

Marine Navigation (No. 2) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Transport with the consent of Baroness Wilcox, the member in charge of the Bill, are published separately as HL Bill 64 – EN.

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B I L L

TO

Make provision in relation to marine navigation and harbours.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Pilotage

1 Power to remove harbour authorities’ pilotage functions

- (1) In section 1 of the Pilotage Act 1987 (meaning of “competent harbour authority”) after subsection (4) insert—
- “(4A) A harbour authority in England or Wales is not a competent harbour authority for the purposes of this Act while it is specified in an order of the Secretary of State under this subsection. 5
- (4B) A harbour authority in Scotland is not a competent harbour authority for the purposes of this Act while it is specified in an order of the Scottish Ministers under this subsection.” 10
- (2) For subsection (5) of that section (power to revoke or amend where circumstances change) substitute—
- “(5) An order under this section may be amended or revoked by further order.”
- (3) In subsection (7) of that section (procedure for certain orders) for “this section” substitute “subsection (3) or (4)”. 15
- (4) After subsection (8) of that section insert—
- “(8A) Before making an order under subsection (4A) or (4B) the person making the order must consult—
- (a) any harbour authority to which the order would apply, and 20
- (b) anyone else who the person making the order thinks appropriate.

(8B) An order under this section may include transitional, consequential, incidental or supplemental provision.”

- (5) In section 1A(1) (procedure for certain orders: Scotland) after “other than subsection (4)” insert “or (4B)”.

2 Pilotage exemption certificates: grant 5

- (1) In section 8(1) of the Pilotage Act 1987 (grant) –
 (a) for “the master or first mate” substitute “a deck officer”, and
 (b) in paragraph (a) for “master or first mate” substitute “a deck officer”.
- (2) In section 8(5)(a) (renewal) for “the master or first mate of a ship” substitute “a deck officer of a ship”. 10
- (3) In sections 10(3), 15(1)(b) and 20(1)(a) (pilotage charges, compulsory pilotage and boarding facilities for pilots) for “master or first mate” substitute “deck officer”.
- (4) In section 31(1) (interpretation) at the appropriate place insert –
 ““deck officer”, in relation to a ship, includes the master and first mate;” 15

3 Pilotage exemption certificates: suspension and revocation

- (1) After section 8 of the Pilotage Act 1987 insert –
“8A Pilotage exemption certificates: suspension and revocation
- (1) A competent harbour authority may by written notice suspend or revoke a person’s pilotage exemption certificate in the following cases. 20
- (2) Case 1 is where an event has occurred as a result of which the authority is no longer satisfied of the matters specified in section 8(1)(a).
- (3) Case 2 is where the authority thinks that the person has provided false information to the authority as to any of those matters. 25
- (4) Case 3 is where the authority thinks that the person has been guilty of professional misconduct while piloting a ship.
- (5) Case 4 is where –
 (a) pilotage notification was given under section 15(4)(b) in reliance on the person’s certificate, and 30
 (b) in the event, the pilotage was carried out by a person who was neither an authorised pilot nor acting in accordance with a pilotage exemption certificate.

8B Section 8A: supplementary

- (1) The maximum period for which a pilotage exemption certificate may be suspended is 28 days. 35
- (2) But if a harbour authority has suspended a person’s certificate and is considering whether to revoke it, the authority may by written notice extend the suspension for a single period of up to 28 days.
- (3) A suspended certificate may be revoked (on the same or different grounds). 40

- (4) Before revoking a person’s certificate a harbour authority must—
 - (a) give the person written warning, stating the reasons for the proposed revocation, and
 - (b) allow the person a reasonable opportunity to make representations. 5
- (5) A competent harbour authority which has suspended or revoked a certificate may pay compensation to any person who has suffered, or is likely to suffer, loss as a result.”
- (2) In section 8—
 - (a) omit subsection (6) (revocation and suspension of certificates), and 10
 - (b) in subsection (7) (notice) omit “or suspending or revoking a certificate held by any person”.

4 Pilotage notification

For section 15(3) of the Pilotage Act 1987 (notification by master navigating ship) substitute— 15

- “(3) The master of a ship commits an offence if—
 - (a) the ship is navigated in an area in which a pilotage direction applies to it, and
 - (b) the competent harbour authority which gave the direction has not been given pilotage notification. 20
- (4) Pilotage notification is notification that the ship will be navigated in an area in which a pilotage direction will apply to it and—
 - (a) that an authorised pilot is required to pilot the ship, or
 - (b) that an authorised pilot is not required because the ship will be piloted by a specified person acting in accordance with a pilotage exemption certificate. 25
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”

Harbour authorities

5 Harbour directions 30

- (1) After section 40 of the Harbours Act 1964 insert—

“Harbour directions

40A Directions

- (1) A designated harbour authority may give directions (“harbour directions”) in respect of ships— 35
 - (a) within their harbour, or
 - (b) entering or leaving their harbour.
- (2) A harbour direction may relate to—
 - (a) the movement of ships;
 - (b) mooring or unmooring; 40

- (c) equipment (including nature and use);
 - (d) the manning of ships.
- (3) A harbour direction may require the master of a ship to provide information to a specified person in a specified manner.
- (4) “Designated harbour authority” means – 5
- (a) a harbour authority for a fishery harbour in Wales who are designated by order of the Welsh Ministers,
 - (b) a harbour authority for any other harbour in England or Wales who are designated by order of the Secretary of State, and
 - (c) a harbour authority for a harbour in Scotland who are designated by order of the Scottish Ministers. 10
- (5) A harbour direction is subject to any direction under section 52 of the Harbours, Docks and Piers Clauses Act 1847 (directions by harbour master).
- (6) A harbour authority may not give a harbour direction which conflicts with an enactment. 15
- (7) An order designating a harbour authority may amend or repeal any statutory provision of local application which the person making the order thinks is – 20
- (a) inconsistent with the power to give harbour directions, or
 - (b) unnecessary as a result of the power.
- 40B Procedure**
- (1) Harbour directions must be in writing.
- (2) Before giving harbour directions a harbour authority must consult such representatives of users of the harbour as the authority think appropriate. 25
- (3) A harbour authority must make such arrangements as they think appropriate for publicising a proposed harbour direction for at least 28 days before it is given.
- (4) A harbour authority must – 30
- (a) make harbour directions available for inspection, and
 - (b) supply a copy to anyone who requests it.
- (5) A harbour authority may charge for the supply of copies.
- (6) As soon as is reasonably practicable after giving a harbour direction the harbour authority must publish a notice in a newspaper specialising in shipping news – 35
- (a) stating that a harbour direction has been given, and
 - (b) giving details of the arrangements for the inspection and supply of copies of harbour directions.
- 40C Enforcement** 40
- (1) The master of a ship must ensure that harbour directions are complied with.
- (2) Breach of subsection (1) without reasonable excuse is an offence.

- (3) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

40D Supplemental

- (1) Harbour directions—
- (a) may make provision that applies generally or only in relation to specified circumstances, areas, periods or descriptions of ship, and 5
 - (b) may make different provision for different circumstances, areas, periods or descriptions of ship.
- (2) Harbour directions may be varied or revoked by subsequent harbour directions. 10
- (3) In section 40A—
“mooring” includes casting anchor, and
“unmooring” includes weighing anchor.”
- (2) In section 54 (orders and regulations) at the end insert— 15
- “(5) A power of the Secretary of State or Welsh Ministers to make an order under section 40A is exercisable by statutory instrument.
- (6) A statutory instrument containing an order under section 40A—
- (a) if made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament, 20
 - (b) if made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (3) In section 57(1) (interpretation) insert at the appropriate place—
““master”, in relation to a ship, means the person who has command or charge of the ship for the time being;” 25

6 Harbour closure orders

- (1) After section 17 of the Harbours Act 1964 insert—

“Harbour closure orders

17A Power to make closure order

- (1) The Secretary of State may make an order under this section in respect of a harbour (a “closure order”)— 30
- (a) on the application of the harbour authority,
 - (b) with the consent of the harbour authority, or
 - (c) if the Secretary of State has consulted the harbour authority and is satisfied that they are unlikely to object. 35
- (2) The Secretary of State must publish guidance about the circumstances in which a closure order will be made. The guidance—
- (a) must require the Secretary of State to have regard to the underlying purpose, and
 - (b) must be reviewed and (if appropriate) revised from time to time. 40

- (3) In this section—
- (a) “the underlying purpose” means the purpose of permitting or requiring harbour authorities to cease to maintain harbours which are no longer commercially viable or necessary;
 - (b) “the harbour authority” in relation to a harbour means any harbour authority which has statutory duties to manage, maintain or improve the harbour. 5

17B Content of closure order

- (1) A closure order must relieve the harbour authority of—
 - (a) all statutory functions in respect of the harbour, or 10
 - (b) specified statutory functions in respect of the harbour.
- (2) A closure order may transfer specified functions of the harbour authority to a specified body (with the body’s consent).
- (3) A closure order must include transitional provision about the cessation of the harbour authority’s functions (including provision about rights and liabilities in relation to the performance of functions before the closure order takes effect). 15
- (4) A closure order may—
 - (a) permit or require the harbour authority to carry out works in respect of the harbour; 20
 - (b) permit the Secretary of State to carry out works in respect of the harbour;
 - (c) require a harbour authority to pay for works carried out under paragraph (b);
 - (d) confer on the harbour authority or the Secretary of State power to acquire (whether by agreement or compulsorily) land described in the order as the site of works to be carried out under paragraph (a) or (b). 25

17C Harbour closure orders: property etc

- (1) A closure order may include provision for the transfer of property, rights and liabilities of the harbour authority. 30
- (2) In particular, a closure order may include provision—
 - (a) transferring things that would otherwise not be capable of being transferred;
 - (b) creating interests, rights or liabilities in relation to things transferred or in connection with a transfer; 35
 - (c) for enforcement of rights or liabilities (whether transferred or created by the order);
 - (d) about the transfer of rights and liabilities in relation to employment (including provision for deemed continuity); 40
 - (e) about pension schemes (including provision for amending schemes, winding them up, transferring their administration, and saving rights existing before a transfer takes effect);
 - (f) terminating appointments;
 - (g) for compensation for loss of employment (or office). 45
- (3) A closure order may include provision—

- (a) extinguishing liabilities to the Secretary of State;
 - (b) about the winding up of the harbour authority's affairs;
 - (c) about the winding up of any company wholly owned by the harbour authority;
 - (d) about the dissolution of the harbour authority. 5
- (4) A provision of a closure order transferring property, rights or liabilities may –
- (a) make the transfer subject to a condition (such as the grant of an interest in favour of a third party), and
 - (b) include provision about the effect of failure to comply with the condition. 10
- (5) Provision under this section may confer a function on the Secretary of State.
- 17D Harbour closure orders: procedure**
- (1) Part 1 of Schedule 3 has effect in relation to closure orders as in relation to harbour revision orders. 15
- (2) In relation to closure orders made otherwise than on the application of the harbour authority Part 1 of Schedule 3 has effect with any necessary modifications, in particular –
- (a) ignore paragraphs 3, 5, 6, 7, 9, 13 and 14, 20
 - (b) treat a reference to the applicant as a reference to the Secretary of State,
 - (c) treat a reference to the application for an order as a reference to the proposal to make an order,
 - (d) treat a reference to being notified of a proposed application as a reference to proposing to make an order, and 25
 - (e) paragraph 8 applies if the Secretary of State decides that the order would relate to a project which falls within Annex I or II to the Directive and is a relevant project, in which case –
 - (i) the Secretary of State must prepare the environmental statement, having consulted bodies with environmental responsibilities, and
 - (ii) the statement must include the information specified in sub-paragraph (2) (and may include other information). 30
- (3) Section 44 applies in relation to closure orders as in relation to harbour revision orders. 35
- 17E Harbour closure orders: devolution**
- (1) In relation to fishery harbours in Wales –
- (a) the power to make closure orders vests in the Welsh Ministers, and 40
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Welsh Ministers.
- (2) In relation to harbours in Scotland –
- (a) the power to make closure orders vests in the Scottish Ministers,
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Scottish Ministers, and 45

- (c) the reference in section 17D(1) to Schedule 3 is a reference to that Schedule as it has effect in relation to Scotland.

17F Supplemental

- (1) A closure order may include incidental, consequential, transitional or saving provisions. 5
- (2) In particular, a closure order –
- (a) may amend, repeal or revoke an enactment of local application, and
- (b) may disapply or modify the application of any other enactment.
- (3) A closure order – 10
- (a) may make provision generally or only for specified purposes, and
- (b) may make different provision for different purposes.”
- (2) At the end of section 44 (limitation of right to challenge orders) insert –
- “(9) Section 17D(3) applies this section to closure orders.” 15
- (3) In section 57(1) (interpretation) insert at the appropriate place –
- ““closure order” has the meaning given by section 17A;”.

Port constables

7 Port constables: extension of jurisdiction in England and Wales

- (1) A port constable may, for policing purposes connected with the port constable’s police area, act outside that area. 20
- (2) A port constable may act under subsection (1) only with the consent of the chief officer of police for the police area in which the port constable is acting.
- (3) Consent –
- (a) may be given in relation to a particular port constable or any description of port constables; 25
- (b) may be given generally for all policing purposes connected with the port constable’s police area or may be limited (whether as to particular purposes, particular occasions or in any other way);
- (c) may be given subject to conditions. 30
- (4) When acting under subsection (1) a port constable has all the powers and privileges of a constable.
- (5) “Port constable” means –
- (a) a person appointed by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847, 35
- (b) a person appointed under provision made by virtue of paragraph 8 of Schedule 2 to the Harbours Act 1964, or
- (c) a person appointed under section 154 of the Port of London Act 1968 (c. xxxii).
- (6) A port constable’s police area is the area in which the port constable has jurisdiction to act, ignoring – 40

- (a) subsection (1), and
 - (b) any provision, made by or under an enactment, under which the port constable has jurisdiction to act in an area for limited purposes only.
- (7) “Policing purposes connected with the port constable’s police area” means any of the following – 5
- (a) the prevention of the commission of offences in the port constable’s police area;
 - (b) the detection or investigation of offences committed in the port constable’s police area;
 - (c) the apprehension or prosecution of offenders in respect of offences committed in the port constable’s police area; 10
 - (d) the preservation of the peace in the port constable’s police area;
 - (e) the apprehension of offenders within the port constable’s police area in respect of offences committed outside that area and the transport of them to police stations outside that area; 15
 - (f) the regulation of traffic in the port constable’s police area.
- (8) Nothing in this section limits the circumstances in which a port constable may act apart from this section.

General lighthouse authorities

8 General lighthouse authority areas 20

- (1) In section 193 of the Merchant Shipping Act 1995 (general lighthouse authorities etc) at the end insert –
- “(6) In subsection (1) references to the seas include seas in an area specified by virtue of section 129(2)(b).”
- (2) In section 255C (locating and marking wrecks) – 25
- (a) at the end of subsection (4) insert “(and for this purpose a general lighthouse authority has the powers conferred by section 253 throughout their area)”;
 - (b) omit subsection (5).
- (3) In section 255F (removal in default) omit subsection (4). 30

9 General lighthouse authorities: commercial activities

- (1) After section 197 of the Merchant Shipping Act 1995 insert –
- “197A General lighthouse authorities: commercial activities**
- (1) A general lighthouse authority may enter into agreements – 35
- (a) for the use by others of assets of the authority (“hire agreements”);
 - (b) for the provision of consultancy or other services by the authority (“service agreements”).
- (2) But an authority may enter into a hire or service agreement only if – 40
- (a) they are satisfied that it is not likely to prejudice the discharge of their functions under section 195, and
 - (b) the Secretary of State consents.

- (3) Where an authority enter or seek to enter into hire or service agreements –
- (a) expenditure of the authority incurred in connection with the agreements, and with the Secretary of State’s consent, must be paid out of the General Lighthouse Fund, and 5
 - (b) sums received by the authority under the agreements must be paid into the General Lighthouse Fund.
- (4) The Secretary of State may consent to expenditure in acquiring an asset for the purpose of entering into hire agreements only if the Secretary of State thinks that the expenditure is merely preparatory or subsidiary to hire agreements in respect of other assets (such as in the case of acquiring one asset to be used with another or to be used in fitting, maintaining or converting another). 10
- (5) An authority must send a copy of any hire or service agreement to the Secretary of State. 15
- (6) Consent under this section –
- (a) may be subject to conditions,
 - (b) may be general or specific, and
 - (c) may be prospective or retrospective.”
- (2) In section 197 omit subsections (8) to (11) (power to exploit spare capacity). 20

Manning requirements and marking wrecks

10 Manning requirements for ships

In section 47 of the Merchant Shipping Act 1995 (manning requirements) after subsection (4) insert –

- “(4A) Standards of competence or other conditions prescribed or specified by the Secretary of State under subsection (1)(b) may be expressed by reference to other documents. 25
- (4B) A reference to a document in reliance on subsection (4A) may include a reference to amendments of the document which are –
- (a) made after the conditions are prescribed or specified, and 30
 - (b) approved for the purposes of the regulations by the Secretary of State.”

11 Marking wrecks

- (1) In section 252 of the Merchant Shipping Act 1995 (c. 21) (powers of harbour and conservancy authorities in relation to wrecks) in subsection (2)(b) for “light or buoy” substitute “mark the location of”. 35
- (2) After subsection (3) of that section insert –
- “(3A) For the purposes of subsection (2)(b) a location may be marked by –
- (a) buoys, lights or other physical devices;
 - (b) the transmission of information about the location.” 40

*General***12 Extent**

- (1) An amendment or repeal made by this Act has the same extent as the enactment to which it relates.
- (2) Section 7 extends to England and Wales only. 5

13 Commencement

- (1) Sections 1 to 11 come into force on such day or days as the Secretary of State may by order made by statutory instrument appoint, subject to subsections (2) and (3).
- (2) Sections 5 and 6 come into force in relation to fishery harbours in Wales on such day or days as the Welsh Ministers may by order made by statutory instrument appoint. 10
- (3) Sections 1 to 6 come into force in Scotland on such day or days as the Scottish Ministers may by order appoint.
- (4) An order under this section – 15
 - (a) may make provision generally or only for specified purposes,
 - (b) may make different provision for different purposes, and
 - (c) may include incidental or transitional provision (including savings).

14 Short title

This Act may be cited as the Marine Navigation Act 2012. 20

Marine Navigation (No. 2) Bill

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B I L L

To make provision in relation to marine navigation and harbours.

Brought from the Commons on 3rd December 2012

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