

**EXPLANATORY MEMORANDUM TO**  
**THE HARWICH HAVEN AND WALTON BACKWATERS (APPLICATION OF THE**  
**PILOTAGE ACT 1987) ORDER 2020**

**2020 No. 1187**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of this Order is to provide that the Pilotage Act 1987 (“the Act”) shall apply to the Harwich Haven Authority (“the Harbour Authority”) as if their harbour includes a particular area within the Walton Backwaters, found at the coordinates specified in article 2 of the Order (“the Area”).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Part 1 of the Act provides that certain harbour authorities are competent harbour authorities (“CHAs”) and imposes on them duties in respect of harbour pilotage. These duties include keeping under review whether any, and if so what, pilotage services need to be provided in respect of its harbour and whether pilotage should be compulsory. If the Secretary of State considers that a CHA should exercise pilotage functions in relation to an area outside of their harbour (in the interests of efficiency and safety of navigation) then section 1(3)(a) of the Act enables the Secretary of State to provide by order that the Act applies to that CHA as if its harbour included that particular area.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Order provides that the Act applies to the Harbour Authority as if their harbour includes the Area.
- 7.2 Under section 7 of the Act, a CHA has a duty to specify the area and circumstances where pilotage services are required. This includes stipulating in clear terms the area in which acts of pilotage may take place. In 2016, the Harbour Authority issued the most recent iteration of its Pilotage Directions document, within which it specifies this area.
- 7.3 Following a review of this document in 2019, the Harbour Authority concluded that it would be in the interests of efficiency and safety of navigation for them to be able to exercise pilotage functions in the Area. The Area contains shallow tidal waterways and is not straightforward to traverse – for larger vessels the expertise of a pilot may be vital to avoid grounding.
- 7.4 The Harbour Authority approached the Secretary of State and asked for this issue to be considered. Following a detailed consideration and taking into account consultation responses (see below), the Secretary of State concluded that making the relevant Order would be in the interests of efficiency and safety of navigation because of the risks involved in the Harbour Authority being unable to offer pilotage services to commercial and leisure shippers navigating such difficult waters without the necessary knowledge and experience.
- 7.5 The Harbour Authority will issue a new Pilotage Directions document to take account of this Order. The Pilotage Directions will provide that the Area is part of the Harbour Authority's voluntary pilotage area.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c. 16).

## **9. Consolidation**

- 9.1 There are currently no plans to consolidate the legislation amended by this instrument.

## **10. Consultation outcome**

- 10.1 The Harbour Authority carried out a preliminary local consultation on its proposal to exercise pilotage functions in relation to the Area. There were no objections to the proposal from harbour users or other interested stakeholders and the two formal respondents both agreed that there would be no increase in risk to maritime safety in the harbour area if the proposal was finalised.
- 10.2 The Secretary of State, as part of his consideration of the Harbour Authority's request, published a consultation paper in order to inform the persons considered to be affected by the Order and to give them an opportunity to object, as required under section 1(7) of the Act. The consultation ran for 4 weeks, from 11<sup>th</sup> September to 9<sup>th</sup> October 2020, which was considered to be an adequate time to gather information from all local and national bodies which have an interest in Harwich Haven.

- 10.3 A total of two responses were received in response to the public consultation. These have been fully considered. No objections to the proposal were received.
- 10.4 The consultation document and a summary of the responses received can be viewed at [www.gov.uk/government/consultations/harwich-haven-authority-extension-of-pilotage-area](http://www.gov.uk/government/consultations/harwich-haven-authority-extension-of-pilotage-area).
- 10.5 Having considered the responses to the consultation, the Secretary of State decided to proceed with the Order with modifications.

## **11. Guidance**

- 11.1 No guidance will be issued in relation to the effect of this instrument because it does not make changes that affect businesses or others.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact is foreseen.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 Under section 2 of the Act, CHAs have a duty to assess what, if any, pilotage services are required to secure the safety of ships, and to provide such services as are deemed necessary. To assist understanding of those responsibilities, the Department for Transport and the Maritime and Coastguard Agency publishes the Port Marine Safety Code (PMSC) and related Guide to Good Practice which are available to view at <https://www.gov.uk/government/publications/port-marine-safety-code>. These documents explain those legal responsibilities and create national standards for every aspect of port and harbour safety with the aim of enhancing safety for those who use or work with ports, ships, passengers and the environment.
- 14.2 Application of the PMSC is voluntary but harbour authorities are required to self-certify compliance by notifying the Maritime and Coastguard Agency every three years, which can undertake an informal ‘health check’ visit if necessary. The PMSC encourages ports and harbours to keep their powers under review and to seek to amend these where this may be necessary to ensure safe and efficient operations.
- 14.3 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Robert Courts MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, has made the following statement:  
“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate, taking into account the economic impact of the legislation, to include provision for review”.

**15. Contact**

- 15.1 Tim Alsop at the Department for Transport Tel: 07977 433012 or email: tim.alsop@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Stephen Benzies, Deputy Director for Maritime Operations at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts MP, Parliamentary Under Secretary of State with responsibility for maritime policy at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.