EXPLANATORY MEMORANDUM TO

PORT SECURITY (PORT OF MILFORD HAVEN) DESIGNATION ORDER 2013

2013 No. 516

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

This Order identifies the port boundary for the Port of Milford Haven for the purposes of the Port Security Regulations 2009 (SI 2009/2048) (Regulation 3). The Order also designates the port security authority for the Port of Milford Haven 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 This Order is a further one in 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. To date seven designation orders have been made:

Designation Order
2010 No. 319 : The Port Security (Avonmouth Dock and Royal Portbury and Port of Bristol Security Authority Designation Order 2010 – into force 19 March 2010
2011 No.3045: The Port Security (Port of Dover) Designation Order 2011 – into force 31 January 2012
2012 No. 2607: The Port Security (Port of Aberdeen) Designation Order 2012 – into force 19 November 2012
2012 No. 2608: The Port Security (Port of Grangemouth) Designation Order 2012 – into force 19 November 2012
2012 No. 2609: The Port Security (Port of Portland) Designation Order 2012 – into force 19 November 2012
2012 No. 2610: The Port Security (Port of Tees and Hartlepool) Designation Order 2012 – into force 19 November 2012
2012 No. 2611: The Port Security (Port of Workington) Designation Order 2012 – into force 19 November 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 risk 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 this Order has come into force, and has designated the Port Security Authority for the Port of Milford Haven. The Port Security Authority is required to complete its own port security risk 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 Port of Milford Haven

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 Order are to identify port boundaries for the Port for the purposes of the Port Security Regulations 2009 and to designate a Port Security Authority for the Port.

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 the Designation Order to allow the security measures contained in the Port Security Regulations 2009 to be applied at the Port of Milford Haven.

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 in paragraph 4.3 above, to date seven designation orders have come into force .

8. Consultation outcome

8.1 The Port of Milford Haven was included in 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 eleven responses received to the consultation. The only substantive issue raised was from SemLogistics regarding the inclusion of its oil and petrochemical storage and logistics facilities and associated Restricted Area inside the boundary for Milford Haven Port Security Authority. Subsequently, following extensive discussion between DfT officials and SemLogistics, the Milford Haven port authorities and other interested parties, it has been agreed to redraw the port security authority boundary to exclude the SemLogistics port facilities. These facilities are well secured and their exclusion is consistent with the treatment of other gas and oil terminals at the port, refineries and storage facilities. However, the Restricted Area is to be retained to mitigate the risk of a threat from the seaward direction. Relevant parties have been informed and the Port of Milford Haven can proceed to be designated.

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 Order is in force and Port Security Authority designated for the Port of Milford Haven,, 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.