

Draft Marine Navigation Bill: Consultation Document





Draft Marine Navigation Bill: Consultation Document

Presented to Parliament by the Secretary of State for Transport
by Command of Her Majesty

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1. Executive summary

1.1 The UK Government proposes to legislate to reinforce the *Port Marine Safety Code*, to improve the management of the General Lighthouse Fund and the powers of the General Lighthouse Authorities and to enable the ratification of the International Convention on the Removal of Wrecks 2007. Views are sought on the proposed measures.

1.2 A draft Bill is published as Annex A to this consultation document with the following measures:

- enabling the Secretary of State to provide for harbour authorities to give general directions to shipping;
- permitting the Secretary of State to provide for competent harbour authorities to relinquish their powers and duties relating to pilotage where they are no longer required;
- strengthening and clarifying the existing provisions for pilotage exemption;
- enabling the Secretary of State to direct harbour authorities that appear to be discharging their duties unsafely;
- providing a power for the Secretary of State to designate National Occupational Standards for Harbour Masters and pilots;
- providing a simpler means for harbour authorities to relinquish their powers and duties in certain circumstances;
- redefining the powers of the General Lighthouse Authorities to operate beyond UK territorial waters and to undertake commercial work where this will bring in additional money to fund their statutory duties;
- providing the Secretary of State with a power to make alternative arrangements for pensions for staff of the General Lighthouse Authorities;
- providing the General Lighthouse Authorities with powers to enforce their duties with respect to the supervision of Local Lighthouse Authorities;
- updating the methods of marking wrecks available to the authorities with statutory responsibility for this work; and
- providing for the ratification of the International Convention on the Removal of Wrecks 2007 to provide a uniform legal basis for locating, marking and removing wrecks which pose a hazard to navigation or the marine environment and recovering associated costs from the shipowner.

1.3 The Government also invites views on possible legislation to update the existing tax exemption for the General Lighthouse Fund and to improve the ability of the General Lighthouse Authorities to enforce their inspections of non-statutory aids to navigation.

2. How to respond

2.1 The consultation period began on 6 May 2008 and will run until 25 July 2008. Please ensure that your response reaches us by that date. If you would like further copies of this consultation document it can be found at:

<http://www.dft.gov.uk/consultations>

or you can contact the Department for Transport at the address below.

2.2 Please send consultation responses to:

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2.3 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

2.4 A list of statutory organisations/stakeholders that we have sent this consultation to is included in this consultation document. If you have any suggestions of others who may wish to be involved in the consultation process please let us know.

2.5 This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation".

2.6 According to the requirements of the Freedom of Information Act 2000, all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response **or your name and address** to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.

2.7 A summary of responses to this consultation will be published on our website:

<http://www.dft.gov.uk>

after the consultation period has closed. Paper copies will be available on request. The Government will then announce its conclusions following the consultation.

3. The proposals in detail

3.1 Port Safety Measures

Navigational safety in UK harbour waters is the responsibility of statutory harbour authorities, drawing on obligations and powers set out in a mixture of national statutes and local Acts and Orders specific to each port. Some of the legislation is well over a century old and aspects of the local legislation may no longer be suited to the type and size of vessels now in use. Rather than devote substantial time and effort to overhauling this complex legislative inheritance, Government has concentrated on providing an up-to-date overarching non-statutory framework to which the whole industry is expected to adhere.

After the oil tanker *Sea Empress* grounded off the Middle Channel Rocks in the approaches to Milford Haven on 15 February 1996 the report of the Marine Accident Investigation Branch recommended that national minimum standards of pilot training and examination in the UK should be prepared and procedures should be developed and implemented for the effective monitoring of competent harbour authorities' standards of training and examination of pilots. Consequently the Deputy Prime Minister announced on 16 July 1997 a review of the arrangements for harbour pilotage that are carried out under the Pilotage Act 1987. The Review began with an assessment of the management of pilotage, but identified that this needed to be considered in the wider setting of harbour authorities' powers to regulate the use of their waters. The Review argued for a systematic approach to port marine safety, covering all port safety functions, not just pilotage.

The Port Marine Safety Code (PMSC) was developed in this context as a national standard for all aspects of port marine safety (i.e. those relating to operations on the water rather than on the quayside). The Code was developed by the Department between September 1998 and March 2000 with a wide range of representative interests and Government said it would work with the industry to implement it. The Code aims for the widest possible adoption of good practice, building on the legal powers and duties given to harbour authorities, as "duty holders", to enable them to manage their harbours safely. It applies to marine operations the well-established principles of risk assessment and safety management systems.

A 2003 review of the implementation of the Code concluded that it was achieving its objectives, with a marked overall improvement in port marine safety standards. Thorough risk assessments were being carried out as a matter of course and there was a new emphasis on safety management, involving port employees as well as harbour users. However, a reserve power for the Secretary of State to direct the few authorities that appear to be falling below the necessary high standards of safety set out in the Code will ensure that the Government continues to have an effective role in maintaining the raised standards although we do not envisage the power being used other than in very rare cases.

The Ports Policy Review Interim Report, issued on 19 July 2007, included a public statement that we will seek an early opportunity to take forward appropriate legislation in respect of a number of gaps and anomalies in the current legislation underpinning the operation of the Port Marine Safety Code.

3.1.1 General Directions by Harbour Authorities **Clause 6**

The Government proposes to take a power to confer on every harbour authority the ability to issue General Directions to shipping within its harbour area. The purpose of this is to give all harbour authorities ready access to this power so it may form part of their regulatory toolkit to help secure port safety.

Harbour Authorities are the persons in whom statutory powers and duties relating to the management of a harbour area are vested. The harbour area over which the harbour authority has authority is determined by reference to its local legislation. Harbour authorities exercise their functions principally through persons appointed by them for that purpose known as Harbour Masters. The statutory powers and duties which apply to individual harbour authorities are set out in local legislation – which may be local Acts of Parliament or orders made under the Harbours Act 1964¹. Very often these powers relate back to a standard set of model clauses in the Harbours, Docks and Piers Clauses Act 1847.

Harbour Authorities currently have up to four instruments available under their local legislation which they may use in regulating their harbour areas. These are:

- a) Byelaws – power to issue byelaws which, subject to confirmation by the Secretary of State, have effect in harbour areas;
- b) Special Directions – power to issue directions in relation to individual ships in the harbour area for a specified purpose;
- c) 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; and
- d) Pilotage Directions – certain harbour authorities have powers 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.

Further, all harbour authorities (through their Harbour Master) have power² to prohibit a vessel's entry into or require its removal from a harbour in circumstances where there is a grave or imminent danger to life or property, or there is a grave or imminent risk of the harbour being blocked or obstructed by the vessel sinking or foundering. Also, any Harbour Master has power³ to issue directions regulating the presence of dangerous substances (and associated containers and vessels) in a harbour area.

General Directions are therefore among the instruments currently available to some harbour authorities, but only where their local legislation so provides. The Government considers that it is appropriate in the interests of the safe and efficient management of harbours for all harbour authorities to have ready access to the power to issue such Directions in relation to all ships in the harbour area.

Over time, many harbour authorities will have need to apply for a Harbour Revision Order (HRO) (because, for example, they wish to change elements of the harbour authority constitution), and it would be possible to add to any such HROs a power to issue General

¹ Most commonly Harbour Revision Orders ("HROs") made under section 14.

² Under section 1 of the Dangerous Vessels Act 1985.

³ Under Regulation 7 of the Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987/37).

Directions. The Government wishes to avoid this “drip feed” approach as it will take many years for the powers to become generally available through this route. It would also be possible to issue general instructions to shipping within a harbour area using Harbour Byelaws in a similar way to that which is contemplated for the power to issue General Directions. However, it has been argued that the publication and confirmation procedure involved in producing Harbour Byelaws is a significant obstacle to this alternative approach since the aim is to have a flexible power that allows a quicker response to the need to manage safety situations.

The Government envisages that the power would not be conferred upon all harbour authorities automatically, but should be conferred through the Secretary of State using an order-making power, subject to negative resolution parliamentary procedure, designating an authority as one to which the new power should apply. We feel that this is appropriate for two reasons. First, it avoids the prospect of duplicating powers for harbour authorities which may have already secured a power to issue General Directions through amendments to their local legislation. Secondly, it reflects the general policy approach taken by the Government towards ports – namely that responsibility for management is devolved to the relevant harbour authorities, and Government’s role is to facilitate that management without imposing requirements from “the centre”. The powers would be made readily available to harbour authorities should they choose to seek them, but there is no requirement that they should do so.

Failure by the Master of a vessel to comply with a direction without reasonable excuse would be an offence punishable by a fine up to a maximum of level 4 on the standard scale (£2,500).

Questions: Is the proposal properly targeted, with proportionate enforcement provisions?

Do you agree that there should be a power to confer the ability to make General Directions on Harbour Authorities?

Do you agree that it is preferable to confer the ability upon application, rather than providing that the power is conferred on all Harbour Authorities automatically?

Do you agree with the scope and procedures for the General Directions power which harbour authorities would have?

Are you content with the proposed level of fine?

3.1.2 Removal of Unwanted Pilotage Powers Clause 1

The Government proposes to confer an order-making power on the Secretary of State for Transport which would, provide that a harbour authority is not a competent harbour authority (CHA) for the purposes of the Pilotage Act 1987. The purpose of this is to relieve inactive harbour authorities of the onerous duties related to the provision of pilotage services under the 1987 Act that their status as CHAs requires them to meet.

Some CHAs no longer provide pilotage services because of changing patterns of trade and modern developments in shipping. They do not have the means of keeping their pilotage service functions under continuous review. “Providing pilotage services” means the CHA providing a facility whereby there are pilots available to board vessels in order to navigate

their way in or out of the harbour with the benefit of their expertise and knowledge of the local safe routes and hazards. The findings of the Department's 1998 *Review of the Pilotage Act 1987* revealed that some CHAs had no need for the pilotage powers conferred upon them by the 1987 Act and wanted to be relieved of their CHA status, if only to make it clear to harbour users that they do not consider it practicable or appropriate to provide a pilotage service. Having pilotage functions and keeping the provision of services under review requires the CHA to have available a properly certified pilot launch and to make judgments under the 1987 Act.

A CHA that does not provide pilotage services is still expected to ensure that it would be able to meet the current national standards set out in the Port Marine Safety Code were it ever to provide pilotage services. All harbour authorities are expected to comply with the requirements of the Port Marine Safety Code but it is a non-statutory code. This places a considerable burden upon the CHA. In November 2000 the Government published a paper entitled *Modern Ports: A UK Policy*. This paper set out the Government's policy aim of legislating to allow the removal of pilotage powers. The need for CHAs to be able to relinquish their unwanted pilotage functions was further discussed in the Department's 2004 *Review of the Implementation of the Port Marine Safety Code: A Sea of Change for Port Safety*. It noted that there were harbour authorities that faced serious difficulties with the duties they were required to discharge under the 1987 Act due to lack of funding and resources.

The distinction between a harbour authority which does not provide pilotage services because it is no longer a CHA as a result of an order made under the new power and a CHA which has concluded that it need not provide pilotage services is important because of the inferences which a commercial ship's Master may draw. Where a harbour authority has relinquished its CHA status, a Master who seeks suitable shelter/anchorage for his vessel will know that the harbour is unsuitable for commercial vessels and will proceed to another harbour.

In the case of a CHA where pilotage is considered to be desirable but not compulsory but which has chosen not to provide pilotage services because either it does not have the resources to do so or the present-day traffic does not normally require pilotage, a Master may base his decision to anchor in a harbour on the information he has available to him in Admiralty Sailing Directions. The Admiralty Sailing Directions includes essential information on all aspects of navigation, including navigational hazards and buoyage, meteorological data, details of pilotage, regulations, port facilities and guides to major port entry. The Admiralty Sailing Directions will also indicate whether a harbour is a CHA or not. This may be misleading if a harbour has CHA status but has decided not to operate pilotage services. A Master may assume that since the CHA has opted not to provide pilotage services that the harbour is suitable for his vessel to enter without pilotage, when it is not. Implications for port safety may arise from such flawed assumptions.

The proposal is for a power exercisable by the Secretary of State to provide that a harbour authority is not a CHA for the purposes of the 1987 Act. The power is to be exercisable by statutory instrument in the form of an order subject to the negative resolution procedure of both Houses of Parliament. Before making such an order, the Secretary of State will be required to consult:

- a) the CHA to which the order would apply; and

b) any other persons as she considers appropriate.

To allow for some flexibility were a harbour authority's circumstances to change following the making of an order under the new power, the Secretary of State would have a power to reinstate CHA status to a harbour authority which had its status removed by an order under the new power.

Questions: Are further safeguards necessary for this provision?

Do you agree that there should be power to remove CHA status by order as proposed?

Do you agree with the procedure proposed for making such an order?

3.1.3 Pilotage Exemption Clauses 3, 4 & 5

Under the Pilotage Act 1987⁴ a competent harbour authority (CHA) can direct that, in the interests of safety, pilotage shall be compulsory for vessels navigating into and out of the harbour. However, if the master or first mate of a ship is suitably qualified, the Act creates⁵ a mechanism by which, when holding a pilotage exemption certificate (PEC) he can act as his own pilot, rather than having to make use of a pilot provided by the CHA. The qualifications to be a pilot and to hold a PEC are essentially similar, but the use of the PEC is generally limited to the ship or ships on which the holder is master or first mate and to times at which the holder is acting in that capacity. Both a pilot's expertise and that of a PEC holder relate to the specific navigational conditions in specified harbours. In this respect they are not therefore readily transferable between harbours. A PEC is valid for one year, and may be renewed after that period by the CHA.

The draft Bill includes measures altering the Act to better enable CHAs to control the use of PECs and act in cases of misuse. These are, in summary:

- a) a master must either request an authorised pilot or notify the CHA that the ship will be piloted by a specified person in accordance with a PEC;
- b) a measure permitting the CHA to suspend and/or revoke the PEC where it has been wrongfully relied upon;
- c) a power for CHAs to suspend immediately the certificate pending the investigation of an incident, or where there has been incompetence or misconduct which does not fall within the existing category of affecting the holder's ability to pilot the ship;
- d) the creation of a duty to consider the payment of compensation to the shipowner in the event that it is found that the CHA has wrongly suspended the certificate; and
- e) the removal of the restriction requiring PEC holders to be either masters or first mates.

⁴ Section 7.

⁵ Section 8.

Wrongful reliance on certificate

The intention behind this measure is to prevent the use of PECs to avoid the requirement to use a pilot when entering or exiting a harbour where the person to whom the PEC was issued is not actually navigating the vessel. It is difficult for a CHA to know who is actually navigating a vessel in its harbour. A ship is not obliged to communicate with the port authority through its PEC holder, and, in any event, the CHA might not be able to identify the PEC holder through that communication. A ship will contact the CHA in order to inform the CHA that it is entering the area, as it is an offence to navigate in an area of compulsory pilotage without informing the CHA that the master proposes to do so, and in order to permit an authorised pilot to offer to take charge of the ship. The ship will confirm the PEC number of the PEC held by the master or first mate. However, that does not ensure that the PEC holder is actually present, or navigating the vessel, and therefore, if the vessel is navigated by someone other than the PEC holder, potentially this creates a dangerous situation. There have been cases where misuse of this nature has been admitted. It is not considered that such misuse falls within the provisions of the Act which would currently permit a CHA to suspend or revoke the certificate, as the misuse of the PEC in this fashion does not affect the holder's capability to pilot the ship. The issue is not whether the person is able to pilot the vessel, but whether in fact he is doing so.

Consideration has also been given to whether it would be appropriate to take any power in relation to the person actually navigating the ship. Clearly that person would always be at fault, since they would be aware that they were not themselves a PEC holder, and that they had not been given specific authority from the CHA to continue anyway. Moreover, the PEC holder might not be aware that his PEC was being misused (if, for example, the master was off duty and asleep in his bunk, and a decision was made not to call him, in contravention of his instructions). However, this measure is designed to ensure that the management structure of the vessel recognises the accountability of the holder of the PEC for its use, and therefore the only power sought is the suspension or revocation of the PEC.

Power to suspend a PEC immediately

A CHA should have power to suspend a certificate immediately where it believes that either an incident has taken place and, as a result of that incident, there is a doubt about the PEC holder's capacity to act as a pilot of a vessel, or where there is a suspicion of some other misbehaviour (such as drunkenness).

In relation to the first, we consider that this would be covered by the Act⁶, and be, potentially, "*incompetence or misconduct affecting [the PEC holder's] ability to pilot the ship*". However, it is considered that the second example would not fall within the existing provisions; a temporary inability to pilot a vessel does not affect general ability, as ability is a more permanent state, not capable of being affected through temporary incapacity through alcohol or otherwise. It has been considered whether, in particular, the misuse of alcohol would be sufficiently dealt with under the Railways and Transport Safety Act 2003, which provides that a professional master or pilot of a vessel commits an offence if his ability to carry out his duties is impaired by either drink or drugs. However, this does not catch any person who is neither a master nor a pilot who might hold a PEC (which is particularly important given our proposals to extend the category of person who can be granted a PEC), nor does it provide that a PEC may be suspended following commission of the offence.

⁶ Section 8(6).

In relation to other forms of misconduct, we have in mind the PEC holder's failure to be properly in charge of the navigation of the ship whilst on the bridge during the ship's passage through the area where pilotage is compulsory. This may be the result of distractions, such as using a mobile telephone on the bridge or management duties such as preparing the documentation for arrival in port, that take the PEC holder's full attention away from navigating the ship; it may also be caused by fatigue through breaches of the Working Time Regulations. This is a separate consideration to the failure of the PEC holder to be present on the bridge, and the issues in relation to this such as another member of the ship's crew wrongfully claiming that the PEC holder is present which are dealt with as described above. The issue here is concerned with work overload that means the PEC holder cannot give sufficient attention to navigation. With regard to the use of mobile telephones by the PEC holder, this has been an issue in at least one accident, and where a PEC holder is navigating the ship (as he should be), making or receiving telephone calls at the same time is liable to distract him.

The preferred mechanism for an immediate suspension of a PEC is by way of a statutory notice issued by the CHA to a PEC holder. This would provide that the PEC holder be prevented from using his certificate for a set period of time. The length of this period of time is open to discussion and views are welcome, but it is suggested that it should be 28 days, with a power to extend the notice for a further 28 days. It would be unlikely to be a lengthy period in aggregate, since a PEC is only valid for a year in any event. Such a period would give the CHA the opportunity to investigate an incident or a course of behaviour and then judge whether the PEC should be revoked. The CHA would then, therefore, have the power to revoke following the period set out in the statutory notice.

Compensation for wrongful suspension of a certificate

The Government proposes that a CHA should be given discretion to make compensation payments where it has been found that the notice was issued in circumstances where it subsequently accepts that it was not appropriate to do so. Some CHAs may already have this power in their constitutions, but it is likely that some will not. Given that harbours are governed by local legislation which varies in substance and tone, we are concerned to ensure consistent coverage. Where a PEC is suspended, if there is no other PEC holder on board the vessel able to pilot it, then the owner will have to pay the CHA for providing its own pilot. In those circumstances, throughout the currency of the notice at least, it is reasonable to expect that additional expenditure will be incurred. Where it has been decided that the notice should not have been issued, the CHA should therefore have the discretion to make compensation payments.

Consideration has been given as to whether there should be provision compelling the CHA to make a compensation payments in these circumstances. However, the Government considers that CHAs would normally be keen to facilitate the use of the harbour by vessels, and that they would be prepared to make payments voluntarily when a PEC has been wrongly suspended.

However, we consider that there may be times on which the CHA has wrongfully issued a notice, but it has erred only in a matter of procedure rather than substance, and, were the decision to be made anew, the CHA would be entitled to issue the notice. In those circumstances, the Government would want the CHA to have the power to refuse to compensate.

The Government also considered whether a right of appeal to the High Court should be created. However, when exercising its pilotage duties, the CHA would be undertaking a public function and would therefore be susceptible to judicial review. Judicial review has a number of merits as a remedy, not least since it may eliminate the risk of variable findings according to local conditions in relation to the actions of the CHA. In those circumstances, not only would the issue of the notice be reviewable, but the refusal to exercise a discretion to compensate would be reviewable in its own right.

Removal of restriction on granting a PEC

Currently, a PEC may only be granted to “*any person who is bona fide the master or first mate of any ship...*”, subject to the CHA being satisfied as to that person’s skill, experience, local knowledge and relevant knowledge of the English language. The Government proposes to amend this provision to provide that a PEC may be issued to any person, subject to the same conditions. Although the term master has been used for many, many years, the term first mate is gradually ceasing to be used. The Government proposes to make a provision which will allow the CHA to issue a certificate to any suitably qualified and experienced person who will actually navigate the vessel. This change would assist shipping companies in ensuring that properly qualified personnel are available to pilot ships and help to remove the temptation to stretch duty hours so as to ensure that a PEC holder remains on duty for an extended period instead of taking a rest period. The Government considers that the retention of the criteria as to which the CHA must be satisfied, the definition and testing of which is entirely at the discretion of the CHA, would be sufficient to ensure that persons who are not properly qualified to pilot a vessel in a particular harbour do not get issued with a PEC.

Question: Do these proposals provide sufficient checks and balances to permit efficient and safe navigation of vessels in harbours whilst protecting the rights of individuals?

3.1.4 Secretary of State’s Power to Direct Harbour Authorities Clause 7

The Government proposes a measure to give the Secretary of State for Transport a reserve power to direct harbour authorities as to the exercise of their functions in the interests of public safety.

The Government is concerned about the lack of consistent safety standards between harbours. The Port Marine Safety Code (PMSC) was introduced in 2000 to provide all harbour authorities with guidance on their legal obligations, duties and powers. The overall aim of the PMSC is to encourage best practice among harbour authorities so that a high overall standard is applied consistently across the country. At present, the Government encourages compliance with the PMSC. However, the PMSC is non-statutory and the Secretary of State has no means of ensuring that harbour authorities’ safety functions and duties are being discharged in a satisfactory manner. In order to help ensure that harbour authorities observe the PMSC in practice, the Government would like to provide for the Secretary of State to have a power to direct harbour authorities where there are significant failures by a harbour authority to exercise its statutory functions.

The power is to be exercisable where, in the opinion of the Secretary of State:

- a) a harbour authority has failed, or is failing, to discharge any of its functions safely (or at all); and
- b) that failure causes or is likely to cause:
 - i. damage to a vessel or anything contained in a vessel;
 - ii. loss of human life or human illness or injury; or
 - iii. pollution.

Before making such a direction, the Secretary of State would be required to consult the harbour authority to whom the direction is to be given and other appropriate persons. This is intended to strike a balance between the public interest in maritime safety and the private interests which harbour authorities (which are often private commercial undertakings) may have in having the freedom to exercise their functions without interference from the Secretary of State. It is also intended to complement the non-statutory mechanisms which the Government intends should apply to the exercise of this power of direction in practice.

The Government has no intention of routinely overriding harbour authorities' discretion as to the proper exercise of their own functions. This is very much intended as a reserve power to be exercised in the last resort to direct a specific harbour authority. As such, the Government would expect the powers only to be used after the Secretary of State has written to a harbour authority expressing concerns, for example following a report from the Maritime Accident Investigation Branch or a series of complaints from harbour users, as to the manner in which they are exercising their functions having regard to public safety issues, and the harbour authority has failed to respond appropriately to this prompt.

The power for the Secretary of State to issue directions would also include powers of variation and revocation.

Failure of a harbour authority to comply with a direction would be an offence attracting a fine up to a maximum of level 4 on the standard scale (£2,500).

Questions: Do you agree with the power being taken, and the approach described as to the circumstances in which it would be exercised? Is the proposed penalty adequate?

3.1.5 National Occupational Standards **Clauses 2, 8 & 17**

The Government's intention is to take a regulation-making power to enable the Secretary of State for Transport to require harbour authorities to employ only qualified persons as Harbour Masters and pilots, and to prescribe the standards of competence to be achieved in order to achieve such qualifications.

Harbour authorities are the persons in whom statutory powers (and duties) relating to the management of a harbour area are vested. Harbour authorities exercise their functions principally through persons appointed by them for that purpose known as Harbour Masters. There are currently no legislative constraints upon harbour authorities as to who they may choose to employ as Harbour Masters.

Competent Harbour Authorities (CHAs) have powers to direct that it is compulsory for a ship to be subject to pilotage – ie under the charge of an authorised pilot or a master or first mate holding a pilotage exemption certificate. Pilots may be employees of the relevant harbour

authority, but need not necessarily be so. The CHAs' power to authorise pilots in their areas involves a wide discretion, as it is left to each CHA to determine whether the pilot is suitably qualified for authorisation in respect of their harbour.

The Government recommended in the *Port Marine Safety Code* non-statutory qualifications for Harbour Masters and pilots. However, the Government remains concerned that there has been insufficient adoption of these standards and qualifications by the industry. The Government considers that it is important to ensure that Harbour Masters and pilots are trained to an acceptable standard, on the basis that in the future it is anticipated that fewer candidates for such positions will have had command experience at sea (which is recognised as an alternative means of providing appropriate experience for these positions).

The proposal is therefore for a regulation-making power to enable the Secretary of State to:

- a) require harbour authorities to authorise only qualified persons as Harbour Masters and pilots; and
- b) prescribe the standards of competence to be attained, and the conditions to be met, in order to be qualified persons for these purposes.

The Government plans to make use of the regulation-making power only if the industry continues to fail to adopt the non-legislative standards. However, it wishes to take the power in the draft Bill while this legislative opportunity presents itself. The Secretary of State would be able to grant exemptions from the qualification requirements where appropriate, perhaps in respect of persons without relevant qualifications who are working as Harbour Masters or pilots before the regulations come into force, or so as to facilitate vocational training.

Offences, punishable by a fine of up to a maximum of level 5 on the standard scale (£5,000), would be created, to ensure that the measures are enforceable, in respect of knowingly or recklessly making a false statement for the purpose of obtaining qualifications.

Questions: On the understanding that this power would only be exercised in the absence of agreement by the industry to adopt non-legislative standards, is the power properly targeted in relation to its aims?

Do you agree that it is necessary to take powers for a mandatory occupational standards system?

Do you agree that it is appropriate to give harbour authorities a further opportunity to adopt the non-statutory standards before introducing a mandatory system?

Do you agree with the offence and the level of fine proposed?

3.1.6 Closure of Harbours **Clause 9**

The Government proposes to give the Secretary of State for Transport a power to permit or, exceptionally, require a relevant harbour authority to cease maintaining a harbour and thereby effectively allow that harbour to “close”⁷.

⁷ The term “closure” of a harbour is used as shorthand for a measure that includes the removal of a harbour authority's functions and duties. However, it is acknowledged that the rights of navigation would still exist and a harbour is never effectively “closed” in the true sense of the word unless it is physically filled in.

Harbour authorities are persons in whom statutory duties and functions relating to harbours are vested. Some have the sole purpose of exercising powers and functions in relation to a harbour (or harbours). Others are public bodies (for example the Environment Agency) or commercial enterprises whose business extends far beyond the exercise of functions relating to a harbour. Many harbour authorities are created by local Acts of Parliament (for example the Port of London Act 1968), others by orders made under the Harbours Act 1964. These local Acts and orders set out the powers, functions and duties of the harbour authority in respect of the harbour. Many of these provisions derive from the Harbours, Docks and Piers Clauses Act 1847. One of these incorporated provisions is the so-called ‘open port duty’ contained in of the 1847 Act⁸; this provision places a duty on a harbour authority to keep the harbour open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers subject to payment of harbour dues.

The 1964 Act provides the Secretary of State with powers⁹ to amend local legislation relating to harbours by secondary legislation. Included in these powers is the power to close part of a harbour, reduce facilities available in the harbour and dispose of facilities not required for the purposes of the harbour. However, it does not include power for a harbour to be closed completely. Currently, a harbour authority that wishes to rid itself of its functions and duties in relation to a particular harbour must either promote a Bill in Parliament or find someone willing to take the harbour over. If they lack the resources to promote a Bill and cannot find a person willing to become the harbour authority, they must continue as the harbour authority.

This position is unsatisfactory. The Government wishes to provide a proportionate legislative solution in a situation where for example a harbour authority is on the brink of insolvency or in financial difficulties and therefore unable or otherwise unwilling to continue to invest in the upkeep of the harbour. Failure to maintain the depth of the harbour, and to provide good access at all states of tide, suitable quays and cargo handling facilities may result in a harbour that no longer viable for commercial purposes. In other cases, changes in local commercial activity and exports from harbours (e.g. cessation in mining in certain areas) may mean that some harbours are no longer in fact required for any commercial purposes. A lack of commercial activity is likely to result in very little income received to invest in the maintenance of the harbour and also very little need for the provision of services and facilities – and yet, the harbour authority will remain under the same statutory duty to maintain and carry out other functions in relation to the harbour. There is a safety dimension to this issue. There are harbours which appear on paper to be open and accessible but are in fact poorly maintained (if at all) and do not have the necessary facilities to operate safely.

It is clear that a harbour authority which is facing financial difficulties is not likely to have the resources to promote a Bill for the closure of a harbour. It is therefore considered desirable that the Secretary of State should be able to agree to the “closure” of a harbour by order in certain circumstances. Such an order would remove any assumption by potential harbour users that the harbour is a properly maintained and functioning harbour and therefore safe and usable. In other words the “maintained harbour” status would be removed and the harbour would in effect become no different to any other piece of coastline rather than being distinguished as a port.

⁸ Section 33.

⁹ Sections 14 to 18.

The Government's intention is that the power should usually be exercisable upon application made to the Secretary of State in writing by the harbour authority for the harbour in question which would encompass persons exercising functions in the name of the harbour authority, such as an administrator in circumstances where the Authority is a Companies Act company and an administration order has been made in respect of it.

There is also a need for a limited power for the Secretary of State to make closure orders on her own initiative, only where the harbour authority consents or is not likely to object to the making of such an order. The reasoning for this is based upon a concern that there may be a harbour authority which is incapable of making an application for an order because there are no persons available to exercise functions on behalf of the authority, as could occur where the Board of a defunct authority was inquorate through resignations or deaths. The Government intends that this power would be exercised rarely. It is not the intention that this power would be used to close harbours that continue to be viable or necessary on the basis that a harbour authority no longer wishes to continue managing the harbour or wishes to make room for the land to be developed for non-marine purposes. In such circumstances the Department would seek to persuade the existing authority that its purposes would be better served by finding a willing purchaser prepared to run the harbour. The provision is intended to be used only in circumstances where the harbour authority is unable or otherwise unwilling to continue the maintenance of the harbour and the exercise of its functions in relation to the harbour **and** has been unsuccessful in finding a body to whom it can transfer its functions.

The procedure for closure orders would be based on that currently used for Harbour Revision Orders (set out in Schedule 3 to the Harbours Act 1964) and the provision would ensure that the Secretary of State has power to make any necessary supplementary, incidental, consequential or transitional provisions.

It should be noted that the Government expects during the course of 2008 to amend Schedule 3 to the Harbours Act 1964, as regards England and Wales. These amendments will implement Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 83/337/EEC and 96/61/EC.

Questions: Does the power to close harbours address the problem adequately?

Do you agree that there is a need for a power to close harbours by order?

Do you agree that the scope of this power is appropriately narrow?

Are you content with proposals to apply a modified version of the procedure applicable for Harbour Revision Orders to closure orders? Are any further modifications appropriate?

3.2 General Lighthouse Authority Measures

3.2.1 Powers of General Lighthouse Authorities **Clauses 12 and 13**

The three General Lighthouse Authorities (GLAs) and their geographical responsibilities are:

- a) the Corporation of Trinity House is the GLA for England and Wales and the adjacent seas and islands;
- b) the Northern Lighthouse Board (Commissioners of Northern Lighthouses) is the GLA for Scotland and the adjacent seas and islands; and
- c) the Commissioners of Irish Lights are the GLA for both Northern Ireland and the adjacent seas and islands. The Commissioners are also the GLA for the Republic of Ireland.

The General Lighthouse Fund (GLF) is administered by the Secretary of State. Its income is mainly derived from the payment of general light dues charged predominantly on commercial shipping in the United Kingdom and Ireland (both Northern Ireland and Eire). The fund is supplemented by a grant from the Irish government. The three GLAs provide, for example, lighthouse services and navigational aids and other aids for the safety of ships; the GLAs are funded exclusively through the GLF.

The General Lighthouse Fund was created by statute in 1898 to provide funding for the three General Lighthouse Authorities. The GLAs predate the establishment of the Fund by over 350 years. Prior to 1836, aids to navigation were provided by a rather confusing mixture of the GLAs and private operators each levying a charge on passing ships. Private operators generally purchased the right from the Treasury or the Crown to provide the aid to navigation and to levy a charge. In 1836 Parliament decided that the GLAs should have compulsory powers to buy out private lighthouses. The current funding arrangements were established by the Merchant Shipping (Mercantile Marine Fund) Act of 1898, which separated the funding for aids to navigation from other marine items. In recent years progress towards modernisation of the GLAs has been rapid. All lighthouses were automated by 1998 with controls centralised at each GLA's headquarters. The GLAs have focused on reducing costs with major investment programmes on both depots and ships. All of this has been achieved while reducing costs to the light dues payers – 50% down in real terms since 1996 and the actual rate charged to commercial vessels has fallen from a peak of 43p per net tonne in 1993 to 35p in 2006 (at which level it has since been maintained).

GLA powers outside the 12 nautical mile limit

It is proposed that Part VIII and Part IX of the Merchant Shipping Act 1995 (“the 1995 Act”) is amended so as to provide a revised description of the areas over which the GLAs are the general lighthouse authority. The provision provides that the GLAs are the general lighthouse authorities for an area that lies beyond the territorial sea and up to the outer limit of an area of sea that is known as the Pollution Control Zone. The Pollution Control Zone is an area of sea described in the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996¹⁰ as amended by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1997¹¹. The 1996 Regulations were made under powers given in the Merchant Shipping (Prevention

¹⁰ SI 1996/2128.

¹¹ SI 1997/506.

of Pollution) (Law of the Sea Convention) Order 1996¹² which in turn was made under powers given in section 129(2)(b) of the Merchant Shipping Act 1995. The area described in the 1996 Regulations as amended is known colloquially as the UK's pollution control zone (PCZ). The PCZ is the nearest equivalent in the United Kingdom to an Exclusive Economic Zone (EEZ). An EEZ is an area beyond and adjacent to the territorial sea over which the coastal state has certain rights and jurisdiction, (Article 55 of the United Nations Convention on the Law of the Sea 1982, (UNCLOS)). The UK has not as yet declared an EEZ but if an EEZ is declared in time, this will be used as a reference point for the extent of GLA powers in preference to the PCZ. It is proposed that each GLA should be responsible for the part of the PCZ that is adjacent to its territory, so for example, Trinity House would be responsible for the part of the PCZ that is adjacent to England and Wales. The precise division of responsibilities between the three GLAs will be determined by them in accordance with their operational requirements.

The GLAs operate approximately 40 installations outside the 12 mile territorial sea limit at a cost of approximately £1.5 million per annum. In some instances, lighthouses, buoys and beacons are at a considerable distance from the main coastline but stand on rocks that are considered to be UK territory (although the majority of buoys and beacons are floating rather than land based). Some of these aids to navigation are provided in order to meet UK obligations under international agreements. It is important to ensure that the GLAs have full powers to operate outside of territorial water, and incur expenditure that is financed by the UK's General Lighthouse Fund, in order that they may respond quickly and effectively to extra-territorial wreck incidents.

The Government therefore proposes to amend the 1995 Act so as to provide that the three GLAs are the general lighthouse authorities for an area that lies beyond the territorial sea and up to the outer limit of the UK's PCZ, so that:

- a) Trinity House is the GLA for England and Wales and its adjacent seas and islands up to the outer limit of the adjacent PCZ;
- b) The Northern Lighthouse Board is the GLA for Scotland and its adjacent seas and islands up to the outer limit of the adjacent PCZ, and
- c) The Commissioners of Irish Lights are the GLA for Northern Ireland and its adjacent seas and islands up to the outer limit of the adjacent PCZ.

and to ensure that the GLAs' powers in relation to wreck in Part IX of the 1995 Act extend extra territorially up to the outer limit of the PCZ.

GLA powers to undertake commercial work

The Government would like provisions that enable the GLAs to purchase assets, (including the hiring of staff or consultants) with a view to entering into agreements to exploit spare capacity in existing assets in order to generate income for the GLF. Such an asset need not be capable of being used to discharge the GLAs' functions, but must be purchased for the purpose of exploiting spare capacity in an existing asset.

¹² SI 1996/282.

Under existing powers the GLAs cannot use the GLF to purchase assets other than those necessary for the discharge of their functions. Additionally the GLAs can only exploit spare capacity in assets that are held for the discharge of their functions. The effect of this is that the GLAs are limited in the work they can undertake in order to generate income for the GLF.

In order to maximise profits for the GLF, which will help to keep down costs on general light dues payers, the Government proposes a provision that would enable the GLAs:

- a) to enter into agreements for others to use the GLAs' assets;
- b) to provide consultancy and other services (including the utilisation of the time of a GLA employee); and
- c) to be reimbursed from the GLF in respect of expenditure incurred in connection with such agreements.

However, before an agreement is entered into it is proposed that the consent of the Secretary of State must be obtained, which may be given unconditionally, or subject to conditions, and if appropriate for a class of cases and that the GLAs must be satisfied that any such agreement will not prejudice the discharge of their functions.

Additionally, it is proposed that the consent of the Secretary of State must be given for GLF expenditure in connection with these agreements. The Secretary of State will not be able to consent to GLF expenditure for the purchase of additional assets that will be used in connection with hire agreements unless those assets are ancillary to such agreements.

Question: Comments on the breadth of this provision and its implications for the General Lighthouse Fund would be welcome.

3.2.2 General Lighthouse Authority Pensions **Clause 14**

The 1995 Act¹³ provides for the payment of pensions from the GLF to those persons whose salaries are paid out of the GLF. In practice this includes all employees of the GLAs. Pension benefits are paid on a "pay as you go" basis. There is no statutory provision for any payments to be ring-fenced so that they apply only to the payment of pensions, and no ring-fencing takes place outside the statutory framework.

The Government proposes legislation that secures the GLA pension arrangements by:

- a) Allowing the separation of the General Lighthouse Fund into two parts – running/operational costs and pensions with the pensions element protected from other GLA/GLF liabilities, and requiring the GLF to be separated in respect of the pension element paid after the measure comes into force.
- b) Establishing a power to create a separate contributory pension fund for new staff as a first move to a fully funded pension scheme and to assist in controlling the large actuarial deficit recorded against the GLF.
- c) Permitting the Secretary of State to provide by order that payments may be made from the GLF to third party pension funds. Making provision for a separately funded pension scheme would allow the closure to new members of the current final salary scheme.

¹³ Section 214.

Notwithstanding the statement above that the GLF cannot be legally divided, in practice the GLF is split into two funds for administrative convenience. This allows the fund to be split between two investment managers in part to spread the investment risk and compare investment managers' performance. The desired level of the pension element can be reassessed annually when the annual actuarial report revalues the pension scheme. In practice funds are not moved unnecessarily between the two accounts to avoid transaction costs. Actual "pay as you go" pension expenditure is met from either the operational fund or from the cash held by HSBC.

The current pension schemes fall within the definition of a "Public Service Pension Scheme" in section 1 of the Pensions Scheme Act 1993 and are not required to be separately funded. The schemes are operated, for employees who joined the scheme before 1 October 2002, on a non-contributory basis. There is a facility for employees to make additional contributions in respect of benefits for widows and children and added years; these are also defined benefits and unfunded. Employees who joined the scheme after 1 October 2002 contribute 3.5% of pensionable elements of pay and may also make voluntary contributions for the purchase of added years' service. Hence the level of the pension contributions held within the Fund is expected to increase substantially.

The Government reassessed the operation of the schemes in line with best practice as suggested by the Pensions Act 1995 (as amended by the Pensions Act 2004). The Government and the GLAs wish to improve and secure the pension arrangements for GLA staff in the light of the pension funding issues raised by the operation of the Mirror Group/Maxwell pension arrangements. This Bill is intended to achieve that. In the interim the management of the Fund has been enhanced to include a regular actuarial valuation of the debt and the identification of the value of the staff pension contributions held within the GLF reserve. The target level of the reserve was revised to reflect this.

One solution would be for the Treasury to guarantee the schemes. After discussions with the Treasury it was agreed that DfT Ministers would issue a letter of comfort to the GLAs and that the actuarial deficit would be recorded by the DfT in their annual return of contingent liabilities. That letter is now published annually in the General Lighthouse Fund Accounts. However the measures in the Bill will provide more security.

The actuarial deficit stood at £347 million at March 2007 and is rising steadily (from £256m million in April 2005 to £305 million at March 2006). We are considering other methods of funding pensions, given the actuarial deficit, and the clause would permit the Secretary of State to make an order to give effect to whatever decision is ultimately reached after consultation. This would inevitably increase short term costs as the GLF met both the existing "pay as you go" expenditure and started to contribute to the new scheme with employer's contributions. A further difficulty could be that the GLAs might face increases in the salary bill to compensate for the less attractive pension offered to new employees.

Currently the GLAs pay employer contributions into the Merchant Navy Officers' Pension Fund (MNOFP) for some of the ships' crews who have joined the GLAs as existing members of that scheme. It is necessary to permit the GLAs to make payments to an external funded pension scheme.

Question: We welcome views on whether the proposals for GLA staff provide adequate protection for existing payments made in relation to pensions, and future payments, whilst providing flexibility to make changes to such pensions in the future.

3.2.3 Enforcement of General Lighthouse Authority Inspections Clauses 10 & 11

The Government proposes to amend Part VIII of the Merchant Shipping Act 1995 so as to provide appropriate sanctions in relation to certain existing duties on Local Lighthouse Authorities which relate to the provision of aids to navigation.

By virtue of the 1995 Act¹⁴, each statutory harbour authority is a Local Lighthouse Authority.

The 1995 Act provides a clear hierarchy in relation to the provision of lighthouses, buoys and beacons (collectively known as “aids to navigation” or “AtoN”) in UK waters. It is the role of the relevant GLA to inspect and monitor the work of Local Lighthouse Authorities relating to AtoNs in its area. It is the duty of the Local Lighthouse Authorities to provide information to the GLAs to enable the GLAs to discharge that inspection duty. It is the duty of the relevant GLA to provide feedback to the Local Lighthouse Authority and report to the Secretary of State for Transport on the results of the inspections. The relevant GLA has a power to direct (subject to the Secretary of State’s consent and giving “due notice” of their intention to do so direct) a Local Lighthouse Authority as to how it deploys AtoNs. Moreover Local Lighthouse Authorities must not deploy or change the deployment of AtoNs without consent from the relevant GLA¹⁵.

While the Act establishes a clear hierarchical relationship, there are concerns that the absence of enforceable sanctioning options for non-compliance by Local Lighthouse Authorities means that the primacy of the GLAs in the structure is not being observed in practice. The proposals in the draft Bill therefore strengthen the existing powers of the GLAs so that it will be an offence to fail to provide information requested by the GLAs under their existing powers in the 1995 Act. The proposals would also permit the GLAs to give directions to Local Lighthouse Authorities.

In the clause as drafted an offence of non-compliance with a direction of a General Lighthouse Authority is created with a maximum fine of level 5 on the standard scale (£5,000). Consideration was given to providing for a continuing daily penalty for non-compliance rather than (or in addition to) a maximum fine in view of the fact that the directions are likely to be the result of serious concerns about the safety of a harbour and the aim of the measure is to ensure that safety deficiencies are put right as quickly as possible. This may still be advisable and views are sought as to whether it is reasonable in these circumstances.

Questions: Are the proposals proportionate to the issue being addressed, with appropriate penalties for non-compliance?

Do you consider that daily fines for non-compliance would be appropriate as an additional penalty?

¹⁴ Section 193(2).

¹⁵ Sections 199(1) & 199(2) of the Merchant Shipping Act 1995.

3.3 Removal of Wrecks

3.3.1 Marking wrecks with beacons **Clause 16**

The Government proposes that the powers to light or buoy wrecks in the 1995 Act¹⁶ should be extended to include marking a wreck by means of a beacon. Currently a wreck can only be marked by a light or buoy which means that there can be delay in marking a wreck until a ship has managed to deploy a light or buoy. If a wreck can be marked by means of a non physical beacon – such as the automatic identification system (AIS), this would speed up the process of marking wrecks. The AIS is a means of describing the position of something without the need for a physical marker – as the signal originates from a transmitter located elsewhere.

The Government therefore proposes to amend the 1995 Act so that a harbour or conservancy authority and a GLA can mark a wreck:

- a) using other physical devices in addition to being able to mark or buoy a wreck; and
- b) by the transmission of information about the location of the wreck.

Question: Does this measure meet all present and foreseeable requirements?

3.3.2 International Convention on the Removal of Wrecks 2007 **Clause 15**

A separate consultation document has been prepared in respect of the UK Implementation and Ratification of the Nairobi International Convention on the Removal of Wrecks 2007.

This document sets out the Government's proposals for implementing the Convention. The purpose of the Convention is to provide a uniform legal basis for States Parties to locate, mark and remove, or have removed, wrecks which pose a hazard to navigation or the marine environment. The Convention also contains provisions to assist a State Party in recovering from the shipowner the costs associated with removal of a wreck.

The proposals on ratification and implementation of the ICRW will be of interest to all those who own and operate sea going ships. They will be of particular importance to owners of ships of 300 gross tonnage and above and to those providing insurance to the marine sector. They will also be of relevance to public bodies that are likely to incur costs arising from removing a wreck.

¹⁶ Sections 252 and 253

If you would like a copy of this consultation document it can be found at www.dft.gov.uk/consultations or you can contact James Hatcher at the address below:

Shipping Policy 1 (Zone 2/33)
Department for Transport
Great Minster House
76 Marsham Street
London, SW1P 4DR

Telephone: 020 7944 5444
Fax: 020 7944 2186
Email: james.hatcher@dft.gsi.gov.uk

4. Additional proposals (Not in the Draft Bill)

The following two measures have not been included in the text of the draft Bill because there is still ongoing debate as to the best method of dealing with them, whether by legislation (and if so, how) or by some other means. Consultees are therefore invited to offer views on the extent of the problem, the benefits of dealing with them, the need for legislation and alternative solutions.

4.1 General Lighthouse Fund Tax Exemption

The GLF benefits from a general exemption from “taxes, duties, rates, etc” in the 1995 Act¹⁷.

The Government wishes to invite views on whether to introduce a specific amendment to cover Stamp Duty Reserve Tax (SDRT) for the General Lighthouse Fund. SDRT was introduced by section 87 of the Finance Act 1986, and deals with transactions in shares where there is no written instrument of transfer. Stamp Duty is chargeable where there is a written transfer document, but SDRT operates to levy tax on an agreement to transfer chargeable securities. Typically, these will be shares, which are very commonly transferred electronically nowadays, and very rarely transferred on paper. Although section 221 of the 1995 contains an exemption for stamp duty, when SDRT was introduced, no amendment was made (as it had been when Stamp Duty Land Tax was introduced) to provide a similar exemption from SDRT. HMRC agree that such an amendment is appropriate. We would wish for an amendment to be retrospective in order that repayment of SDRT already paid can be sought from HMRC. HMRC has indicated that it does not object to such retrospectivity.

The second proposal is to make clear that income tax should not be payable on dividends received from investments. The Government considers that investment income would be a payment accruing to the GLF. However under the existing section 211 exemption, in order to be exempt from tax, the payment must be received in respect of a service, which may not cover investment income. The proposed provision would make it clear that the income from invested funds would attract the very broad tax exemption in the Act.

The GLAs engage in some commercial activity; for example the selling of cards and calendars, surveying of the sea bed, and ship charters and payment is received directly by the GLAs for these activities, with the sums paid into the GLF. It is therefore proposed that to maintain the intention of the Act, the exemption should be phrased in terms that would catch any payments into the GLF from whatever source.

The benefit of this measure would be a small reduction in taxes paid out of the GLF and it would therefore help to keep down general light dues payable by commercial shipping.

4.2 Non-statutory Provision of Aids to Navigation (GLA Powers)

There are 797 aids to navigation in operation outside the areas of local lighthouse authorities including those on 134 offshore installations (plus 246 aids on operational wind turbines¹⁸ and up to a further 3,880 aids on towers yet to be given consent¹⁹) which are required

¹⁷ Section 221 as amended by SI 2003/2867.

¹⁸ There are 5 offshore wind farms in operation comprising a total of 145 turbine towers, all of which are day-marks, 40 of which are lighted (80 lights) and 21 have fog signals. (145 + 80 + 21 = 246 Aids to Navigation).

¹⁹ There are to date 2,290 further wind turbine towers yet to be given consent, meaning that an estimated further 3,880 Aids to Navigation are, potentially, to be established.

as part of the consent for the works or installation. Inspection by the GLAs during 2007 revealed that 86 of the existing 797 aids (10.8%) were deficient in some way. There are ten proposed wave or tidal developments in the course of planning which will require an as yet unknown number of aids to navigation.

The Department will consider legislating to give the GLAs the same powers in respect of the operators of these aids to navigation as it is proposed that they should have in respect of those operated by local lighthouse authorities (to require the provision of information from the operators of aids to navigation and, with the Secretary of State's consent, to direct operators to take action in respect of these aids).

The costs and benefits to the operators of offshore installations and the GLAs of remedying this non compliance have not yet been estimated so views on this are particularly invited.

5. Devolution

5.1 Some aspects of the draft Bill relate to reserved matters but there are some measures for which the devolved administrations in Scotland, Wales and Northern Ireland have responsibility. The draft Bill has been prepared with this in mind but its publication now does not mean that further adjustments of responsibilities might be made, before it is introduced into Parliament in order to achieve the most practical implementation of its provisions. The key aim is not for consistency of implementation across the United Kingdom but for the most appropriate administration being responsible for overseeing the measures. The Government is committed to respecting the devolution settlements. In line with the Sewel Convention once the Bill is introduced into Parliament we will build upon work with the devolved administrations and will seek the consent of the devolved legislatures where provision is made in a devolved area.

5.2 It is expected that there will be parallel legislation in Northern Ireland to implement measures that are equivalent to those in clauses 6 to 8, dealing with harbour authorities, where responsibility is devolved. The Harbours (Northern Ireland) Act 1970 contains an order making power in section 17 to discontinue the maintenance of a harbour so clause 9 of this draft Bill is unnecessary for Northern Ireland. No provision for Northern Ireland is therefore made in respect of harbour authorities.

5.3 As the Commissioners of Irish Lights operate in the waters around the whole of Ireland there is a need for the Irish Government to consider legislating on similar lines and discussions are in progress to facilitate this.

6. Consultation questions

Here follows a summary of the questions asked under each part of this consultation paper. Consultees may wish to use these pages as a response form, in which case the consultee details box below should also be completed.

Views are specifically invited on these questions but consultees are welcome to comment on any aspect of the proposals.

Consultee details

Name	
Address	
Postcode	
Organisation or Business	
Number of members or employees	
Telephone number and email address	

Questions

6.1 Is the proposal for harbour directions properly targeted, with proportionate enforcement provisions?

Do you agree that there should be a power to confer the ability to make General Directions on Harbour Authorities?

Do you agree that it is preferable to confer the ability upon application, rather than providing that the power is conferred on all Harbour Authorities automatically?

Do you agree with the scope and procedures for the General Directions power which harbour authorities would have?

Are you content with the proposed level of fine?

--

6.2 Are further safeguards necessary for the provision for removal of unwanted pilotage powers?

Do you agree that there should be power to remove CHA status by order as proposed?

Do you agree with the procedure proposed for making such an order?

6.3 Do the pilotage exemption proposals provide sufficient checks and balances to permit efficient and safe navigation of vessels in harbours whilst protecting the rights of individuals?

6.4 Do you agree with the power to direct harbour authorities being taken, and the approach described as to the circumstances in which it would be exercised? Is the proposed penalty adequate?

6.5 On the understanding that this power to prescribe National Occupational Standards for Harbour Masters and pilots would only be exercised in the absence of agreement by the industry to adopt non-legislative standards, is the power properly targeted in relation to its aims?

Do you agree that it is necessary to take powers for a mandatory occupational standards system?

Do you agree that it is appropriate to give harbour authorities a further opportunity to adopt the non-statutory standards before introducing a mandatory system?

Do you agree with the offence and the level of fine proposed?

6.6 Does the power to close harbours address the problem adequately? Are there any further safeguards required?

Do you agree that there is a need for a power to close harbours by order?

Do you agree that the scope of this power is appropriately narrow?

Are you content with proposals to apply a modified version of the procedure applicable for Harbour Revision Orders to closure orders? Are any further modifications appropriate?

6.7 Comments on the breadth of the provision clarifying the ability of the GLAs to undertake commercial work and its implications for the General Lighthouse Fund would be welcome.

6.8 We welcome views on whether the proposals for GLA staff pensions provide adequate protection for existing payments made in relation to pensions, and for future payments, whilst providing flexibility to make changes to such pensions in the future.

6.9 Are the proposals for enforcing GLA inspections proportionate to the issue being addressed, with appropriate penalties for non-compliance?

Do you consider that daily fines for non-compliance would be appropriate as an additional penalty?

6.10 Does the measure relating to marking wrecks with beacons meet all present and foreseeable requirements?

What will happen next?

A summary of responses, including the next steps will be published by 31 October 2008 on www.dft.gov.uk. Paper copies will be available on request.

The draft Bill will be revised, taking into account the comments received, and prepared for introduction into Parliament.

Impact Assessment

The Impact Assessment can be found at Annex C. When responding to the consultation, please comment on the analysis of costs and benefits, giving supporting evidence wherever possible.

Please also suggest any alternative methods for reaching the objective.

You should highlight any possible unintended consequences of the policy and any practical enforcement or implementation issues.

7. Code of Practice on Consultation

7.1 The Government has adopted a code of practice on consultations. The code of practice applies to all UK public consultations by government departments and agencies, including consultations on EU directives.

7.2 Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.

7.3 The code contains six criteria. They should be reproduced in all consultation documents. There should be an explanation of any departure from the criteria and confirmation that they have otherwise been followed.

The Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time-scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

7.4 A full version of the code of practice is available on the Better Regulation Executive web-site at:

<http://bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf>

7.5 If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

Lec Napal
Consultation Co-ordinator
Department for Transport
Zone 1/33 Great Minster House
76 Marsham Street
London, SW1P 4DR
email: consultation@dft.gsi.gov.uk

8. List of those consulted

The following principal consultees have been identified and have been included amongst those invited to respond:

Ports

- British Ports Association
- British Waterways
- UK Major Ports Group
- Significant ports, harbours and terminals

Port users

- British International Freight Association
- British Tug Owners Association
- Chamber of Shipping
- Honourable Company of Master Mariners
- Independent Light Dues Forum
- Institute of Marine Engineering, Science & Technology
- International Salvage Union
- Lights Advisory Committee
- National Federation of Fishermen's Organisations
- Passenger Shipping Association
- PIANC
- Sea Fish Industry Authority
- Society of Maritime Industries
- Principal shipping and ferry operators
- UK Safety of Navigation (UKSON)

Training and professional organisations

- AMICUS
- British Marine
- British Marine Federation
- British Maritime Law Association
- Chartered Institute of Logistics and Transport
- Deep Sea & Coastal Pilots Ltd

- Federation of Small Businesses
- Fleetwood Nautical Campus
- Glasgow College of Nautical Studies
- International Group of P&I Clubs
- International Maritime Pilots' Association
- Nautilus
- Nautical Institute
- Ports Skills and Safety Ltd
- Royal Institute of Navigation
- Royal Yachting Association
- Scottish Trade Union Congress
- South Tyneside College
- Sunderland Marine Mutual Insurance Company Limited
- TGWU
- UK Harbour Masters Association
- UK Marine Pilots Association
- Warsash Maritime Academy

Environmental organisations

- Advisory Committee on Protection of the Sea
- Countryside Council for Wales
- Environment Agency
- Environment & Heritage Service (Northern Ireland)
- Friends of the Earth
- Greenpeace UK
- International Tanker Owners' Pollution Federation
- Marine Conservation Society
- Natural England
- RSPB
- Scottish Natural Heritage

Local government

- Convention of Scottish Local Authorities
- Local Government Association

Regulators

- Commissioners of Irish Lights
- Health and Safety Executive
- IMO
- MAIB
- Marine Fisheries Agency
- Maritime and Coastguard Agency
- Northern Lighthouse Board
- SEPA
- Trinity House

9. Glossary

AtoN	Aid to Navigation
CHA	Competent Harbour Authority
EEZ	Exclusive Economic Zone
EU	European Union
GLA	General Lighthouse Authority
GLF	General Lighthouse Fund
HMRC	Her Majesty's Revenue and Customs
HRO	Harbour Revision Order
MNOPF	Merchant Navy Officers' Pension Fund
PEC	Pilotage Exemption Certificate
PCZ	Pollution Control Zone
PMSC	Port Marine Safety Code
SDRT	Stamp Duty Reserve Tax
SI	Statutory Instrument
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 1981
UNCLOS	United Nations Convention on the Law of the Sea 1982

Marine Navigation Bill

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A
B I L L
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 (c. 21) (competent harbour authorities) is amended as follows.
- (2) After subsection (4) insert –
 - “(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.”
- (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.”
- (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 –
 - (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

- (1) After section 3 of the Pilotage Act 1987 (c. 21) (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.
- (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.
- (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.
- (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
 - (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.
- (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 –
- (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.
- (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,
 - (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
 - (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 (c. 21) for “section” substitute “sections 3A and”.

3 Pilotage notification

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
 - (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
 - (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.”

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”.
- (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”.

5 Exemption certificates: suspension and revocation

- (1) After section 8 of the Pilotage Act 1987 (c. 21) (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.
- (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.
- (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
 - (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.
- (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).
- (4) Before revoking a person’s certificate a harbour authority must—
- (a) give the person written warning, stating the reasons for the proposed revocation, and
 - (b) allow the person a reasonable opportunity to make representations.
- (5) A competent harbour authority which has suspended or revoked a certificate may pay compensation to any person who has suffered, or is likely to suffer, loss as a result.”
- (2) In section 8—
- (a) omit subsection (6) (revocation and suspension of certificates), and
 - (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 (c. 40) (use of harbour services and

facilities) insert –

“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 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 –
 - (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
 - (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.”
- (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 Safety directions

- (1) After section 40D of the Harbours Act 1964 (c. 40) (inserted by section 6 above) insert—

“Safety directions

40E Directions

- (1) The Secretary of State may give a harbour authority directions about the exercise of their functions.
- (2) A direction may be given only if the Secretary of State thinks that the authority have failed to discharge a function safely or at all and as a result—
 - (a) someone has died or been injured;
 - (b) people are likely to die or be injured;
 - (c) a ship or something on a ship has been damaged;

- (d) ships or things on ships are likely to be damaged;
 - (e) the environment has been polluted or is likely to be polluted.
- (3) A direction may require a harbour authority –
- (a) to discharge a function in a specified way or for a specified purpose, or
 - (b) not to discharge a function in a specified way or for a specified purpose.
- (4) Before giving a direction the Secretary of State must consult –
- (a) the harbour authority, and
 - (b) anyone else that the Secretary of State thinks appropriate.
- (5) Failure to comply with a direction without reasonable excuse is an offence.
- (6) Harbour authorities guilty of the offence are liable on summary conviction to a fine not exceeding level 4 on the standard scale.

40F Devolution

- (1) In relation to harbour authorities for fishery harbours in Wales –
- (a) the power to give directions under section 40E vests in the Welsh Ministers, and
 - (b) a reference in that section to the Secretary of State is to be treated as a reference to the Welsh Ministers.
- (2) In relation to harbour authorities for harbours in Scotland –
- (a) the power to give directions under section 40E vests in the Scottish Ministers, and
 - (b) a reference in that section to the Secretary of State is to be treated as a reference to the Scottish Ministers.”
- (2) In section 41 (power to obtain information and forecasts) at the end add –
- “(5) Subsection (4) does not apply to a notice served for the purpose of obtaining information reasonably required for the exercise of functions under section 40E.
- (6) Subsection (1) applies to the Welsh Ministers and the Scottish Ministers as to the Secretary of State in relation to functions under section 40E.”

8 Qualifications required by harbour masters

After section 42 of the Harbours Act 1964 (c. 40) insert –

“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.
- (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 –
 - (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) 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

- (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.
- (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.
- (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.
- (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.
- (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.”

9 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,
 - (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.
- (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
 - (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
 - (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 –
 - (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).
- (4) A closure order may –
 - (a) permit or require the harbour authority to carry out works in respect of the harbour;
 - (b) permit the Secretary of State to carry out works in respect of the harbour;
 - (c) require a harbour authority to pay for works carried out under paragraph (b);
 - (d) confer on the harbour authority or the Secretary of State power to acquire (whether by agreement or compulsorily) land described in the order as the site of works to be carried out under paragraph (a) or (b).

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;
 - (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);
 - (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);
 - (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;
 - (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—
 - (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.

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—
 - (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,
 - (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—

- (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).
- (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
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Welsh Ministers.
- (2) In relation to harbours in Scotland –
- (a) the power to make closure orders vests in the Scottish Ministers,
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Scottish Ministers, and
 - (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.
- (2) In particular, a closure order –
- (a) may amend, repeal or revoke an enactment of local application, and
 - (b) may disapply or modify the application of any other enactment.
- (3) A closure order –
- (a) may make provision generally or only for specified purposes, and
 - (b) may make different provision for different purposes.”
- (2) At the end of section 44 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 –
- ““closure order” has the meaning given by section 17A;”.

*Local lighthouse authorities***10 Information**

In section 198 of the Merchant Shipping Act 1995 (c. 21) (inspection of local lighthouses and collection of information) after subsection (3) insert –

- “(3A) A person who fails without reasonable excuse to comply with a requirement under subsection (2) or (3) is guilty of an offence.

- (3B) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

11 Control

For section 199 of the Merchant Shipping Act 1995 (c. 21) substitute—

“199 Control of local lighthouse authorities

- (1) A general lighthouse authority may give directions to local lighthouse authorities within their area about lighthouses, buoys and beacons.
- (2) A direction may in particular relate to—
 - (a) the erection or placing of lighthouses, buoys or beacons;
 - (b) their removal or discontinuance;
 - (c) their repair, maintenance or improvement;
 - (d) the manner in which they are operated.
- (3) A direction may be given only with the Secretary of State’s consent (whether general or specific).
- (4) A local lighthouse authority must comply with directions under this section.
- (5) Failure to comply with a direction without reasonable excuse is an offence.
- (6) A local lighthouse authority may not without the consent of the general lighthouse authority—
 - (a) erect or place any lighthouse, buoy or beacon,
 - (b) remove or discontinue any lighthouse, buoy or beacon, or
 - (c) vary the character of any lighthouse, buoy or beacon or the mode of exhibiting lights in any lighthouse, buoy or beacon.
- (7) Nothing in this section applies to local buoys or beacons placed or erected for temporary purposes.

199A Section 199 directions: supplementary

- (1) A direction under section 199 must be in writing.
- (2) Before giving a direction a general lighthouse authority must—
 - (a) notify the relevant local lighthouse authority, and
 - (b) allow them a reasonable opportunity to make representations.
- (3) The Secretary of State may withdraw consent under section 199(3).
- (4) If consent is withdrawn any direction made in reliance on it lapses (without prejudice to its validity until then).
- (5) Local lighthouse authorities guilty of the offence under section 199(5) are liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

*General lighthouse authorities***12 Areas**

In section 193 of the Merchant Shipping Act 1995 (c. 21) (general and local lighthouse authorities) at the end add—

“(6) In subsection (1) references to the seas include seas in an area specified by virtue of section 129(2)(b).”

13 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—
 - (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—
 - (a) they are satisfied that it is not likely to prejudice the discharge of their functions under section 195, and
 - (b) the Secretary of State consents.
- (3) Where an authority enter or seek to enter into hire or service agreements—
 - (a) expenditure of the authority incurred in connection with the agreements, and with the Secretary of State’s consent, 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.
- (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).
- (5) An authority shall send a copy of any hire or service agreement to the Secretary of State.
- (6) Consent under this section—
 - (a) may be subject to conditions,
 - (b) may be general or specific, and
 - (c) may be prospective or retrospective.”

(2) In that section omit subsections (8) to (11) (power to exploit spare capacity).

14 General Lighthouse Fund: pensions

- (1) This section amends section 214 of the Merchant Shipping Act 1995 (c. 21) (General Lighthouse Fund: pensions).
- (2) The existing section becomes subsection (1).
- (3) In that subsection –
 - (a) after “are” in each place insert “(or were)”, and
 - (b) omit “, allowances and gratuities”.
- (4) After that subsection insert –
 - “(2) The Secretary of State shall make arrangements for part of the Fund to be allocated for the payment of pensions (and to be unavailable for other purposes); in particular, the arrangements –
 - (a) shall provide for the allocation of sums paid into the Fund by way of pension contributions after commencement of the arrangements, and
 - (b) may provide for the allocation of other sums paid into the Fund (whether or not by way of pension contributions and whether paid before or after commencement of the arrangements).
 - (3) The Secretary of State may by order make arrangements for pensions in respect of persons whose salaries are (or were) paid out of the General Lighthouse Fund to be paid otherwise than out of the Fund; and an order –
 - (a) may establish a pension scheme (and may, in particular, include provision –
 - (i) for the appointment and tenure of trustees;
 - (ii) for conferring other discretionary functions on the Secretary of State or on one or more specified persons;
 - (iii) about winding up,)
 - (b) may amend the list in Schedule 1 to the Superannuation Act 1972 (c. 11) (and make other incidental amendments of that Act),
 - (c) may include incidental, consequential or transitional provision (which may, in particular, include –
 - (i) provision about the payment of contributions;
 - (ii) provision transferring or otherwise relating to sums allocated in accordance with subsection (2);
 - (iii) consequential amendment of a provision of this Act, including section 211 and this section), and
 - (d) may apply generally or only in relation to specified cases or circumstances and may make different provision for different cases or circumstances.
 - (4) In this section “pensions” includes allowances and gratuities.”

*Wrecks***15 Wrecks Removal Convention**

After section 255 of the Merchant Shipping Act 1995 (c. 21) insert –

“PART 9A**WRECKS REMOVAL CONVENTION***Preliminary***255A Key concepts**

- (1) In this Part –
 - (a) “the Wrecks Convention” means the Nairobi International Convention on the Removal of Wrecks 2007 done in Nairobi on 18th May 2007,
 - (b) “Wrecks Convention State” means a State which is a party to the Wrecks Convention, and
 - (c) “Convention area” has the same meaning as in the Wrecks Convention.
- (2) In this Part “wreck” means –
 - (a) a sunk or stranded ship,
 - (b) any part of a sunk or stranded ship,
 - (c) anything which is or was on board a sunk or stranded ship,
 - (d) anything which is lost at sea from a ship and which is sunk, stranded or adrift at sea, and
 - (e) a ship which is likely to sink or become stranded where measures to assist the ship or property in danger are not already being taken.
- (3) The Secretary of State shall from time to time make an order describing the United Kingdom’s Convention area.

*Reporting, marking and removing***255B Wreck reports**

- (1) Where an accident results in a wreck in a Convention area, the persons responsible for any United Kingdom ship involved in the accident must report the wreck as soon as is reasonably practicable.
- (2) If the wreck is in the United Kingdom’s Convention area, it must be reported to the Secretary of State.
- (3) If the wreck is in the Convention area of any other State, it must be reported –
 - (a) to the government of that State, and
 - (b) in accordance with any arrangements made by that government.
- (4) The following are responsible for a ship –
 - (a) the master, and

- (b) the operators.
- (5) A report must state the following (so far as known)—
 - (a) the name and principal place of business of the owner of every ship involved in the accident,
 - (b) the location of the wreck,
 - (c) the type, size and construction of the wreck, and
 - (d) the type and quantity of any oil or cargo on board the wreck.
- (6) Failure without reasonable excuse to comply with subsection (1) is an offence; and a person responsible for a ship has a reasonable excuse if one of the other persons responsible for the ship has made a report.
- (7) If the Secretary of State, or the government to which a report is made, requests further information from a person responsible for a ship—
 - (a) the person must comply, and
 - (b) failure to comply is an offence.
- (8) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to a fine.

255C Locating and marking wrecks

- (1) This section applies where—
 - (a) an accident results in a wreck in the United Kingdom's Convention area, and
 - (b) the Secretary of State thinks that the wreck poses a hazard.
- (2) The Secretary of State must ensure that all reasonable steps are taken to identify and mark the location of the wreck.
- (3) In particular, the Secretary of State may direct any of the following to take all reasonable steps to identify or mark the location of a wreck within their area—
 - (a) a general lighthouse authority;
 - (b) a harbour authority;
 - (c) a conservancy authority.
- (4) A direction—
 - (a) must be in writing, and
 - (b) may require the authority to publish details about the marking of the wreck's location.
- (5) A direction may include provision requiring an authority to exercise or not to exercise a power under section 252 or 253.
- (6) An authority to whom a direction is given must comply with it.
- (7) For the purposes of this section the location of a wreck may be marked by—
 - (a) buoys, lights or other physical devices;
 - (b) the transmission of information about the location.

255D Removal by owner

- (1) This section applies where—

- (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the United Kingdom's Convention area, and
 - (b) the Secretary of State thinks that the wreck poses a hazard.
- (2) The Secretary of State must take all reasonable steps to give a notice (a "wreck removal notice") requiring the owner of the ship to—
- (a) ensure that the wreck is removed, and
 - (b) provide specified evidence that at the time of the accident the ship had any wreck removal insurance required by section 255K.
- (3) A notice must be in writing and must—
- (a) specify the date or dates by which the requirements must be complied with, and
 - (b) explain the effect of sections 255F and 255G.
- (4) An owner who fails, without reasonable excuse, to comply with a notice is guilty of an offence.
- (5) An owner guilty of the offence is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to a fine.

255E Directions about removal

- (1) The Secretary of State may give an owner who has been given a wreck removal notice directions about removal of the wreck.
- (2) A direction may be given only if the Secretary of State thinks that the direction is necessary to remove or reduce—
- (a) a risk to safety, or
 - (b) a risk of environmental pollution.
- (3) An owner who fails, without reasonable excuse, to comply with a direction is guilty of an offence.
- (4) An owner guilty of the offence is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to a fine.

255F Removal in default

- (1) The Secretary of State may remove a wreck in the United Kingdom's Convention area in any of the following cases.
- (2) Case 1 is where the wreck has not been removed as required by a wreck removal notice.
- (3) Case 2 is where the Secretary of State thinks that the wreck poses a hazard and has been unable to give a wreck removal notice in respect of it.
- (4) Case 3 is where—
- (a) the wreck is a ship or anything from a ship that was involved in an accident,
 - (b) the Secretary of State thinks that the wreck poses such a hazard that its immediate removal is required, and

- (c) the Secretary of State has taken all reasonable steps to inform the owner of the ship and the government of the State in which it is registered.
- (5) The Secretary of State may, instead of exercising the power under subsection (1), direct that the power be exercised by any of the following—
 - (a) a general lighthouse authority;
 - (b) a harbour authority;
 - (c) a conservancy authority.
- (6) A direction may be given to an authority only in relation to a wreck within the authority's area.
- (7) A direction must be in writing.
- (8) An authority to whom a direction is given must comply with it.

255G Liability for costs

- (1) This section applies where—
 - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the United Kingdom's Convention area, and
 - (b) costs have been incurred locating or marking the wreck under section 255C or removing it under section 255F.
- (2) The person who incurred the costs is entitled to recover them from the ship's owner unless the owner proves that an exception in section 255H applies.
- (3) The owner is not liable for costs under this section if or to the extent that liability would conflict with—
 - (a) a convention listed in Article 11(1) of the Wrecks Convention (exceptions to liability),
 - (b) an enactment implementing such a convention, or
 - (c) any other provision specified by the Secretary of State in an order made for the purposes of this paragraph.
- (4) Where the owner of each of two or more ships is liable for costs under this section but the costs for which each is liable cannot reasonably be separated, the owners shall be jointly liable for the total costs.
- (5) This section does not prevent the exercise of the right (if any) to limit liability by virtue of section 185.
- (6) An order under subsection (3)(c) may be made only if a draft has been laid before and approved by resolution of each House of Parliament.
- (7) An order may include incidental, supplemental or transitional provision.

255H Exceptions

- (1) This section lists the exceptions mentioned in section 255G(2).
- (2) Exception 1 is where the accident resulted from an act of war, hostilities, civil war or insurrection.

- (3) Exception 2 is where the accident resulted from an exceptional, inevitable and irresistible natural phenomenon.
- (4) Exception 3 is that the accident was caused wholly by the act or omission of a person other than the owner who—
 - (a) intended to cause damage, and
 - (b) was not a servant or agent of the owner.
- (5) Exception 4 is where the wreck was caused wholly by the negligence or wrongful act of a government or other authority in connection with the function of maintaining lights or other navigational aids.

255I Limitation period

An action to recover costs under section 255G may not be brought after the end of whichever of the following ends earlier—

- (a) the period of 3 years beginning with the date on which a wreck removal notice was given in respect of the wreck, and
- (b) the period of 6 years beginning with the date of the accident which resulted in the wreck.

255J Expenses of general lighthouse authorities

Costs incurred by a general lighthouse authority in complying with a direction under 255C or 255F shall be paid out of the General Lighthouse Fund if or to the extent that they are not recovered under section 255G; but section 213 shall apply as if they were expenses of the authority falling within subsection (1) of that section other than establishment expenses.

*Insurance***255K Wreck removal insurance**

- (1) This section applies to ships with a gross tonnage of 300 or more.
- (2) A United Kingdom ship may not enter or leave a port in the United Kingdom or elsewhere unless—
 - (a) the ship has wreck removal insurance, and
 - (b) the Secretary of State has certified that it has wreck removal insurance.
- (3) A foreign ship may not enter or leave a port in the United Kingdom unless—
 - (a) the ship has wreck removal insurance, and
 - (b) there is a certificate confirming that it has wreck removal insurance.
- (4) For a ship registered in a foreign Wrecks Convention State the certificate must be issued by or under the authority of the government of that State.
- (5) For a foreign ship registered in any other State the certificate must be issued—
 - (a) by the Secretary of State, or
 - (b) by or under the authority of the government of a Wrecks Convention State.

- (6) For the purposes of subsection (1) the gross tonnage of a ship is to be calculated in the manner prescribed by order under paragraph 5(2) of Part II of Schedule 7.
- (7) In this Part—
- “wreck removal insurance” means a contract of insurance or other security satisfying the requirements of Article 12 of the Wrecks Convention; and “insurer” means the person providing the insurance or other security, and
- “wreck removal insurance certificate” means a certificate required by subsection (2)(b) or (3)(b).

255L Failure to insure

- (1) The master and operators of a ship are each guilty of an offence if—
- (a) the ship enters or leaves a port in contravention of section 255K, or
 - (b) anyone attempts to navigate the ship into or out of a port in contravention of that section.
- (2) A person guilty of the offence is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to a fine.

255M Detention of ships

A ship may be detained if anyone attempts to navigate it out of a port in contravention of section 255K.

255N Production of certificates

- (1) This section applies to a ship which is required to have a wreck removal insurance certificate before entering or leaving a port.
- (2) The master of the ship must ensure that the certificate is carried on board.
- (3) The master of the ship must, on request, produce the certificate to—
- (a) an officer of Revenue and Customs;
 - (b) an officer of the Secretary of State;
 - (c) if the ship is a United Kingdom ship, a proper officer.
- (4) Failure to comply with subsection (2) or (3) is an offence.
- (5) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

255O Issue of certificates

- (1) The owner of a ship may apply to the Secretary of State for a wreck removal insurance certificate in respect of the ship if it is—
- (a) a United Kingdom ship, or
 - (b) a foreign ship registered in a State other than a Wrecks Convention State.
- (2) The Secretary of State must issue the certificate if satisfied that the ship has wreck removal insurance in place for the period to which the certificate will relate.

- (3) But a certificate may be refused if the Secretary of States doubts whether—
 - (a) the obligations of the person providing the wreck removal insurance will be met, or
 - (b) the wreck removal insurance will cover the owner's liability under 255G.
- (4) The Secretary of State must send a copy of a certificate issued in respect of a United Kingdom ship to the Registrar General of Shipping and Seamen.
- (5) The Registrar must make such certificates available for public inspection.

255P Cancellation of certificates

- (1) The Secretary of State may make regulations about the cancellation and delivery up of wreck removal insurance certificates issued under section 255O.
- (2) A person who fails to deliver up a certificate in accordance with the regulations is guilty of 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.

255Q Third parties' rights against insurers

- (1) This section applies where—
 - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the United Kingdom's Convention area,
 - (b) at the time of the accident the ship had wreck removal insurance, and
 - (c) there is a wreck removal insurance certificate in relation to the insurance.
- (2) A person who is entitled to recover costs from the ship's owner under section 255G may recover them from the insurer.
- (3) It is a defence for the insurer to prove that the accident was caused by the wilful misconduct of the ship's owner.
- (4) The insurer may also rely on any defences available to the owner (including section 255I).
- (5) The insurer may limit liability in respect of claims made under this section to the same extent (if any) as the owner may limit liability by virtue of section 185.
- (6) But an insurer may limit liability whether or not the accident is caused by an act or omission mentioned in Article 4 of the Convention set out in Part I of Schedule 7.
- (7) The Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 do not apply in relation to any wreck removal insurance to which a wreck removal insurance certificate relates.

255R Electronic certificates

- (1) This section applies if the Secretary of State has given, or proposes to give, notice under paragraph 13 of Article 12 of the Wrecks Convention (electronic insurance certificates, &c.).
- (2) The Secretary of State may by order make such amendments of this Part as the Secretary of State thinks necessary or expedient for giving effect to the notice.
- (3) An order may be made only if a draft has been laid before and approved by resolution of each House of Parliament.
- (4) An order may include incidental, supplemental or transitional provision.

*Supplemental***255S Interpretation**

- (1) In this Part—
 - “accident” means a collision of ships, a stranding, another incident of navigation or another event (whether on board a ship or not) which results in material damage to a ship or its cargo or in an imminent threat of material damage to a ship or its cargo,
 - “Convention area” has the meaning given by section 255A(1),
 - “hazard” means anything which—
 - (a) poses a danger or impediment to navigation, or
 - (b) is likely to harm the environment, economic activities, infrastructure or health,
 - “insurer” shall be construed in accordance with section 255K(7),
 - “International Safety Management Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization by resolution A.741(18) (as amended from time to time),
 - “operator”, in relation to a ship, means the owner or a person (such as a manager or bareboat charterer) who—
 - (a) has assumed responsibility for operation of the ship, and
 - (b) has agreed to take over all duties and responsibilities under the International Safety Management Code,
 - “owner”, in relation to a ship which has been involved in an accident which resulted in a wreck, means the owner at the time of the accident,
 - “ship” means a seagoing vessel, including—
 - (a) hovercraft, submersible craft and other craft, and
 - (b) floating platforms, except when engaged in the exploration or exploitation of mineral resources,
 - “wreck” has the meaning given by section 255A(2),
 - “wreck removal insurance” has the meaning given by section 255K(7),
 - “wreck removal insurance certificate” has the meaning given by section 255K(7),

“wreck removal notice” means a notice under section 255D,
 “the Wrecks Convention” has the meaning given by section
 255A(1), and
 “Wrecks Convention State” has the meaning given by section
 255A(1).

- (2) References in this Part to entering a port in a State include references to arriving at a terminal in the territorial sea of that State (except in section 255M).
- (3) References in this Part to ships registered in a State include unregistered ships entitled to fly the flag of that State.
- (4) In determining for the purposes of this Part whether a wreck poses a hazard the Secretary of State must have regard to Article 6 of the Wrecks Convention (determination of hazard).

255T Government ships

- (1) This Part does not apply in relation to warships or ships for the time being used by a State for non-commercial purposes.
- (2) But it does apply to such ships if specified in a notice under paragraph 3 of Article 4 of the Wrecks Convention.
- (3) Section 255K does not apply to a ship (an “exempt ship”) which—
 - (a) is owned by a Wrecks Convention State, and
 - (b) is for the time being used for commercial purposes.
- (4) An exempt ship must have a certificate issued by the government of the State concerned and stating—
 - (a) that the ship is owned by that State, and
 - (b) that any liability under section 255G will be met up to the limits prescribed by paragraph 1 of Article 12 of the Wrecks Convention (compulsory insurance).
- (5) Section 255N(2) to (5) applies to such a certificate.
- (6) Where a ship is owned by a State and operated by a company which is registered in that State as operator of the ship, references in this Part to the owner are references to that company.
- (7) In proceedings against a Wrecks Convention State for the recovery of costs under section 255G the State shall be treated as having submitted to the jurisdiction of the court in which the proceedings are brought; but this does not authorise execution, or in Scotland the execution of diligence, against the property of a State.

255U Power to amend

- (1) The Secretary of State may by order amend this Part to reflect any amendment of the Wrecks Convention.
- (2) An order under this section may be made only if a draft has been laid before and approved by resolution of each House of Parliament.”

16 Marking wrecks

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

*Miscellaneous***17 Manning requirements**

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.
- (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.”

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

- (1) In section 54 of the Harbours Act 1964 (c. 40) (orders and regulations) at the end add –
 - “(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 –
 - (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
 - (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 (c. 21) (orders and regulations) –
 - (a) in subsection (1) after “power” insert “of the Secretary of State or Scottish Ministers”,
 - (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

(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.

(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.”

General

19 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 –
 - (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).

20 Short title

This Act may be cited as the Marine Navigation Act 2008.

MARINE NAVIGATION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Marine Navigation Bill as published on 6 May 2008. They have been prepared by the Department for Transport. These notes have been prepared in order to assist the reader of the draft Bill and to help inform pre-legislative scrutiny on it. They do not form part of the draft Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. UK ports are vital to our economic well-being. Accidents still cause delay and expense in both financial and environmental terms. The dangers and potential impact of incidents increase nearer to shore and in the busier shipping lanes around ports.
4. The 1998 Review of the Pilotage Act 1987 indicated that the threshold for identifying competent harbour authorities in the Act may have been set too low, and that as a result some ports may retain functions under the Act (including duties in relation to the safety of ships) which they do not need and are unable in practice to exercise. The Government understands this to be the position for a relatively small number of ports, but it may have cost implications for those it affects. There is in addition a danger that mariners will incorrectly assume that such ports are able to handle more difficult vessels.
5. The non-statutory Port Marine Safety Code sets out the government's expectations of harbours and advises on safety management within the statutory framework. The Code provides all ports with a standard that they are expected to meet, with different standards applicable to different sizes of port. The Code has been published to help harbour authorities meet all their statutory safety obligations. It recommends that harbour authorities should ensure they have assessed risk, and hold adequate resources and powers for effective management. The Secretary of State aims to ensure that harbour authorities take all reasonable steps to comply with the Code.
6. The absence of standard rules for navigating harbours and their approaches has been known to cause confusion, accidents and costly delays where the procedures differ between ports.
7. The general lighthouse authorities (Trinity House, the Commissioners of Northern Lights and the Commissioners of Irish Lights) also have duties with regard to the inspection of aids

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to navigation equipment in harbours and in ensuring that the seas around the United Kingdom are appropriately marked.

8. The International Convention on the Removal of Wrecks was agreed at a diplomatic conference held in Nairobi in May 2007.

SUMMARY

9. The draft Bill provides measures relating to safety of shipping in harbours and the seas around the United Kingdom including provisions governing pilotage, the management of harbours and the supervision of local lighthouse authorities. It also includes provisions concerning powers and duties applicable to harbour authorities and the general lighthouse authorities. It will make amendments to UK law on wreck to enable the United Kingdom to ratify the International Convention on the Removal of Wrecks.

OVERVIEW OF STRUCTURE

10. The Bill is divided under 7 subheadings as follows:
 - a) Pilotage
 - b) Harbour authorities
 - c) Local lighthouse authorities
 - d) General lighthouse authorities
 - e) Wrecks
 - f) Miscellaneous
 - g) General

TERRITORIAL EXTENT

11. Amendments made by the Bill will have the same extent as the enactments amended. Certain provisions extend to England, Wales, Scotland and Northern Ireland, but the extent of other provisions is more limited. It is anticipated that for certain measures, provision for Northern Ireland will be enacted through a proposed Northern Ireland Assembly General Harbours Bill, so provision in this Bill will not be necessary.

TERRITORIAL APPLICATION

12. *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.
13. *Clause 2* of the Bill gives the Scottish Ministers power to specify qualifications for pilots. The same powers are given to the Secretary of State in relation to England and Wales, and the Northern Ireland Department for Regional Development in relation to Northern Ireland respectively.
14. *Clause 6* of the Bill gives power to the Secretary of State, Scottish Ministers and Welsh Ministers to designate harbour authorities in England, Scotland and Wales respectively,

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which are permitted to give harbour directions to ships that are within or entering or leaving their harbour.

15. *Clause 7* of the Bill gives the Scottish Ministers power to give safety directions 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.
16. *Clause 8* of the Bill gives the Scottish Ministers power to specify qualifications for harbour masters. The same powers are given to the Secretary of State in relation to England and Wales.
17. *Clause 9* of the Bill 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.

COMMENTARY

PILOTAGE

Clause 1: Competent harbour authorities

18. This clause 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. The order making power is subject to the applicable negative resolution scrutiny procedure.

Clause 2: Qualifications required by pilots

19. This clause amends the Pilotage Act 1987 to provide the appropriate national authority with power to make regulations requiring that only qualified pilots may be appointed by harbour authorities, and determining what the relevant qualifications are. Regulations may be made only where the appropriate national authority considers it in the interests of safety. The appropriate national authority in this context is the Secretary of State in respect of a harbour in England or Wales, the Scottish Ministers in respect of a harbour in Scotland or the Department for Regional Development in respect of a harbour in Northern Ireland. The regulation making power is subject to the negative resolution scrutiny procedure. The clause provides that it shall be an offence to knowingly or recklessly make a false statement for the purpose of obtaining a certificate under the regulations, punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5000).

Clause 3: Pilotage notification

20. This clause amends the Pilotage Act 1987 to provide that the master of a ship must ensure that the relevant competent harbour authority is notified before the ship is navigated in an area for which a pilotage direction is in force. The notification must either request an

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authorised pilot or notify the authority that the ship will be piloted by a specified person in accordance with a pilotage exemption certificate.

Clause 4: Grant

21. This clause 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. An applicant for a certificate must satisfy a competent harbour authority that he 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 5: Exemption certificates: suspension and revocation

22. This clause extends the circumstances in which a competent harbour authority can, by written notice, suspend or revoke a pilotage exemption certificate, for example if a pilot is found to be temporarily incapable of navigating a ship due to being under the influence of alcohol – the existing legislation would not permit the immediate suspension of his 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.

As an example, the existing legislation would not permit 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.

23. 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.

HARBOUR AUTHORITIES

Clause 6: Directions by harbour authority

24. This clause amends the Harbours Act 1964 so as to provide that the appropriate national authority may by order designate harbour authorities which may give general harbour directions to ships within, entering or leaving their harbour. Harbour directions are intended to supersede and standardise the powers of general direction currently held by some harbour authorities under their local legislation. 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 or the Secretary of State in respect of any other harbour in England and Wales. The regulation making power is subject to the negative resolution

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scrutiny procedure. New section 40B 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.

25. New section 40C 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 7: Safety directions

26. This clause amends the Harbours Act 1964 so as to provide that the appropriate national authority may in specified circumstances direct a harbour authority about the exercise of its functions. 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 or the Secretary of State in respect of any other harbour in England and Wales.

Before issuing such a direction, the appropriate national authority must first consult the authority and any other interested parties. It is an offence for a harbour authority not to comply with a direction without reasonable excuse, punishable on summary conviction by a fine not exceeding level 4 on the standard scale (currently £2500).

Clause 8: Qualifications required by harbour masters

27. This clause amends the Harbours Act 1964 to provide the appropriate national authority with power to make regulations requiring that only qualified harbour masters may be appointed by harbour authorities, and determining what the relevant qualifications are. Regulations may be made only where the appropriate national authority considers it in the interests of safety.
28. The appropriate national authority in this context is the Secretary of State in respect of a harbour in England and Wales, and the Scottish Ministers in respect of a harbour in Scotland. The regulation making power is subject to the appropriate negative resolution scrutiny procedure. The clause provides that it shall be an offence to knowingly or recklessly make a false statement for the purpose of obtaining a certificate under the regulations, punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5000).

Clause 9: Harbours: closure orders

29. This clause amends the Harbours Act 1964 to provide the appropriate national authority with power to permit or require harbour authorities to stop maintaining harbours which are no longer commercially viable or necessary. 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.
30. New section 17B 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. 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.

*These Notes refer to the Marine Navigation Bill (xxxx)
as published in draft on 6 May 2008*

31. A closure order may be made if the harbour authority asks the appropriate national authority to do so or by the appropriate national authority if it is satisfied that the harbour authority has consented to it or is unlikely to object. Each of the appropriate national authorities must publish further guidance about the circumstances in which an order will be made by them. The procedure for making a closure order is set out in new section 17D, and is a modified version of the procedure in Part 1 of Schedule 3 to the Harbours Act 1964 applicable to harbour revision orders.

LOCAL LIGHTHOUSE AUTHORITIES

Clause 10: Inspections: information

32. This clause amends the Merchant Shipping Act 1995 to create an offence where a person fails to comply, without reasonable excuse, with a request made by a general lighthouse authority under section 198(2) or (3) for information, explanations or returns. The offence is punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5000).
33. Requests made under section 198(2) and (3) may be made by general lighthouse authorities in connection with their duty under section 198(1) to monitor the lighthouses, buoys and beacons managed by a local lighthouse authority. The policy intention is that the new offences will improve compliance by local lighthouse authorities with such requests, which will enable the general lighthouse authorities to improve their regular oversight of aids to navigation.

Clause 11: Control

34. This clause replaces section 199 of the Merchant Shipping Act 1995 and contains provision whereby a general lighthouse authority may give a direction to a local lighthouse authority about permanent lighthouses, buoys and beacons in their area, including their provision, removal, maintenance, improvement or operation. A general lighthouse authority may only issue such a direction with the consent of the Secretary of State. Failure to comply with a direction without reasonable excuse is an offence, punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5000).

GENERAL LIGHTHOUSE AUTHORITIES

Clause 12: General lighthouse authority areas

35. This clause amends the Merchant Shipping Act 1995 to provide for the area in which the general lighthouse authorities may operate so that it includes the area for which the United Kingdom has jurisdiction for the prevention of pollution from ships.

Clause 13: Commercial activities

36. This clause authorises general lighthouse authorities to enter into agreements for others to use the authorities' assets and to provide consultancy and other services. It also allows the general lighthouse authorities 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 general lighthouse authorities under such agreements must be paid into the General Lighthouse Fund.

*These Notes refer to the Marine Navigation Bill (xxxx)
as published in draft on 6 May 2008*

Clause 14: General Lighthouse Fund: pensions

37. This clause provides that the Secretary of State shall make arrangements to allocate part of the General Lighthouse Fund for the purpose of paying pensions, and must so allocate all pension contributions paid into the Fund after the arrangements commence. It also permits the Secretary of State to make different arrangements for the payment of pensions to the staff of the general lighthouse authorities.

WRECKS

Clause 15: Wreck Removal Convention

38. Clause 15 inserts new sections 255A to 255U into the Merchant Shipping Act 1995 (the Act). Therefore the following refers to new sections of the Act. These new sections implement the International Convention on the Removal of Wrecks (ICRW) 2007, providing for the marking and removal of wrecks in the Convention Area and recovery of the costs of so doing.

Section 255A - Key concepts

39. This new section sets out the key concepts for Part 9A of the Act. These include the full citation for the Convention and definition of “wreck”. It also includes an order making power under which the Secretary of State is to describe the UK’s Convention Area. That order will be subject to negative resolution scrutiny procedure by virtue of section 306 of the Act.
40. As the UK has not declared an EEZ, it is proposed that the UK’s Convention Area should be broadly similar to the Pollution Control Zone which is prescribed by the Merchant Shipping (Prevention of Pollution)(Limits) Regulations 1996 (S.I.1996/2128) under s.129 of the Act and the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996 (S.I. 1996/282). In addition, the Government proposes to include the UK’s territory and territorial sea in the Convention Area, using the option available to States under the Convention.

Section 255B – Wreck reports

41. This new section introduces a requirement on the master and the operator of any United Kingdom ship (a ship registered in the UK) which is involved in an accident resulting in a ship, or any other part of a ship or cargo becoming a wreck, to make a report as soon as practicable to the State in whose Convention Area it falls (“Affected State”). Therefore if the wreck is located in the UK’s Convention Area it must be reported to the Secretary of State; if the wreck is located in another State’s Convention Area then the wreck must be reported to the authorities in that State in accordance with the local arrangements in that State.
42. The new section specifies the information to be included when reporting the wreck, so far as it is known. It is anticipated that the master and shipowner of a ship involved in an accident may not have full information about other ships involved in the accident.
43. The new section makes it an offence for the master and operator, without a reasonable excuse, not to report a wreck as required. If neither the master nor the operator of a UK ship reports, then each is to be guilty of an offence. If one has reported it, the other will commit

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as published in draft on 6 May 2008*

no offence by not reporting it. The offence is to be punishable by fines, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

44. It is also to be an offence, carrying the same penalties, if following reporting of a wreck to the Secretary of State or other Affected State, the Secretary of State or other Affected State requests further information on the wreck from the master or the operator and this information is not provided by them.

Section 255C – Marking wrecks

45. This new section deals with the steps to mark a wreck in the UK's Convention Area if the Secretary of State determines it is a hazard (defined in new section 255S).
46. A duty is imposed on the Secretary of State to ensure all reasonable steps are taken to mark the location of such wrecks. In discharging this duty, the Secretary of State may direct a general lighthouse authority, harbour authority or conservancy authority to mark the wreck and to exercise, or not, their existing powers. He may also direct them to publish location details of the wreck. Such a direction must be complied with.

Section 255D – Removal by owner

47. This new section applies in respect of a wreck in the UK's Convention Area which the Secretary of State determines to be a hazard. The Secretary of State must take all reasonable steps to give the owner written notice both to arrange for the removal of the wreck and to provide evidence that they have sufficient insurance to cover their liability under the ICRW as required by section 255K of the Act.
48. The Secretary of State's notice must include the timescale for removal and explain the effects of new sections 255F and 255G.
49. An owner who does not comply with a notice under this section without reasonable excuse is guilty of an offence. The offence is to be punishable by fines, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

Section 255E – Directions about removal

50. This new section authorises the Secretary of State to issue directions to recipients of Wreck Removal Notices where necessary to reduce or remove safety or environmental pollution risks.
51. An owner who does not comply with a direction under this section without reasonable excuse is guilty of an offence. The offence is to be punishable by fines, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

Section 255F – Removal in Default

52. This new section enables the Secretary of State in specified circumstances to remove a wreck in the UK Convention Area which has been determined as a hazard. Alternatively the Secretary of State may direct a general lighthouse authority, harbour authority or conservancy authority in writing to undertake the removal. If the Secretary of State issues a direction then this direction must be complied with.

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Section 255G Liability for costs

53. This new section concerns liability for costs that have been incurred from the locating, marking or removal of any wreck within the UK's Convention Area.
54. These costs may be recovered directly from the shipowner (or insurer where 255Q applies) unless the owner (or his insurer) proves any of the exceptions provided for in new section 255H of the Act are applicable, or the liability is in conflict with other Conventions detailed under Article 11(1) of the ICRW or such other provisions that the Secretary of State may specify by order. An order made under this section is to be subject to the affirmative resolution scrutiny procedure.

Section 255H – Exceptions

55. This new section sets out the exceptions referred to in section 255G(2). These are when an accident:
- resulted from an act of war, hostilities, civil war, insurrection; or
 - resulted from an exceptional, inevitable and irresistible natural phenomenon; or
 - was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
 - was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.
56. These are the usual defences under maritime liability conventions.

Section 255I – Limitation period

57. Claims under new section 255G for costs associated with locating, marking or removing a wreck are subject to a time limit. The claim must be brought within 6 years of the accident or, if sooner, within 3 years from the date on which a wreck removal notice was issued under section 255D.

Section 255J – Costs of general lighthouse authorities

58. This new section provides for the reimbursement of unrecovered costs, incurred by General Lighthouse Authorities in complying with directions under new sections 255C and F of the Act, from the General Lighthouse Fund in the same way as section 253(3) of the Act allows for reimbursement of similar expenses under that section.

Section 255K – Wreck removal insurance

59. This new section covers the compulsory insurance and state certification requirements. Any ship of 300 gross tonnage and above entering or leaving a UK port or terminal will be required to maintain insurance or other security compatible with Article 12 of the ICRW and to carry a State-issued certificate confirming that such insurance or other security is in place.

Section 255L – Failure to insure

60. This new section provides that if a ship enters or leaves (or attempts to enter or leave) a port or terminal in the UK without the required State certificate attesting that insurance is in place, the master and operator will commit an offence. The offence is to be punishable by

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finer, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

Section 255M – Detention of ships

61. This new section makes provision for a vessel to be detained if either the insurance or State Certification requirements are not complied with. Section 284 of the Act already provides for the enforcement of detention.

Section 255N – Production of certificates

62. This new section requires the State Certificate to be carried on board the vessel and produced. If the Master fails to do either of these, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5000).

Section 255O – Issue of certificates

63. This new section requires the Secretary of State to issue a certificate for a UK ship or a ship registered in a State which is not party to the ICRW in respect of the insurance requirements under the ICRW if he is satisfied that the insurance in place will cover the liability. If however the Secretary of State is not satisfied that this is the case then he can refuse to issue a certificate. The Registrar General of Shipping will have a copy of the certificate, available for public inspection.

Section 255P – Cancellation of certificates

64. This new section allows the Secretary of State to make regulations about cancellation and delivery of any certificate issued under section 255O. Failure to deliver up a certificate when required is an offence where the fine upon conviction would not exceed level 4 on the standard scale (currently £2500).

Section 255Q – Third parties' rights against insurers

65. This new section makes provides for a claimant, who is entitled to recover costs from a ship's owner under 255G, to recover them directly from the insurer.
66. The insurer is allowed to limit his liability in the same manner and extent as the shipowner, and claim defences which would be available to the shipowner. In addition the insurer may limit liability where the shipowner is not entitled to limit his liability under the Limitation of Liability for Maritime Claims (LLMC) Convention (i.e. where the loss resulted from the shipowner's personal act or omission, committed with the intent to cause such loss, or recklessly and with the knowledge that such loss would probably result).
67. The insurer also has an additional defence if the incident was due to the wilful misconduct of the shipowner.
68. Similar provisions are contained in section 165 of the Act in relation to the Civil Liability Convention.

Section 255R – Electronic certificates

69. This new section allows for the use of electronic insurance certificates, which may be introduced by a State under Article 12(13) of the ICRW. This would mean ships not being require to have an actual certificate of insurance when entering or leaving a port or arriving

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or leaving an offshore facility, if the Secretary of State has informed the Secretary-General of the International Maritime Organisation that the UK maintains records in an electronic format, accessible to all State Parties, attesting to the existence of the certificate.

70. Should the Secretary of State decide to allow electronic certificates then appropriate changes to Part 9A may be made by order, subject to the affirmative resolution scrutiny procedure.

Section 255S – Interpretation

71. This new section adds the further definitions necessary for the interpretation of sections 255A to S, including:
- definitions of “accident”, “hazard”, and “ship” and
 - definitions of “operator” and “owner”, and clarification of the differences between the two.

Section 255T – Government ships

72. This new section applies Part 9A to state ships if they are being used for commercial purposes and clarifies liabilities. These are the same arrangements already provided for in section 167 of the Act in respect of the Civil Liability Convention regime.

Section 255U – Power to amend

73. This new section will enable the Secretary of State to amend any of the sections within this part to reflect any future amendments to the text of the ICRW. Such appropriate changes to Part 9A may be made by order, subject to the affirmative resolution scrutiny procedure.

Clause 16: Marking Wrecks

74. 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 by either 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 General Lighthouse Authorities who, by virtue of section 253(1), have the same powers as those conferred by section 252.

MISCELLANEOUS

Clause 17: Manning requirements

75. This clause provides for an amendment of section 47 of the Merchant Shipping Act 1995, which relates 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.

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FINANCIAL EFFECTS

76. The financial effects to Consolidated Fund and National Loans Fund of this Act should be negligible. The only area of additional expenditure likely to be incurred is through enforcement (it is not foreseen that these will be significant).

PUBLIC SERVICE MANPOWER

77. The Bill does not require significant changes to public service manpower. The proposals in it should be met within existing resources.

IMPACT ASSESSMENT

78. An Impact Assessment has been published on the Department for Transport website, at www.dft.gov.uk/consultations. The sectors who may incur costs under this legislation are the enforcement authorities and, to the extent that they are not already complying with best practice, harbour authorities and shipping companies. However compliance costs will be insignificant compared with the potential safety benefits
79. The Bill will produce significant non-monetarised benefits in safety improvements in harbours and at sea which in turn will potentially lead to the avoidance of accidents and benefits in dealing with their aftermath both financially and environmentally.

EUROPEAN CONVENTION OF HUMAN RIGHTS

80. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights protected by the Human Rights Act. We believe that the Minister will be able to make the following statement “In my view the provisions of the Marine Navigation Bill are compatible with the Convention rights.”
81. *Clauses 2 and 8* provide powers which may be used to require harbour authorities to authorise as harbour masters or pilots only such applicants as hold a qualifications certificate. This potentially engages Article 6 and Article 1 of the First Protocol insofar as it involves determining a person’s right to engage in those occupations. The Government considers that these measures are compatible with Convention rights because judicial review is available in respect of any contested decision made by the certification body, and because they represent an acceptable balance between private interests and the public interest in the safe management and operation of harbours.
82. *Clause 5* provides competent harbour authorities with power to revoke or suspend a person’s pilotage exemption certificate in prescribed circumstances. This potentially engages Article 6 and Article 1 of the First Protocol insofar as it involves determining a person’s right to pilot a ship in an area of compulsory pilotage, which may affect their employment prospects as a seafarer. The Government considers that the measure is compatible with Convention rights because judicial review is available in respect of any contested decision made by the competent harbour authority, and because the measure is an acceptable balance between private interests and the public interest in safe navigation in and around harbours.
83. *Clause 6* provides a mechanism through which harbour authorities may be empowered to make harbour directions to ships. This potentially engages Article 1 of the First Protocol insofar as the directions may require shipowners and others to act in a prescribed manner, potentially interfering with their property rights. The Government considers that this

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measure is compatible with Convention rights because the measure is an acceptable balance between private rights and the public interest in the safe management and operation of harbours.

84. *Clause 7* provides a power to direct harbour authorities as to the exercise of their functions where the authority is thought to have failed to discharged functions safely (or at all). This potentially engages Article 6 and Article 1 of the First Protocol insofar as it affects the harbour authority's ability to operate its business. The Government considers that, for those harbour authorities which have rights under the Convention, the measure is compatible with Convention rights because judicial review is available in respect of any contested direction, and the measure is an acceptable balance between private interests and the public interest in the safe management and operation of harbours.
85. *Clause 9* provides a power to "close" harbours by order, rather than through a private Act. This potentially engages Article 1 of the First Protocol insofar as the order contains provisions which interfere with the property rights of the harbour authority or others. The Government considers that the measure is compatible with Convention rights because the power shall be exercised only where there is an acceptable balance between private interests and the public interest in the safe and proper management of harbours. The Government considers that the procedural requirements of the closure order provisions are sufficient to enable an appropriate balance to be struck.
86. *Clause 11* provides the General Lighthouse Authorities with powers of direction over Local Lighthouse Authorities as to the exercise of their functions in respect of lighthouses, buoys and beacons. This potentially engages Article 1 of the First Protocol insofar as it affects the ability of the Local Lighthouse Authority to operate its business. The Government considers that, for those Local Lighthouse Authorities which have rights under the Convention, the measure is compatible with Convention rights because it is an acceptable balance between private interests and the public interest in safe navigation and the consistent deployment of aids to navigation.
87. *Clause 15* amends the law so as to implement the Wrecks Convention. New section 255C(3) potentially engages Article 6 and Article 1 of the First Protocol insofar as it provides for the Secretary of State to issue directions affecting a lighthouse authority, harbour authority or conservancy authority's ability to operate its business. The Government considers that, for those authorities which have rights under the Convention, the measure is compatible with Convention rights because judicial review is available in respect of any contested direction and the measure is an acceptable balance between private interests and the public interest in safe navigation and the consistent deployment of aids to navigation.
88. *Clause 15* further potentially engages Article 1 of the First Protocol in respect of requirements on shipowners (to obtain wreck removal insurance, to arrange the removal of their wreck and to reimburse costs of locating, marking and removing their wreck) and the possible detention of a ship which does not have wreck removal insurance or a certificate in respect of that insurance. The Government considers that these measures are compatible with Convention rights because they are an acceptable balance between private interests and the public interest in safe navigation.

COMMENCEMENT DATE

89. The provisions in the Bill will be brought into force by order made by the Secretary of State.

SUMMARY: INTERVENTION & OPTIONS

Department for Transport	Impact Assessment of draft Marine Navigation Bill
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Stage Draft Bill	Version 2.6 14/04/08	Related Publications
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Available to view or download at: www.dft.gov.uk/consultations

Contact name for enquiries: Cameron Clark

Telephone number: 020 7944 5455

What is the problem under consideration? Why is government intervention necessary?
Improvement of the safety management of shipping at sea around the coast and ports of the United Kingdom and of the operation of some of the bodies that have the statutory task of managing safety and aids to navigation.

Although the safety record in the UK has been improving, accidents are still a source of delay in UK ports. Maritime accidents can be very expensive. Existing measures work well in the great majority of cases. Nevertheless there is still room for improvement and updating.

What are the policy objectives and the intended effects?

Pilotage and management of harbours
Confidence in the port industry and incentives to maintain best practice.

Lighthouse Authorities
Ensure they are properly equipped to carry out their statutory functions.

International Convention on the Removal of Wrecks
Enable the UK to ratify the Convention and benefit from its provisions.

What policy options have been considered? Please justify any preferred option.
In each part of the draft Bill the options have been either to legislate as proposed or to do nothing and remain with the status quo. There has been pressure on the Government for some years to take action in several of the areas. The justification for these options is given below in the Evidence Base.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? **Three years after coming into force.**

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Date:

Ministerial Sign-off For final proposal/implementation stage Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Date:

SUMMARY: ANALYSIS & EVIDENCE

Policy Option		Description	
ANNUAL COSTS One off (Transition) <input type="text" value="£10,000"/> <input type="text" value="1"/> Average Annual Cost (excluding one-off) <input type="text" value="£15,000 - £45,000"/>		Description and scale of key monetised costs by 'main affected groups' Government & Agencies £10,000 one off + £15,000pa General Lighthouse Authorities Negligible Harbour Authorities £0 - £30,000pa Environmental Regulators None Shipping Industry Some cost savings Total Cost (PV) <input type="text" value="£160,000-£460,000"/>	
Other key non-monetised costs by 'main affected groups' There may be additional compliance costs for some organisations in, for example additional training or maintenance, but in most cases this will only affect those that have not hitherto been complying with published best practice.			
ANNUAL BENEFITS One off <input type="text" value="£0"/> <input type="text"/> Average Annual Benefit (excluding one-off) <input type="text" value="£30,000 - £100,000+ see NOTE below"/>		Description and scale of key monetised benefits by 'main affected groups' Government & Agencies Negligible General Lighthouse Authorities Significant Harbour Authorities £30,000pa Environmental Regulators Significant Shipping Industry Negligible Total Benefit (PV) <input type="text" value="£30,000 - £1m+ see NOTE below"/>	
Other key non-monetised benefits by 'main affected groups' NOTE: By far the largest benefits of the Bill will come from avoided costs of dealing with wrecks and associated pollution. These could occur anywhere at any time. The savings from the avoidance of even one incident could run to millions of pounds. This will completely overshadow any compliance costs.			
Key Assumption/Sensitivities/Risks Most of the measures dealing with port safety are designed to encourage compliance with the Port Marine Safety Code and evidence from inspections is that most authorities already comply so the additional costs are likely to be minimal.			
Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £15,000-£55,000+	NET BENEFIT (NPV Best estimate) £55,000+ (see NOTE above)
What is the geographic coverage of the policy/option?			UK
On what date will the policy be implemented?			2010 subject to Parliamentary time
Which organisation(s) will enforce the policy?			DfT, MCA, GLAs
What is the total annual cost of enforcement for these organisations?			£0
Does enforcement comply with Hampton principles?			Yes
Will implementation go beyond minimum EU requirements?			No
What is the value of the proposed offsetting measure per year?			N/A
What is the value of changes in greenhouse gas emissions?			Negligible
Will the proposal have a significant impact on competition?			No
Annual cost (£-£) per organisation (excluding one-off)		Micro - Small Negligible costs	Med - Large Most of the costs
Are any of these organisations exempt?		No	No
		N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			
Increase of	<input type="text" value="£14,000"/>	Decrease of	<input type="text" value="£28,000"/> impact <input type="text" value="£14,000"/>
Key:			<input type="text" value="Annual Cost: Constant Prices"/> <input type="text" value="(Net) Present Value"/>

Evidence Base for Summary Sheets

The Problem

The draft Bill tackles three main interlinked areas, all of which are designed principally to improve the safety management of shipping at sea around the coast or using ports of the United Kingdom and to improve the operations of some of the bodies that have the statutory task of managing safety and aids to navigation. The three areas cover:

Pilotage and management of harbours

Lighthouse Authorities

International Convention on the Removal of Wrecks

UK ports are vital to our economic well-being. Although the safety record has been improving, marine accidents still cause delay and can result in significant injury or loss of life. The dangers and potential impact of incidents increase nearer to shore and in the busier shipping lanes around ports. Dealing with the aftermath of shipping accidents can be very costly; the financial costs are quite likely to fall by default on the authorities which are charged with managing safety, including the Maritime and Coastguard Agency and the General Lighthouse Authorities.

Wrecks can therefore cause a number of major problems:

- depending on its location, a wreck may constitute a hazard to navigation, potentially endangering other ships, their crews and coastal communities;
- depending on the nature of the cargo, there is potential for a wreck to cause substantial damage to marine and coastal environments affecting people and wildlife over a wide area; and
- the costs involved in the marking and removal of hazardous wrecks.

Policy Objectives

Quantification of the costs of potential shipping accidents and the benefits of the measures proposed in the Bill is not easy as it is not possible to extrapolate from past events. One of the objectives of publishing the Bill in draft is therefore to ensure that as many interested people and organisations as possible have an opportunity to contribute to the assessment of its impact.

Pilotage and management of harbours

The objectives are to institute a package of measures that will improve marine and port safety, leading to a reduction in the number and severity of accidents in and around UK ports, while retaining the port's operational primary responsibility to ensure safe operations.

The measures underpin the existing port safety regime, which is, and will remain, based largely on compliance with a non-statutory code of practice, the Port Marine Safety Code. Introducing relatively minor amendments to existing legislation will provide confidence in the UK port industry and incentives to maintain best practice at all levels.

Lighthouse Authorities

There are three General Lighthouse Authorities with duties of providing and maintaining aids to navigation around the coasts of the United Kingdom and Ireland. Although their origins are rooted in history, their powers and management have from time to time been brought up to date and there is now a further need, notably following developments in technology and financial systems, to ensure that they are properly equipped to carry out their statutory functions, including the supervision of harbour authorities and others who provide aids to navigation on a more local basis.

International Convention on the Removal of Wrecks

The aim of the ICRW is to establish international rules on the rights and obligations of States and shipowners with respect to wrecks and drifting or sunken cargo which pose a hazard either to navigation or to the marine environment and to make it easier for signatory States in which a shipwreck occurs to recover costs resulting from locating, marking and removing wrecks.

The Need for Intervention

Safety is a key priority in the large, highly competitive and growing port industry. Although the record in the UK has been improving, marine accidents are still a source of injury, pollution and delay in UK ports. Statistics for incidents in ports are not collected separately from those relating to shipping generally in UK waters but both the dangers and potential impact of incidents increase nearer to shore and in the busier shipping lanes close to and within ports. In the past five years (2002-06¹ – some 2006 figures are provisional) in the UK Search and Rescue Region, the MCA recorded 2,723 incidents involving commercial shipping and 11,451 relating to inshore leisure craft, resulting in 540 deaths from maritime accidents and 526 occasions in which oil was released into the marine habitat. As an example of one port, in 2006 in Milford Haven² there were 45 port incidents and 93 near misses. Only some of these will have involved vessels at sea. In addition, 2006 saw 40 cases of pollution, 18 within the Haven and 22 within Milford Docks. The 18 Haven pollutions amounted to 261 litres in total whilst the 22 within Milford Docks totalled 284 litres. Two of the Haven pollutions could be attributed to ships whilst six of the Milford Dock pollutions were attributed to fishing vessels.

Marine accidents can be very expensive and not all costs and impacts are captured by market prices and compensatory regimes. At the moment, it is often difficult, and sometimes it has proved impossible, to obtain compensation for costs associated with locating, marking and removal of a wreck. The responsible authorities and the Government have experienced difficulties recovering the costs for removing wrecks arising from an incident or threat of an incident.

Implementation of the ICRW will make it easier for the authorities in the Affected State to recover from the shipowner the costs associated with removal of a wreck. If a wreck incident were to occur in UK waters, the Government and the shipping industry are likely to face criticism if statutory authorities are unable to recover their losses.

¹ Source: 2006 Annual Report of the Maritime and Coastguard Agency.

² Source: Milford Haven Port Authority Annual Report, Business Review and Accounts 2006.

Two examples illustrate the impact, actual or potential, of accidents and while we cannot be certain that the provisions of the Bill would help they will provide more certainty that accidents can be avoided and costs recovered.

A cargo vessel carrying approx 2,250 tonnes of steel grounded in the River Nene at Port Sutton Bridge whilst trying to swing in the river in December 2000. There was a serious threat to the environment due to presence of fuel, hydraulic and lubricating oil. The vessel's back broke due to the significant tidal fall in the river and it was impossible to refloat, therefore it was necessary to cut the vessel into sections to remove it. Meanwhile the river access to the Port of Wisbech upstream was blocked. The Secretary of State's Representative for Marine Intervention and Salvage issued a Direction on the overseas owners to remove the wreck but this was not acted upon. The obligation to remove the wreck and respond to the pollution threat fell on the harbour authority and MCA. Legal proceedings were ongoing seven years later and the total cost of the operation was in excess of £1,200,000 with legal costs of £140,000 against which the likely total recovery from the owners' limitation fund in Germany is £150,000.

It may not be possible to quantify the consequential losses that could have resulted from the collision between a dredger and the Thames Flood Barrier in October 1997. While navigating through one of the barrier's spans the vessel collided with one of the barrier's concrete piers. The vessel, loaded with about 3,300 tonnes of sand and gravel, was holed. It sank and came to rest on top of one of the housed barrier gates. The gate was effectively put out of commission until such time as the vessel was refloated and the majority of her lost cargo removed. The barrier was closed for repairs but the potential losses if the barrier had been needed to protect London from flooding in the period that it was out of commission would have been enormous.

Major incidents, involving loss of life or serious pollution are, thankfully, few and this is evidence that the existing measures work well in the great majority of cases. Evidence from inspections of harbour authorities indicates that most have taken the principles of the Port Marine Safety Code into their internal management systems. Nevertheless there is still room for improvement and updating.

Effects of the Proposed Measures

The main proposals are:

- 1) Removal of unwanted pilotage powers
- 2) Pilotage Exemption
 - *Wrongful reliance on certificate*
 - *Power to suspend a Pilotage Exemption Certificate immediately*
 - *Compensation for wrongful suspension of a Pilotage Exemption Certificate*
 - *Removal of restriction on granting a Pilotage Exemption Certificate*
- 3) General directions by harbour authorities
- 4) Secretary of State's Power to Direct Harbour Authorities
- 5) National Occupational Standards

- 6) Closure of Harbours
- 7) Enforcement of General Lighthouse Authority Inspections
- 8) Powers of General Lighthouse Authorities
 - *GLA powers outside the 12 nautical mile limit*
 - *Marking wrecks with beacons*
 - *GLA powers to undertake commercial work*
- 9) General Lighthouse Authority Pensions
- 10) General Lighthouse Authority Tax Exemption
- 11) International Convention on the Removal of Wrecks 2007

Taking each in turn:

1. Removal of unwanted pilotage powers

1.1 This measure would provide the Secretary of State with an order-making power to permit Competent Harbour Authorities to relinquish unwanted pilotage powers. Where circumstances have developed such that there is no longer any need for compulsory pilotage at a particular harbour then the CHA may, in agreement with stakeholders and others with an interest in the port, relinquish their powers. The process would be initiated by the CHA.

1.2 This measure has no operational costs associated with it. There would be administrative costs involved for both the harbour authority and the Department in applying for and processing of Orders. These would be at the lower end of the scale of those detailed below for HROs. The effect of an order would be to remove duties from a Harbour Authority which could result in a cost saving although in practice the reason that an authority has applied for the Order will be that it is no longer resourced or capable of carrying out those functions and the work has not been effectively carried out for a considerable length of time. Savings are therefore likely to be notional rather than actual. Nevertheless the authority will be protecting itself from possible legal challenges for not having carried out its statutory duties so here too there is a notional saving.

2. Pilotage Exemption

Wrongful reliance on a Pilotage Exemption Certificate

Power to suspend a Pilotage Exemption Certificate immediately

2.1 Currently, Competent Harbour Authorities have powers to suspend or revoke a Pilotage Exemption Certificate (PEC) for incompetence or misconduct relating to the capability of the holder to pilot the ship. However, the holder is still free to use the PEC while the procedure for the CHA to notify him about suspension or revocation to and give him reasonable opportunity of making representations is in progress. These measures would allow CHAs to suspend or revoke a PEC for incompetence or misconduct relating to the use of the PEC.

2.2 PECs are issued by CHAs to ships' officers. We do not have any data on the frequency with which authorities investigate incidents, nor how many investigations result in suspensions as these are internal matters for harbour authorities. There is no procedure for collecting the information which relates to matters that are entirely the responsibility of harbour authorities.

2.3 However incidents such as the dredger referred to above, where there were irregularities in the use of a PEC, albeit rare, indicate that there is a need for CHAs to be able to respond quickly to deal with any suspected misuse of PECs or if the holder of a certificate no longer meets the required standard.

2.4 This measure would have some small operational and administrative costs of the shipping company for whom the PEC holder works, since they may have to consider alternative arrangements. There would be possibly some further administrative costs for the harbour authority suspending the PEC immediately but these are likely to be insignificant compared to the overall costs of suspending a PEC. The aim of the measure is to minimise the risk of potentially costly incidents that might arise where there are reasonable grounds to suspect that the holder of a PEC no longer meets the qualification criteria that the competent harbour authority has determined to be necessary for safe navigation within its harbour.

Compensation for wrongful suspension of a Pilotage Exemption Certificate

2.5 A CHA should be given discretion to make compensation payments where it has been found that the statutory notice was issued in circumstances where it subsequently accepts that it was not appropriate to do so. Some may already have this power in their constitutions but the measure will ensure consistent coverage. Where a PEC is suspended, if there is no other PEC holder on board the vessel able to pilot it, then the owner or operator of the vessel will have to pay the CHA for providing its own pilot. In those circumstances, throughout the currency of the statutory notice at least, it is reasonable to expect that additional expenditure will be incurred. This is likely to be in the order of £100-£2,000 per act of pilotage, with a wide range between small and large ports, and different sizes and types of vessel. The decision on whether to pay compensation will be for the CHA to determine on commercial grounds balancing the cost against the need to retain the goodwill of their customers as well as the actual circumstances that led to the suspension of the certificate. However, just as incidents requiring the suspension of a PEC are rare, cases of mistaken suspension will be even less frequent.

Removal of restriction on granting a Pilotage Exemption Certificate

2.6 Currently, a PEC may only be granted to "any person who is bona fide the master or first mate of any ship...", subject to the CHA being satisfied as to that person's skill, experience, local knowledge and relevant knowledge of the English language. The proposed clause amends this provision so that a PEC may be issued to any person, subject to the same conditions. Although the term master has been used for many years, the term first mate is gradually ceasing to be used. The Government proposes to make a provision which will allow the CHA to issue a certificate to any suitably qualified and experienced person who will actually navigate the vessel and who satisfies the requirements of the CHA. This change would assist shipping companies in ensuring that properly qualified personnel are available to pilot ships and help to remove the temptation to stretch duty hours so as to ensure that a PEC holder remains on duty for an extended period instead of taking a rest period.

2.7 Savings to shipping companies are likely to include the costs of paying overtime to PEC holders or, in extreme cases, taking a pilot where the PEC holder is unable to carry out his functions safely, for example due to having worked excessive hours. Improvements in the safety of navigation are also likely to result in a reduced risk of accidents and thereby potential savings in the environmental and financial costs of dealing with accidents.

2.8 There are no costs associated with this measure.

2.9 Where a shipping company is able to avoid taking a pilot the savings could be as much as £2,000 per voyage in the larger ports although for smaller ports and vessels the figure would be much lower, down to around £100.

3. General directions by harbour authorities

3.1 Harbour authorities have four main powers to regulate ship movements within their harbours –

- **Byelaws** – provide a general framework for rules of navigation which apply to all vessels – including speed limits, defining fairways, anchorages, etc. – and which can be treated as unlikely to require frequent or short term amendment.
- **Special Directions/General Directions** – Special directions may be given by the harbour master: these are time and vessel specific and most apt for operational purposes and emergencies. Some harbour authorities have more effective powers of general direction to be given by the authority itself. General directions apply to all vessels, including where a vessel is conducted by a pilot or the holder of a pilotage exemption certificate.
- **Pilotage Directions** – may generally be given by competent harbour authorities which have the power to regulate navigation: these determine the circumstances in which pilotage is to be compulsory.
- **Dangerous Vessel Directions** – are a special case, permitting a harbour master to remove a vessel from the harbour in clearly defined circumstances; they may be overruled by the Secretary of State.

3.2 The use of all these powers should be governed by the authority's formal risk assessment, and should support the safety management system. The master or pilot of a vessel is not obliged to obey directions if he believes that compliance would endanger the vessel. It is therefore essential that the use all of these powers should be clearly based on a proper assessment of the safety of the harbour and vessels using it.

3.3 The proposed measure would provide a power for the Secretary of State to specify the harbour authorities that may issue general directions (referred to in the draft Bill as "harbour directions") to better regulate shipping within their harbour. Some harbour authorities have already taken this power by means of Harbour Revision Orders (HROs), but a standard approach would ensure a national standard of effectiveness.

3.4 It is envisaged that the cost to harbour users of a harbour authority having powers to give general directions would be less than the cost of introducing revised byelaws, or for attempting to issue special directions on each and every occasion. Although some of the functions of general directions can be performed using byelaws, the byelaw process is cumbersome, requires legal representation and may take between one to five years before they can be confirmed by the Secretary of State. General directions, by comparison can be introduced within days of their being advertised and consulted on; they do not have to be confirmed by the Secretary of State.

3.5 In the case of Harwich Haven it was found that of the 77 byelaws in place prior to 2003, 42 could be replaced by general directions. Harwich maintained that the effective regulation of marine activity could be safely accomplished without the need for a lengthy and expensive of byelaw revision.

3.6 Where the use of general directions is able to augment/replace the need for marine byelaws and special directions there will be a saving for harbour users who pay the costs of harbour authorities through harbour dues. This is because:

- general directions usually apply to all vessels at all times, obviating the need to make numerous repetitive special directions; and
- they can be modified without recourse to legal and Government advice and processes, and are therefore cheaper and quicker.

3.7 There are 104 “Competent Harbour Authorities³” in England and Wales through whose harbours pass a substantial amount of the total of UK passengers and cargo. Of these some 21 have taken the power to give general directions by means of local legislation so the majority have not.

3.8 We are aware of some 35 authorities who are currently considering, or are applying for a Harbour Revision Order (HRO). Of these, 3 have been raised to clarify their status constitutionally/financially, 5 are major port redevelopments (where the authority already has powers of general direction – for example London Gateway) and a further 5 are for construction projects. There are 4 HROs which would confer, among other measures, the power to give general directions. Bringing all competent harbour authorities to a common standard by this means would be a slow and expensive process. The Department charges a fee (of £2,000, £4,000, £6,000 and £10,000) to cover the cost of processing HROs, depending on the size and complexity of the Order. We are aware that this barely covers the cost of processing the simplest of HROs. It is possible that the Department may be able to process an HRO concerning a single uncontentious issue for that amount. However harbour authorities nearly always apply for an HRO for a number of issues including constitutional changes, power to borrow, dredge, undertake construction etc. On top of the fees charged by DfT for processing HRO there are the legal costs incurred by the harbour authority. These fees will vary considerably with the complexity of the HRO. Legal, advertising and administrative disbursements would be in the range of £5,000 to £25,000 and potentially significantly more, for contentious or complex applications, particularly if the Order was referred to a Public Local Inquiry.

³ Competent Harbour Authorities are those which have powers to manage shipping through the provision of a pilotage service and include all the main commercial ports.

4. Secretary of State's Power to Direct Harbour Authorities

4.1 It is proposed that the Secretary of State should have a reserve power, with suitable safeguards, to direct harbour authorities to use available statutory powers where they are failing to discharge any of their legal functions, such as to create a risk of loss of life or injury, or a serious danger to navigation or marine pollution. The intention is that where the Secretary of State has reason to believe that such a risk exists and the harbour authority is not taking reasonable steps to mitigate it, she will be able to direct it to take suitable action. The outcome would therefore be a reduced risk of accidents and their consequential costs.

4.2 This power is not intended to be used frequently and would only be exercised after full consultation with the harbour authority concerned. There would be no administrative or operational costs involved merely from keeping the power available for use since the Department and the Maritime and Coastguard Agency already monitor and investigate incidents and the measure would just provide statutory backing for what they already do by negotiation. The power would be used in circumstances where potentially very large safety benefits can be achieved including the prevention of loss of life. Harbour authorities may be faced with costs in complying with a direction but these would be unlikely to be more than the reasonable costs of properly discharging their statutory functions. It is hoped that it will in fact have a positive effect by indicating to harbour authorities the need for effective safety management measures to avoid intervention by the Secretary of State.

4.3 The Department is aware of at least one port where it is probable that a direction would have been issued if the power had been available. During the period 2002 to 2006 there were 14 groundings of ferries within the port. Only three of these were reported as the harbour authority is required to do by the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005; the other 11 were only identified or discovered by the Marine Accident Investigation Branch when they undertook an investigation.

5. National Occupational Standards

5.1 There are currently few legislative constraints upon Harbour Authorities as to who they may choose to employ as Harbour Masters and authorise as pilots. Harbour Authorities have statutory powers (and duties) relating to the management of a harbour area. They exercise their functions principally through persons appointed as Harbour Masters and other employees who may have specialist functions. The Government wishes to ensure that all such persons are suitably qualified.

5.2 By prescribing standards of qualification for harbour authority staff in ports that have the higher levels of responsibility attached to their status as competent harbour authorities, there may be additional training costs involved in bringing them up to the relevant national standard and staff who are trained to a higher level may demand greater remuneration. Offset against this will be efficiency gains from better trained personnel and potential safety improvements with savings resulting from fewer incidents or where staff are better equipped to manage them. The implications for most ports will however be minimal since the great majority already comply with the recognised best practice for the industry and apply existing non-statutory qualifications.

5.3 The proposal is for a discretionary power for the Secretary of State which will not be brought into force until the need for regulation is established and suitable qualifications and training schemes have been put in place.

6. Closure of Harbours

6.1 In very rare cases a harbour needs to be permanently closed to traffic. At present this can only be achieved by promoting a private Act of Parliament. The last one was the Colchester Borough Council Act 2001; for which the whole process took three years and incurred legal fees of £120,000 as well as substantial administration costs in the Department for Transport.

6.2 The Government wishes to provide a proportionate legislative solution in a situation where for example harbour authorities are on the brink of insolvency or in financial difficulties and therefore unable or otherwise unwilling to continue to invest in the upkeep of the harbour, particularly where the harbour is no longer used for the purposes of shipping and unshipping of goods, and the embarking and landing of passengers for which it was established.

6.3 By employing the proposed powers it is envisaged that steps will be taken to reassign responsibilities for safety in harbours where the infrastructure exists (and may be important for uses such as flood prevention) but is no longer required for marine purposes.

6.4 The intention is that a power to close a harbour by order would be exercised rarely, in circumstances where the harbour authority is unable or otherwise unwilling to continue the maintenance of the harbour and the exercise of its functions in relation to the harbour and has been unsuccessful in finding a body to whom it can transfer its functions. It would not be used to close harbours that continue to be viable or necessary on the basis that a harbour authority no longer wishes to continue managing the harbour or wishes to make room for the land to be developed for non-marine purposes. In such circumstances the Department would seek to persuade the existing authority that its purposes would be better served by finding a willing transferee.

6.5 Since the power to close a harbour by order has not previously been available substantial efforts to find an alternative use are usually made. We envisage that this will still be the case, and indeed the retention of harbours and docks often feature in regeneration schemes, since the harbour or dock is often an essential part of the scheme (Albert Dock Liverpool, London Docklands etc.). Nonetheless, having the ability to 'close' the harbour to traffic will assist the Department in providing a further option.

6.6 The procedures for making a harbour closure order would be based on those for Harbour Revision Orders and their costs, which would normally be borne by the promoter of the order. It is expected that the cost of a Harbour Closure Order (HCO) would generally be less than that of an HRO. The HCO costs would be borne by the promoters/Secretary of State/interested parties and objectors. We estimate that there may be perhaps three HCOs in the 5 years following enactment of the Bill. DfT costs (including legal costs) for HRO work are £35,000 per HRO although a single issue HRO is less while those requiring Impact Assessments and public enquiries are greater.

7. Enforcement of General Lighthouse Authority Inspections

7.1 The aim of this measure is to amend the Merchant Shipping Act 1995 to provide appropriate sanctions in relation to certain existing duties on Local Lighthouse Authorities (LLAs) which relate to the provision of aids to navigation.

7.2 It is the role of the relevant GLA to inspect and monitor the work of LLAs relating to aids to navigation in its area. It is the duty of the LLAs to provide information to the GLAs to enable the GLAs to discharge that inspection duty. The Government regards the GLAs' role in this hierarchy as being one of partly discharging the Secretary of State's policy responsibility for ensuring the safety of shipping and harbours, through the appropriate deployment of aids to navigation nationwide.

7.3 The relevant GLA has a power to direct (subject to Secretary of State consent and giving "due notice" of their intention to so direct) a LLA as to how it deploys aids to navigation. LLAs must not deploy or change the deployment of aids without consent from the relevant GLA. However the absence of practical sanctioning options for non-compliance by LLAs means that the primacy of the GLAs in the structure is not always being observed in practice.

7.4 The Government is concerned that there might be safety implications from LLAs failing to observe their duties to provide full information to the GLA, to observe directions from the GLA as to aids to navigation and to obtain GLA consent before making decisions on the deployment of aids. This provision will provide specific sanctioning tools for the GLAs to use to secure the objective of greater compliance by LLAs. The existence of the measure will ensure that LLAs understand that the Government and GLAs take their safety responsibilities seriously and it is hoped that this in itself will ensure that standards are improved in many of the harbours that have given cause for concern. Formal proceedings under the powers are therefore expected to be relatively rare and confined to the most intransigent authorities that have serious safety issues.

7.5 Implications for harbour authorities are not expected to be significant, particularly for those with a good safety record. Some others may face costs in bringing their operations up to an acceptable standard but they will not be asked to do anything that they should not already be doing. A few, if the enforcement powers have to be invoked, may incur legal costs and judicial penalties but only when all other avenues have previously been exhausted. As with other safety-related measures there are potentially significant savings in the avoidance of accidents and the associated clean-up operations.

8. Powers of General Lighthouse Authorities

GLA powers outside the 12 nautical mile limit

8.1 The GLAs operate approximately 40 installations outside the UK's 12 mile territorial sea limit at a cost of approximately £1.5 million per annum. In some instances, lighthouses, buoys and beacons are at a considerable distance from the main coastline but stand on rocks that are considered to be UK territory (although the majority of buoys and beacons are floating rather than land based). Some of these aids to navigation are provided in order to meet UK obligations under international agreements. It is important to ensure, and the National Audit Office requires this clarity, that the GLAs have the necessary full powers to operate outside of territorial waters and incur expenditure that is financed by the UK's

General Lighthouse Fund, in order that they may respond quickly and effectively to extra-territorial wreck incidents. In practice the GLAs have been carrying out extra-statutory work so it is not envisaged that any additional burdens or responsibilities will result from this measure. The measure will provide the GLAs with the ability to justify their actions in the unlikely event of any legal challenge to their right to operate beyond territorial waters and help to protect them against claims resulting from the provision of aids to navigation in these waters.

Marking wrecks with beacons

8.2 An amendment to the Merchant Shipping Act is proposed to ensure that the powers of the authorities charged with the duty of marking wrecks may do so by using up to date technology as well as traditional buoys and beacons. By giving greater flexibility to the authorities they will be able to react to incidents quicker, particularly by using electronic warnings that can be implemented instantly rather than physical markers which need specialist equipment to install. Early warning of potential dangers and the ability to use a greater range of techniques will improve safety, especially in the critical few hours after an incident has occurred. This will help to prevent further damage to shipping which has been an infrequent but potentially very costly result in past cases. As an example, the wreck of a car carrier in the English Channel in December 2002 was struck twice by other ships in the days after capsizing in the main shipping channel, despite conventional buoys having been deployed and warnings broadcast on VHF radio. The first of these secondary collisions led to an escape of oil that affected seabirds in three countries. The proposed amendment will therefore have the potential to reduce the operating costs of harbour and conservancy authorities and the General Lighthouse Authorities once they have been able to invest in the necessary technology, as well as reducing the risk of pollution mitigation measures if secondary collisions can be prevented; in the latter case the costs of pollution clearance and salvage operations can run to many millions of pounds⁴.

GLA powers to undertake commercial work

8.3 The General Lighthouse Fund (GLF) is administered by the Secretary of State. Its income is mainly derived from the payment of light dues charged predominantly on commercial shipping in the United Kingdom and Ireland (both Northern Ireland and the Republic of Ireland), supplemented by investment income, the profits from any commercial work carried out by the GLAs and a grant from the Irish government.

8.4 The GLAs have carried out work for other marine organisations for many years. The main operations involve the use of their ships to support other statutory authorities' operations by maintaining aids to navigation as well as the use of the considerable surplus accommodation on the GLA lighthouse estate. This allowed the GLAs to utilise any spare capacity involving ships and accommodation without reference back to the Department subject to an annual report of the contracts involved and income generated and to copies of the contracts being made available. The Department and the GLAs now have considerable experience in the operation of the existing provisions of the Merchant Shipping Act. A number of areas have been identified which would improve the effectiveness of the operation.

⁴ For example, around £60 million for the Sea Empress at Milford Haven in February 1996, although that particular incident would not have been prevented by this proposed measure.

8.5 The measures now proposed would enhance and clarify the GLAs' powers to enter into agreements that would allow them to maximise the use of the assets (equipment, buildings etc) that are required to meet their statutory responsibilities; ensure that GLA spare assets can be deployed to better effect by improving powers to utilise spare resources in staff; and provide a power to permit the GLAs to acquire, with the approval of the Secretary of State, additional assets and resources to maximise the return on works. In all cases the beneficiary of the contracts would be the GLF and this would have the effect that the requirement for light dues from shipping would be reduced. The operators of shipping calling at UK ports would therefore have reduced costs which they could pass on to consumers in the form of lower shipping costs and, ultimately, retail prices. UK ports would also gain a competitive advantage as transshipment hubs with consequent benefits in income for ports and other businesses. Although the scale of commercial operations by the GLAs to utilise their spare capacity can, by definition, only ever be a small part of their work, there is always pressure from the shipping industry to minimise light dues so any additional contribution from other sources will be welcome.

9. General Lighthouse Authority Pensions

9.1 Under the Merchant Shipping Act pensions are paid from the GLF to all former employees of the GLAs. Pension benefits are non-contributory (except for small employee contributions for widow, widower and partner benefits) paid on a pay as you go basis; there is no statutory or other provision for any part of the GLF to be ring-fenced for the payment of pensions. Consideration is being given to reform of the GLA pension provisions in a wholesale manner; either by permitting the GLAs to participate in suitable existing schemes or to introduce a completely alternative scheme with different benefits, costs and funding requirements.

9.2 No decision on GLA future pension schemes has yet been made so the proposed provision is for an Order making power to permit the Secretary of State to make alternative arrangements for the payment of pensions. It is also proposed that contributions made to pension payments from any source should be separated within the GLF and only used for the purpose of the payment of pensions out of the fund.

9.3 This measure will ensure that the GLAs are able to manage their pensions in accordance with current and future practice and that they are able to do so in the best interests of employees and the GLF.

10. General Lighthouse Authority Tax Exemption

This proposal is not in the Bill as currently drafted but it is intended to consult on the assumption that a measure will be added before introduction to update the existing tax exemption provisions in section 221 of the Merchant Shipping Act 1995.

10.1 The General Lighthouse Fund (GLF) has historically enjoyed exemption from general and local taxation for the funding of the operational activities of the GLAs. This is the only concession from government towards funding their statutory functions.

10.2 The aim of the measure would be to ensure that the income from the investments made from the GLF remains free of tax following changes to the fund management which now relies on electronic transfers of shares on which Stamp Duty Reserve Tax is payable rather than the Stamp Duty applied to the former paper transfers.

10.3 In recent years the liability for Stamp Duty Reserve Tax has amounted to:

Year	Liability (£)
2002-03	63,881
2003-04	45,792
2004-05	60,451
2005-06	48,795
2006-07	119,428
2007-08	53,760
Total	392,107

The increase in 2006-07 was an isolated peak due to the appointment of new fund managers who reviewed and reinvested much of the portfolio. Although there would be a theoretical loss to the Exchequer in the order of £50,000 per annum it is accepted that the long-established principle of tax exemption for the GLF should always have covered these payments so in practice the impact will be negligible.

11. International Convention on the Removal of Wrecks 2007

11.1 Although the number of marine casualties has declined in recent years, the number of abandoned wrecks, estimated at approximately 1,300 worldwide⁵ has reportedly increased. As a result, the problems they cause to coastal States and shipping have become more acute. Negotiations at the IMO led to the adoption of the Nairobi International Convention on the Removal of Wrecks (ICRW) in May 2007.

11.2 The aim of the ICRW is to establish international rules on the rights and obligations of States and shipowners with respect to wrecks and drifting or sunken cargo which pose a hazard either to navigation or to the marine environment and to make it easier for the Affected State to recover costs resulting from locating, marking and removing wrecks.

11.3 The ICRW will facilitate cost recovery for removal of a wreck that presents a hazard to navigation or the marine environment through the following measures:

- making the registered owner strictly liable for the costs of locating, marking and removing the wreck, but subject to the international limitation of liability rules;
- requiring the registered owner of ships of 300 gross tonnage (gt) and above to maintain insurance or other financial security to cover their liability; and

⁵ Source – IMO.

- giving the affected State the right of direct action against the provider of the insurance or other financial security.

11.4 Once the ICRW enters into force it will introduce strict liability arising from all wrecks that fulfil the criteria of hazard within the Convention. This liability will apply to all ships, not just to ships of 300gt and above. However, it is only ships of 300gt and above that will be required to maintain compulsory insurance for this liability.

11.5 As an island state with a coastline of over 10,500 miles, the Government is conscious of the potential environmental, social and economic impacts stemming from a major incident.

11.6 The UK relies on shipping for 95 per cent of its visible trade and is surrounded by a number of major shipping routes. The English Channel is the world's second busiest international waterway, after the Malacca Straits. Each year there are in excess of 80,000 traffic movements through the Dover Strait alone.

11.7 The most problematic wrecks are those that lie in sensitive areas within a State's territory and in the past the UK has been unable to recover the costs of removing wrecks lying within its territory and territorial waters. To address this, the scope of the Convention applies in the Exclusive Economic Zone (EEZ) of a State Party⁶ and contains an option enabling State Parties to apply certain provisions to their territory, including their territorial sea.

11.8 Here follows a list of incidents that the Secretary of State's Representative for Salvage and Intervention (SOSREP) has been involved in that have resulted in wrecks of one sort or another over the past 10 years⁷, all of which would have been covered by the provisions of the ICRW had it been in force. This list is not exhaustive and only includes ships of 300gt and above.

⁶ An EEZ is a seazone defined in the United Nations Convention on the Law of the Sea (UNCLOS) over which a State has special rights over the exploration and use of marine resources. Generally a State's EEZ extends from the edge of the territorial sea to a distance of 200 nautical miles out from its coast. The UK does not have an EEZ but we do have a Pollution Control Zone which is an equivalent area and is any area specified by virtue of Section 129(2)(b) of Merchant Shipping Act 95. There are proposals to use the Marine Bill to define an EEZ.

⁷ Source – MCA

Table showing number of wrecks in UK waters

Date	Ship Name	Location	Ship Type	Gross Tonnage
31/01/2008	<i>Riverdance</i>	Ashore – 53° 52.34' N 003° 03.19' W	Freight Ferry	6,041
16/01/2008	<i>Ice Prince</i>	50° 09.99' N 002° 02.18' W	General Cargo Vessel	3,433
09/08/2007	<i>Jork</i>	53° 26.02' N 002° 08.40' E	General Cargo Vessel	3,169
20/01/2007	<i>MSC Napoli</i>	50 40.62N 003 09.89W	Container Vessel	53,409
06/02/2006	<i>Ece</i>	29 miles NNW of Guernsey	Chemical Tanker	8,003
03/03/2004	<i>Mulheim</i>	Lands End – Shore (Sennen Cove, Cornwall)	Bulk Carrier	1,599
29/06/2003	<i>Jambo</i>	58° 01.14' N 005° 27.15' W	Bulk Carrier	1,990
09/10/2001	<i>Ash</i>	9 miles from Hastings	General Cargo Vessel	1,009
30/10/2000	<i>Ievoli Sun</i>	49° 52' N et 002° 24' W	Chemical Tanker	4,189
13/12/2000	<i>Lagik</i>	River Nene at Port Sutton Bridge	General Cargo Vessel	998
29/03/1997	<i>Cita</i>	Off Newfoundland Point, Isles of Scilly	Container Ship	3,083

11.9 Shipowners are entitled to limit their liability for “claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked or abandoned, including anything that is or has been on board such ship” under Article 2(1) (d) of the International Convention on Limitation of Liability for Maritime Claims (LLMC) Convention, 1976 as amended by its Protocol of 1996. Limits of liability start at 1 million SDR⁸ (approximately £810,000) for shipowners of ships with a tonnage less than 2,000 tons, and increase with the size of the ship. Shipowner liability for a medium-sized ship of, for example, 40,000 tons would be 15.2 million SDR (about £12.3 million). Although limitation of liability for dealing with a wreck is allowed under article 2(1)(d) of that Convention, it may be excluded under article 18(1). It is excluded in the UK by paragraph 3 of Part II of Schedule 7 until a compensation fund for harbour and conservancy authorities has been established by order, which has not happened, so claims for wreck removal expenses are not subject to limitation under UK law.

11.10 However, there is currently no requirement for shipowners operating in UK waters to maintain insurance to cover their liability in respect of wreck. Whilst it is believed that most UK shipowners maintain adequate levels of insurance, it is not known to what extent non-UK registered shipowners do so and in recent years the UK has experienced a number of incidents where cost recovery has proved difficult, and in some cases, impossible.

⁸ The Special Drawing Right is an artificial currency unit used by the International Monetary Fund, its value is calculated according to the currency of a number of major industrialised nations and so its relative value in any one currency fluctuates. Other international maritime liability treaties use the SDR as the unit of account.

11.11 The Government has had to abandon a number of claims for compensation for wreck removal including:

- The *Cita* ran aground in March 1997. The UK Government spent £192,284 on response and clean-up operations, mainly in respect of the ship's bunker fuel⁹. In addition the Isles of Scilly spent £91,360 dealing with the wreck. The *Cita* was insured, but a combination of factors, including legal inaccessibility of the shipowner, insolvency of the insurer, and the impossibility of pursuing a successful action against a limitation fund established in Germany by the ship's charterers.
- The *Lagik*, a 998GT, 24 year old Antigua and Barbuda registered general cargo ship, grounded at Port Sutton Bridge on the river Nene on 13 December 2000. The ship was under pilotage at the time of the grounding after attempting to swing in to her berth. A combination of the weight of the ship and her cargo of steel broke the ships back as the tide ebbed. She was declared a total constructive loss and closed the port of Wisbech for 44 days. The *Lagik* was abandoned by her owners and the task of removing the wreck and pollutants was taken up by the Government and the local Harbour Authority in partnership. The cost was around £1.25 million and the partners joined in legal action for recovery. However, none of the partners was able to recover costs.

11.12 With the implementation of the Convention historic cost recovery problems should be removed because:

- the shipowner is strictly liable for all removal of wreck – this means that the shipowner is liable even when he is not at fault;
- claims can be pursued in the State where the incident occurred;
- the registered shipowner of any ship of 300gt and above is required to maintain compulsory insurance backed by State Certification; and
- claimants will have the right of direct action so can claim directly against the insurer, which overcomes the “pay to be paid” rule and should make it easier to recover costs.

11.13 When ratified, the Convention will apply obligations on shipowners in respect of insurance for ships of 300gt or more, providers of financial security for maritime risks and Government (the MCA will be required to carry out an administrative function and issue State Certificates to all UK registered ships and some non State Party ships).

⁹ When the Bunkers Convention enters into force on 21 November 2008 claims involving the bunker fuel would be covered by that Convention.

Sectors and Groups Affected

Shipowners of ships of 300gt and above.

11.14 All shipowners are strictly liable for costs associated with locating, marking and removing wrecks under the Convention. However, the compulsory insurance provisions in the Convention will apply only to ships of 300gt and above. The shipowner must maintain insurance to cover their liabilities in the event of a wreck and obtain a State Certificate attesting to the effectiveness of insurance or other financial security. It is understood that most UK registered shipowners already maintain insurance. Figures from the UK register in February 2008 show there are 1,235 ships of the 300gt and above threshold that would therefore fall under the provisions of the ICRW. It is unlikely that registered shipowners' premiums will increase as a direct consequence of entry into force of the ICRW. The only additional cost to the shipowner should be the purchase of a State Certificate from the MCA. A fee will be charged to cover the MCA's administrative costs of issuing the certificate. At the time of going to consultation it is expected that this charge will be consistent with the Merchant Shipping (Fees) Regulations 2006. These costs will not apply until the State Certificate requirement enters into force.

Maritime and Coastguard Agency (MCA)

11.15 Once the Convention is in force the Government will have a statutory duty to issue State Certificates for UK flagged ships. The MCA carries out the Port State Control function for foreign flagged ships entering UK ports. The Port State Control checks will be extended to ensure that ships of 300 gt and above carry a State Certificate for wreck removal insurance.

11.16 Under the International Convention on Civil Liability for Oil Pollution Damage (CLC) shipowners of oil tankers are already required to have a State Certificate which is issued by the MCA and upon entry into force (21 November 2008) shipowners will require State Certificates for the Bunkers Convention. Therefore, the MCA already has a well established system in place to deal with issuing of State Certificates and for checking that ships coming into UK ports carry the required statutory certificates.

Providers of Financial Services

11.17 The International Group of Protection and Indemnity Clubs (International Group) already insure over 90% of the world's ocean going tonnage for certain third party risks and agree with the Government that it should ratify the Convention. The International Group does not consider the implementation of the Convention to be an additional cost burden to shipowners who already carry third party liability insurance. However, insurance certificates are subject to market influences and premiums will depend on the marine insurance market at the time. Underwriters take claims records into account and, therefore, an increase in the number of claims may result in an increase in premiums in the future. The consultation process will enable shipowners who do not insure with a member of the International Group to say what kind of financial security they have, if any.

Local Authorities

11.18 The convention will have a positive effect on local authorities as it should make it significantly easier for them to recover costs for any damage they have incurred as a result of any incidents involving Wreck Removal.

Coastal Businesses

11.19 As the claims can only be made by the Affected State no claims would be permissible from affected businesses under the Convention. However, should any pollution damage be caused by any persistent oil (under the CLC / International Oil Pollution Compensation Fund Regime) or Bunker Oil spilling from the wreck (once the Bunkers Convention enters into force) claims under these regimes would be permissible.

Policy Options

Pilotage and management of harbours

Accept the MNPS Bill.

This is the minimum considered necessary to deliver the policy objectives, and is the preferred option because it will be very difficult to frame a statutory Code in such a way that it meets the needs of regulating the most complex commercial ports without becoming unnecessarily onerous for the smaller mainly fishing and leisure ports. The voluntary Code has worked well for several years in the great majority of cases, as it enables the requirements to be tailored to the individual circumstances of ports, which are all different in their management structure and physical characteristics, as well as the types of vessels that they handle. The minimal legislation proposed in the Bill is intended to provide a statutory backing for the Code that will be employed only where circumstances so dictate without imposing an unnecessary regulatory burden on other ports.

Do nothing

Unsatisfactory if the Government is to achieve its aim of ensuring that the best practice is followed in all ports. Although most ports are complying fully with the Code there is a need to ensure that standards do not slip through complacency and that the few harbour authorities that have an inadequate safety management system are brought into line. The decision to proceed with a non-statutory PMSC was taken on the basis of speed rather than cost. Following the grounding of the Sea Empress, in the entrance to Milford Haven, the MAIB conducted an investigation. One of the resulting recommendations was that the Pilotage Act 1987 be reviewed. The principal outcome of the Review, published in November 1998, was that a Port Marine Safety Code was introduced. This Code was published in March 2000 and adopted by industry in the period 2000 to 2002. It seems highly improbable that a statutory Code could have been developed, drafted, consulted on introduced by legislation in that time scale.

Lighthouse Authorities

Accept the MNPS Bill.

The proposed legislation is proportionate, will have no significant adverse impact on any relevant bodies and will enable the General Lighthouse Authorities to fulfil their statutory functions effectively.

Do nothing

Although it is unlikely that there would be any immediate problems, the risks of managing harbours would continue at their current level and the likelihood of potentially expensive accidents would remain. Whilst no measures can completely eradicate risk, the Government would rightly be criticised for failing to take steps that have been recommended and accepted as sensible. Similarly for the management of the General Lighthouse Fund, where opportunities to make improvements have been identified that have the potential to reduce costs for those who pay into the Fund there would be increasing pressure for action.

International Convention on the Removal of Wrecks

*Implementation of the Convention**a. Implement the Convention and extend to territory and territorial seas*

Under this option the UK would ratify and implement the ICRW and make use of the opt in to extend coverage to territory and territorial seas. This would provide shipowner strict liability, a regime of compulsory insurance, backed by State Certification, for ships with a gross tonnage of 300 and above and a right of direct action against the providers of financial security. It would improve the effectiveness of UK maritime liability legislation through the implementation of the international regime governing liability and compensation for locating, marking and removing a wreck.

Local Authorities, General Lighthouse Authorities, Harbour and Conservancy Authorities and the Maritime and Coastguard Agency are more likely to obtain compensation for any damages incurred due to the strict liability and direct action provisions within the Convention. The process of cost recovery should be easier for claimants, possibly reducing the length and cost of court action.

There will be costs for the Government through the MCA for issuing of certificates though these costs are covered by a charge for issuing the certificate. At the time of going to consultation it is expected that this charge will be consistent with the Merchant Shipping (Fees) Regulations 2006.

It is unlikely that registered shipowners' premiums will increase as a direct consequence of entry into force of the ICRW. The only additional cost to the shipowner should be the purchase of a State Certificate from the MCA.

b. Implement the Convention without extending to territory and territorial seas

Under this option the UK would ratify and implement the ICRW but we would not make use of the opt in to extend coverage to territory and territorial seas. Apart from lack of coverage for territorial seas the option would be identical to option a.

c. Do nothing

This option is to do nothing in respect of liability for wreck removal costs and continue to rely on existing legislation.

There are existing powers for dealing with wrecks in the UK's territory and territorial sea and in the EEZ equivalent area, but these depend on the geographical location and threat posed. The powers apply to a number of bodies and are set down in the Merchant Shipping Act (MSA) 1995, Merchant Shipping and Maritime Security Act 1997 and the Marine Safety Act 2003. A recent major example being the RoRo ferry *Riverdance* that grounded on the North Shore of Blackpool in January 2008.

SOSREP, Receiver of Wreck, the Harbour and Conservancy Authorities and the General Lighthouse Authorities all currently have powers in relation to wrecks.

The present arrangements do not however allow any of the bodies mentioned above to act on a non UK ship outside of the territory or territorial sea. Under this option, shipowners would continue to be entitled to limit their liability for wreck removal costs under the LLMC Convention. There would be no strict liability or requirement on shipowners to make financial provisions to cover their liabilities, making cost recovery difficult, and in some cases, impossible.

Whilst most UK shipowners maintain third party insurance voluntarily, we have no existing enforcement regime to determine whether shipowners of foreign-flagged ships do so. The ICRW will provide this regime.

There would be no additional costs to UK shipowners trading in the UK and other States that do not become party to the ICRW. However, any UK shipowners wishing to trade in a State that is party to the ICRW would be required to comply with the insurance and certification requirements. There would be no implementation or policy costs. However, there would be costs to bodies involved in responding to the incident such as local authorities, the MCA, General Lighthouse Authorities, Harbour and Conservancy Authorities. These bodies might not be able to claim compensation, resulting in a loss to the Government and hence the UK taxpayer.

Costs

The attached table (Annex A) summarises the likely costs and benefits of the proposed measures.

Small Firms Impact Test

We do not consider that the provisions of the draft Bill or the implementation of the ICRW would have a significant impact on small businesses. Some harbour authorities would be classified as small businesses but they are generally the smaller ones which have little or no commercial shipping and the impact of the Bill's measures on these would be minimal.

The businesses that would be mainly affected by the ICRW are shipowners and insurers. Whilst many UK shipowners may be small businesses, particularly those that operate as one-ship companies, responsible UK shipowners already maintain third party insurance and would not be affected too much by the ICRW.

The IG P&I Clubs is expected to provide the necessary insurance under the ICRW. A number of members of the IG P&I Clubs are based in the UK. Information on the financial status of each of these Clubs has been obtained from Standard & Poor's Marine Mutual Report 2007. Standard & Poor's financial Services Ratings Group rates the creditworthiness of insurance companies and financial institutions globally. The report indicated that none of the IG P&I Clubs falls within the definition of a small firm, due to the value of their total individual assets.

Competition Assessment

The proposed new mandatory measures would not place an additional burden on any new firms that would not also apply to existing firms.

Implementation of the ICRW is not likely to have a significant effect on competition. The Convention will only affect a small market, registered owners of ships of 300 gt and over. UK ship owners will not be placed under any disadvantage by the UK ratifying the ICRW as there are no onerous burdens being placed on the shipowner except for maintaining insurance and we understand that the majority of UK registered ships of 300 gt and above already have insurance although we do not have figures to confirm this, so the only additional burden is the requirement to obtain a state certificate as evidence that insurance is in place. The obligations under the ICRW will apply to all ships entering or leaving UK ports or terminals, not just those registered in the UK.

Environmental and Carbon Impact

None of the measures in the draft Bill is likely to have any adverse environmental or carbon impact. The potential environmental savings from the avoidance of even one major maritime incident are very large, in the order of many millions of pounds.

Race, Disability and Gender Impact Assessment

This draft Bill has been assessed for relevance and no measures are likely to have any variation in impact on different groups; an Impact Assessment is not required.

Human Rights

We believe that the Minister would be able to make the following statement "In my view the provisions of the Marine Navigation Bill are compatible with the Convention rights."

Specific Impact Tests – Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base? (Y/N)	Results annexed? (Y/N)
Competition Assessment	Y	N
Small Firms Impact Test	Y	N
Legal Aid	N	N
Sustainable Development	N	N
Carbon Assessment	Y	N
Other Environment	Y	N
Health	N	N
Race Equality	Y	N
Disability Equality	Y	N
Gender Equality	Y	N
Human Rights	Y	N
Rural Proofing	N	N

Cost Impact Summary Table for the draft Marine Navigation and Port Safety Bill

	Cost Impact						Overall
	Government & Agencies	General Lighthouse Authorities	Harbour Authorities	Environmental Regulators	Shipping Industry		
General directions by harbour authorities	-£10,000 ⁱ Potential >£1m + ^{ve} impact of avoided costs of dealing with incidents		+£30,000pa ⁱⁱ		£0	Potential >£1m + ^{ve} impact	
Removal of unwanted pilotage powers	-£15,000pa ⁱⁱⁱ	£0	-£15,000pa ^{iv} Potential + ^{ve} impact	£0	£0	Negligible impact	
Pilotage Exemption	Potential >£1m + ^{ve} impact of avoided costs of dealing with incidents		Insignificant - ^{ve} impact		Slight - ^{ve} impact ^v Potential + impact ^{vi}	Potential >£1m + ^{ve} impact	
Secretary of State's Power to Direct Harbour Authorities	Potential >£1m + ^{ve} impact of avoided costs of dealing with incidents				£0	Potential >£1m + ^{ve} impact	
National Occupational Standards	Insignificant - ^{ve} impact < -£10,000pa	£0	£0 < -£5,000pa	£0	£0	Insignificant - ^{ve} impact Potential + ^{ve} impact	
Closure of Harbours (See NOTE)	Potential + ^{ve} impact on efficiency of management and safety					Potential + ^{ve} impact	
Powers of General Lighthouse Authorities	£0	Potential + ^{ve} impact ^{viii}	£0	£0	Potential + ^{ve} impact ^{ix}	Potential + ^{ve} impact	
General Lighthouse Authority Pensions	£0	Potential + ^{ve} impact ^x	£0	£0	Slight + ^{ve} impact ^x	Potential + ^{ve} impact	
Enforcement of General Lighthouse Authority Inspections	Potential >£1m + impact of avoided costs of dealing with incidents				£0	Potential >£1m + ^{ve} impact	
General Lighthouse Authority Tax Exemption	£0	Slight + ^{ve} impact	£0	£0	Slight + ^{ve} impact	Slight + ^{ve} impact	
International Convention on the Removal of Wrecks 2007 – full implementation (Option a)	Potential >£1m + impact of reclaiming costs of dealing with incidents				Negligible - ^{ve} impact & potential + ^{ve} impact	Potential >£1m + ^{ve} impact	
Overall impact for affected bodies	-£30,000pa offset by >£1m potential for avoided costs	>£1m potential for avoided costs	+£20,000pa ^{xi} offset by >£1m potential for avoided costs	>£1m potential for avoided costs	+ ^{ve} impact	Potential >£1m + ^{ve} impact	

See NOTES overleaf ...

NOTES

Impacts are categorised as cost saving – positive (+^{ve}) or increasing costs – negative (–^{ve}) in the table.

- i Cost of designating harbour authorities.
- ii HROs avoided, affecting only a few authorities.
- iii Cost of processing orders.
- iv Cost of applying for orders, affecting only a few authorities.
- v Cost of managing the suspension of an employee's PEC.
- vi Potential efficiencies in staffing of ships.
- vii Harbour closures are not expected to occur as often as annually.
- viii Efficiency gains.
- ix Increased efficiency and income to GLF offsets light dues.
- x Greater options for managing pensions within the GLF.
- xi Affecting only a few authorities.



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