

# NATIONAL DIRECTIONS PANEL

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## SUPPLEMENTARY GUIDANCE: CODE OF CONDUCT ON HARBOUR DIRECTIONS

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### SUPPLEMENTARY GUIDANCE: CODE OF CONDUCT ON HARBOUR DIRECTIONS

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#### 1. Introduction

- 1.1 Sections 40A-40D of the Harbours Act 1964 were inserted by section 5 of the Marine Navigation Act 2013<sup>1</sup>.
- 1.2 In response to questions raised by members of both Houses of Parliament in relation to appropriate safeguards for the exercise of the powers to be conferred by the 2013 Act, the Government made clear in Parliament during the passage of the Bill that it would expect any harbour authority seeking to take advantage of the powers to agree to abide by a code of conduct as agreed by industry representatives. Extracts from the debates in both Houses of Parliament are set out in Appendix E.
- 1.3 The Code of Conduct on Harbour Directions (the Code)<sup>2</sup> was agreed by industry and user representative organisations and “sets out procedures in connection with the granting of the power to make Harbour Directions to individual harbour authorities and the way in which those Directions might be formulated and handled.”
- 1.4 The Code is not legally binding but its use is strongly recommended as a way of ensuring that the powers conferred by the 2013 Act are exercised appropriately after wide and effective consultation.

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<sup>1</sup> See Appendix C

<sup>2</sup> Appendix A

1.5 The Code states that:

***“Before making an Order designating a Harbour Authority as having Harbour Direction powers, the Harbour Authority will provide an assurance that it will abide by the Code to the Secretary of State (or Welsh or Scottish Ministers).”<sup>3</sup>***

1.6 The Code also created a new National Directions Panel (NDP), comprising industry and user representative organisations. The NDP comprises the British Ports Association, the UK Major Ports Group, the UK Chamber of Shipping, the Royal Yachting Association, the British Tugowners Association and the National Federation of Fishermen’s Organisations and includes observers from the DfT/Devolved Administrations

1.7 The Code provides that:

***“The NDP will act as a focal point for issues arising from the granting and use of Harbour Direction powers. Although it will not have the power to intervene in harbour operations or in individual dispute resolution procedures, it will oversee and make recommendations on the conduct expected of harbour authorities using the powers. These recommendations will be highly persuasive, providing guidance both to harbour authorities and Port User Groups (PUGs).***

***The NDP will be responsible for the preparation of Model Harbour Directions and any relevant accompanying guidance. These will be promulgated to all ports using powers under the Act and all those ports will be expected to factor them into their decision making. The NDP should keep under review what other guidance it might offer.”<sup>4</sup>***

1.8 This non-statutory guidance has therefore been prepared by the NDP in accordance with the above provisions of the Code and sets out the NDP’s guidance on the application of the Code.

## **2. Obtaining the powers – designation and compliance with the Code of Conduct**

2.1 A harbour authority may only exercise the power to give harbour directions under sections 40A-40D of the Harbours Act 1964 once it has been designated in an Order made by the relevant ministers, who are:

- (a) Welsh Ministers in the case of a fishery harbour in Wales;
- (b) the Secretary of State for Transport in the case of other harbours in England or Wales; and
- (c) Scottish Ministers in the case of a harbour in Scotland.

2.2 A harbour authority must apply to the relevant minister to be designated. The Department for Transport has published an Advice Note on how to make an application to be designated, which is available at [www.gov.uk/government/publications/harbour-directions](http://www.gov.uk/government/publications/harbour-directions) and a copy of which is attached as Appendix B. The Scottish Government has produced its own Advice Note along similar lines for ports in Scotland.

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<sup>3</sup> Appendix A, paragraph 4

<sup>4</sup> Appendix A, paragraphs 6 & 7

2.3 The Code provides that:

***“Before making an Order designating a Harbour Authority as having Harbour Direction powers, the Harbour Authority will provide an assurance that it will abide by the Code to the Secretary of State (or Welsh or Scottish Ministers).”<sup>5</sup>***

### **3. The use of harbour directions**

3.1 Harbour directions can be given by a designated harbour authority to ships:

- (a) within their harbour,
- (b) entering or leaving their harbour,

3.2 Harbour directions may relate to:

- (a) the movement of ships;
- (b) mooring or unmooring (including casting and weighing anchor);
- (c) equipment (including nature and use);
- (d) the manning of ships.

3.3 To all intents and purposes, the power to give harbour directions under the Act, where it is applicable, constitutes an alternative to making byelaws (though byelaw-making powers in any given case may have a wider ambit in that they might, for example, extend to on-shore activities). In particular, the master of a ship:

- (a) must ensure that such directions applicable to the ship are complied with; and
- (b) commits a criminal offence for failing to do so without reasonable excuse.

3.4 Harbour directions made under sections 40A-40D of the Harbours Act 1964 are in the nature of general directions. General directions are, as their name implies, of general application and, as such, are to be contrasted with special directions given from time to time by an authorised harbour master to individual vessels as occasion requires (most harbour masters have such powers by virtue of their harbour authority’s local legislation).

3.5 Unlike special directions, harbour directions may be given in relation to specified circumstances, areas, periods or descriptions of ship.

3.6 Harbour directions may be limited to a particular period or periods of time and therefore may be seasonal (i.e. they apply for the same period of time each year) or purely temporary (i.e. short term, with an in-built expiry date) e.g. to cater for a particular event in the harbour. Where purely temporary directions are considered, the harbour authority will need to bear in mind that the requisite prior consultation arrangements still apply and sufficient time must be allowed in advance for this. Imposing an expiry date on a direction may also be appropriate if the “cooling off” option is to be pursued as part of a dispute resolution process in the case of a proposed harbour direction which has been the subject of objections This possibility is dealt

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<sup>5</sup> Appendix A, paragraph 4

with in more detail below under the 'Port Users Group and Dispute Resolution Process' heading of this guidance.

3.7 As indicated above, harbour directions must relate to "ships" and so cannot be made in relation to other subject matter. In this context, "ship" includes every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968 (see section 57 of the Harbours Act 1964). The meaning of the expression "vessel used in navigation" has been considered in a number of legal cases over many years. In the 2006 case of *R v. Goodwin*, the Court of Appeal expressed the view that "vessel used in navigation" means a vessel that is used to make ordered progression over the water from one place to another.

3.8 Examples of vessels that have been found not to be used in navigation in particular circumstances include personal watercraft, mobile platforms and static hulks. The Railways and Transport Safety Act 2003 contains a power enabling the Secretary of State to modify or extend the definition of "ship" for the purposes of the Harbours Act 1964 but to date this power has not been exercised.

#### 4. Model harbour directions

4.1 As required by the Code<sup>6</sup>, the NDP has produced a number of model harbour directions that, as the Code makes clear, harbour authorities will be expected to factor into their decision-making. The NDP encourages harbour authorities to utilise the text of these model directions as appropriate when drafting their harbour directions.

4.2 These model harbour directions are attached as Appendix D.

4.3 Designated harbour authorities should keep in mind that harbour directions create criminal offences, and that they need to be prepared to prosecute breaches at the Magistrates' Court. Therefore harbour authorities must ensure that harbour directions are clear and unambiguous, that they are appropriately framed and targeted to be effective and achieve their objectives without unnecessary or inappropriate adverse impacts 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 so harbour directions should use simple language, with definitions of the terms used in the harbour directions. The model harbour directions set out in Appendix D are not exhaustive. Where a harbour authority is contemplating making harbour directions that go beyond the NDP's published model directions, it is recommended that those harbour directions follow a similar style and format to the model directions.

4.4 It should also be borne in mind when making harbour directions that these may duplicate the harbour authority's existing byelaws. Unless the designation Order has provided for their revocation, the harbour authority must make a new set of byelaws that revokes earlier byelaws either fully or partially. ***It is recommended that existing byelaws and general directions should be reviewed by harbour authorities at the same time as making harbour directions.***

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<sup>6</sup> Appendix A, paragraph 7

## **5. Procedure for giving harbour directions**

- 5.1 Harbour directions are given by the harbour authority rather than by its officers (i.e. it is a main board function). Once given, they are for the harbour master to enforce as directed by the harbour authority.
- 5.2 As with the introduction of any new regulation, the harbour authority should establish to its satisfaction that the proposed harbour direction is necessary, the most appropriate means of addressing the issue in question and is proportionate in its effect.
- 5.3 The contravention of a harbour direction constitutes a criminal offence with all the implications which that entails. These include, for the harbour authority, the formal process of cautioning, preparation of case and prosecution where the direction needs to be enforced through the courts and, for the master of the vessel, potential criminal liability, possible exposure to civil liability in consequence (by virtue of acting illegally) and the fine and consequential reputational loss which will follow if convicted. The introduction of harbour directions should therefore normally only follow consideration of alternatives (including, for example, the use of information and guidance) and an assessment of the direct and indirect effects of the direction on harbour users. Depending on the circumstances, that may require a detailed formal impact assessment.
- 5.4 In some cases, temporary harbour directions rather than permanent ones may be appropriate. In such cases, the direction should be expressed to have effect for no longer than is appropriate.
- 5.5 It is important to consult harbour users, when considering the introduction of harbour directions, on the form that these may take. This should ensure that directions are appropriately framed and targeted to be effective and achieve their objectives without unnecessary or inappropriate adverse impacts.
- 5.6 To be effective, consultation needs to provide sufficient details of the background to the proposals, what the directions are intended to address, what if any alternatives have been considered and the form of the directions and their anticipated impact on harbour users to allow consultees to make an informed response. Consultation may need to include more than one stage.
- 5.7 If it is decided following advance consultation with harbour users that only harbour directions will deliver the outcome sought, then the statutory process for making harbour directions (section 40B of the 1964 Act) requires the harbour authority to consult representatives of port users on the proposed harbour directions and to publish the proposed directions for public consultation for at least 28 days.
- 5.8 It is recommended that consultation with port users should begin as early as possible, allow an appropriate period for response, and culminate in the harbour authority giving due consideration to the responses received. Involvement of the local PUG in this will be a key element and is dealt with later in this Guidance.
- 5.9 Harbour authorities are encouraged to have regard to government guidance on best practice in relation to consultation. Current government guidance on consultation can be found here:

- 5.10 Once the statutory consultation is complete, a harbour authority will need to consider the responses received and then in light of them decide whether to make the proposed harbour directions, with or without modification, and the reasons for its decision. If it is concluded that the proposed harbour directions should be significantly modified, then port users should again be formally consulted. Whether modifications are significant is a matter for objective judgment and involves weighing up whether or not they materially alter the nature or effect of the direction in a manner that is likely to materially affect a harbour user.
- 5.11 If a harbour authority decides to give harbour directions which have been consulted on, it must then:
- (a) make the harbour directions available for inspection;
  - (b) supply a copy to anyone who requests one (which it may make a reasonable charge for, if it chooses to do so, to reflect the cost of providing that copy);
  - (c) publish a notice in a newspaper specialising in shipping news stating that the direction has been given and giving details of the arrangements for the inspection and supply of copies of the direction.
- 5.12 As failure to comply with harbour directions may constitute a criminal offence, it is strongly recommended that in addition to the above harbour authorities publish harbour directions on their websites for ease of access.

## **6. Port User Groups and the Dispute Resolution Process**

- 6.1 The Code includes the following provisions in relation to PUGs:

***“Any Harbour Authority using Harbour Direction powers under the Act should set up a PUG; this must include representatives of harbour users as extensively as possible, including NDP members as appropriate, but in a way which keeps the PUG to a manageable size. In many cases such a user group already exists, in which case, it would be appropriate for that group to take on the duties of a PUG bearing in mind its role as set out in this Code.***

***A PUG should be able to (1) appoint its Chairman and secretariat from amongst its members; (2) adopt its own rules of procedure; (3) agree its own agenda for meetings; and (4) determine the frequency of its meetings. The Harbour Authority should provide a venue for meetings of the PUG and be represented at its meetings but the Harbour Authority should not be a member of the PUG.***

***Although the representatives on the PUG would have a remit from those they represent and a responsibility to protect their interests, members of the PUG also have a responsibility to understand and protect the overall interests of the harbour.***

***PUGs will have an opportunity to consider proposed Harbour Directions at least 14 days before the formal 28 day consultation period. PUGs will play a particularly***

***important role in the event of unresolved objections. They will have a responsibility to seek to achieve resolution at a local level whenever possible.”***

6.2 If a harbour authority already has a user group which can fulfil the role of the PUG but it does not meet the full requirements of the Code, it is recommended that the group is adapted to do so.

6.3 The Code also includes a process for resolving disputes in relation to proposed harbour directions. The Code provides that the dispute resolution procedure is:

- a) ***Proposed Harbour Direction (HD) published for public consultation and at least 28 days given for responses.***
- b) ***If objection(s), these to be subject to discussion between the Harbour Authority (HA) and objector(s) to share views and explore whether, for example, the intended objective of the HD can be met in other ways.***
- c) ***If objection(s) unresolved, referral to the local Port Users Group (PUG).***
- d) ***PUG to use its best endeavours to resolve objection(s) on a local basis.***
- e) ***If there is no resolution within a reasonable time, the PUG might consider the use of a “cooling off” period, its length to be decided by the PUG, during which time the Harbour Direction is implemented and then reviewed.***
- f) ***If this is not an acceptable approach to the PUG or to an objector and no other means of reaching a resolution is identified, the objection(s) will be resolved by referral to an independent person to be agreed between the Harbour Authority and the PUG/objector (as appropriate) or, failing agreement, appointed by the NDP on request. The independent person will invite the views of the parties and produce a report of his conclusions, which will be made available to all parties. This should be considered a last resort, and every effort should be made to find a local resolution.***
- g) ***The Harbour Authority will, in the light of the PUG’s discussions and the views of the independent person, decide whether to exercise the power to give or amend the disputed Harbour Direction. Once it has so decided, the Harbour Authority must give notice in writing to the PUG and the objector of its decision and of the reasons for that decision. If the Harbour Authority decides to make a significant amendment to a Harbour Direction then it should be treated as being a new direction and consulted on accordingly.***
- h) ***The process is then concluded.”***

6.4 Harbour authorities are likely to find that their PUG can usefully act as a consultative forum for harbour issues generally but it also has a specific role in relation to harbour directions under the Act:-

- (a) to consider proposed harbour directions;
- (b) to consider and use its best endeavours to resolve any unresolved objections (ie objections made to the proposals which after discussion between the harbour authority and the objector, are not withdrawn by the objector);
- (c) to recommend the adoption in appropriate cases (ie where it and the objector or objectors consider this an acceptable way forward) of a “cooling off” period which



should be specified during which time the general harbour direction is implemented and then reviewed;

- (d) where neither a “cooling off” period nor other means of reaching a resolution is identified by the PUG, to agree with the harbour authority who is to be the independent person to whom the objection or objections are referred; and
- (e) to receive and take account of the decision of a harbour authority to make a harbour direction.

6.5 It will be for each PUG in relation to an objection to judge how best to seek to resolve it but is recommended that PUGs consider the following:

- (a) it should bear in mind that what it is seeking to achieve or facilitate is agreement between the parties or, if that is not practicable, at least a narrowing and refinement of the issues in dispute;
- (b) it can provide a useful forum to enable the harbour authority and objectors better to understand their respective positions, the evidential basis for these and any weaknesses in them;
- (c) it may choose to invite written communications but equally may proceed simply by meeting with the parties jointly or separately;
- (d) it should not be influenced by any imbalance in the respective resources of the parties and their ability to argue their case but rather should seek to ensure that arguments on each side are sufficiently explored and receive the consideration they deserve;
- (e) members of the PUG may and should participate in proceedings notwithstanding that they or a body whom they represent has an interest in the matter but they should make it clear when they have such an interest;
- (f) it will not be responsible for making any determination itself but rather is in a similar position to that of a mediator and must leave any final determination to the harbour authority;
- (g) whilst not making a determination itself, it should provide a clear recommendation to the parties at the conclusion of its consideration and in a manner that enables the parties to agree the way forward or, if the dispute cannot be resolved, to refer it to an independent person;
- (h) it should bear in mind that the “cooling off” option (which needs to be consensual) is only likely to be acceptable to the objectors if the length of the implementation period prior to review is no longer than is necessary to provide a practical test of the implications of the direction and if the review process is carefully defined so that the process is clear and time limited;
- (i) the “cooling off” option review process is therefore likely to need to include the opportunity for each party to make its views known to the other on the implementation by a specified date, for that to be followed by a specified period for the PUG to seek to resolve any outstanding objection and, should the direction remain objected to, for

the direction to be time limited or suspended by a specified date unless otherwise agreed pending completion of referral, if needed, to an independent person and final determination by the harbour authority as to whether to retain, drop or amend the direction;

- (j) such a suspension or time limit could be achieved by the harbour authority implementing the direction subject to the qualification “except for such periods as the harbour authority may specify” or “Until [specified date]” and then giving an undertaking to suspend if necessary. Since harbour directions, once made, can only be varied or revoked by subsequent harbour directions, the alternative of reaching agreement as to potential revocation would mean implementing the whole direction-making procedure again just to achieve that.

6.6 The appointment of the independent person in accordance with the Code will need to cover the terms of the referral, including the procedure for making representations, the programme for this and payment of the independent person’s fees and expenses. The independent person might, but not necessarily, be a member of the London Maritime Arbitrators Association or another professionally qualified arbitrator. Whilst different arrangements may be appropriate for different cases, it is recommended for general purposes that the arrangements should provide for a fixed programme for making written representations, that either party or the independent person should be able to call for an oral hearing for the parties to respond to the independent person’s questions, that the whole process should ordinarily be configured to be completed within 3-6 months inclusive of the submission by the independent person’s report to the parties. The arrangement should also provide for the apportionment of the costs of the independent person and for the payment of the parties’ own costs, which might be that the parties each bear their own costs and share equally the costs of the independent person.

6.7 Once the harbour authority receives the independent person’s report, it will be for the harbour authority to reach a final determination on whether or not to make the harbour direction in issue, with or without modifications. In doing so, it will need to have proper regard to the independent person’s report and any other material circumstances and then reach a reasoned decision which it should publish. As with any decision by a public authority, a harbour authority’s decision will be open to legal challenge by any party on grounds of irrationality, if the proper processes have not been followed or if the directions are otherwise unlawful. However, as long as the decision reached is a reasonable one for the harbour authority to reach in all the circumstances and the dispute resolution process has been followed effectively, the risk of such a challenge should be low.

## **7 Enforcement**

7.1 Contravention of a harbour direction is a criminal offence that, on summary conviction before the Magistrates’ Court, may result in a fine not exceeding level 4 (currently set at £2,500).

7.2 As with other possible offences, investigation of possible offences including interviewing of persons involved must be undertaken in accordance with the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice:

<https://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

7.3 In deciding whether to prosecute, the Harbour Authority will need to satisfy itself beyond reasonable doubt that an offence has been committed and that there is sufficient evidence to convict. It will also need to consider whether prosecution is proportionate and in the public interest. Relevant public interest considerations include whether the offending has been intentional, reckless or grossly negligent, the degree of harm caused, any previous history of offending, whether there has been repeated or protracted contravention of the harbour direction and whether the offender has been uncooperative or obstructive.

7.4 Detailed guidance on the principles to be taken into account will be found in the Code for Crown Prosecutors issued by the Crown Prosecution Service:

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

## **8. Contacts**

8.1 Any queries or comments on this guidance can be addressed to:

Chairman, National Directions Panel  
C/o UK Chamber of Shipping  
30 Park Street  
London  
SE1 9EQ

[ndp@ukchamberofshipping.com](mailto:ndp@ukchamberofshipping.com)

**November 2013**

## APPENDIX A

### CODE OF CONDUCT ON HARBOUR DIRECTIONS

1. This Code arises out of the Marine Navigation Act 2013 ('the Act') and sets out procedures in connection with the granting of the power to make Harbour Directions to individual harbour authorities and the way in which those Directions might be formulated and handled.
2. The Code also covers the setting up of a National Directions Panel (NDP) which will oversee the use of Harbour Directions.
3. The Code is only applicable to those Harbour Directions made under powers granted under the Act, although harbour authorities with existing Powers of General Direction may wish to make use of it in exercising these powers.
4. Before making an Order designating a Harbour Authority as having Harbour Direction powers, the Harbour Authority will provide an assurance that it will abide by the Code to the Secretary of State (or Welsh or Scottish Ministers).

#### **Section A – National Directions Panel (NDP)**

5. The NDP will, as a minimum, consist of representatives from the British Ports Association, the UK Major Ports Group, the UK Chamber of Shipping, the Royal Yachting Association and the relevant fisheries organisations. The NDP will keep its membership under continual review to ensure that it is fit for purpose and properly reflective of those likely to be affected by Harbour Directions. It is important that the NDP is of a manageable size. A Chair of and the secretariat for the NDP will be drawn from the members. It will be expected to meet once a year, or more if the circumstances arise.
6. The NDP will act as a focal point for issues arising from the granting and use of Harbour Direction powers. Although it will not have the power to intervene in harbour operations or in individual dispute resolution procedures, it will oversee and make recommendations on the conduct expected of harbour authorities using the powers. These recommendations will be highly persuasive, providing guidance both to harbour authorities and Port User Groups (PUGs).
7. The NDP will be responsible for the preparation of Model Harbour Directions and any relevant accompanying guidance. These will be promulgated to all ports using powers under the Act and all those ports will be expected to factor them into their decision making. The NDP should keep under review what other guidance it might offer.
8. The NDP will keep the procedure for dispute resolution under review. (See Section C)

#### **Section B – Port User Group (PUG)**

9. Any Harbour Authority using Harbour Direction powers under the Act should set up a PUG; this must include representatives of harbour users as extensively as possible, including NDP members as appropriate, but in a way which keeps the PUG to a manageable size. In many cases such a user group already exists, in which case, it would be appropriate for that group to take on the duties of a PUG bearing in mind its role as set out in this Code.

10. A PUG should be able to (1) appoint its Chairman and secretariat from amongst its members; (2) adopt its own rules of procedure; (3) agree its own agenda for meetings; and (4) determine the frequency of its meetings. The Harbour Authority should provide a venue for meetings of the PUG and be represented at its meetings but the Harbour Authority should not be a member of the PUG.

11. Although the representatives on the PUG would have a remit from those they represent and a responsibility to protect their interests, members of the PUG also have a responsibility to understand and protect the overall interests of the harbour.

12. PUGs will have an opportunity to consider proposed Harbour Directions at least 14 days before the formal 28 day consultation period. PUGs will play a particularly important role in the event of unresolved objections. They will have a responsibility to seek to achieve resolution at a local level whenever possible.

13. Issues arising out of an individual PUG which may be of national interest should be communicated to the NDP for the benefit of the NDP and other PUGs.

### **Section C - Dispute Resolution Procedure**

14. The procedure is:-

a) Proposed Harbour Direction (HD) published for public consultation and at least 28 days given for responses.

b) If objection(s), these to be subject to discussion between the Harbour Authority (HA) and objector(s) to share views and explore whether, for example, the intended objective of the HD can be met in other ways.

c) If objection(s) unresolved, referral to the local Port Users Group (PUG).

d) PUG to use its best endeavours to resolve objection(s) on a local basis.

e) If there is no resolution within a reasonable time, the PUG might consider the use of a "cooling off" period, its length to be decided by the PUG, during which time the Harbour Direction is implemented and then reviewed.

f) If this is not an acceptable approach to the PUG or to an objector and no other means of reaching a resolution is identified, the objection(s) will be resolved by referral to an independent person to be agreed between the Harbour Authority and the PUG/objector (as appropriate) or, failing agreement, appointed by the NDP on request. The independent person will invite the views of the parties and produce a report of his conclusions, which will be made available to all parties. This should be considered a last resort, and every effort should be made to find a local resolution.

g) The Harbour Authority will, in the light of the PUG's discussions and the views of the independent person, decide whether to exercise the power to give or amend the disputed Harbour Direction. Once it has so decided, the Harbour Authority must give notice in writing to the PUG and the objector of its decision and of the reasons for that decision. If the Harbour Authority decides to make a significant amendment to a Harbour Direction then it should be treated as being a new direction and consulted on accordingly.

h) The process is then concluded.

## APPENDIX B

### DfT ADVICE NOTE ON DESIGNATION

#### 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)<sup>7</sup> 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.
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 directions<sup>8</sup>. 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](mailto: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](mailto:fisheriesmailbox@wales.gsi.gov.uk).

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<sup>7</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/38728/port-marine-safety-code.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/38728/port-marine-safety-code.pdf)

<sup>8</sup> [www.britishports.org.uk/navigational-safety](http://www.britishports.org.uk/navigational-safety);  
[www.rya.org.uk/go/currentaffairs](http://www.rya.org.uk/go/currentaffairs);  
[www.ukchamberofshipping.com/information/publications-and-briefings](http://www.ukchamberofshipping.com/information/publications-and-briefings);  
[www.ukmajorports.org.uk/pages/latest-news](http://www.ukmajorports.org.uk/pages/latest-news)

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 xx 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.

## 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](http://www.britishports.org.uk/navigational-safety);

[www.rya.org.uk/go/currentaffairs](http://www.rya.org.uk/go/currentaffairs);

[www.ukchamberofshipping.com/information/publications-and-briefings](http://www.ukchamberofshipping.com/information/publications-and-briefings);

[www.ukmajorports.org.uk/pages/latest-news](http://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](mailto: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](mailto:ports@dft.gsi.gov.uk).

- 2.2 Fishery ports in Wales should apply to the Welsh Assembly Government at [fisheriesmailbox@wales.gsi.gov.uk](mailto: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

- 4.1 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.
- 4.2 In the case of a fishery harbour in Wales the harbour authority should liaise with the Welsh Government.
- 4.3 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](mailto: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](mailto:ndp@chamberofshipping.com).
- 5.3 Enquiries about fishery ports in Wales and applications should be sent to [fisheriesmailbox@wales.gsi.gov.uk](mailto: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](mailto: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 e-applications – 30 April 2014

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

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

Make the Order – winter 2014

## APPENDIX C

### HARBOURS ACT 1964, SECTIONS 40A-D

#### *Harbour directions*

#### **40A Directions**

(1) A designated harbour authority may give directions (“harbour directions”) in respect of ships—

- (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;
- (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—

- (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.

(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.

(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—

- (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.

(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—

- (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—

- (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**

(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
- (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.

(3) In section 40A—

- “mooring” includes casting anchor, and
- “unmooring” includes weighing anchor.”

#### **Consequential Amendments to the Harbours Act 1964:**

In section 54 (orders and regulations) at the end insert—

“(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,
- (b) if made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

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;”.

## APPENDIX D

### MODEL HARBOUR DIRECTIONS

#### Note

Section 40C of the Harbours Act 1964 provides that:

- (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.

#### Model Definitions:

In these Directions the following words and expressions have the following meanings:

- i. **“Collision Regulations”** – means the International Regulations for Preventing Collisions at Sea 1972, as amended from time to time;
- ii. **“Commercial Ship”** – means any Ship which is not a Recreational Craft;
- iii. **“Fairway”** – means the navigable channel which is the regular course or track of Ships as shown on the relevant Admiralty chart and by the navigation marks and buoys;
- iv. **“Grounded”** – means, in relation to a Ship, having made involuntary contact with the ground, except for touching briefly so that no damage is caused;
- v. **“Harbour”** – The limits of the harbour within which the Harbour Authority has jurisdiction;
- vi. **“Harbour Authority”** – means [insert port name], in which are invested under an Act of Parliament, or an order or other instrument made under such an Act, powers or duties of improving, maintaining or managing a harbour;
- vii. **“Harbour Master”** – means any person appointed as such by the Harbour Authority, and his/her deputies and assistants, and any other person or employee of the Harbour for the time being authorised to act, either generally or for a specific purpose, in the capacity of Harbour Master;
- viii. **“MARPOL”** – means the International Convention for the Prevention of Pollution from Ships;
- ix. **“Master”** – when used in connection with a Ship means any individual having command or charge of the Ship;
- x. **“Mean High Water Mark”** – means the level of mean high water spring tides;
- xi. **“Mooring”** – includes any quay, buoy, pile, post, chain, pillar, pontoon or like apparatus or convenience provided by the Harbour Authority for the mooring of Ships;
- xii. **“Powerboat”** – means a Recreational Craft which is powered by an engine with a rated power output of in excess of [15kW];
- xiii. **“Recreational Craft”** – means a Ship [of less than 24m in length] which, regardless of its means of propulsion, is intended for sports or leisure purposes;
- xiv. **“Ship”** – includes every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968.
- xv. **“SOLAS”** – means the International Convention for the Safety of Life at Sea;
- xvi. **“Underway”** – when used in relation to a Ship means not at anchor, or made fast to the shore, or aground.

#### Model Harbour Directions

##### **1. Collision Regulations**

The Collision Regulations must be complied with at all times by any Ship within the Harbour.

##### **2. Speed Limit**

- a) Every Ship navigating within the [specify area] of the Harbour [or within [insert figure] metres of Mean High Water Mark] must, unless otherwise authorised by the Harbour



Master in writing, be navigated at a speed not exceeding [*insert figure*] knots through the water.

- b) Direction 2a) does not apply to a Ship on any occasion when it is being used by the Police, Fire Service or RNLI or to any other safety, rescue or patrol craft in an emergency situation, or for the purposes of enforcing any applicable direction or byelaw.
- c) Direction 2a) does not apply to a Ship that is only able to maintain adequate steerage way and control by navigating at a speed in excess of the limit specified in Direction 2a).
- d) A Ship must be navigated at all times with due care and attention and in such a manner so as not to endanger the safety of, or cause nuisance to, any other vessel, person or property.
- e) A Ship must not be navigated or manoeuvred in any part of the [*insert specific description/area (optional)*] Harbour or within [*insert figure*] metres of the shore in a manner or at a speed so as to cause wash to be generated that may endanger the safety of, or cause damage to, any other vessel, person or property.

### **3. Navigating under influence of alcohol or drugs**

A person must not navigate or attempt to navigate a Ship while their ability to do so is impaired because of drink or drugs.

### **4. Reporting Collisions and Sunk or Grounded Ships**

- a) The Master of any Commercial Ship involved in any collision and the Master of any Recreational Craft involved in a collision in which significant damage or personal injury is suffered must as soon as possible and in any event within 24 hours report the collision to the Harbour Master.
- b) The Master of a Commercial Ship which has sunk or grounded in the Harbour must immediately advise the Harbour Master of its position and any other particulars that may be required for the safety of navigation. If a Commercial Ship under tow has sunk or grounded the Master of the towing Ship is subject to the same duty to advise the Harbour Master.
- c) The Master of a Recreational Craft which has sunk in the Harbour, and the Master of a Recreational Craft that has grounded in the Harbour such that the grounding has resulted in significant damage or a threat to its watertight integrity, must as soon as possible advise the Harbour Master of its position and any other particulars that may be required for the safety of navigation.

### **5. Unseaworthy Ship**

A person must not navigate a Ship in an unsafe or unseaworthy condition within the Harbour except as necessary for that Ship's safety and that of its crew. If a Ship has a defect that threatens the safety of its crew or other Harbour users or inhibits its ability to navigate safely the Master must notify the Harbour Master immediately.

### **6. Manning by competent persons**

- a) Any Ship underway in the Harbour must be under the control or direct supervision of a competent person.
- b) When conditions require or in any event when reasonably required by the Harbour Master, a Ship must have at least one competent person on board at all times whilst the Ship is anchored or moored in the Harbour.
- c) A person under the age of [16] years must not be the Master of a Powerboat within the Harbour unless they hold an appropriate RYA qualification (or equivalent) or have permission from the Harbour Master.

**7. Lights impeding safe navigation**

Except in the interests of safe and proper navigation, lights, including lasers or other beams, must not be used on a Ship in a manner which causes nuisance to other vessels or impedes safe navigation.

**8. Mooring and anchoring**

- a) A Ship must not use any Mooring in the Harbour without permission from the Harbour Master. The use of any such Mooring must be in compliance with the conditions attached to the permission issued by the Harbour Master or displayed in the Harbour Master's office.
- b) A Commercial Ship on entering the Harbour must, if directed by the Harbour Master, proceed to the Mooring directed by the Harbour Master. A Commercial Ship so directed must not be moved to a different Mooring without the express permission of the Harbour Master.
- c) A Ship moored or anchored within the Harbour must be properly and effectively moored or anchored, so that it is not only secure but also not liable to cause any damage to any other vessel or property.
- d) Except in the case of an emergency, a Ship must not be anchored in the Fairway, within any areas used for small craft moorings or where it is likely to obstruct navigation.

**9. Obstruction of Aids to Navigation**

A Ship must not obstruct, be made fast to or otherwise interfere with any aid to navigation, including a light, beacon, sea mark, navigation buoy or mark, racing buoy or tide pole within the Harbour.

**10. Obstruction of public landings**

A person must not use a Ship or its equipment or permit a Ship or its equipment to be used in a manner that obstructs any public landing place, hard, pier, jetty or slipway within the Harbour.

**11. Fishing within harbour areas**

A Ship must not be used to drift, trawl, pot or undertake any other fishing activity in any part of the Harbour so as to be or to be likely to become an obstruction or danger to navigation in the Harbour. Bottom gear must not be used in any fairway or channel or any areas used for small craft moorings.

**12. Open fires on board a Ship**

A person must not light an open fire on any Ship within the Harbour, except for cookers or barbecues designed for use on board a Ship. Such cookers or barbecues must only be used on board the Ship and must not be transferred to a pontoon or quay.

**13. Discharge of Oil, Sewage and Waste**

- a) In addition to any of the requirements under MARPOL a person on any Ship must not use the Ship's equipment or cause or permit the Ship's equipment to be used to discharge into the Harbour any:
  - i) oil or oily residues; or
  - ii) sewage, when moored to any Mooring having direct pedestrian access to shore facilities; or
  - iii) commercial or domestic waste, plastics, or foodstuffs.

- b) The Master of a Ship must immediately report to the Harbour Master any discharge of oil or oily residues from the Ship, however caused. In such circumstances, the Master must comply with any directions issued to the Master by the Harbour Master.

**14. Notification of Arrival and Departure**

Before any Commercial Ship:

- i) enters the Harbour; or
- ii) moves within the Harbour; or
- iii) leaves the Harbour,

reasonable notice must be given to the Harbour Master in advance of the intended entering, moving or leaving.

**15. Navigation in Restricted Visibility**

When visibility within the Harbour is less than [one half of a nautical mile]:

- i) a Commercial Ship carrying dangerous substances (as defined in the Dangerous Substances in Harbour Areas Regulations 1987) in bulk; and
- ii) a Commercial Ship in ballast but not gas-free;

must not enter, leave or move within the Harbour without the permission of the Harbour Master.

**16. Automatic and Back-up Steering Gear**

- a) When use is being made of an automatic steering device on a Commercial Ship, a qualified helmsman must be present on the bridge at all times to steer the Ship manually should circumstances demand.
- b) Any duplicate, secondary or backup steering gear and associated power systems fitted to a Commercial Ship must be fully operational and ready for immediate use while that Commercial Ship is navigating within the Harbour.
- c) When use is being made of an automatic steering device on a Recreational Craft, a competent person must be within reach of the steering position at all times to steer the Ship manually should circumstances demand.

**17. Passage Plans**

Before a Ship enters, leaves or moves within the Harbour a voyage plan for the intended passage must be prepared in accordance with Regulation 34 of Chapter V of SOLAS.

**Note:** Information for the preparation, updating and execution of voyage plans may be found in:

- SOLAS Chapter V, Safety of Navigation, Annex 25 – Guidelines for Voyage Planning (IMO resolution A.893 (2))
- Current [insert port name] Notices to Mariners

[insert Harbour Authority name] HARBOUR DIRECTIONS, [insert date].

## **MODERN DRAFTING TIPS**

Reduce the length and complexity of sentences;

Do not use outmoded language such as 'hereby', 'forthwith' (use 'as soon as practical'), 'thereof', 'therewith', 'hereinafter', 'thereto', (replace with 'to it'). Also avoid the use of archaic terms for example phonogram etc;

Do not use initial capital letters for words that are not proper nouns or defined terms in harbour directions;

Replace 'shall' with 'must' or 'shall not' with 'must not' where it is intended to impose an obligation;

Adopt a gender neutral drafting style, for example instead of using 'he', 'his' etc to 'he or she' or 'his and her' and ensure harbour directions comply with equality legislation;

Avoid the passive form, use active verbs;

Ensure consistent terminology is used throughout the harbour directions to avoid ambiguity or creating uncertainty in those complying with the harbour directions or enforcing them. Synonyms should be avoided unless intended to mean something different;

Locations referred to in the harbour directions should be ones that those unfamiliar with the locality can easily locate (for example marked on charts covering the area);

All relevant enabling powers should be specified.

## APPENDIX E

### STATEMENT BY STEPHEN HAMMOND MP

House of Commons, Hansard, 30 November 2012 (columns 542 & 551), on report stage of the Marine Navigation (No.2) Bill

Column 542:

**Peter Bottomley:** ...The next question is what the Minister will say about designating harbour authorities—I do not anticipate that he will be able to speak for the other national authorities other than those for England, but he could indicate whether others may do the same—and whether he will bear in mind the commitment to adhere to an agreed code of practice, and that that commitment, which will not be onerous, and no one is trying to suggest something that would cause more bureaucracy, will be a factor when considering designation. That is one of the crucial issues on which the Minister can address the House. [*Interruption.*] Is he addressing the House now?

**Stephen Hammond:** I tried, on Second Reading and in Committee, to be as helpful as possible as early as possible so that there was no cause for confusion. It is my expectation and the expectation of the Department for Transport that, when applying for a designation, a harbour authority would sign up to the code of practice.

Column 551:

**Stephen Hammond:** This has been a passionate debate and I recognise the concerns raised by my hon. Friends the Members for Worthing West (Sir Peter Bottomley) and for Croydon South (Richard Ottaway), both of whom spoke passionately and with knowledge. I hope that they accept, as I do, that the concerns have been raised a number of times and I hope we are moving towards a solution. The concerns were raised at a meeting with me before the Committee stage of the Bill. I hope that I will be able to allay some of them by explaining why the Government have chosen the non-statutory safeguards that complement the statutory provisions in the Bill. I understand that they have been agreed in principle by industry in its widest sense, by the Department and in principle although not in detail by the RYA. In total, there are 12 safeguards, some of which are detailed in the Bill. Others are non-statutory and I want to focus on them.

A set of harbour directions will be made available for harbours to adopt, as will guidance on how to use the power. A code of conduct covering good practice on consultation and a mechanism to resolve disputes about harbour directions before they are made will be developed by representatives of the port and the port users. An independently chaired panel will be established to develop and maintain the code of conduct and model harbour directions and I have given assurances on Second Reading and in Committee that the Department will actively engage in ensuring that there are guidelines for what should be covered in the code of conduct, how the harbour authority should make those directions and whom they should be consulting.

I expect the code of conduct to be agreed. I want it agreed by all sides—that is, not just by my Department but by the RYA.

See for the whole debate:

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121130/debindx/121130-x.htm>

## STATEMENT BY THE EARL ATTLEE

### House of Lords, Hansard, 1 February 2013 (columns 1834-1836), on consideration stage of the Marine Navigation (No.2) Bill

**Earl Attlee:** My Lords, I am grateful to the noble and right reverend Lord, Lord Eames, for explaining the reason behind this amendment. I was terrified that he would not move his amendment because he observed that there was good news. When a similar amendment was debated in another place, the Shipping Minister was able to announce an initial agreement between port operators and users to develop a code of conduct on harbour directions. The intention was that this would provide a mechanism for resolving disputes. The Shipping Minister said:

"It is my expectation and the expectation of the Department for Transport that, when applying for a designation, a harbour authority would sign up to the code of practice".-[Official Report, Commons, 30/11/2012; col. 542.]

I am happy to say that since then, there have been very productive meetings between the Royal Yachting Association, the British Ports Association and the UK Major Ports Group, chaired by the UK Chamber of Shipping, to develop that code. At their meeting yesterday, agreement was reached on the terms of that code and I have personally laid a copy in the Library of the House. I was not prepared to fall into the trap of some noble Lord going into the Library and not finding the code of practice.

As expected, the code describes the establishment of a National Directions Panel to maintain the code, produce a set of model harbour directions that designated harbours can adopt as appropriate for their local circumstances, and consider how the power of the harbour directions is being used. The code also sets out how harbour directions should be consulted on with harbour users and how disputes can be resolved. The focus of the code is on resolution locally by the port and its users, but with the possibility of referral to an independent arbiter if agreement cannot be reached.

I believe that this is an excellent example of the benefits of non-statutory arrangements complementing legislation. I think that this is the right approach as we seek to reduce bureaucratic and inflexible central regulation and open up local decision-making. We do not want to gold-plate legislation, especially as there are already a number of safeguards in the Bill aimed at ensuring that the power of harbour directions is used responsibly.

In answer to the noble and right reverend Lord, Lord Eames, I repeat the Shipping Minister's assurance that the Government would expect any harbour authority applying for designation to have agreed to the code of conduct. I do not anticipate that the code of conduct would be ignored in future years; furthermore, the designation order would be kept under review and a harbour authority could be de-designated if that were warranted.

The noble Lord, Lord Berkeley, asked whether the harbour authority would have to be a fit and proper person. The noble Lord will know that Ministers always take into consideration whether a person is a fit and proper person. Having said that, I hope that the noble and right reverend Lord, Lord Eames, will feel able to withdraw his amendment.

See for the whole debate:

<http://www.publications.parliament.uk/pa/ld201213/ldhansrd/index/130201.html>