EXPLANATORY MEMORANDUM TO

THE SCARBOROUGH BOROUGH COUNCIL (REMOVAL OF PILOTAGE FUNCTIONS) ORDER 2021

2021 No. 458

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 provides that the Scarborough Borough Council Harbour Authority ("the Harbour Authority"), the harbour authority for Whitby and Scarborough harbours and Filey Coble Landing, is no longer a competent harbour authority ("CHA") for the purposes of the Pilotage Act 1987 (c. 21) ("the Act"). The purpose of this alteration is to withdraw CHA status from the Harbour Authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Part 1 of the Act provides that certain harbour authorities are CHAs and imposes on them certain duties in respect of harbour pilotage. These duties include keeping under review whether any, and if so what, pilotage services need to be provided in respect of its harbour and whether pilotage should be compulsory. Section 1(4A) of the Act, inserted by section 1 of the Marine Navigation Act 2013 (c. 23), enables the Secretary of State to remove a harbour authority's CHA status by Order, so that it is no longer required to discharge the duties imposed by the Act.

6.2 This Order removes the CHA status of the Harbour Authority, which was the CHA for Whitby and Scarborough harbours as well as Filey Coble Landing.

7. Policy background

What is being done and why?

7.1 Under section 2 of the Act, a CHA has a duty to keep under consideration whether pilotage services are required for its area and to provide such services as it considers are needed.

7.2 In 2018, the Harbour Authority reviewed its CHA powers and concluded that pilotage was not required at Whitby and Scarborough harbours or Filey Coble Landing in order to ensure safe navigation of the types of vessels which now use the harbours and that there was no prospect of that situation changing. Furthermore, only three acts of pilotage had been carried out over the past six years. All three being unusual 'towage' acts and not part of the regular commercial activity of the harbours. The Council is confident that it has appropriate provisions in place to ensure that such services could be carried out without the need for pilotage or the employment of a qualified pilot.

7.3 Following consideration of the available evidence, and consultation as required by section 1(8A) of the Act, the Secretary of State concluded that removal of the Harbour Authority's CHA status would be appropriate. Further details regarding the consultation are included in section 10 below.

7.4 The Harbour Authority's status and functions as the statutory harbour authority ("SHA") for Whitby and Scarborough harbours are unaffected. SHAs are harbour authorities which have been given a range of statutory powers or duties for the purpose of improving, maintaining or managing a harbour. The statutory powers or duties are set out by Acts of Parliament that are specific to each authority in the form of local Acts or, in some cases, harbour revision or empowerment orders made under the Harbours Act 1964 (c. 40).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Order does not consolidate any legislation.

10. Consultation outcome

10.1 As part of the application process, the Harbour Authority carried out a preliminary local consultation on its proposal to apply to the Secretary of State for its CHA status be removed. There were no objections to the proposal from harbour users or other interested stakeholders and the two formal respondents both agreed that there would be no increase in risk to maritime safety at Whitby and Scarborough harbours (or Filey Coble Landing) if the Harbour Authority's CHA status were removed.

10.2 The Secretary of State, as part of his consideration of the Harbour Authority's application published a consultation paper in order to ensure that all appropriate persons were consulted, as required under section 1(8A) of the Act. The consultation ran for four weeks from 12 February to 12 March 2021, which was considered to be an adequate time to undertake a question and response process and to gather information from all the local and national bodies which have an interest in the operation of Whitby and Scarborough harbours and Filey Coble Landing.

10.3 Five responses were received to the consultation. Of those who expressed a preference, two responses supported the Secretary of State's proposal to remove the Harbour Authority's CHA status and two responses objected. The two objections cited concerns that pilotage was still required to retain safe passage of marine traffic into and out of Whitby Harbour. However, on further investigation these objections were not related to the current mandatory pilotage arrangements as a CHA. They would continue to be covered under the existing procedures the Council has in place under these circumstances. The Harbour Authority has confirmed it will continue to offer navigation safety advice to vessels once CHA status had been removed as part of its ongoing statutory duties as an SHA. The consultation document and a summary of the responses received can be found online at: www.gov.uk/government/consultations/scarborough-and-whitby-harbour-pilotage-function-removal.

10.4 Having considered the responses to the consultation, the Secretary of State decided to make an Order removing the Harbour Authority's CHA status.

11. Guidance

11.1 No guidance will be issued in relation to the effect of this instrument because it does not make changes that affect businesses or others.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Harbour Authority will remain the SHA for Whitby and Scarborough harbours and Filey Coble Landing under the Harbours Act 1964. It will, therefore, retain legal responsibility for managing the harbours safely and efficiently. To assist understanding of those responsibilities, the Department for Transport and the Maritime and Coastguard Agency publishes the Port Marine Safety Code[1] ("PMSC") and related Guide to Good Practice[2]. These documents explain those legal responsibilities and create national standards for every aspect of port and harbour safety and aim to enhance safety for those who use or work with ports, ships, passengers and the environment.

14.2 Application of the PMSC is voluntary but harbour authorities are required to self-certify compliance by notifying the Maritime and Coastguard Agency every three years, which can undertake an informal 'health check' visit if necessary. The PMSC

[1] See www.gov.uk/government/publications/port-marine-safety-code.
[2] See www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations.

encourages ports and harbours to keep their powers under review and to seek to amend these where this may be necessary to ensure safe and efficient operations.

14.3 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Robert Courts MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, has made the following statement:

"Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate, taking into account the economic impact of the legislation, to include provision for review".

15. Contact

15.1 Jemma Snoxell at the Department for Transport Tel: 0300 330 3000 or email: maritimesafety@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Stephen Benzies, Deputy Director for Maritime Operations at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.