

Marine Navigation Bill [HL]

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TO

Make provision about marine navigation.

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 Competent harbour authorities

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

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

2 Qualifications required by pilots 5

- (1) After section 3 of the Pilotage Act 1987 (authorisation of pilots) insert –

“3A Qualification regulations

- (1) The appropriate national authority may by regulations (“qualification regulations”) require an applicant for authorisation as a pilot under section 3(1) to have specified qualifications. 10
- (2) A competent harbour authority may authorise a person as a pilot under section 3(1) only if the person produces a certificate which –
- (a) is issued by or on behalf of the appropriate national authority under qualification regulations, and
 - (b) shows that the person has any qualification required by qualification regulations. 15
- (3) Qualifications may relate to physical fitness, knowledge, experience, skill or any other matter.
- (4) But a qualification may be required only if the appropriate national authority thinks it in the interests of safety. 20
- (5) “Appropriate national authority” means –
- (a) in relation to a harbour authority for a harbour in England or Wales, the Secretary of State,
 - (b) in relation to a harbour authority for a harbour in Scotland, the Scottish Ministers, and 25
 - (c) in relation to a harbour authority for a harbour in Northern Ireland, the Department for Regional Development.

3B Section 3A: supplemental

- (1) Qualification regulations may make issue of a certificate conditional on payment of a specified fee. 30
- (2) A certificate may be issued in reliance on either –
- (a) an award made by a body specified in the regulations, or
 - (b) assessment carried out by a person specified in the regulations following a process established by the regulations.
- (3) In subsection (2)(a) “award” includes an award – 35
- (a) whether granted for general purposes or for the purposes of this section, and
 - (b) whether or not granted following an examination.
- (4) Qualification regulations may require a qualification to be assessed, or may specify a qualification, by reference to a specified document. 40
- (5) A reference to a document in reliance on subsection (4) may include a reference to amendments of the document which are –
- (a) made after the regulations come into force, and

- (b) approved for the purposes of the regulations by the appropriate national authority.
- (6) Qualification regulations –
- (a) may make provision generally or only for specified classes of case, 5
- (b) may make different provision for different classes of case, and
- (c) may include incidental or transitional provision.
- (7) A person who knowingly or recklessly makes a false statement for the purpose of obtaining a certificate under qualification regulations is –
- (a) guilty of an offence, and 10
- (b) liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- (2) In section 3(1) of the Pilotage Act 1987 for “section” substitute “sections 3A and”.
- 3 Pilotage notification 15**
- For section 15(3) of the Pilotage Act 1987 (notification by master navigating ship) substitute –
- “(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 20
- (b) the competent harbour authority which gave the direction has not been given pilotage notification.
- (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 25
- (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.
- (5) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.” 30
- 4 Exemption certificates: grant**
- (1) In section 8(1) of the Pilotage Act 1987 (grant) –
- (a) omit “who is bona fide the master or first mate of any ship”, and
- (b) in paragraph (a) for “the ship of which he is master or first mate (or that and any other ships specified in the certificate)” substitute “the ship or ships specified in the certificate”. 35
- (2) In section 8(5)(a) (renewal) omit “if the holder continues to be the master or first mate of a ship,”.
- (3) In sections 10(3), 15(1)(b) and 20(1) (pilotage charges, compulsory pilotage and boarding facilities for pilots) for “master or first mate” substitute “person”. 40

5 Exemption certificates: suspension and revocation

- (1) After section 8 of the Pilotage Act 1987 (pilotage exemption certificates) 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. 5
- (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. 10
- (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 15
- (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. 20
- (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 other grounds). 25
- (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. 30
- (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— 35
- (a) omit subsection (6) (revocation and suspension of certificates), and
- (b) in subsection (7) (notice) omit “or suspending or revoking a certificate held by any person”.

Harbour authorities

6 Directions by harbour authority

- (1) After section 40 of the Harbours Act 1964 (use of harbour services and facilities) 40

insert –

“Harbour directions

40A Directions

- (1) A designated harbour authority may give directions (“harbour directions”) in respect of ships – 5
- (a) within their harbour, or
 - (b) entering or leaving their harbour.
- (2) A harbour direction may relate to – 10
- (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 – 15
- (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. 20
- (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. 25
- (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 – 30
- (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. 35
- (3) A harbour authority shall 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 shall – 40
- (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 shall publish a notice in a newspaper specialising in shipping news—
 - (a) stating that a harbour direction has been given, and 5
 - (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. 10
- (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— 15
 - (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. 20
- (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.” 25
- (2) 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;”.

7 Qualifications required by harbour masters

- (1) After section 42 of the Harbours Act 1964 insert— 30

“Harbour masters

42A Qualification regulations

- (1) The Secretary of State may by regulations (“qualification regulations”) specify qualifications required by harbour masters for harbours in England or Wales. 35
- (2) The Scottish Ministers may by regulations (“qualification regulations”) specify qualifications required by harbour masters for harbours in Scotland.
- (3) A harbour authority may appoint a person as a harbour master only if the person produces a certificate which— 40

- (a) is issued by or on behalf of the Secretary of State or the Scottish Ministers under qualification regulations, and
 - (b) shows that the person has any qualification required by qualification regulations.
- (4) Qualifications may relate to physical fitness, knowledge, experience, skill or any other matter. 5
- (5) But a qualification may be required only if the Secretary of State or the Scottish Ministers think it in the interests of safety.
- (6) “Harbour master” includes a dock master or pier master.
- 42B Section 42A: supplemental** 10
- (1) Qualification regulations may make issue of a certificate conditional on payment of a specified fee.
- (2) A certificate may be issued in reliance on either –
 - (a) an award made by a body specified in the regulations, or
 - (b) assessment carried out by a person specified in the regulations following a process established by the regulations. 15
- (3) In subsection (2)(a) “award” includes an award –
 - (a) whether granted for general purposes or for the purposes of this section, and
 - (b) whether or not granted following an examination. 20
- (4) Qualification regulations may require a qualification to be assessed, or may specify a qualification, by reference to a specified document.
- (5) A reference to a document in reliance on subsection (4) may include a reference to amendments of the document which are –
 - (a) made after the regulations come into force, and
 - (b) approved for the purposes of the regulations by the person who made the regulations. 25
- (6) Qualification regulations –
 - (a) may make provision generally or only for specified classes of case,
 - (b) may make different provision for different classes of case, and
 - (c) may include incidental or transitional provision. 30
- (7) A person who knowingly or recklessly makes a false statement for the purpose of obtaining a certificate under qualification regulations is –
 - (a) guilty of an offence, and
 - (b) liable on summary conviction to a fine not exceeding level 5 on the standard scale.” 35

8 Closure orders

- (1) After section 17 of the Harbours Act 1964 (harbour revision and empowerment

orders: procedure) insert –

“Harbour closure orders

17A Power to make order

- (1) 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, 5
 - (b) “closure order” means an order made by the Secretary of State under this section in respect of a harbour, and
 - (c) “the harbour authority” in relation to a harbour means any harbour authority which has statutory duties to manage, maintain or improve the harbour. 10
- (2) The Secretary of State may make a closure order, but only –
- (a) on the application of the harbour authority,
 - (b) with the consent of the harbour authority, or 15
 - (c) if the Secretary of State has consulted the harbour authority and is satisfied that they are unlikely to object.
- (3) The Secretary of State shall 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 20
 - (b) must be reviewed and (if appropriate) revised from time to time.

17B Content of order

- (1) A closure order must relieve the harbour authority of – 25
- (a) all statutory functions in respect of the harbour, or
 - (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 authorities’ functions (including provision about rights and liabilities in relation to the performance of functions before the closure order takes effect). 30
- (4) A closure order may –
- (a) permit or require the harbour authority to carry out works in respect of the harbour; 35
 - (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); 40
 - (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).

17C Property

- (1) A closure order may include provision for the transfer of property, rights and liabilities of the harbour authority.
- (2) In particular, a closure order may include provision—
- (a) transferring things that would otherwise not be capable of being transferred; 5
 - (b) creating interests, rights or liabilities in relation to things transferred or in connection with a transfer;
 - (c) for enforcement of rights or liabilities (whether transferred or created by the order); 10
 - (d) about the transfer of rights and liabilities in relation to employment (including provision for deemed continuity);
 - (e) about pension schemes (including provision for amending schemes, winding them up, transferring their administration, and saving rights existing before a transfer takes effect); 15
 - (f) terminating appointments;
 - (g) for compensation for loss of employment (or office).
- (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; 20
 - (c) about the winding up of any company wholly owned by the harbour authority;
 - (d) about the dissolution of the harbour authority.
- (4) A provision of a closure order transferring property, rights or liabilities may— 25
- (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.
- (5) Provision under this section may confer a function on the Secretary of State. 30

17D Procedure

- (1) Part 1 of Schedule 3 has effect in relation to closure orders as in relation to harbour revision orders.
- (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— 35
- (a) ignore paragraphs 3, 5, 6, 7, 9, 13 and 14,
 - (b) treat a reference to the applicant as a reference to the Secretary of State, 40
 - (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
 - (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— 45

- (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). 5
- (3) Section 44 applies in relation to closure orders as in relation to harbour revision orders.

17E Devolution

- (1) In relation to fishery harbours in Wales –
- (a) the power to make closure orders vests in the Welsh Ministers, and 10
 - (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, 15
 - (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
 - (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. 20
- (2) In particular, a closure order –
- (a) may amend, repeal or revoke an enactment of local application, and 25
 - (b) may disapply or modify the application of any other enactment.
- (3) A closure order –
- (a) may make provision generally or only for specified purposes, and
 - (b) may make different provision for different purposes.” 30
- (2) At the end of section 44 of the Harbours Act 1964 (limitation of right to challenge orders) add –
- “(9) Section 17D(3) applies this section to closure orders.”
- (3) In section 57(1) of the Harbours Act 1964 (interpretation) insert at the appropriate point – 35
- ““closure order” has the meaning given by section 17A;”.

General lighthouse authorities

9 Areas

- In section 193 of the Merchant Shipping Act 1995 (general and local lighthouse authorities) at the end add – 40
- “(6) In subsection (1) references to the seas include seas in an area specified by virtue of section 129(2)(b).”

10 Commercial activities

- (1) After section 197 of the Merchant Shipping Act 1995 (general powers of general lighthouse authority) insert –

“197A Commercial activities

- (1) A general lighthouse authority may enter into agreements – 5
 (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) An authority may not enter into a hire or service agreement unless – 10
 (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 – 15
 (a) expenditure of the authority incurred in connection with the agreements, and with the Secretary of State’s consent, shall be paid out of the General Lighthouse Fund, and
 (b) sums received by the authority under the agreements shall be paid into the General Lighthouse Fund. 20
- (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). 25
- (5) An authority shall send a copy of any hire or service agreement to the Secretary of State.
- (6) Consent under this section – 30
 (a) may be subject to conditions,
 (b) may be general or specific, and
 (c) may be prospective or retrospective.”
- (2) In that section omit subsections (8) to (11) (power to exploit spare capacity).

*Miscellaneous***11 Manning requirements**35

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. 40
- (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
- (b) approved for the purposes of the regulations by the Secretary of State.”

12 Amendments consequential on sections 1, 2, 6 and 8

- (1) In section 54 of the Harbours Act 1964 (orders and regulations) at the end add— 5
- “(3) A power to make an order under section 40A, or regulations under section 42A, is exercisable by statutory instrument.
- (4) A statutory instrument containing an order under section 40A or regulations under section 42A— 10
- (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, and 15
 - (c) if made by the Scottish Ministers, is subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (2) In section 30 of the Pilotage Act 1987 (orders and regulations)—
- (a) in subsection (1) after “power” insert “of the Secretary of State or Scottish Ministers”, 20
 - (b) after subsection (1) insert—
- “(1A) The power of the Department for Regional Development to make regulations under section 3A shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.”, and 25
- (c) at the end add—
- “(3) Any statutory instrument containing an order made by the Scottish Ministers under section 1(4B), or regulations made by the Scottish Ministers under section 3A, shall be subject to annulment in pursuance of a resolution of the Scottish Parliament. 30
- (4) Any statutory rule containing regulations made by the Department for Regional Development under section 3A shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.” 35

General

13 Commencement

- (1) This Act comes into force in accordance with provision made by the Secretary of State by order made by statutory instrument.
- (2) An order— 40
- (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 2011.

Marine Navigation Bill [HL]

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B I L L

To make provision about marine navigation.

Lord Berkeley

Ordered to be Printed, 5th July 2011

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