EXPLANATORY MEMORANDUM TO

Port Security Designation Orders for the Ports of Barrow, Cromarty Firth, Fowey, Glasgow, Great Yarmouth, Peterhead, Troon and Tyne ("the Listed Ports")

THE PORT SECURITY (PORT OF BARROW) DESIGNATION ORDER 2013 No. 3074

THE PORT SECURITY (PORT OF CROMARTY FIRTH) DESIGNATION ORDER 2013 No. 3075

THE PORT SECURITY (PORT OF FOWEY) DESIGNATION ORDER 2013 No. 3076

THE PORT SECURITY (PORT OF GLASGOW) DESIGNATION ORDER 2013 No. 3077

THE PORT SECURITY (PORT OF GREAT YARMOUTH) DESIGNATION ORDER 2013 No. 3078

THE PORT SECURITY (PORT OF PETERHEAD) DESIGNATION ORDER 2013 No. 3079

THE PORT SECURITY (PORT OF TROON) DESIGNATION ORDER 2013 No. 3080

THE PORT SECURITY (PORT OF TYNE) DESIGNATION ORDER 2013 No. 3081

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

The orders define the port boundaries for the Listed Ports for the purposes of the Port Security Regulations 2009 (S.I. 2009/2048, amended by S.I. 2013/2815). The orders also designate a port security authority for each of the Listed Ports for the purposes of regulation 5 of those 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 for the Safety 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 ("the Directive"), 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 (S.I. 2009/2048), which transposed the Directive in the United Kingdom, came into force on 1 September 2009. They were amended by the Port Security (Amendment) Regulations 2013 (S.I. 2013/2815) which came into force on 29 November 2013.

4.3 These orders are part of a series of designation orders in respect of individual ports and port security authorities which have to be made in order to apply the security measures contained in the Port Security Regulations 2009 at relevant ports across the UK. To date, 15 designation orders have been made, all of which have come into force. Those 15 orders are:

Order	*S.I. number*	*Date in force*
The Port Security (Avonmouth Dock and Royal Portbury Dock and Port of Bristol Security Authority) Designation Order 2010	2010/319	19th March 2010
The Port Security (Port of Dover) Designation Order 2011	2011/3045 (amended by S.I. 2013/2728[1])	31st January 2012

[1] The Port Security Designation (Amendment) Order 2013 – This extends the initial review date in six designation orders to 5 years from the coming into force date. For Grangemouth, that amendment order also makes amendments to reflect the reconstitution of the port security authority as a company limited by guarantee.

The Port Security (Port of Aberdeen) Designation Order 2012	2012/2607 (amended by S.I. 2013/2728)	19th November 2012
The Port Security (Port of Grangemouth) Designation Order 2012	2012/2608 (amended by S.I. 2013/2728)	19th November 2012
The Port Security (Port of Portland) Designation Order 2012	2012/2609 (amended by S.I. 2013/2728)	19th November 2012
The Port Security (Port of Tees and Hartlepool) Designation Order 2012	2012/2610 (amended by S.I. 2013/2728)	19th November 2012
The Port Security (Port of Workington) Designation Order 2012	2012/2611 (amended by S.I. 2013/2728)	19th November 2012
The Port Security (Port of Milford Haven) Designation Order 2013	2013/516	1st May 2013
The Port Security (Ports of Swansea and Port Talbot) Designation Order 2013	2013/1652	2nd August 2013
The Port Security (Port of Newhaven) Designation Order 2013	2013/1655	2nd August 2013
The Port Security (Port of Falmouth) Designation Order 2013	2013/1656	2nd August 2013
The Port Security (Port of Sullom Voe) Designation Order 2013	2013/2013	10th September 2013
The Port Security (Port of Hull, New Holland, Immingham and Grimsby) Designation Order 2013	2013/2014	10th September 2013
The Port Security (Ports of Liverpool and the Manchester Ship Canal) Designation Order 2013	2013/2181	3rd October 2013
The Port Security (Port of Southampton) Designation Order	2013/2272	9th October 2013

Each designation order delineates the boundaries of a particular port for the purposes of the Directive, based on a port security assessment defining all areas associated with the port which are relevant to port security and discussions with stakeholders during consultation. The orders also designate a port security authority ("PSA") for the delineated ports. Under regulation 3(3) of the Port Security Regulations 2009, as amended by the Port Security (Amendment) Regulations 2013 (reflecting article 2(4) of the Directive), the provisions of the Directive and of Parts 2 to 6 of the Port Security Regulations 2009 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 by the EU Regulation and is effectively exempted from the provisions of the Directive.

4.4 The reasons for this two-fold legislative structure – comprising the generally applicable Port Security Regulations 2009 and the port-specific designation orders – are explained in paragraphs 4.5 and 4.6 below.

4.5 The Port Security Regulations 2009 as amended ("the Regulations"), which were made under powers contained in section 2(2) of the European Communities Act 1972, transpose the port security measures in the 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 PSA. 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 define the boundaries of each port, and to designate a PSA for each port, was considered. This option was rejected however because it was considered that it would involve unlawful legislative sub-delegation to the Secretary of State. By virtue of paragraph 1(1)(c) of Schedule 2 to 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 defining of the port boundary in each designation order takes into account information resulting from the port security assessment undertaken in accordance with Annex I of the 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.

4.8 Port operators are free to recommend whether the legal status of a PSA should be that of a body corporate or an unincorporated association. As a body corporate, a PSA would be a legal person in its own right separate and distinct from its individual members and could sue and be sued in its own name rather than in the names of its members. An incorporated PSA would also be able, if it wished, to employ staff or contract for services in its own name, and to obtain its own public liability or employers' liability insurance.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom (although its subject matter specifically concerns port operations at 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 these orders are to define port boundaries for the Listed Ports for the purposes of the Port Security Regulations 2009, as amended by the Port Security (Amendment) Regulations 2013, and to designate a port security authority for each Listed 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 the UK's obligation to implement the Directive; and the Government needs to make 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 2009, as amended by the Port Security (Amendment) Regulations 2013 - provide the legal framework for extending port security measures to transport-related and operational areas in relevant ports beyond the immediate "ship/port interface".

8. Consultation outcome

8.1 Barrow, Cromarty Firth, Fowey, Peterhead and Troon were included in a public consultation held from 8 July to 16 August 2013. Barrow had featured in a previous consultation held from 19 November 2012 to 4 January 2013 but an Addendum to that consultation, issued on 18 December 2012, informed consultees that it would be consulted upon for a second time with improved boundary plans. Glasgow (then termed "Clyde") was included in the

same consultation but was not the subject of the Addendum. However, an updated version of the consultation document was issued on 6 December 2012 with revised PSA boundary plans for certain ports including Glasgow but not Barrow. Great Yarmouth and Tyne were included in a public consultation held from 9 August to 20 September 2013. In each case the consultation length was reduced to six weeks from the usual twelve-week period as agreed by Ministers due to the focused local nature of the consultations and the fact that the proposals were discussed with key stakeholders at the Listed Ports prior to the wider public consultations.

8.2 There were two responses concerning Barrow when it was first consulted upon, from Associated British Ports (ABP) Barrow and from Cumbria County Council. ABP made a number of general points about implementation of the Directive which they made in respect of all the ABP ports featuring in that consultation. Cumbria County Council advised that a small piece of their land fell inside the proposed PSA boundary but lay outside the commercial dock perimeter and operational area. The Council land was removed from the PSA area in the Barrow PSA boundary plans produced for the second consultation. This elicited three responses, from ABP Barrow advising that the proposed boundaries included areas not owned by ABP, from International Nuclear Services expressing contentment with the proposals, and from Network Rail Infrastructure Ltd ("Network Rail") concerning land of theirs which abutted the proposed PSA area. The ABP Barrow response appended a plan showing the corrections suggested to the PSA boundary plans which have been accepted and effected. Network Rail did not request that the PSA boundary should be moved further from their land and have now advised that they are content with the revised PSA boundary plans.

8.3 There was one consultation response relating to Cromarty Firth, from the Cromarty Firth Port Authority expressing contentment with the proposals, including the proposed PSA boundary plans. Whilst no changes were required to the positioning of the red line delineating the Cromarty Firth PSA boundary in the key plan and four inset plans, the antiquated wording describing the seaward limits in article 2 (port boundary) has been replaced by labelling the key plan with the modern day equivalent expressed as coordinates which were supplied by the port.

8.4 DfT port security policy and compliance officers visited the Port of Fowey prior to the consultation and a revised PSA boundary plan was produced which was the one annexed to the draft designation order included in the consultation. There was just one consultation response, from Network Rail, who lodged a reservation as they have land at the port: Imerys who operate a china clay port facility have a long lease (200+ years) on a large portion of that land. Because Imerys operates an ISPS[2] port facility on the land it leases from Network Rail, this portion of the Network Rail land needs to be contained within the PSA boundary. The position has been explained to

[2] ISPS = The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 11 September 2001 attacks in the United States. The ISPS Code is implemented through chapter XI-2 Special measures to enhance maritime security in the International Convention for the Safety of Life at Sea (SOLAS), 1974.

Network Rail and they now accept it. The Fowey PSA boundary plan therefore remains unaltered from the version consulted upon. At the pre-consultation meeting the Fowey Harbour Master and Chief Executive also expressed concern that, with only two port facilities (the Imerys one and one operated by the Fowey Harbour Commissioners), they could not provide a minimum PSA membership of three. The Department has agreed, in the circumstances, that the Fowey PSA can have a minimum membership of two there being no stipulation regarding minimum membership in either the Directive or the Port Security Regulations 2009, as amended by the Port Security (Amendment) Regulations 2013. The word "two" has accordingly been substituted for "three" in paragraph 1(1) of Schedule 2 to the Fowey designation order.

8.5 The proposed Glasgow (formerly termed "Clyde") PSA area at the consultation stage was extensive and included large areas of the River Clyde and Firth of Clyde and encompassed areas at Greenock, Fairlie and Hunterston as well as the port of Glasgow. Clydeport Ltd (a member of the Peel Ports Group) submitted a letter outlining their issues regarding the implementation of the Directive at Glasgow (Clyde) including regarding the proposed PSA boundary during the informal phase of consultation prior to the launch of the formal consultation. Clydeport Ltd's letter was lodged as a formal response to the consultation pending resolution of the issues they had raised. The only other response was from the local police.

8.6 After extensive discussions with Peel Ports and other relevant local stakeholders, and having regard to local circumstances, agreement has been reached to a reduced Port of Glasgow PSA area stretching from the River Clyde Tunnel in the east to the river's confluence with the River Cart in the West. Five Clydeport Ltd-operated port facilities are included within the new PSA boundary. It is Clydeport Ltd's intention that the Glasgow PSA will closely liaise with other port facilities in the River Clyde and Firth of Clyde, geographically quite distant from Glasgow, via an informal Port Security Committee to which the Port Security Officer designate for the Glasgow PSA will also belong to act as a communication channel between the two bodies (this committee will be in addition to, and not a replacement for, the formal PSA designated by the order).

8.7 Clydeport Ltd wishes to constitute its PSA as a company limited by guarantee. It is entirely the prerogative of the port as to whether to form an unincorporated or incorporated PSA as there is no requirement in the Directive nor in the Port Security Regulations for a PSA to be constituted as a particular entity. The appropriate drafting amendments have been made to the order including citing the name and number of the company formed.

8.8 No consultation responses were received with respect to Great Yarmouth. Department for Transport port security compliance officers confirmed that the port had elected to avail itself of the assistance they offered (at no cost) with the risk assessment and preparation of the port security plan, an offer open to all in-scope ports. No PSA boundary or other issues had arisen regarding implementation at Great Yarmouth.

8.9 Two consultation responses were received regarding Peterhead, from Peterhead Port Authority (PPA) suggesting minor adjustments to the PSA boundary plans, and from ASCO Peterhead Offshore Supply South Base port facility who were content with the proposals. PPA's response appended a couple of plans showing the corrections suggested to the Peterhead PSA boundary plans which have now been effected.

8.10 With respect to Troon, the two respondents (ABP Troon and Garvel Clyde Troon Ltd) were both content with the proposals. Like Fowey, ABP Troon raised the issue that with only two facilities at the port they could not provide a minimum PSA membership of three. So, as with Fowey (see paragraph 8.4 above), this has been permitted there being nothing in the legislation to preclude it.

8.11 Only one consultation response was received regarding Tyne, from Port of Tyne, the harbour authority. Port of Tyne suggested that to call the PSA "the Port of Tyne Port Security" might cause confusion given the name of the harbour authority. It has been agreed to call the PSA "the Tyne Port Security Authority" to avoid any risk of confusion. No other issues emerged from the consultation and the PSA boundary plans included in the order will remain as consulted upon.

9. Guidance

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 have in practice already put in place the majority of the provisions of the Directive in operational terms. We therefore anticipate that the coming into force of these orders will have only moderate operational impact at the Listed Ports and that the orders do not constitute 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 with regard to 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, as amended by the Port Security (Amendment) Regulations 2013, is likely to apply to a number of small businesses based at, or working within, the Listed Ports. The port facilities based within the envisaged port boundary 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. These plans will feed into the wider port security plan to be managed by the port security authority at the each of the Listed Ports under the new legislation.

11.2 The Port Security Regulations 2009, as amended by the Port Security (Amendment) Regulations 2013, 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 draft 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 the 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 2009 (as amended), thereby complying with the UK's obligations under the Directive. The guidance has been structured in a manner to reflect each of the stated requirements of the Port Security Regulations 2009: these are given as objectives, with subsequent paragraphs indicating how they should be met. 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. Their offer of assistance (at no cost) in carrying out risk assessments and in drawing up the port security plan has been taken up by a number of the ports considered in-scope of the Directive.

12.3 Each designation order contains a standard review clause in accordance with the Coalition Government's Better Regulation principles. The review clause stipulates that the first report following this review must be published within five years from the coming into force of the designation order.

13. Contact

Caroline Wall at the Department for Transport (Tel: 020 7944 6251 or e-mail: caroline.wall@dft.gsi.gov.uk) can answer any queries regarding the instruments.