

HARBOURS (NORTHERN IRELAND) ORDER 2002

S.I. 2002 No. 3155 (N.I. 9)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Harbours (Northern Ireland) Order (“the Order”) was made on 17 December 2002.
2. The Memorandum should be read in conjunction with the Order. It is not, and is not intended to be, a comprehensive description of the Order. Where an Article or part of an Article does not seem to require explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The primary purpose of the Order is to improve the public accountability of the Northern Ireland trust ports, that is Belfast, Coleraine, Carlingford, Londonderry and Warrenpoint. The then Department of the Environment (NI) completed a major review of public trust ports in Northern Ireland in 1998, which paralleled a similar exercise undertaken in Great Britain. In recognising the strategic importance of trust ports to the Northern Ireland economy, the review identified a need to extend their powers and ease the financial controls under which they operate to enable them to compete more effectively. However, it also recommended the need for improvements in the public accountability of the harbour authorities.
4. This objective has, in part, been achieved with the enactment of subordinate legislation in the form of three Harbour Orders for the ports of Belfast, Londonderry and Warrenpoint. These Orders have, inter alia, increased the number of council representatives on each of the Boards and ensured that the ports comply with the Memorandum of Understanding (MOU) which each harbour authority has concluded with the Department, and which governs any disposal of land, and in addition covers any change of use within the respective harbour estates.
5. However, primary legislation is required to improve further public accountability within this sector. The need for this arises from the growing interest of the general public and elected representatives in the activities and future development plans of the individual harbour authorities.

CONSULTATION

6. The Department issued a consultation document on the legislative proposals on 12 October 2001. The consultation document was issued to the harbour authorities, the port users and their agents, the Regional Development Committee, district council, bodies listed in the Department’s Equality Scheme, the Department for Transport, Crown Estates Commissioners, Marine and Coastguard Agency, the Foyle, Carlingford and Irish Lights Commission and Waterways Ireland. A total of 21 responses were received, mainly from the harbour authorities, district councils and industry representatives and the views expressed have been considered and, where appropriate, taken into account.

OPTIONS CONSIDERED

7. The Department considered retaining the status quo with no change to the legislative framework for harbour authorities. However, this would have required the Department to rely solely on an increase in the number of district council representatives on each of the Harbour Boards, and the voluntary arrangements in respect of the Memoranda of Understanding and the Codes of Practice to deliver the desired improvements in public accountability.

OVERVIEW

8. The Order contains seven Articles and has three main provisions. The first relates to a power enabling the Department to issue directions to the harbour authorities. The second deals with the power for the Department to obtain information from the harbour authorities and the third relates to the power for the Department to issue Codes of Practice for the trust ports.

COMMENTARY ON ARTICLES

Article 3: Designated harbour authorities

This Article designates certain harbour authorities and provides the Department with the power to amend the list following consultation with the relevant harbour authority. It specifically excludes the designation of a fishery harbour, a district council owned harbour or a harbour owned by a company having share capital, or a body, which is not a harbour authority.

Article 4: Power of Department to issue directions

This Article provides the Department with the power to issue directions to a designated harbour authority in relation to the exercise of its functions and sets out the arrangements for doing so. The Department is required to consult with a designated harbour authority before giving any directions. A duty is placed on the designated harbour authority to comply with any directions given.

Article 5: Power of Department to obtain information

This Article provides the Department with the power to obtain such information as it may reasonably require from a designated harbour authority by the serving of a notice in writing. The Article creates an offence where any person in purported compliance with the notice knowingly or recklessly makes any statement or produces any document, which is false. It allows for a person to be convicted on indictment and to be liable to a fine or to imprisonment or both. In addition it creates an offence with the same penalties, where any person without reasonable excuse fails to comply with a notice. The Article relates to information that has come into the possession of the designated harbour authority after the coming into effect of the Order.

Article 6: Code of practice

This Article provides the Department with the power to issue or amend codes of practice intended for the guidance of members of designated harbour authorities. It places a duty on the designated harbour authority to take account of the relevant provisions of the code when exercising its functions. The Department is required to publish the code.

Article 7: Making and approval of code of practice

This Article requires the Department to prepare a draft of the code or amendment to the code and to consult with such persons as it thinks necessary. The Department will lay the code or the amendment to the code before the Assembly. The Department shall specify the day on which the code or amendment shall come into effect within the code or amendment.