

## **MARINE NAVIGATION (No. 2) BILL**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Marine Navigation (No.2) Bill as brought from the House of Commons on 3rd December 2012. They have been provided by the Department for Transport with the consent of Baroness Wilcox, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or part of a section does not seem to require any explanation or comment, none is given.

#### **BACKGROUND AND SUMMARY**

3. This Bill amends legislation relating to pilotage, harbour authorities, the general lighthouse authorities and the manning of ships, as well as extending the powers of port police, to address the problems outlined below.
4. Many harbours require ships traversing their waters to use a maritime pilot with appropriate experience, generating additional costs for shipping companies. Although a harbour authority can grant a pilotage exemption certificate, where ships' officers have the required skills and knowledge, the restrictions on the granting, suspension and revocation of such certificates make this arrangement unnecessarily inflexible.
5. There is no straightforward legal progress to enable a port to close, should it become uneconomic to operate. Closure could be achieved only by promoting a private Act of Parliament, which is both time-consuming and costly for the harbour authority as well as Parliament and the Government. Similarly, there is no process for relieving a Competent Harbour Authority (as defined in the 1987 Pilotage Act) of its legal duties to provide pilotage where activity at the port no longer warrants the provision of pilotage services.
6. Powers of general direction are conferred on some harbour authorities by the Acts or Orders establishing them. Such powers are a useful and efficient means to ensure safety and smooth

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operations. But many harbour authorities lack them and they would each need to apply for a Harbour Revision Order to obtain them. This can be a lengthy and costly process.

7. Six harbours in England have their own ports police forces. However, officers in those forces are limited to carrying out their duties within the port and within one mile of the port. This unnecessarily limits their ability to protect maritime businesses from crime.
8. The three General Lighthouse Authorities (GLAs) for the UK and Ireland are restricted in the extent to which they could reduce their operating costs by engaging in commercial operations where they have surplus capacity. This reduces the opportunity to earn income that could help keep down the level of Light Dues charged on ships visiting UK ports. It is also necessary to provide the GLAs with clear powers to provide essential aids to navigation outside UK territorial waters and to use modern, cost-effective electronic warnings to mark wrecks as well as more traditional methods of lights and buoys.
9. The Merchant Shipping Act 1995 (MSA95) contains regulation-making powers which authorise references to external documents, for example an industry-agreed standard, in the areas of safety and environmental protection. This provides a simple and effective method of quickly incorporating necessary technical amendments into legislation. However, this option is not available for the power to make regulations on manning requirements, complicating the process for transposing internationally agreed changes to manning standards.
10. In response to these problems, this Bill introduces measures to reduce burdens on the ports and shipping industry, and improve safety for vessels in harbours and the seas around the United Kingdom. It includes provisions governing pilotage, the management of harbours, and the powers and duties applicable to harbour authorities, port constables and the GLAs.

## **OVERALL STRUCTURE OF THE BILL**

11. The Bill comprises 14 clauses under the following six headings:
  - a) Pilotage
  - b) Harbour authorities
  - c) Port constables (i.e. port police)
  - d) General lighthouse authorities (GLAs)
  - e) Manning requirements and marking wrecks
  - f) General

## COMMENTARY ON CLAUSES

### PILOTAGE

#### **Clause 1: Power to remove harbour authorities' pilotage functions**

12. Clause 1 amends the Pilotage Act 1987 to provide the appropriate national authority with power to specify by order that a harbour authority in England, Wales or Scotland is not a competent harbour authority within the meaning of that Act. Making such an order in respect of a competent harbour authority will mean it is no longer required to carry out certain duties set out in the Pilotage Act. The relevant duties include keeping under review whether any, and, if so, what pilotage services need to be provided for the safety of ships in its harbour or its approaches and whether pilotage should be compulsory. The appropriate national authority in this context is the Secretary of State as regards harbours in England and Wales and the Scottish Ministers as regards harbours in Scotland. In England and Wales, the order making power is subject to the applicable negative resolution scrutiny procedure.

#### **Clause 2: Pilotage exemption certificates: grant**

13. Clause 2 amends the Pilotage Act 1987 to remove the restriction whereby only the master or first mate of a ship may hold a pilotage exemption certificate. Any *bona fide* deck officer of a ship, including its master or first mate, may hold one provided the relevant competent harbour authority is satisfied that that person has the skill, experience and local knowledge, and sufficient knowledge of English for safety purposes, to be capable of piloting one or more specified ships within its harbour.

#### **Clause 3: Pilotage Exemption certificates: suspension and revocation**

14. Clause 3 extends the circumstances in which a competent harbour authority can, by written notice, suspend or revoke a pilotage exemption certificate. The authority may do this if:
- a) an event occurs that gives it reason to believe that the holder of the certificate no longer meets the requirements for holding a certificate;
  - b) it thinks that the holder of the certificate has provided false information;
  - c) it thinks that the holder of the certificate has been guilty of professional misconduct while piloting the ship; or
  - d) the certificate has been misused in circumstances where an act of pilotage is undertaken by an unauthorised person.
15. As an example, the previous legislation would not have permitted the immediate suspension of the certificate of a pilot if he were found to be temporarily incapable of navigating a ship due to being under the influence of alcohol. Such misconduct would fall under paragraph (c) above.

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16. In order to suspend or revoke a certificate an authority must give written notice. The maximum period of suspension is 28 days but that may be extended for a further 28 days if the authority is considering whether to revoke it. A revocation must state the reasons for the revocation in writing and the holder of the certificate must be allowed a reasonable period to make representations. The authority will have the discretion to pay compensation to any person who has suffered, or is likely to suffer, loss as a result of the suspension or revocation of a certificate.

**Clause 4: Pilotage notification**

17. Clause 4 amends the Pilotage Act 1987 by substituting a new section 15(3) which makes it an offence by the master of a ship not to give a pilotage notification before the ship is navigated in an area for which a pilotage direction is in force. That notification must either request an authorised pilot or notify the authority that the ship will be piloted by a specified person in accordance with a pilotage exemption certificate.

**HARBOUR AUTHORITIES**

**Clause 5: Harbour directions**

18. This clause amends the Harbours Act 1964 and inserts new sections 40A to 40D.
19. New section 40A (Directions) provides that the appropriate national authority may by order designate harbour authorities which may give harbour directions to ships within, entering or leaving their harbour. Harbour directions may relate to the movement of ships, their mooring or unmooring, their equipment and their manning. Those subject matters enable a designated harbour authority to regulate safety and environmental protection in the harbour. The appropriate national authority in this context is the Scottish Ministers in respect of a harbour in Scotland, the Welsh Ministers in respect of a fishery harbour in Wales and the Secretary of State in respect of any other harbour in England and Wales. In England and Wales, the regulation making power is subject to the negative resolution scrutiny procedure.
20. New section 40B (Procedure) governs the procedure applicable to harbour directions. A harbour authority must consult users and publicise a harbour direction before the direction is given, and publicise the fact that it has been given. There is also provision for the inspection of harbour directions and the provision of copies.
21. New section 40C (Enforcement) creates an offence where a master of a ship fails to ensure compliance with harbour directions without reasonable excuse. This is punishable on summary conviction by a fine not exceeding level 4 on the standard scale (currently £2500).

**Clause 6: Harbour closure orders**

22. This clause amends the Harbours Act 1964 and inserts new sections 17A to 17F.

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23. New section 17A (Power to make closure order) provides the appropriate national authority with power to make a closure order so that a harbour authority will stop maintaining its harbour which is no longer commercially viable or necessary. The harbour authority must have applied for the order or consent to it or the national authority must be satisfied it is unlikely to object. Each national authority must publish further guidance about the circumstances in which an order will be made. The appropriate national authority in this context means the Scottish Ministers in respect of harbours in Scotland, the Welsh Ministers in respect of fishery harbours in Wales, and the Secretary of State in respect of all other harbours in England and Wales. There is already a similar provision in Northern Ireland.
24. New section 17B (Content of closure order) contains provisions as to the content of a closure order. A closure order will have the effect of relieving the harbour authority of some or all of its statutory functions and may include provision for transitional arrangements.
25. New section 17C (Harbour closure orders: property etc.) provides that a closure order may also provide for the transfer of some or all of the harbour authority's property, rights and liabilities to other bodies.
26. New section 17D (Harbour closure orders: procedure) sets out the procedure for making a closure order which is a modified version of the procedure in Part 1 of Schedule 3 to the Harbours Act 1964 applicable to harbour revision orders.

## **PORT POLICE**

### **Clause 7: Port constables: extension of jurisdiction in England and Wales**

27. This clause extends the geographic jurisdiction for ports police forces in England and Wales beyond the existing limit related to the boundary of the port. By removing the jurisdiction limit, ports police are enabled to carry out a range of policing tasks without the assistance of the normal (or 'Home Office') Police Forces. There are currently six ports police forces in England and none in Wales.

## **GENERAL LIGHTHOUSE AUTHORITIES (GLAs)**

### **Clause 8: General lighthouse authority areas**

28. Clause 8 amends section 193 of the Merchant Shipping Act 1995 by inserting subsection (6) to clarify that the area in which each GLA may operate includes the area for which the United Kingdom has jurisdiction for the prevention of pollution from ships.

### **Clause 9: General Lighthouse authorities: commercial activities**

29. This clause inserts new section 197A into the Merchant Shipping Act 1995. It authorises the GLAs to enter into agreements for others to use the authorities' assets and to provide

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consultancy and other services. It also allows the GLAs to obtain reimbursement from the General Lighthouse Fund in respect of certain expenditure incurred in connection with such agreements. The consent of the Secretary of State is required prior to the entry into such an agreement or such expenditure being incurred. Any sums received by the GLAs under such agreements must be paid into the General Lighthouse Fund.

## **MANNING REQUIREMENTS AND MARKING WRECKS**

### **Clause 10: Manning requirements for ships**

30. Clause 10 provides for an amendment of section 47 of the Merchant Shipping Act 1995 relating to manning requirements on ships. The amendment allows regulations made under section 47, or provision made by the Secretary of State under such regulations, to prescribe or specify conditions by reference to documents prepared by other people, including amended versions of such documents where the Secretary of State has approved the amendments for the purposes of section 47. The policy intention is to allow greater flexibility in drafting the provisions in regulations which determine the standards which must be met by seafarers in order for them to be qualified for the purposes of section 47.

### **Clause 11: Marking Wrecks**

31. This clause amends section 252 of the Merchant Shipping Act 1995 under which harbour authorities and conservancy authorities have power to mark wrecks which are or are likely to become a danger to navigation. The amendment allows for locations to be marked either by physical devices (such as buoys or lights) or by broadcasting relevant information. Such broadcast information can be used to show locations on electronic devices and charts. The amendment will also affect the GLAs who, by virtue of section 253(1), have the same powers as those conferred by section 252.

## **TERRITORIAL EXTENT AND APPLICATION**

32. At introduction this Bill contains provisions that trigger the Sewel Convention which provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the Consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.
33. Amendments made by the Bill have the same extent as the enactments amended. While certain provisions extend to England, Wales, Scotland and Northern Ireland, the extent of other provisions is more limited.

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34. *Clause 1* of the Bill gives the Scottish Ministers power to specify the harbour authorities that are no longer required to provide pilotage services. The same powers are given to the Secretary of State in relation to England and Wales. No provision is made for Northern Ireland.
35. *Clause 5* gives power to the Secretary of State, Scottish Ministers and Welsh Ministers to designate harbour authorities in England, Scotland and Wales respectively, which are permitted to give harbour directions to ships that are within or entering or leaving their harbour. These powers are inserted in the Harbours Act 1964 which does not extend to Northern Ireland.
36. *Clause 6* gives the Scottish Ministers power to make closure orders in relation to harbour authorities in Scotland; Welsh Ministers are given the same power in respect of fishery harbours in Wales and the Secretary of State is given the same power in respect of all harbours in England and non-fishery harbours in Wales. These powers are inserted in the Harbours Act 1964 which does not extend to Northern Ireland.

#### **FINANCIAL EFFECTS**

37. The financial effects to the Consolidated Fund and National Loans Fund of this Bill should be negligible.
38. The only additional expenditure likely would be incurred through the one-off production of guidance on Harbour Closure Orders and the minimal ongoing cost of the processing of such orders or those revoking Competent Harbour Authority status. The Impact Assessment has estimated there would be one to two applications for Harbour Closure Orders a year for a few years following enactment and that there are around twenty inactive Competent Harbour Authorities that might seek an order to revoke their status.

#### **PUBLIC SECTOR MANPOWER**

39. The Bill would not require significant change to public service manpower. The proposals in it should be met within existing resources.

#### **SUMMARY OF IMPACT ASSESSMENT**

40. The Impact Assessment has concluded that the clauses in this Bill would have no significant adverse impact on any relevant body. Instead, they offer the opportunity to reduce costs and risks for harbour authorities, will enable port police and the General Lighthouse Authorities to fulfil their statutory functions more effectively, and should reduce the risk of potentially expensive accidents involving the improper use of Pilot Exemption Certificates.

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41. Micro businesses are not exempted from this Bill because the measures have relatively limited impact on any business (as demonstrated in the Impact Assessment) and the net impact is expected to be deregulatory and beneficial to business, so it is reasonable to allow micros to benefit from that deregulation along with larger businesses.
42. A copy of the full impact assessment is available in the Vote Office. It is also available on the Department for Transport website, at <https://www.gov.uk/government/publications/marine-navigation-no-2-bill>

**COMMENCEMENT**

43. The provisions in the Act will be brought into force by Order made by the Secretary of State, except that, in respect of fishery harbours in Wales, clauses 5 and 6 will be brought into force by Order made by the Welsh Ministers and, in respect of Scotland, clauses 1 to 6 will be brought into force by Order made by the Scottish Ministers.

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