

<b>Title:</b> Port Security Regulations 2009, as amended, and 33 associated Port Security Designation Orders at local port level  <b>PIR No:</b> DfTPIR0019  <b>Lead department or agency:</b> Department for Transport  <b>Contact for enquiries:</b> Caroline Wall (020 7944 6251, caroline.wall@dft.gsi.gov.uk)	<b>Post Implementation Review</b>
	<b>Source of intervention:</b> EU
	<b>Type of regulation:</b> Secondary legislation
	<b>Type of review:</b> Statutory - other
	<b>Date measure came into force:</b> 01/09/2009
	<b>Recommendation:</b> Keep
<b>Summary: Intervention and Review</b>	<b>RPC Opinion: GREEN</b>

*On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.*

**This PIR reviews the effectiveness of the implementation in UK domestic legislation of Directive 2005/65/EC “on enhancing port security”. A complete list of the legislation covered by this PIR can be found at [Annex B](#).**

### **Background**

The International Maritime Organisation responded to the attacks of September 2001 by developing security requirements for ships and port facilities to counter the threat of acts of terrorism. These special measures to enhance maritime security were adopted by the International Maritime Organization (IMO) in 2002, and amended the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and established the International Ship and Port Facility Security Code (ISPS Code). The UK is a party to the SOLAS Convention.

Within the EU, Regulation (EC) 725/2004 was introduced and formed the basis for the harmonised interpretation, implementation and Community monitoring of the International Ship and Port Facility Security Code (ISPS Code). The Regulation makes mandatory all of Part A and a number of recommendations introduced into Part B of the ISPS Code.

The Directive complements the security measures introduced by Regulation 725/2004 by making an entire port (as opposed to a port facility) subject to a security regime, in order to obtain maximum protection for maritime and port activities.

The Directive required that measures should be taken that cover all ports within a perimeter defined by the Member State, thereby ensuring that security measures taken in accordance with the Regulation benefit from enhanced security within the areas of port activity. These measures should be applied to all ports in which one or more port facilities covered under the Regulation 725/2004 are situated. If, however, the boundary of a single port facility was co-terminus with the boundary of the port, only the EC Regulation would apply to that port. The Directive also provides for mechanisms for implementing these measures and checking their conformity.

*A “port” for the purposes of the Directive and the legislation implementing it is defined as: any specified area of land and water, with boundaries defined by the Member State in which the port is situated, containing works and equipment designed to facilitate commercial maritime operations.*

A “port facility” means a location where the ship/port interface takes place; this includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate. A ship/port interface’ means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship.

In the UK each port facility is a business in its own right and in terms of security must abide by the requirements of the EC Regulation and by extension the ISPS Code along with specific security requirements set by the Department for Transport (DfT). There are several different types of port facility, for example:

- Cruise Terminals,
- Roll-on Roll-off ferry terminals,
- Chemical, Oil and Gas terminals
- Other Bulk Cargo terminals

The aim of the Directive was to complement the earlier EC Regulation by improving security co-ordination between port facilities and the wider port area beyond the individual port facilities. The defined boundary of the port for the purposes of the Directive encompassed the individual port facilities within that port.

### **1. What were the policy objectives and the intended effects? How far were these objectives and intended effects expected to have been delivered by the review date?**

#### The Directive and its policy objectives

Directive 2005/65/EC was transposed into UK law at national level by the Port Security Regulations 2009 (“the PSRs”), as amended by the Port Security (Amendment) Regulations 2013. The PSRs implemented the requirements of the Directive which have general application across all UK ports.

The policy objectives of the Directive were to introduce basic common measures across the EU to enhance port security. The main aim of the Directive is to complement the security requirements that were introduced by the EC Regulation by introducing security requirements for the wider port area.

The PSRs implemented the essential requirements of the Directive which were:

- The delineation of the boundary of the “port” for the purposes of the Directive
- The designation of a Port Security Authority (PSA)<sup>1</sup> at each “port” considered in scope of the Directive (a PSA may be designated for more than one port)
- The development, maintenance and updating of a Port Security Plan (PSP) based on the findings of a Port Security Risk Assessment (PSRA)
- The appointment of a Port Security Officer (PSO)<sup>2</sup>

The policy objective of the PSRs was to enhance security at the in-scope ports (including better risk management and better overall coordination between constituent port facilities) and to fulfil

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<sup>1</sup> A PSA is responsible for the preparation and implementation of a port security plan covering the wider port area (beyond the immediate ship/port interface) based on the findings of a Port Security Risk Assessment.

<sup>2</sup> A PSO is the point of contact for port security related issues at the “port”

the UK's obligations to implement the security requirements under the Directive in the wider port area. The UK approach was to adopt the minimum requirements of the Directive.

#### Implementation at local "port" level

Prior to implementation DfT maritime security compliance inspectors carried out a port security assessment at every port in the UK. If a port had a single port facility and the boundary of the port was found to be co-terminus with the boundary of a single port facility the requirements of the Directive were effectively "switched off" as there was no additional port area to be encompassed. Following this assessment it was determined that ports at 33 locations fell within the scope of the Directive; that is to say there existed one or more facilities within the boundary of the port.

The provisions relating to the delineation of the boundaries of the "ports" and the designation of a PSA at each were implemented via 33 individual port security designation orders (DOs). The full implementing legislation is listed in Annex B to this PIR.

While the EC Regulation focused on the ship/port interface (i.e. individual port facilities), the Directive, as implemented by the PSRs and DOs, focuses on transport-related areas of the port. In the UK the PSRs are meant to work in tandem with the EC Regulation (directly applicable in the UK) to enhance port security, without creating additional requirements in areas already governed by the EC Regulation.

The UK has fully implemented the Directive. Of the approximately 400 port facilities in the UK, almost 250 port facilities are encompassed in the 33 defined port security authority areas.

#### **2a. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.**

The level of resource used to collect the evidence used in this report was low, as the initial impact assessments estimated the cost to business as relatively low. Costs ranged from transition costs of £33,525 (2014 prices) to establish a PSA at Troon which has 2 port facilities, to transition costs of £260,217 (2014 prices) to establish the Thames PSA at the Port of London which has over 50 port facilities. Estimated annual costs ranged from £15,918 (Troon) to £43,891 (Thames). Overall, start-up costs were estimated at £1.9 million in total (2014 prices) and annual costs at £0.8 million, for all 33 ports. When gathering stakeholder feedback, it became clear that the actual costs borne by business were lower than estimated in the impact assessments.

More importantly, the requirements introduced by the Directive, as implemented by the PSRs were not thought to be risky or contentious, as there was already a level of coordination in security arrangements in place at the in-scope ports. This was through the Port Security Committees (PSCs) established following the introduction of the ISPS Code after the terrorist attack in the US ("9/11"). This made the projected cost of establishing port security authorities lower than if a port was starting from scratch. It was assumed that existing PSC members for a particular port would most likely form the core membership of that port's PSA entailing little or no additional cost.

The level of evidence sought is correspondingly low. As the Directive was expected to have a small impact on the designated ports, it was not deemed proportionate to undertake a high level of evidence gathering, especially as the evidence sought was considered sufficient to answer the research questions set out in the PIR template.

The statutory instruments designating PSAs at the 33 in-scope ports were implemented in a series of tranches meaning that the dates when the 5 year review falls due range from 31 January 2017 for Dover to 5 August 2020 for Oban. However, the PSAs in the majority of the ports (30 out of 33) have been in existence for between 3 and 5 years (7 in the case of Bristol), a reasonable length of time in which to analyse the effectiveness of the security regime introduced.

The RPC Secretariat agreed with DfT's approach that it would be sensible to have a combined PIR covering both the PSRs, as amended, and the 33 Designation Orders to allow an overall appraisal of implementation of the Directive in the UK and to avoid multiple, essentially repetitious PIRs. A wholesale review has the added benefit of synchronising future review dates.

## **2b. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.**

### What forms of monitoring data were collected?

Since the PSRs and DOs have been implemented, the DfT has established a system to ensure adequate and regular supervision of the Port Security Authorities to ensure they comply with the requirements of the PSRs and the DOs. This work has been integrated into its overall maritime security inspection regime by maritime security compliance inspectors (which includes inspection of individual port facilities). The DfT also sends representatives to PSA meetings on an ad hoc basis. Information from the DfT's monitoring of the PSAs has been used when preparing this report, including the views of the DfT's officials who conduct security inspections.

### What evaluation approaches were used?

A light touch impact evaluation was used to attempt to identify any changes due to the Directive. To assess the efficacy of the Directive, evidence was sought primarily through stakeholder engagement but also obtaining feedback on the designated ports from the DfT's maritime security compliance inspectors. The review sought to evaluate:

- the extent to which the policy has achieved its original objectives
- whether the objectives remain valid
- whether there have been any unintended consequences
- whether government intervention is still required
- what scope there is for simplification, improvement or deregulation
- whether compliance levels indicate that the enforcement mechanism chosen is appropriate

The 5 year standard review clauses in the legislation implementing the Directive stipulate that in carrying out the review the Secretary of State must have regard to how the Directive is implemented in other EU Member States. A questionnaire was sent to other EU Member States

to elicit this information (see Annex D below). Nine Member States responded (see section 7 below).

#### How have stakeholder views been collected?

Stakeholder views were collected through consultation with those affected by the Directive. A separate questionnaire was sent out to over 500 key maritime security stakeholders in the UK, including PSOs at the in-scope ports, Port Facility Security Officers (PFSOs)<sup>3</sup>, representative trade bodies in the port sector, members of the National Maritime Security Committee (Industry) and other government departments with an interest in port security matters. A copy of the questionnaire sent to key UK stakeholders is at Annex C.

Forty-one responses were received from PSOs and PFSOs. Together the responses covered 18 out of the 33 ports at which PSAs had been established. Not all of the respondents answered all of the questions. Officials in the Maritime Security & Resilience Division of the DfT also provided comments on the implementation of the Directive. No comments were received from other government departments with an interest in port security.

### **3. To what extent has the regulation achieved its policy objectives?**

The policy objectives of the Directive were to introduce basic common security measures across the EU to enhance security at the ports delineated for the purposes of the Directive. The main aim of the Directive is to complement the security requirements that were introduced by the EC Regulation. While the EC Regulation focussed on the ship/port interface (i.e. individual port facilities), the Directive focuses on transport-related areas of the port. The Directive is meant to work in tandem with the Regulation to enhance port security, without creating additional requirements in areas already governed by the Regulation. The logic map at Annex A illustrates how the Directive was anticipated to meet its policy objectives including better risk management and better overall coordination of security at the port.

#### Implementation of the Directive

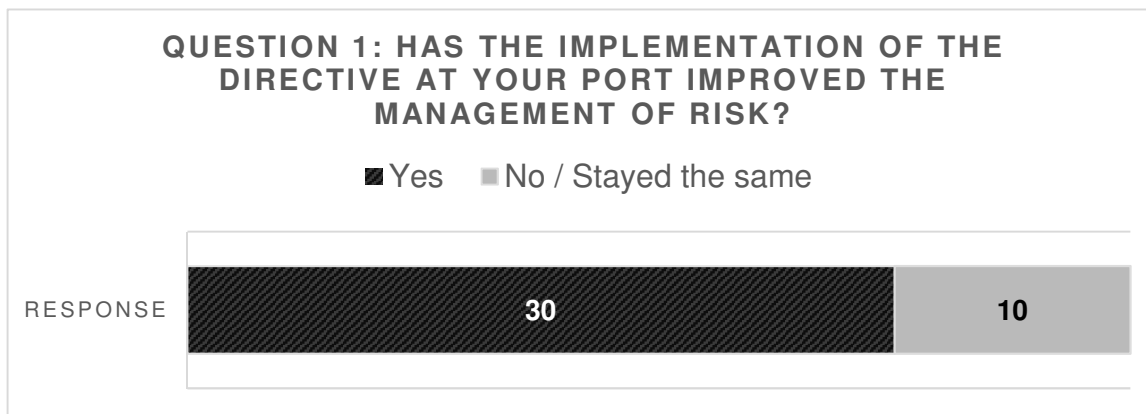
The UK has successfully fulfilled all its obligations under the Directive and implemented common security measures at the ports deemed in scope of the Directive: PSAs were created and the PSA area of jurisdiction delineated and PSPs were drawn up based on PSRAs. DfT for Transport maritime security compliance inspectors offered considerable assistance at no cost to the newly created PSAs in carrying out port security assessments and drawing up port security plans based on the assessment. This offer was taken up by the majority of the in-scope ports reducing the financial burden on those ports and speeding up the implementation process. Failure to comply with the Directive could have resulted in the European Commission launching infringement proceedings against the UK.

Monitoring of compliance with the Directive by the DfT's maritime security compliance inspectors has demonstrated a high standard of compliance with PSAs complying with the majority of the requirements. As part of DfT's regular inspection programme, PSAs' compliance with the PSRs is checked every 18 months to 2 years and to date no instances of significant ongoing non-compliance with the requirements of the Directive have been detected.

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<sup>3</sup> A Port Facility Security Officer (PFSO) is the person designated as responsible for the development, implementation, revision and maintenance of the port facility security plan. PFSOs are required to apply for membership of the PSA at in scope ports.

## Improving security at ports



In other words 3 out of 4 of those responding to Question 1 said that implementation of the Directive had improved risk management in their port. The 10 respondents who felt that risk management had either not improved or stayed the same as a result of implementation of the Directive all came from large ports. **The fact that the majority of respondents felt that implementation of the Directive had improved risk management at their port suggests that the objective of enhancing port security in the wider port area may have generally been met.**

In general officials who were involved in the implementation and ongoing monitoring of the Directive agreed that there had been a somewhat more joined up approach to security coordination in locations where the Directive applied.

It was felt that meetings of the PSA provided a useful opportunity for the representatives of port facilities to discuss security matters, share ideas and best practice as well as providing a platform for conducting joint security exercises. The attendance of other government agencies with a role in security such as the Police and Border Force at these meetings was considered beneficial in providing a rounded consideration of security.

It was noted that the Directive follows a “one size fits all approach”. The provisions apply equally at comparatively small ports with 2 facilities and at large ports with over 50 port facilities. The general view was that the benefit of the Directive were more evident at large ports.

### **4. Have there been any unintended effects?**

Regarding **Question 2 of the questionnaire** on whether there had been any unintended consequences arising from the PSRs, 20 respondents said there had been none.

Six respondents said that their port had experienced greater costs (for security and training), bureaucracy and responsibilities as a result of the implementation of the Directive. However they could not quantify this cost as it was difficult for PSA members to separate out the PSA cost from the cost of fulfilling their responsibilities under the EC Regulation which sets out the security requirements for individual port facilities. The Impact Assessments (IAs), using standard costs derived from information provided by the port industry, attempted to quantify the time and associated cost that PSOs, PSAs and PSA Advisors would incur through the establishment and running of the PSA. However, not all costs identified in the responses are attributable to PSA establishment, for example Port Facility Security Officers are required to undergo training as part of the requirements of the EC Regulation applying to port facilities, with the cost falling to the

operator of the port facility. For this reason, training costs were not included in the standard cost estimates used in the original IAs.

Four respondents said that they had concerns about their liabilities beyond their immediate port facility as a result of a PSA being established. Several ports had made the decision to set up their PSAs as a company limited by guarantee (to limit their liability) because of this, rather than an unincorporated entity which most ports settled for. The 4 respondents expressing concern about liabilities were from unincorporated PSAs though 2 ports are part of a port group whose desire is to incorporate the PSAs established at its ports considered in scope of the Directive. A third was unable to choose the incorporated route because it needs the agreement of all PSA Members and this could not be secured.

The DfT is of the view that both the unincorporated and incorporated models for the PSA are effective so it is entirely up to individual PSAs as to whether they incur the additional cost of setting up a company. Neither the Directive nor the PSRs stipulate what type of entity a PSA should be. The majority of PSAs created (29 out of 33) have been set up as unincorporated entities. The unincorporated model seems to have worked well in practice and liability does not appear to have been an issue even though there were concerns prior to the establishment of the PSA. Once a PSA is established PSA Members are responsible for its running. Any decisions on whether a PSA wished to change its status from unincorporated to incorporated status are for PSA Members to make.

## **5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA)**

### Costs

Using cost data supplied by the UK port industry, the DfT identified four costs that would be incurred by port security authorities:

- **Port Security Officer (PSO)** – Administrative costs related to acting as PSO
- **Port Security Authority (PSA)** – Administrative costs of running PSA
- **Port Security Risk Assessment** – Cost of carrying out a comprehensive review and assessment of the port's security risks and issues that informs the development of the Port Security Plan
- **Port Security Plan** – Cost of integrating all existing security plans and developed through the Port Security Risk Assessment.

The DfT derived standard costings for use in estimating the cost of implementing the Directive at the in-scope ports based on information supplied by the port industry:

- **PSO/PFSO salary:** 57,000 £s/annum (£241.15 daily rate = PSO/PFSO salary divided by 260 working days p.a. year x 1.1 for +10% expenses<sup>4</sup>)
- **Admin Salary:** 21,646 £s/annum (£91.58 daily rate = Admin salary divided by 260 working days per year x 1.1 for +10% expenses)

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<sup>4</sup>This percentage was derived from costings provided by the Port of Dover for the purposes of the first impact assessment with respect to implementation of the Directive at the in-scope ports. Ten percent is based on the PSO only travelling locally to PSA meetings and for associated subsistence costs.

- **Accommodation:** 37.5 £s/hr (£300.00 daily rate based on 8 hour day at 37.50 per hour)

It was assumed that the PSO would spend 2 days a week (= 104 days) in the start-up year and 1 day a week (= 52 days) in the 9 following years. Administratively speaking it was projected that the PSA would meet 4 times in the start-up year and twice a year thereafter

The PSA costs were zeroed as PSAs replaced existing port security committees

The daily rates were further used to calculate the cost of undertaking the port security (risk) assessment and the drawing up of the plan based on the assessment. It was projected that PSA Members (the larger the port, the more the members) and stakeholders would require 4 working days to carry out the port security assessment in the start-up year and 2 in subsequent years. It was projected that one member of the PSA would need 5 working days to complete the Port Security Plan in the start-up year and 2 days per year thereafter.

Overall the costs were estimated as follows:

- **Port Security Officer:**

- Start-up: £25,080
- Annual: £12,540

- **Port Security Risk Assessment:**

- Start-up: £6,033 to £231,520 (all except Medway and Thames were below £40k)
- Annual: £2,413 to £30,869

- **Port Security Plan:**

- Start-up: £1,206 to £3,617
- Annual: £482 to £1,184

The range in estimated costs for each port reflects the great variation in the size of ports and the number of port facilities within them. The largest port had 50+ port facilities and the smallest, 2 port facilities.

### Benefits

The IAs also identified benefits though it was not possible to monetise them. It was considered that improved security measures would reduce the chances of successful maritime terrorist incidents - bringing benefits of a prevented terrorist incident such as saved human injuries and no disruption of the movement of goods and people that could have a material impact on the UK economy. It was felt that the measures would also lead to better coordination and support between the various security institutions such as the police and the government by combining existing activities into a single regime.

## **5b. What have been the actual costs and benefits of the regulation and its effects on business?**

PSAs and port facility operators typically do not collect data for implementing the Directive separately from the general security costs they choose to incur. The performance of PSA-related duties normally forms only a proportion of a PSO's or PSA Member's everyday role in a port. The person holding the role of Port Security Officer is predominantly a Port Facility Security Officer for one of the port facilities in the PSA's area of jurisdiction. For many ports, it was



therefore not possible to determine the actual cost of the regulation without disproportionate effort.

However, we have received some stakeholder feedback which we have used to revisit some of the assumptions used in the impact assessments, to better ascertain the costs of the Directive. We have elected not to recalculate the EANCB however, as we believe it would not be a particularly meaningful metric for a review of this policy. Additionally, as we have not received actual cost estimates from every port, we have insufficient evidence to re-estimate the costs that vary by port size.

#### Running costs (Annual)

Question 6 was directed at PSOs asking how many hours a week they spent as PSO and to provide an estimate of the cost. Eight PSOs (out of a possible 33) responded, and time spent ranged between 2 hours a week to 20 hours a week. Of those providing cost estimates, the cost of the PSO per year ranged between £2,000 and £24,000 per year. This compares with the impact assessment estimate of one-day a week, at a cost of £12,540. All of the respondents experienced costs significantly lower than those estimated in the IA, with the exception of Port 6 (at £24,000 for a PSO).

Port 6 incurred costs significantly higher than those estimated in the impact assessment. It also experienced other annual running costs totalling £96,000<sup>5</sup> per annum that were not identified in the IA because they were not costs attributable to implementation of the Directive. It is notable however that Port 6 has elected to use its Port Security Authority to go beyond what was required in the regulations and further co-ordinate security practices between its port facilities. We therefore believe that the costs of implementing the Directive specifically have been significantly lower than estimated by Port 6.

#### PSA establishment costs (Start-up)

Six respondents provided estimates of the cost of establishing their PSA, which ranged from £1,000 to £60,000 (with an average of £18,500).

<b>PSA</b>	<b>Estimated start-up cost</b>	<b>Actual cost</b>
<b>Port 1</b>	£33,524	£1,000
<b>Port 2</b>	£45,583	£5,000
<b>Port 3</b>	Not assessed*	£10,000
<b>Port 4</b>	£38,348	£10,000
<b>Port 5</b>	£44,377	£25,000
<b>Port 6</b>	£85,134	£60,000

\* The establishment of a PSA at Port 3 took place before 2010, and therefore pre-dated the modern IA process

Again, a notable outlier was port 6, with the majority of responses ranging between £1,000 and £25,000. These costs compare favourably with the estimates in the impact assessment, with

<sup>5</sup> This was costs for additional staff recruited to run the company set up as the PSA: 3 Auditors (1 part time), and 1 Administrator (50% cost to PSA - £11,000). No other PSA employs additional staff.

costs coming in lower than originally anticipated. Three respondents replied that the costs were met either by the harbour authorities or the organisation employing the PSO.

### Charging of fees

Only 1 of the 18 PSAs (Port 6 above) in respect of which replies were made, charged a fee to PSA Members. It had developed a two tier fee structure agreed by the Board of the Company established and designated as PSA whereby Members pay in accordance with the number of facilities they operate and the ISPS responsibilities they have. The Company is a not for profit organisation and the fees cover the entire running of the PSA as well as putting it in a position to deliver tangible benefits to members (e.g. cost-effective bespoke training courses, coordination of drills and exercises and the sharing of best practice). The same PSA (Port 6) was the only PSA out of 18 responding that employed staff to assist with the administration of the PSA, with the cost being covered by PSA Members' fees. Responses in respect of the other 17 PSAs said their cost was absorbed by their port facility operator or the port authority and hence was difficult to quantify.

**Overall, the costs experienced by PSAs are similar to what was anticipated or lower. The only exception to this was the Port 6, which elected to have a more formal structure for its Port Security Authority, with more functions. However, it must be noted that not all ports responded to the consultation, though the ones that did respond represent 54% of the ports covered by the regulations. It is also not unreasonable to believe that if a port did experience costs significantly higher than those estimated in the impact assessment, they would have chosen to respond to the questionnaire.**

## **6. Has the evidence identified any opportunities for reducing the burden on business?**

The evidence given by ports suggests that those electing to make their PSAs incorporated bodies have incurred higher costs than those who have chosen not to. This seems like an easy opportunity to reduce costs whilst still ensuring compliance with the Directive and meeting the policy objectives. Four out of 33 PSAs have elected to be bodies corporate but as we have explained (see section 4 above) they are not obliged to do so. PSA Members are at liberty to choose the PSA status including opting for the lower cost unincorporated model and both models are deemed acceptable by the DfT.

Beyond this, the stakeholder feedback gathered for this review has not identified other opportunities to reduce the burden on Port Security Authorities or their constituent members.

Only one PSA has elected to impose fees on its members. However, other PSA's take it in turns to host PSA meetings and share costs that way, as well as through collaborating on exercises

The DfT is also seeking an opportunity to simplify the process by which changes can be effected to PSAs (for example to amend the PSA boundary due to closing/opening of a port facility, or to change its constitution) which is explained in greater detail in section 9 below.

Officials in the DfT considered that the way the Directive was drafted did not always allow for a pragmatic and proportionate risk based approach – especially in relation to its application in locations with limited levels of maritime activity and less than 3 port facilities. The manner in which the Directive is currently drafted does not allow for such an approach to be taken.

## **7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?**

Article 19 of the Directive requires that by 15 December 2008 and every 5 years thereafter, the Commission shall submit an evaluation report to the European Parliament and the Council analysing compliance with the Directive by Member States, the effectiveness of the measures taken, and, if necessary present proposals for addition measures. The reports would, among other things be based on monitoring information provided by Member States.

The first evaluation report, COM (2013) 792 final was issued in January 2009. The Commission reported there were delays in the adoption of national Implementation measures in Member States by this date and complications in implementation at local port level, particularly in establishing the port boundary. As a consequence, the Commission was unable to complete a detailed analysis of compliance with the requirements of the Directive or draw any final conclusions on the impact of implementation of the measures. The second evaluation report, COM (2013) final was issued in November 2013 and concluded that since the first report, significant progress had been made by Member States in implementing the Directive and, following port security assessments, 466 out of 1,052 EU ports had been assessed to fall within its scope. In the Commission's view the level of security had increased in European Ports. The report stated that while it was difficult to assess the impact of the measures in terms of providing a deterrent to terrorist acts, port authorities considered there had been a significant reduction in smuggling, theft and malicious acts.

For the purposes of this PIR, a questionnaire (Annex D) was sent to members of the European Commission's Maritime Security Committee (MARSEC) to ascertain how other Member States had implemented the Directive. Nine Member States responded; one of which provided completed questionnaires for each of its 7 Federal Districts.

In the UK the Directive was implemented by means of one national piece of legislation and 33 designation orders at local port level. Six out of the Member States responding had introduced a national piece of legislation and one of these States had additionally introduced 25+ pieces of local legislation. Two MS had used provisions in existing national pieces of legislation. In the federated Member State legislation had been introduced at federal district level. In implementing the Directive, all respondents had, like the UK, stayed broadly within the minimum requirements.

In the UK, the 33 PSAs created were new entities. Seven Member States designated existing national or regional level entities as PSAs, and 2 Member States created new entities. In the UK several PSAs created covered more than one port – these were either located on river estuaries where there was more than one port or where there were several ports grouped closely together. Some Member States had a national level PSA covering all ports in that state, while where there was a regional entity designated as PSA it would cover ports in that region.

In the UK, the person designated as PSO is generally one of the Port Facility Security Officers in the PSA. In other Member States, PFSOs had been appointed as PSOs, or else local or regional police, port or Coastguard officials. On average, in the UK PSAs meet twice a year. Other Member States responding to the questionnaire said that their PSA(s) met once or twice yearly. In the UK the DfT has a dedicated team of maritime security compliance inspectors who monitor compliance with the requirements of the Directive. Other Member States cited

Government Departments or safety agencies as being responsible for oversight of PSAs including approval of port security assessments and port security plans, and their revision.

The UK does not make use of “recognised security organisations” (RSOs) to carry out port security assessments and port security plans, as is permitted under the Directive. Four out of the 9 Member States responding said they made use of RSOs.

The Directive provides that Member States may apply the security measures to “port related areas” (any areas adjacent to the port that could be security relevant). Neither the UK nor any of the MS responding to the questionnaire had designated any port related areas.

No cost information was provided by the Member States responding to the questionnaire. It is not unreasonable to assume that the 7 Member States making use of existing entities incurred reduced implementation costs as a result. While the 33 PSAs created in the UK were technically new entities, the existence of Port Security Committees meant that in-scope ports were not starting from scratch and so would have borne less costs.

## **8. Assessment of risks or uncertainties in evidence base / Other issues to note**

### What are the main limitations to the evidence base for the PIR?

The original impact assessments undertaken for batches of the in-scope ports, using standard cost estimates based on information supplied by the port industry indicated that the costs of establishing and running a PSA were modest as there were already Port Security Committees established at those ports and would extend the security benefits beyond the immediate ship/port interface to the wider port area at little additional cost. As explained in section 2 the DfT considered that a light touch, low evidence exercise was the most appropriate for this PIR. A more extensive data gathering exercise would be disproportionate and unlikely to yield any additional useful data on which to base a decision. As a consequence, although there are limitations to the evidence base, we considered the amount was sufficient for a PIR of this nature.

### Are there any other issues which should be considered when this PIR is reviewed?

This light touch PIR has been carried out in accordance with the advice provided by the Cross Government Evaluation Group in conjunction with the Better Regulation Framework Manual and the Magenta Book on evaluation which recommends the appropriate level of evidence that should be collected for light touch PIRs. No other issues have been identified.

## **9. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?**

This PIR found that the Directive and implementing regulations along with the DOs are for the most part working adequately in the UK and the objectives have largely been met. PSAs have been established at the 33 ports considered in scope of the Directive and the essential requirements of the Directive (see section 1a above) have been implemented at those ports. It has led to a somewhat better level of cross-port coordination of security and most respondents felt that the management of risk in the port had improved as a result.

The business of the port occurs at the individual port facilities who must abide by security requirements under the EC Regulation, not the PSRs which implemented the Directive: therefore moderate burden is imposed on those port facilities as a result of the PSRs. The Directive does allow Member States some scope for implementing the requirements in manner most appropriate to their particular circumstances, however, there are some constraints especially in relation to where the Directive applies.

To ensure compliance with EU law and taking account of the evidence in the round we have concluded that keeping the current regulations is the most appropriate course of action

#### Other changes

Policy officials have been reviewing the current system of multiple statutory instruments. Each DO sets the boundary of the port, to change the port boundary as a result of the opening or closing of a port facility, or changing the constitution of a PSA, the boundary plan in the DO must be amended via another Statutory Instrument. This is an inflexible, cumbersome, and time-consuming approach, which can take at least 6 months through the statutory instrument process.

The preferred option to improve on the current method would be to grant the Secretary of State powers to implement the Directive via administrative action. This would require primary legislation and an appropriate legislative opportunity is being sought.

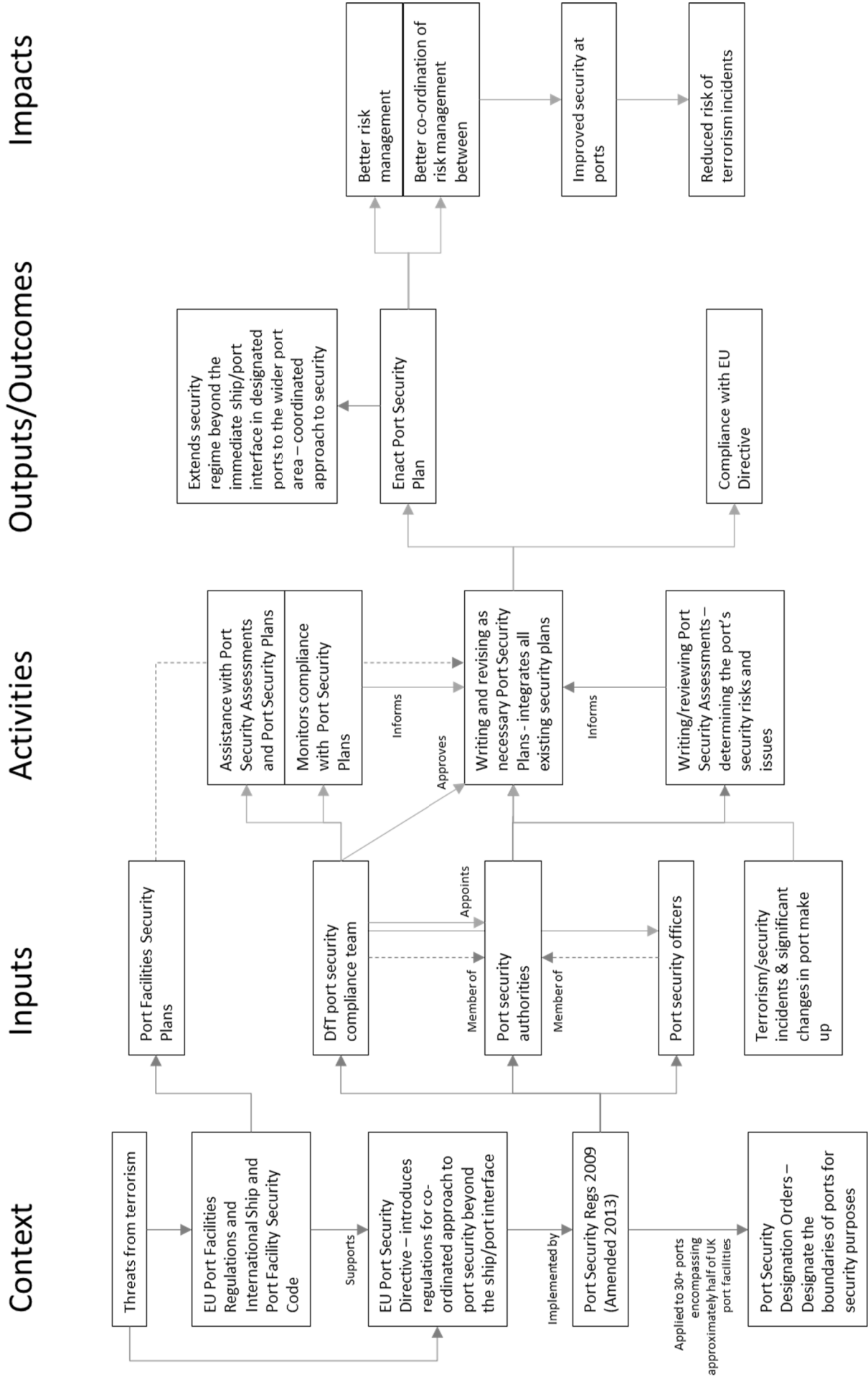
Sign-off for Post Implementation Review:

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.***

**Signed:** Andrew Charlesworth-May

**Date:** 08/05/2017

# Annex A: Logic Map



## Annex B: List of Statutory Instruments and Review Dates

### UK IMPLEMENTING LEGISLATION FOR DIRECTIVE 2005/65/EC ON ENHANCING PORT SECURITY

UK-level implementation	S.I. Reference	Coming into force date	Review Date
Port Security Regulations 2009	SI 2009/2048	1 September 2009	29 November 2018 <sup>6</sup>
Port Security (Amendment) Regulations 2013	SI 2013/2815	29 November 2013	Inserted Regulation 39 into Port Security Regulations 2009/2048
Implementing legislation at local "port" level	S.I. Reference	Coming into force date	Review Date
The Port Security (Avonmouth Dock and Royal Portbury Dock and Port of Bristol Security Authority) Designation Order 2010	SI 2010/319	19 March 2010	No review provision
The Port Security (Port of Dover) Designation Order 2011	SI 2011/3045	31 January 2012	31 January 2017 <sup>7</sup>
The Port Security (Port of Aberdeen) Designation Order 2012	SI 2012/2607	19 November 2012	19 November 2017 <sup>7</sup>
The Port Security (Port of Grangemouth) Designation Order 2012	SI 2012/2608	19 November 2012	19 November 2017 <sup>7</sup>
The Port Security (Port of Portland) Designation Order 2012	SI 2012/2609	19 November 2012	19 November 2017 <sup>7</sup>
The Port Security (Port of Tees & Hartlepool) Designation Order 2012	SI 2012/2610	19 November 2012	19 November 2017 <sup>7</sup>
The Port Security (Port of Workington) Designation Order 2012	SI 2012/2611	19 November 2012	19 November 2017 <sup>7</sup>
The Port Security (Ports of Swansea and Port Talbot) Designation Order 2013	SI 2013/1652	2 August 2013	2 August 2018
The Port Security (Port of Newhaven) Designation Order 2013	SI 2013/1655	2 August 2013	2 August 2018
The Port Security (Port of Falmouth) Designation Order 2013	SI 2013/1656	2 August 2013	2 August 2018
The Port Security (Port of Sullom Voe) Designation Order 2013	SI 2013/2013	10 September 2013	10 September 2018
The Port Security (Port of Hull, New Holland, Immingham and Grimsby) Designation Order 2013	SI 2013/2014	10 September 2013	10 September 2018
The Port Security (Port of Liverpool and the Manchester Ship Canal) Designation Order 2013	SI 2013/2181	3 October 2013	3 October 2018

<sup>6</sup> Original SI had no review provision as preceded introduction of the Government Better Regulation processes but an amending S.I. inserted a review clause.

<sup>7</sup> Amended by SI 2013/2728 the Port Security Designation (Amendment) Order 2013 - this extended the initial review date in 6 Designation Orders to 5 years from the coming into force date.

Implementing legislation at local "port" level	S.I. Reference	Coming into force date	Review Date
The Port Security (Port of Southampton) Designation Order 2013	SI 2013/2272	9 October 2013	9 October 2018
<b>Next European Commission 5 year Evaluation Report on implementation of Directive 2005/65/EC on enhancing port security due 15/12/18</b>			
The Port Security (Port of Milford Haven) Designation Order 2013	SI 2013/516	1 May 2013	1 January 2019
The Port Security (Port of Barrow) Designation Order 2013	SI 2013/3074	9 January 2014	9 January 2019
The Port Security (Port of Cromarty Firth) Designation Order 2013	SI 2013/3075	9 January 2014	9 January 2019
The Port Security (Port of Fowey) Designation Order 2013	SI 2013/3076	9 January 2014	9 January 2019
The Port Security (Port of Glasgow) Designation Order 2013	SI 2013/3077	9 January 2014	9 January 2019
The Port Security (Port of Great Yarmouth) Designation Order 2013	SI 2013/3078	9 January 2014	9 January 2019
The Port Security (Port of Peterhead) Designation Order 2013	SI 2013/3079	9 January 2014	9 January 2019
The Port Security (Port of Troon) Designation Order 2013	SI 2013/3080	9 January 2014	9 January 2019
The Port Security (Port of Tyne) Designation Order 2013	SI 2013/3081	9 January 2014	9 January 2019
The Port Security (Ports of Cardiff, Barry and Newport) Designation Order 2013	SI 2013/3180	20 January 2014	20 January 2019
The Port Security (Port of Belfast) Designation Order 2013	SI 2013/3184	20 January 2014	20 January 2019
The Port Security (Port of Shoreham) Designation Order 2013	SI 2013/3185	20 January 2014	20 January 2019
The Port Security (Port of Plymouth) Designation Order 2014	SI 2014/8	14 February 2014	14 February 2019
The Port Security (Port of Medway) Designation Order 2014	SI 2014/82	17 February 2014	17 February 2019
The Port Security (Port of London) Designation Order 2014	SI 2013/577	10 April 2014	10 April 2019
The Port Security (Port of Bramble Island Dock, Felixstowe, Harwich, Harwich International, Ipswich and Mistley Quay) Designation Order 2014	SI 2014/604	14 April 2014	14 April 2019
The Port Security (Port of Londonderry) Designation Order 2014	SI 2014/1811	11 August 2014	11 August 2019
The Port Security (Port of Rosyth) Designation Order 2014	SI 2014/2007	30 August 2014	30 August 2019
The Port Security (Port of Oban) Designation Order 2015	SI 2015/1504	5 August 2015	5 August 2020



## Annex C: Questionnaire to Stakeholders

PSA Name – (if applicable)	
Organisation you represent	
Position held	
1. <b>All:</b> Has the implementation of the Directive at your port improved the management of risk?	
2. <b>All:</b> Were there any unintended consequences arising from the Port Security Regulations 2009?	
3. <b>All:</b> Do you have any comments or suggestion on how to improve the Port Security Regulations 2009, as amended in 2013 or the designation orders which established the PSAs?	
4. <b>All:</b> Do you have any further comments to make regarding the implementation of the Port Security Directive in the UK?	
5. <b>All:</b> Could we have implemented the Port Security Directive in a different way to minimise costs and maximise benefits?	
6. <b>PSOs only:</b> On average how many hours a week do you spend as PSO and could you provide an estimate of how much this costs?	
7. <b>PSOs/PSA Members:</b> Could you describe the organisational structure of your PSA (e.g. does it have working groups/sub-committees)?	
8. <b>PSOs/PSA Members:</b> No of PSA Members and other attendees of PSA meetings: a) How many members does your PSA have and which organisations do they represent? b) How many advisors does your PSA have and what organisations do they represent?	
9. <b>PSOs/PSA Members:</b> Who did you choose as your PSA Chair? Please give job title and the organisation they represent.	
10. <b>PSOs/PSA Members:</b> How often per year has your PSA met since its first meeting?	
11. <b>PSOs/PSA Members:</b> Are you content with your choice to establish your PSA as an unincorporated association or as a body corporate? Or would you prefer a different model to the one you chose – if so, please explain why.	
12. <b>PSOs/PSA Members:</b> Are there any other bodies whom you think it would be useful to have as Advisors but do not currently attend PSA meetings?	
13. <b>PSOs/PSA Members:</b> How much did it cost to establish your PSA (approximately)?	
14. <b>PSOs/PSA Members:</b> What is the yearly cost of running your PSA approximately, it would help if you could group your cost (staff, office costs, other etc.)?	

**15. PSA Members:** On average how many hours a week do you, as a PSA member, spend on PSA-related work and how much does this cost?

**16. PSOs/PSA Members:** Have you employed staff to assist with the administration of the PSA?

- a. How many people?
- b. At what cost?

**17. PSOs/PSA Members:** Does your PSA charge a fee to its members?

- a. What level are the fees set at?
- b. Do the fees recoup the running costs
- c. Do you have any comments on the fees charged by your PSA (if applicable)?

**18. PSOs/PSA Members:** As well as the routine reviews of the port security [risk] assessment (PSRA) and port security plan (PSP) at PSA meetings, has the PSRA/PSP required to be revised as a consequence of a major operational/structural change in the port or a major security incident? YES/NO

If yes, please give brief details of the circumstances and the approximate cost of any revision entailed.

**19. PSOs/PSA Members:** Please advise the number of security exercises carried out since the formation of your PSA, giving brief details of scenarios and any action taken following the exercise (e.g. any amendments to your port security assessment and port security plan following the exercise).

## Annex D: Questionnaire to EU Member States

<b>Name</b>	
<b>Member State</b>	
<b>1. How did you implement the Directive in your national law</b>	
In the UK the Directive was implemented by one national level piece of legislation and 30+ local pieces of legislation which established Port Security Authorities and established the boundaries of the port.	
<b>2. Did you implement the minimum requirements of the Directive or did you go beyond the requirements?</b>	
The UK stayed broadly within the minimum requirements.	
<b>3. How did you create your Port Security Authority/Authorities (PSAs)? Did you designate an existing entity/entities or did you create a new entity/entities?</b>	
In the UK, the PSAs were new entities created at each in-scope port (see under question 1 above).	
<b>4. Did any of your Port Security Authorities cover more than one port?</b>	
In the UK there were several PSAs created which covered more than one port – these were either located on river estuaries where there was more than one port or where there were several ports grouped closely together.	
<b>5. Who is designated as the Port Security Officer?</b>	
In the UK it will generally be one of the Port Facility Security Officers who is also a member of the PSA	
<b>6. Are any of your Port Security Officers responsible for more than one Port Security Authority?</b>	
Currently in the UK each PSO is responsible for only one PSA.	
<b>7. Does your PSA hold meetings with relevant parties? Who attends PSA meetings?</b>	
In the UK the Port Security Officer and Port Facility Security Officers attend and also a number of advisors including port authority personnel, the Department for Transport, immigration authorities and local police.	
<b>8. How often do PSAs meet?</b>	
In the UK, PSAs meet on average 2-4 times a year	
<b>9. Who is responsible for monitoring compliance with the Directive and how do they make sure the requirements are met?</b>	
In the UK the Department for Transport has a team of compliance inspectors. The inspectors monitor implementation of the port security plan to ensure compliance. The inspectors also check that adequate security exercises are performed at the ports.	
<b>10. Do you make use of “recognised security organisations” (RSOs) in the context of implementing the Directive? If yes, what do they do - do they carry out port security assessments and develop port security plans?</b>	

Currently, the UK has not delegated port security compliance to any RSOs.

**11. Who approves port security plans and port security assessments?**

In the UK the Department  
for Transport approves port security plans and port security assessments.

**12. How do you deal with changes in the port security environment – how do you update port security assessments and port security plans if there are changes?**

In the UK the Port Security Authority for the port reviews the port security assessment and the port security plan at each of its meetings and also within 30 days of a major operational change, a major structural change, or a major security incident at the port.

**13. Have you designated any “port-related areas” (see Article 2 of Directive)**

The UK has not designated any “port-related areas”

**14. Are there any other comments you consider relevant to make about implementation of the Port Security Directive in your State that are not covered by the above questions? If so, please do so below.**