

Department for Transport

Harbour Directions Guidance

**Advice note for Harbour Authorities applying to the Department for Transport
to be designated with the powers to make harbour directions under section
40A - 40D of the Harbours Act 1964.**

November 2013

Contents

| | |
|--|-----------|
| Executive Summary | 4 |
| Harbour Directions | 6 |
| What are they? | 6 |
| What are they used for? | 6 |
| Who will they apply to? | 6 |
| Why apply for Harbour Directions? | 7 |
| National Directions Panel | 8 |
| | |
| Application for Designation | 9 |
| How to apply? | 9 |
| Rationale | 10 |
| Amendments/repeal to statutory provisions | 10 |
| Consultations | 11 |
| Code of Conduct Statement | 11 |
| Timescale | 12 |
| Review | 12 |
| | |
| Making Harbour Directions | 12 |
| Devolution | 13 |
| Contacts | 14 |
| Annex A - Assurance Template | 15 |
| Annex B - Proposed timetable for Year 1 | 16 |

Executive Summary

1. Harbour authorities are responsible for managing and running safe and efficient harbours. They have particular responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and the protection of the port environment.
2. The Port Marine Safety Code (PMSC)¹ recommends harbour authorities to review and be aware of their existing powers to ensure they are still relevant to the safe operation of a harbour. It recommends that additional powers should be sought by a harbour authority, if a risk assessment concludes that this would be advisable. This may include securing powers of general directions to support the effective management of vessels within the harbour, if a harbour authority does not already have them.
3. As a result of the Marine Navigation Act 2013, harbour authorities may now, on application, be designated with the power to make harbour directions. This power may be sought as a response to the review of powers recommended by the PMSC.
4. **The process to designate harbour authorities requires a statutory instrument (the ‘designation Order’) to be made by the Secretary of State. The Department is seeking applications for a first round of harbour authorities to be issued with these powers in a designation Order, which is expected to be made in late 2014. This advice note provides guidance on how to apply.**

¹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/38728/port-marine-safety-code.pdf

5. To promote the effective use of harbour direction powers, the national representatives of harbour authorities and harbour users have formed a National Directions Panel (NDP). Interested harbour authorities are advised to refer to the guidance produced by the NDP, in particular the non-statutory Code of Conduct on harbour directions². The Government expects any harbour authority seeking the power to make harbour directions to commit to complying with this Code of Conduct.

How to apply to the Department

6. Expressions of interest to be designated with the powers to make harbour directions should be submitted to the Department by e-mail to Ports@dft.gsi.gov.uk, which is the relevant authority for harbour authorities in England and non-fishery ports in Wales.
7. Fishery ports in Wales should apply to the Welsh Assembly Government at fisheriesmailbox@wales.gsi.gov.uk.
8. **To take part in the first round of harbour authorities to be issued with these powers, please submit your expression of interest no later than 30 April 2014.**
9. A draft form that can be used to give assurance that the harbour authority has signed up to the code is attached at Annex A. A covering letter including contact details and the information requested at paragraph 2.5 of this note should also be provided.
10. If a harbour authority is unable to sign up to the Code of Conduct, the reasons for this should be explained fully in the covering letter. All applications to be designated with the powers to make harbour directions will be assessed on a case by case basis.
11. This advice note applies to England and all ports in Wales as agreed by the Welsh Government. Transport Scotland will be publishing their own guidance and ports in Scotland should refer to this.

² www.britishports.org.uk/navigational-safety;
www.rya.org.uk/go/currentaffairs;
www.ukchamberofshipping.com/information/publications-and-briefings/;
www.ukmajorports.org.uk/pages/latest-news

1 Harbour Directions

What are they?

1.1 The Harbours Act 1964, as amended by the Marine Navigation Act 2013, provides a mechanism by which the Secretary of State may by Order designate harbour authorities with a power to make harbour directions to better regulate shipping and improve safety within their harbour area. Such harbour authorities are called “designated harbour authorities”. (new sections 40A to 40D of the Harbours Act 1964, inserted by section 5 of the marine Navigation Act 2013).

What are they used for?

1.2 Harbour directions may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to the movement, mooring and unmooring, equipment and manning of ships. For example directions could be used:

- a. to regulate the use of any main navigation channel or fairway;
- b. to prescribe where and how vessels are to moor and move within the harbour;
- c. to ensure ships above a certain size have working radios to allow communication between harbour master and ship;
- d. to specify requirements for no deficiency in machinery; and,
- e. to ensure sufficient people with relevant experience crew specific types of ship.

Who will they apply to?

1.3 Harbour directions will only apply to ships as defined in the Harbours Act 1964. This Act defines a ship as including every description of vessel used in navigation, seaplanes and hovercraft. The Court of Appeal has held that to be used in navigation, a vessel must be used to make ordered progression from one place to another.

Why apply for Harbour Directions?

1.4 Harbour authorities are responsible for managing and running safe and efficient harbours. They have particular responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and the protection of the port environment.

1.5 To meet these responsibilities effectively, harbour authorities have currently up to four powers available under their local legislation which they may use in regulating their harbour areas:

- Byelaws – power to issue byelaws which, subject to confirmation by the Secretary of State for Transport. Byelaws may apply to harbour land as well as the water;
- Special directions – power to issue directions in relation to individual ships in the harbour area for a specified purpose;
- General directions – power to issue directions in relation to all ships in the harbour area either in response to a particular occurrence or as a standing instruction to all ships or specified classes of ship;
- Pilotage directions – (applies to ‘competent harbour authorities’ only) power to direct that it is compulsory for a ship to be subject to pilotage – i.e. under the charge of either an authorised pilot or a master or first mate holding a pilotage exemption certificate

If designated, a harbour authority will have an additional power:

- Harbour directions - power to issue directions in relation to ships in the harbour area, or entering or leaving the harbour.

1.6 Since its first publication in 2000, the Port Marine Safety Code (PMSC) has recommended that additional powers should be sought by a harbour authority, if a risk assessment concluded that it would be well advised to secure additional powers to support effective management of vessels in their harbour waters. Obtaining the powers to give harbour directions may meet such a recommendation

National Directions Panel

- 1.7 An industry-led National Directions Panel (NDP) has been set up to provide guidance on the operational use of harbour directions, to issue draft model directions and to act as a focal point on any issues arising from the granting of harbour directions. The NDP will also keep under review the non-statutory Code of Conduct on the use of harbour directions that was previously agreed by organisations.
- 1.8 The NDP is chaired by the UK Chamber of Shipping and includes representatives of the British Ports Association, the UK Major Ports Group, the Royal Yachting Association, the British TugOwners Association and the National Federation of Fishermen's Organisation. The Department for Transport and devolved administrations attend meetings as observers.
- 1.9 The Government expects any harbour authority applying for designation to have agreed to sign up to this Code before it is designated with the power of harbour directions.
- 1.10 The NDP has produced non-statutory supplementary guidance on how to use these powers, both the Code of Conduct and the non-statutory supplementary guidance can be found on the following websites:
- www.britishports.org.uk/navigational-safety;
- www.rya.org.uk/go/currentaffairs;
- www.ukchamberofshipping.com/information/publications-and-briefings/;
- www.ukmajorports.org.uk/pages/latest-news
- 1.11 This guidance includes a set of model directions, intended to assist designated harbour authorities to draft their harbour directions. This is not exhaustive and has been produced in agreement with the various trade associations and provides examples that are likely to be accepted to most harbour users.
- 1.12 Enquiries about the NDP, the Code of Conduct, model directions and other advice published by the NDP should be directed to the NDP Chairman, c/o UK Chamber of Shipping: ndp@ukchamberofshipping.com.

2 Application for designation

How to apply

- 2.1 Harbour authorities in England and non fishery ports in Wales seeking to be designated with powers of harbour direction should apply to the Department for Transport at ports@dft.gsi.gov.uk.
- 2.2 Fishery ports in Wales should apply to the Welsh Assembly Government at fisheriesmailbox@wales.gsi.gov.uk.
- 2.3 The Department intends to make Orders that designate a number of harbour authorities with the powers at the same time. It is not feasible for the Department to make an Order on an *ad hoc* basis for individual harbour authorities. Therefore we intend to:
 - a) invite applications to be part of a first round by June 2014;
 - b) invite applications/expressions of interest for a second round;
 - c) thereafter review and, if necessary, make a designation Order on a three-yearly cycle.
- 2.4 Applications will be assessed on a case by case basis. The designation Order will be drafted and consulted on. All views expressed by those with an interest on the suitability of the harbour authority to be designated with the powers to make harbour directions will be considered.
- 2.5 The application (no more than 6 pages) should provide:
 - a. **A rationale** covering why the power to make harbour directions is needed (paragraph 2.6);
 - b. Details of any proposal for **amending or repealing any statutory provision of local application** which would be inconsistent with the power to give harbour directions or unnecessary, if that power is conferred; and/or (as appropriate) a statement of intention for amending and/or revoking any existing byelaws or directions that might otherwise conflict with harbour directions (paragraph 2.8);
 - c. The views of harbour users with respect to the suitability of that particular harbour authority applying to the Department to be designated in the Order,

if they have been sought already or, if not, a statement of when and how they will be consulted (paragraph 2.10); and

- d. **Code of Conduct statement** – either an assurance that the harbour authority has signed up to the Code of Conduct or a full explanation of why it is unable to do so (paragraph 2.13).

Rationale

2.6 Explain why the power to make harbour directions is needed so that the Department understands why they are needed. For example, reasons might include:

- a risk analysis has identified a need for an authority to seek harbour directions;
- to assist the harbour in meeting recommendations of the Port Marine Safety Code and Guide to Good Practice.
- to deal with specific incidents and/or accidents;
- an increase in traffic;
- recommendations in a Marine Accident Investigation Branch report; or
- harbour users have requested the powers to protect various activities in the port.

2.7 This is not an exhaustive list of possible reasons why harbour directions are required.

Amendments/repeal to statutory provisions

2.8 Explain if any statutory provision of local application will need to be amended or repealed and how and when this will be done.

2.9 A designation Order may amend or repeal any statutory provision of local application, which the person making the order thinks is inconsistent with the power to give harbour directions or is unnecessary as a result of such power. Statutory provisions enabling byelaws or general directions to be made, and any byelaws or general directions made under them, may be inconsistent or unnecessary once the power to make harbour directions is available to the harbour authority. However, if it is thought that the existing powers may still be needed but that particular byelaw or general directions made under them need

to be amended or repealed, the harbour authority may prefer simply to provide a statement of its intent to amend or revoke them. Amending or revoking byelaws requires confirmation by the Secretary of State, but is expected to be simpler than applying for new byelaws. However, it is unlikely that it would be appropriate to amend or revoke existing byelaws through the designation Order itself. The designation Order would need to specify the date when the byelaws were revoked and it is possible that the process to make harbour directions would not be completed before the byelaws were revoked or amended.

Consultation

2.10 Explain whether the views of harbour users and other interested parties have been sought on:

a) suitability of harbour authority to be designated with the power to make harbour directions.

b) an indication of what the harbour directions will cover.

2.11 A short summary of views expressed should also be submitted so that the Department is aware if there are any local problems that may be raised when it consults on the order.

2.12 If at the time of applying to the Department harbour users have not yet been consulted, a short explanation of the reason should be provided along with the harbour authority's plan on when and how it will consult.

Code of Conduct Statement

2.13 An assurance that the harbour authority has signed up to the Code of Conduct or a full explanation of why it is unable to do so. Annex A provides a form of words that could be used in an application to give assurance that the harbour authority has signed up to the Code.

Timescale

2.14 Before a designation Order is made the Department will consult on it. The consultation will give the opportunity for those with an interest to express their views (including whether a harbour authority should be included or removed from the designation Order). The ultimate decision on whether or not a harbour authority should have the status of a 'designated harbour authority' rests with the Department for Transport, which will consider responses to the consultation.

2.15 Annex B sets out approximate timescales; this is for illustrative purposes only and is dependent on resources and volume of applications submitted. In consultation with the National Directions Panel a deadline of six months for initial applications was considered suitable.

Review

2.16 We will keep each designation Order under review to ensure it is fit for purpose and relevant. If there is a need, any amendments would usually be made on the three-yearly cycle. Harbour authorities are encouraged to liaise with the Department for Transport about their designation.

3 Making Harbour Directions

3.1 Section 40B of the Harbours Act 1964 sets out the procedure that designated harbour authorities must follow before making harbour directions. The Act specifies that:

- all directions must be set out in writing;
- a harbour authority must consult such representatives of the users of the harbour;
- a harbour authority must publicise a proposed harbour direction for at least 28 days before it is given; and,
- a harbour authority must make harbour directions available for inspection, and supply a copy to anyone who requests it; as soon as reasonably practicable after giving a harbour direction the harbour authority must

publish a notice in a newspaper specialising in shipping news, stating that a direction has been given, and giving details of the arrangements for the inspection and supply of copies of harbour directions.

- 3.2 In order to publicise harbour directions the Department recommends harbour authorities publish harbour directions on their websites. While this is not a statutory requirement, it is good practice to do so.
- 3.3 The Department recognises that each harbour authorities is unique and considers that each harbour authority, in consultation with port users, is best placed to make decisions on which harbour directions would be appropriate for its harbour, based on local circumstances.
- 3.4 Harbour directions create criminal offences, and designated harbour authorities need to be prepared to prosecute breaches at the Magistrates' Court. Therefore harbour authorities must ensure that harbour directions are clear and unambiguous and that it is clear who is responsible for complying with the harbour direction. Harbour users should be able to easily understand what is permitted and what is not permitted within the harbour. Therefore harbour directions should use simple language, with definitions of the terms used in the harbour directions .Further Guidance is available from the NDP

4 Devolution

- 4.2 Ports legislation is a devolved matter. The Secretary of State in England will assess applications for ports in England and non-fishery ports in Wales.
- 4.3 In the case of a fishery harbour in Wales the harbour authority should liaise with the Welsh Government.
- 4.4 In the case of a harbour in Scotland they should contact the Scottish Government.

5 Contacts

- 5.1 Enquiries about this guidance or making an application should be sent to ports@dft.gsi.gov.uk.
- 5.2 Enquiries about the NDP, the Code of Conduct, model directions and other advice published by the NDP should be directed to The NDP Chairman, c/o UK Chamber of Shipping: ndp@chamberofshipping.com.
- 5.3 Enquiries about fishery ports in Wales and applications should be sent to fisheriesmailbox@wales.gsi.gov.uk.
- 5.4 Enquiries about the guidance produced by Transport Scotland should be addressed to Val Ferguson and any applications from ports in Scotland sent to Harbourorders@scotland.gsi.gov.uk.

Annex A – Assurance template

I confirm that the following resolutions of the [specify name of Harbour Authority] were duly passed at a meeting of the [specify harbour authority] on xxxx.

The harbour authority has had regard to the content of and agrees to comply with the code of conduct on harbour directions, in particular:

- a) to maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the code of conduct when required; and,
- b) to have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

The [Chief Executive] is authorised to apply to [Welsh Minister/ the Secretary of State for Transport/ Scottish Ministers] for [specify harbour authority] to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.

Name

XXXXXXXX

Signed

XXXXXXX

Date

XXXXXXX

Annex B - Proposed timetable for Year 1

DfT Guidance published – Nov 2013

Deadline for expressions of interest – 30 April 2014

Deadline for e-applications – 30 June 2014

Review of applications by the Department – July/August 2014 (largely dependent on volume of applications.)

Public consultation on the Designation Order – (allowing time for the Order to be drafted) – September/October 2014

Make the Order – late 2014/early 2015