EXPLANATORY MEMORANDUM TO

The Port Security Orders 2012 for the Ports of Aberdeen, Grangemouth, , Portland, Tees and Hartlepool and Workington (The "Listed Ports")

THE PORT SECURITY (PORT OF ABERDEEN) DESIGNATION ORDER 2012

2012 No. 2607

THE PORT SECURITY (PORT OF GRANGEMOUTH) DESIGNATION ORDER 2012

2012No. 2608

THE PORT SECURITY (PORT OF PORTLAND) DESIGNATION ORDER 2012

2012 No. 2609

THE PORT SECURITY (PORT OF TEES AND HARTLEPOOL) DESIGNATION ORDER 2012

2012 No. 2610

AND

THE PORT SECURITY (PORT OF WORKINGTON) DESIGNATION ORDER 2012

2012 No. 2611

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 instruments

These Orders identify the port boundaries for each of the Listed Ports for the purposes of the Port Security Regulations 2009 (SI 2009/2048) (Regulation 3). The Orders also designate the port security authorities for each of the Listed Ports for the purposes of regulation 5 of the Port Security Regulations.

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

None

4. Legislative Context

4.1 Under Regulation (EC) 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (the "EU Regulation") certain provisions of the International Maritime Organization's International Convention on the Saving of Life at Sea (SOLAS) 1974 (as amended by the addition of a new Chapter XI-2) and of the International Ship and Port Facility Security Code (the ISPS Code) were incorporated into EU law. The aim of these measures was to enhance the security of ships used in international trade and certain domestic shipping and the security of the associated port facilities.

4.2 In 2005 the European Parliament and the Council adopted further legislation in the form of Directive 2005/65/EC of 26 October 2005 on enhancing port security, so as to extend port security measures beyond the immediate "ship-port interface" (essentially the docking areas) covered by the EU Regulation and into the wider port area (including transport-related and other operational areas of the port). The Port Security Regulations 2009 (SI 2009/2048), which transposed Directive 2005/65/EC (the "EU Directive") in the United Kingdom, came into force on 1 September 2009.

4.3 These Orders form part of a series of designation orders in respect of individual ports and port security authorities which will be made in order to apply the security measures contained in the Port Security Regulations at relevant ports across the UK. The first designation order, in relation to the port of Bristol, came into force on 19 March 2010. The second order, in relation to the port of Dover, came into force on 31 January 2012. Each designation order will delineate the boundaries of a particular port area for the purposes of the EU Directive, based on a port security assessment identifying all areas associated with the port which are relevant to port security and discussions with stakeholders during the consultation process; and will also designate a port security authority for the delineated port. Under regulation 3(5) of the Port Security Regulations (reflecting Article 2(4) of the EU Directive), the provisions of the EU Directive and the Port Security Regulations need not, however, be applied to ports where there is only one port facility and where the defined port area would not extend beyond the boundaries of that facility; in such a case the facility can continue to be governed under Regulation (EC) 725/2004.

4.4 The reasons for this two-fold legislative structure – comprising the generally applicable Port Security Regulations and the port-specific designation orders – are explained in paragraphs 4.5 and 4.6 below.

4.5 The Port Security Regulations, which were made under powers contained in section 2(2) of the European Communities Act 1972, transpose the port security measures in the EU Directive which have general application across all relevant UK ports. It was not however considered practicable to include in the Regulations themselves the provisions required to apply those general measures at every relevant port in the UK. The provisions in question relate to the delineation of the boundaries of each relevant port and the designation of a port security authority for each of those ports. To attempt to

include these specific provisions for all the relevant ports in the Regulations themselves would have resulted in an impracticably long instrument containing numerous schedules of maps.

4.6 The possibility of including in the Regulations a power for the Secretary of State at a later stage to delineate the boundaries of each port, and to designate a port security authority for each port was considered. This option was rejected however because it was considered that this would constitute unlawful legislative sub-delegation to the Secretary of State. Under Schedule 2 paragraph 1(1)(c) of the European Communities Act 1972 it is unlawful to include in an instrument made under section 2(2) of the Act a provision that sub-delegates power to *legislate* to another individual or body. (A power to give directions as to *administrative* matters is not regarded as a power to legislate. However, on the basis that the delineation of port boundaries and the designation of port security authorities would give rise to legal effects it was considered that these would be regarded as legislative rather than administrative acts).

4.7 The identification of the port boundary in each Designation Order takes into account information resulting from the port security assessment undertaken by the Department for Transport in accordance with Annex I of the EU Directive, and views expressed by stakeholders during the consultation process. The boundary embraces the port facilities situated within the port, and the port areas that could have an impact on the security of the port. After these Orders have come into force, and have designated the Port Security Authority for each of the Listed Ports, each Port Security Authority is required to complete their own port security assessment in accordance with regulation 14 and schedule 3 of the Port Security Regulations, which is scrutinised and approved by the Department. This is because, as a matter of policy, it is considered appropriate for each port security authority to carry out, and take responsibility for, the risk assessments undertaken for their ports.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom (although its subject matter specifically concerns port operations in the Listed Ports).

6. European Convention on Human Rights

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

7. Policy background

7.1 The policy objectives of the Orders are to identify port boundaries for each of the Listed Ports for the purposes of the Port Security Regulations 2009 and to designate Port Security Authorities for the Listed Ports.

7.2 As indicated in paragraphs 4.3 to 4.7 above, there is a need to legislate in this area in order to fulfil our EU obligation to implement the Directive 2005/65/EC on enhancing port security; and the Government needs to produce

these Designation Orders to allow the security measures contained in the Port Security Regulations 2009 to be applied at the Listed Ports.

7.3 There has not been a high level of public or media interest in the policy.

7.4 The legislation is politically and legally important as the Department for Transport advocates good security practice and this instrument is one of a series of port security designation orders which - in conjunction with the Port Security Regulations - provide the legal framework for extending port security measures to transport-related and operational areas in relevant ports beyond the immediate "ship/port interface". As mentioned above, the first of this series of designation orders, in relation to the port of Bristol, came into force on 19 March 2010 and the second, in relation to the port of Dover, came into force on 31 January 2012.

8. Consultation outcome

8.1 A public consultation was launched on the 28 March 2012 and ran for six weeks until 9 May 2012. The reduced length of the consultation from the usual twelve week period was agreed by Ministers and was due to the focussed local nature of the consultation and the fact that the proposals were discussed with the key stakeholders prior to the wider public consultation.

8.2 There were no substantive responses received to the consultation in respect of these Orders.

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9. Guidance

9.1 The Department has produced a Port Security Officers' Handbook for guidance on dealing with the port security assessment and port security plan. The guidance has been structured in a manner to reflect each of the stated requirements of the Regulations: these are given as objectives, with subsequent paragraphs indicating how they should be met.

10. Impact

10.1 The impact on business is not high as the UK implementation of the EU Regulation (and the activities of the existing Port Security Committees at the Listed Ports) has in practice already put in place the majority of the provisions of the Directive in operational terms and therefore we anticipate that the coming into force of this Order will have only moderate operational impact at the ports and does not pose a major policy change. There will be no impact on charities and voluntary bodies.

10.2 The additional impact on the public sector is not anticipated to be high as the police are already engaged in activity around assisting ports to undertake multi-agency threat and risk assessments ("MATRA" assessments).

10.3 An Impact Assessment is attached to this Memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 Implementation of the Port Security Regulations 2009 is likely to apply to a number of small businesses based at, or working within, the designated Listed Ports. The port facilities based within the envisaged port boundaries are already regulated by the Department for Transport under the existing port security regime. Under the current regime these facilities also have Port Facility Security Plans in place which are regulated by the Department for Transport and these plans will feed into the wider Port Security Plan to be managed by the Port Security Authority at the Listed Ports under the new legislation.

11.2 The Port Security Regulations 2009 recognise the need to avoid overburdening smaller ports by allowing a number of port facilities to combine under the umbrella of a single port security authority, thereby taking advantage of economies of scale.

11.3 The Department undertook a full consultation on the Port Security Regulations in 2008, including all port operations of which many would be classified as small businesses. No particular concerns emerged from these operations. There was support for the combination of smaller ports under single umbrella port security authorities.

12. Monitoring & review

12.1 Once the Orders are in force and Port Security Authorities designated for each of the Listed Ports, the Department will continue its enforcement programme to ensure compliance with the Port Security Regulations, and thereby with the UK's obligations under Directive 2005/65/EC on enhancing port security. In the meantime the current compliance and enforcement programmes will continue.

12.2 The Department has a dedicated team of Compliance Security Inspectors who regularly monitor and review their respective port areas according to Departmental policy.

13. Contact

Gary Kemp at the Department for Transport (Tel: 020 7944 6242 or e-mail: gary.kemp@dft.gsi.gov.uk) can answer any queries regarding the instrument.