authorities to be designated with the power to give harbour directions which included the 25 harbour authorities already designated (see paragraph 4.1 above). Five out of the total of nineteen responses to the consultation are relevant to the four harbours covered by this instrument. All five responses were from national level respondents (UK Chamber of Shipping, Marine Management Organisation, Trinity House, Natural England, and the Royal Yachting Association ("RYA")). All five organisations supported or had no objection to the designation of the harbour authorities for the four harbours which are the subject of this instrument.

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 The RYA commented on the PUG arrangements at all 4 harbours though their response was treated as a single response. Further clarification has been sought from the relevant harbour authority (Associated British Ports ("ABP")) regarding PUG arrangements at the four harbours. ABP has advised that stakeholder consultation is a fundamental pillar of their Port Marine Safety Code compliance at all their harbours, including those for which the power to give harbour directions is sought. ABP has advised that it will be adding the monitoring of adherence to the Harbour Directions Code of Conduct including PUG arrangements to their audit procedures for the harbours for which they will be designated with the power to give harbour directions.

8.5 Natural England commented on the applications of the English Harbour authorities. 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. The substance of Natural England's response was reproduced in the Summary of Responses[5] to the consultation, and the opportunity will be taken to convey this information on environmental duties to ABP (as the current harbour authority) on informing it of the designation of these four harbours.

## 9. Guidance

9.1 The Department issued *Harbour Directions Guidance*[6] 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.

---

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441428/harbour-directions-summary-responses.pdf

[6] 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*[7] 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 ABP has done so - this included an undertaking to set up an appropriate PUG. 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 There is no impact on business, charities or voluntary bodies as the designation order simply confers a power on the designated harbour authorities. In addition, designation with the power to give harbour directions under the new section 40A of the 1964 Act, 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 1964 Act. Harbour authorities have a statutory obligation to publicise proposed harbour directions for 28 days prior to making, 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 powers.

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

## 11. Regulating small business

11.1 The legislation applies to the harbour authorities of the harbours referred to in paragraph 2 of this Order. It has no additional effect on small business.

## 12. Monitoring & 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 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.

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

## 13. Contact

13.1 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.