



Department
for Transport

Ports Good Governance Guidance

Moving Britain Ahead

March 2018

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1. Introduction

- 1.1 This guidance applies to all in Statutory Harbour Authorities (SHAs) England. It also covers all SHAs in Wales until the devolution settlement set out in the Wales Act 2017 comes into effect in April 2018 (see further discussion below).
- 1.2 It is primarily aimed at SHAs whose powers and duties in respect of a harbour are set out in legislation, but its principles are also relevant to all organisations that own or manage harbour and port facilities. Where the term 'SHA' is used, this should be taken to include such other organisations, unless it is clear that this would not be appropriate, for example where legal provisions apply only to SHAs.
- 1.3 SHAs have been given powers and duties in relation to a harbour in local Acts of Parliament, Harbour Revision or Empowerment Orders and other legislation. It is therefore appropriate for the Department for Transport (DfT) to set out good governance guidance for SHAs that helps deliver their key aim of managing, maintaining and improving their harbour in the broad public interest.
- 1.4 The guidance covers all SHAs regardless of the port ownership model, that is whether this is private, a trust port, a LA owned port. This is a new approach. It does not signify that DfT has general concerns about the governance of SHAs but builds on previous governance guidance to trust ports and to local authority owned ports to set out key principles of openness, accountability and fitness for purpose that are applicable to all SHAs given the similarity of their key objectives in managing harbours in the broad public interest.
- 1.5 Notwithstanding the different ownership models of port, SHAs have much in common in terms of their broad aims and objectives, the legal framework they operate under, their responsibilities for safety, the importance of engaging effectively and fully with stakeholders and carrying out their business in an accountable way. It is these similarities that are the basis for providing good governance guidance that applies to all SHAs as set out in Part A below. While recognising the similarities, this document also contains specific governance guidance aimed at trust ports (see Part B) and also local authority owned ports (Part C) reflecting the particular characteristics of those two models of port ownership.

Relationship with other guidance

- 1.6 This guidance is based on a number of other documents, particularly the UK Corporate Governance Code¹ (UKCGC). It replaces that in previous documents such as Modernising Trust Ports (MTP), published by the then DETR in 2000, its second edition Modernising Trust Ports (MTP2)², published by DfT in 2009, and Opportunities for Ports in Local Authority Ownership³, published by DfT in 2006. The guidance also reflects the recommendations of the Department's Trust Port Study, published in May 2016.

¹ <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9222/mtp-good-guide-to-governance.pdf

³ <http://webarchive.nationalarchives.gov.uk+/http://www.dft.gov.uk/pgr/shippingports/ports/opportunities/rtunitiesforportsinlocal4960.pdf>

Compliance

- 1.7 The governance guidance in this document does not have force of law and is not legally binding. It does not replace any legal duties or obligations that SHAs might have in their own legislation or general acts of Parliament, such as the Harbours Act 1964 or the Companies Act 2006.
- 1.8 While the guidance is advisory, DfT expects all SHAs to carefully consider it and to implement its principles if these are not already in place, where practical and appropriate to the circumstances of the SHA. Where the board of a trust port decides not to comply with an aspect of the governance guidance, for example because its scale makes this impracticable, it should be able to clearly state this and the reasons why to stakeholders, such as in their annual report.
- 1.9 Some of the documents referred to in the Guidance have their own approach to compliance, such as the UKCGC and Port Marine Safety Code (PMSA), which of course SHAs should follow as necessary.

Devolution

- 1.10 This guidance applies to all SHAs in England. It also covers all SHAs in Wales until the devolution settlement set out in the Wales Act 2017 comes into effect on 1 April 2018. After that date, the guidance will only apply to reserved trust ports⁴ in Wales. Other Devolved Administrations may publish their own good governance guidance for ports and harbours where they have responsibility for them.

The ports sector

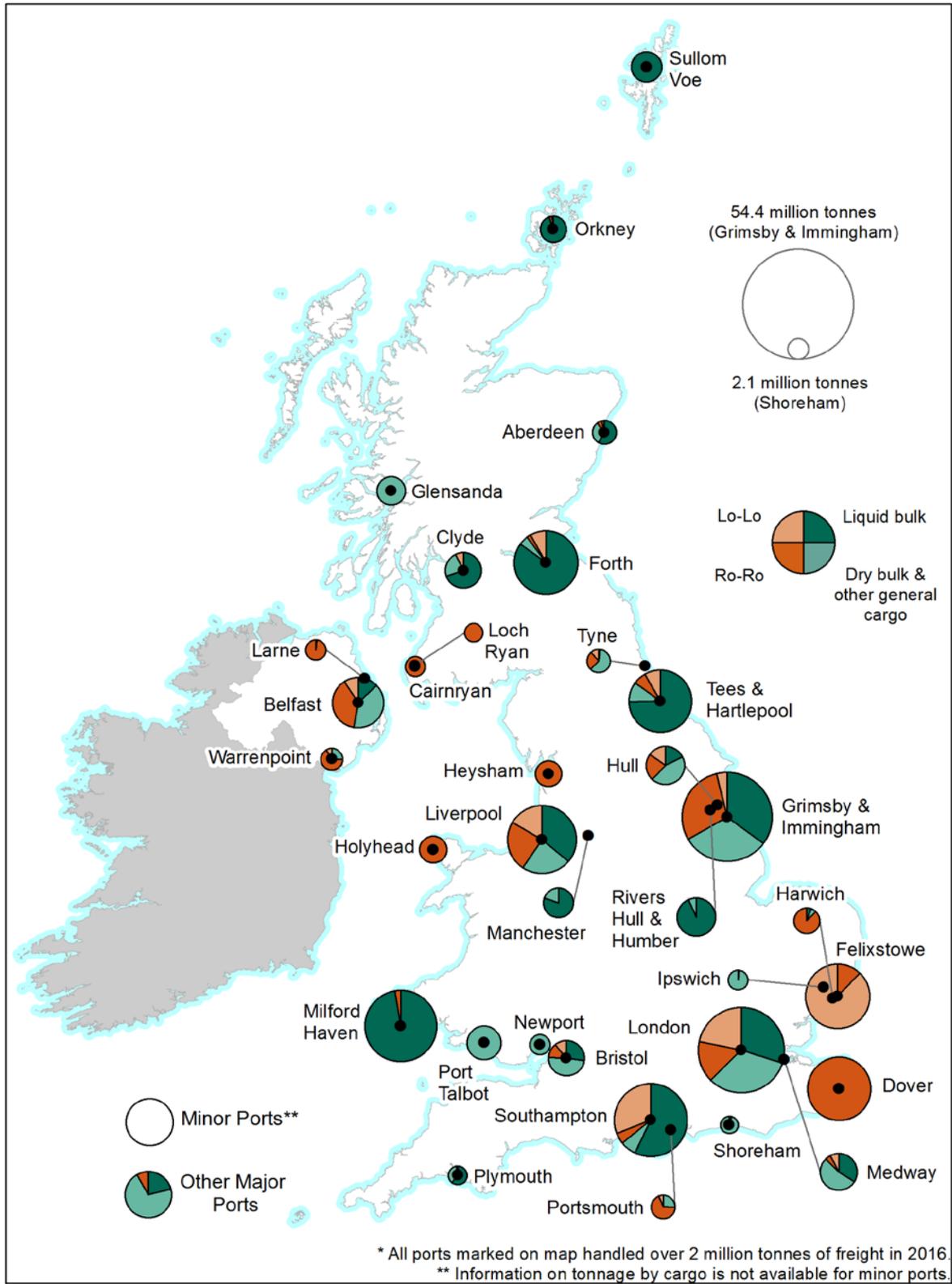
- 1.11 The ports sector is an essential part of the UK economy, ensuring that goods and people can move smoothly and efficiently in and out of the country, so facilitating trade, and tourism and economic growth. The ports sector is estimated to directly employ 24,000 people and generate value added of some £1.7bn. Including indirect, induced and wider activities undertaken in ports increases this to 101,000 jobs and £7.6bn value added. The maritime sector in total generated £14.5bn direct value added contribution to the UK economy in 2016, see figure 1 below.



Figure 1 Maritime and ports sector contribution to GVA (2016)

⁴ Reserved trust ports are defined in the Wales Act 2017 by reference to a turnover threshold. Milford Haven Port Authority is expected to be the only such port when the Wales Act provisions come into force on 1 April 2018

- 1.12 The UK remains a maritime nation. Shipping and ports are critical to supplying the UK's daily needs. 95% of exports and imports come by sea, including 40% of our food and at least a quarter of our energy. Overall, UK ports handled nearly 490 million tonnes of cargo in 2016, almost all of which passed through the 100 main commercial ports.
- 1.13 There are over 300 ports and harbours in England and Wales. These range from ports which play a vital role as international gateways such as Felixstowe, Humber and Milford Haven, to medium and smaller sized ports serving regional and local interests. There is a wide range of business models and markets served by ports. These include "ro-ro" (roll on, roll off) and passenger ferry services, containerised traffic, dry bulk cargoes (such as aggregates), liquid bulk (including oil and liquefied natural gas), the cruise industry, fishing fleets and general cargo. Some ports are also bases for vessels constructing or servicing offshore energy facilities. Certain SHAs are purely concerned with conservancy and navigational safety. Figure 2 shows the largest UK ports by type of cargo for 2016.
- 1.14 In addition to their national importance, ports also play an important role in local communities and economies in terms of leisure activities and fishing, as well as a source of employment and location for businesses. In some places ports are the central focus of a community.
- 1.15 The great majority of ports operate on a commercial basis without public support, in competition with each other (both domestically and abroad) and in some cases with other modes of transport. Sources of revenue include harbour dues, other charges for the use of the harbour and income from property. SHAs raise substantial funds from the markets, banks and other institutions to invest in new and improved facilities.



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Figure 2 UK ports by cargo 2016

2. Guidance for all SHAs (Part A)

Section 1 - Corporate Governance

Introduction

- 2.1 The UKCGC sets out the purpose of corporate governance as being ‘to facilitate effective, entrepreneurial and prudent management that can deliver the long term success of a company’. This is relevant to the activities of SHAs, concerned as they are with the long term success and sustainability of a harbour.
- 2.2 The UKCGC applies only to companies with a Premium listing of equity shares and so is directly relevant to the boards of SHAs that are part of such companies. While the UKCGC does not apply to other types of businesses, the Department believes that its principles are relevant to many SHAs when applied on a proportionate basis and taking account of the ownership model of the SHA. For example privately owned SHAs are likely to have different corporate governance arrangements. Further guidance on corporate governance for trust ports and LA owned harbours is in Parts B and C respectively.

Forthcoming changes

- 2.3 In August 2017, the Government announced a package of changes to corporate governance. As part of implementing these changes, in the course of 2018 legislation will be introduced to require:
 - around 900 listed companies to annually publish and justify the pay ratio between CEOs and their average UK worker;
 - all companies of a significant size to publicly explain how their directors take employees’ and shareholders’ interests into account; and
 - all large companies to make their responsible business arrangements public.
- 2.4 The Government has also invited the Financial Reporting Council (FRC) to revise the UKCGC in relation to executive pay and strengthening employee, customer and wider stakeholder voice in boardroom decision making. The FRC and other stakeholders have also been invited to develop voluntary corporate governance principles for large private companies. These reforms will be reflected, as necessary, in future versions of this guidance.

Guidance

- 2.5 The key principles and other points from the UKCGC in relation to leadership, board effectiveness, accountability and remuneration are set out below⁵.

⁵ “FRC Corporate Governance Code 2016, © The Financial Reporting Council Limited. Referenced and reproduced with the kind permission of the Financial Reporting Council

Leadership

Principles

- Where relevant, all port business should be headed by an effective board which is collectively responsible for the long-term success of the business. The board's role is to provide leadership within a framework of prudent and effective controls which enables risk to be assessed and managed.
- The board's job is to set an organisation's strategic aims, ensure that the necessary financial and human resources are in place to meet those objectives and to review management performance in meeting them. All board directors must act in the best interests of the SHA consistent with their statutory duties.
- It is important to have a clear division of responsibilities at the head of a SHA between the running of the board and the executive responsibility for the running of the business. It is best practice that no one individual has unfettered powers of decision over the business.
- The chair is responsible for the leadership of the board and ensuring its effectiveness. Part of the chair's role is to set the board agenda, allowing adequate time for discussion of items, in particular strategic issues. Promoting a culture of openness and debate in board discussions is also important.
- Part of the role of Non-Executive Directors (NEDs) on a board is to challenge constructively and help develop proposals on the company's strategy. A further part of a NED's role is to scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.

Board effectiveness

Principles

- The board and its committees need to have the appropriate balance of skills, experience, independence and knowledge to enable them to discharge their respective duties and responsibilities effectively.
- The board needs to be of a sufficient size so that the requirements of the business can be met. It should include an appropriate combination of executive directors and NEDs such that no individual or small group of individuals can dominate the board's decision taking.
- New directors should be appointed by a formal, thorough and transparent procedure. The search for, and appointment of, board candidates should be made on merit, against objective criteria and with regard for the benefits of diversity on the board, including gender.
- It is important that all directors can allocate sufficient time to the company to discharge their responsibilities effectively. All directors should receive induction on joining the board and should regularly update and refresh skills and knowledge.
- It is important that a board is supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.
- It is good practice for boards to undertake a formal and rigorous annual evaluation of its own performance and that of its committees as well as of individual directors. The chair may decide to act on the results of a performance evaluation by recognising the strengths and addressing weaknesses of a board.

- All directors should be considered for re-election or re-appointment as appropriate at regular intervals, subject to their continued satisfactory performance.

Accountability

Principles

- The board should present a fair, balanced and understandable assessment of its position and prospects. This responsibility covers annual reports and information required to meet statutory requirements.
- A board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems.
- Further, a board should establish formal transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors. An audit committee, including three NEDs or two in smaller organisations, should be established to help achieve this.

Remuneration

Principles

- Executive directors' remuneration should be designed to promote the long-term success of the business. Any performance-related elements need to be transparent, stretching and rigorously applied.
- There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.
- The board should establish a remuneration committee, including at least three NEDs (or for smaller organisations two). The committee should have delegated responsibility for setting remuneration for all directors and the chair including, where relevant, pension rights and any compensation payments.



Section 2 - Stakeholder engagement

Introduction

- 2.6 Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder's views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders.

Principles

- All SHAs should engage effectively and openly with a wide range of stakeholders that have an interest in their harbour.
- SHAs should periodically assure themselves that stakeholders have been identified and that engagement with them is appropriate and effective.
- SHAs should also consider how the voice and views of stakeholders can be taken into account in their work, including in governance.

Supporting discussion

- 2.7 Ports and harbours often have a significant effect on their locality, for example as places of employment or locations of other businesses, so play an important role in generating economic activity and growth at local, regional and in many cases national level. Ports and harbours can also be a source of some other less desirable effects on their local area, through being a source of road traffic, noise and emissions from vehicles.

- 2.8 Current company law already reflects the importance of stakeholder interests in corporate governance. The Companies Act 2006⁶ puts a duty on all companies to promote the success of a company for the benefit of shareholders, and in doing so to have regard to stakeholder interests, amongst other matters. These include the interests of employees, the need to foster business relationships with suppliers, customers and others, as well as the impact of the company's operations on the community and environment.
- 2.9 Stakeholders have a particular significance for trust ports. In the absence of shareholders or elected representatives, trust port boards are accountable to their stakeholders. This has significant implications for trust port boards, see Part B.

Types of stakeholder

2.10 Stakeholders will vary from harbour to harbour, but are likely to include, amongst others and in no particular order the following and as represented in figure 3 below :

- local communities
- harbour users – both commercial and leisure and their representative organisations
- local economy, such as local businesses including suppliers
- local government
- central government
- others – including employees, MPs and elected representatives



Figure 3 SHA and stakeholders

⁶ Section 172

- 2.11 SHAs may have a commercial relationship with some stakeholders, such as port users or local businesses.
- 2.12 The Trust Port Study recommended that as part of best practice the nature and extent of stakeholder and community engagement should form part of a port's ongoing self-assurance process. The Study also recommended that a regular review of stakeholder engagement should act as a challenge as to whether stakeholders have been appropriately identified and engaged with effectively, and provide the opportunity for each port to develop and assess appropriate stakeholder engagement strategies. Although aimed at trust ports, the Department believes that all SHAs should follow these recommendations.
- 2.13 Such reviews should take into account new and emerging structures at local and regional level, such as sub-national transport bodies and changes to local government structures.

Methods of engagement

- 2.14 Different stakeholders may well have different views and interests on particular matters, which may not be consistent. It is important for SHAs and boards to engage with their stakeholders to consider these views and reflect them, where appropriate in the governance and operation of the harbour or port. Many SHAs do this effectively with well-developed stakeholder engagement activities and functions included as part of corporate social responsibility programmes.
- 2.15 There are a range of approaches SHAs can consider using to provide information to and develop relationships with stakeholders. These include:
- websites, regularly updated with information about the SHA and its activities, as well as information about how to contact the harbour (including complaints)
 - social media
 - formal advisory committees of port users
 - advisory committees for local communities
 - public forums and meetings
 - direct communications, such as newsletters
 - consultation on specific projects or subjects
 - community engagement programmes and partnerships, including the use of port community funds where a port contributes financially to a fund that helps support a range or benefits for the local community
 - port master planning exercises (see box below)
- 2.16 While best practice and previous guidance has moved away from representative board appointments to trust port boards, there are a variety of other options for strengthening the voice of stakeholders on boards that SHAs might consider. These include:
- establishing stakeholder advisory panels and a means for the board to seek views on key issues relevant to stakeholders;
 - designating a NED with particular responsibility of ensuring that stakeholder views are heard at board level;

- selecting a NED partly on the basis of their special knowledge or experience of the position of the SHA within the local community and local economy. The NED would have the same responsibilities and duties as other NEDs. One trust port has selected two NEDs on this basis; and
- SHAs are best placed to determine which of the above approaches and which others are best suited for effective stakeholder engagement for their particular circumstances.

2.17 Particular requirements for how trust ports should engage with stakeholders are contained in Part B.

Port Master Plans

In 2008 DfT produced Guidance on the Preparation of Port Master Plans, to assist ports in the preparation of such plans. This document continues to provide useful guidance on the purpose and contents of a master plan, how it can be developed and in what circumstances ports should prepare one.

Master plans are generally more likely to be appropriate to larger ports and/or those where development is likely in the medium to long term

The aim of master plans is to set out a port's strategic planning for the medium to long term, including how it expects to grow and develop its business over this period. In doing so these plans can be a very useful way of informing stakeholders about how a port expects to develop in the coming years, while helping regional and local planning bodies, including transport infrastructure providers, in making their own plans and strategies.

The Guidance includes information on the content of a master plan. Stakeholder engagement forms an essential part of the process of producing a master plan and in the period once the plan has been produced. The Guidance envisages three phases of consultation with stakeholders:

- informal pre-consultation and dialogue with a wide range of stakeholders;
- consultation on a draft plan for discussion; and
- a formal consultation process.

Section 3 - Provision of information

Introduction

2.18 This section discusses statutory requirements applying to SHAs in relation to providing information as well as good practice in making information available and operating in a transparent way.

Principles

- SHAs have a statutory obligation under the Harbours Act 1964 to produce annual accounts and reports in line with the requirements of the Companies Act 2006 and to provide these to the Secretary of State for Transport.
- SHAs should present a fair, balanced and understandable assessment of the port's position and prospects through their annual accounts.
- SHAs should generally operate in an open, transparent and accountable way, making a range of information available to stakeholders about their organisation and activities, subject to commercial and data confidentiality considerations. Annual reports and regularly updated websites are likely to be important ways of doing this.
- SHAs should consider, if they have not already, establishing a formal complaints handling procedure to deal with complaints made by stakeholders. Information about how to access any complaints system should be readily available.

Supporting discussion

2.19 Providing information about the performance and activities of SHAs to shareholders, stakeholders and other interested parties is an essential element of good governance.

2.20 Most SHAs have a duty under section 42 of the Harbours Act to prepare annual accounts and reports relating to their activities at the harbour. The accounts and reports should follow the provisions of the Companies Act 2006 in terms of their form and contents. It is noted that many SHAs will be incorporated under the Companies Act 2006 and will therefore already be required to produce accounts on this basis.

2.21 However, regulations made by the Secretary of State in 1983⁷ exempt SHAs whose turnover is under £250,000 per year from the obligation to follow the requirements of the Companies Act in preparing reports and accounts, but not from the requirement to prepare reports and accounts.

2.22 SHAs should continue sending their accounts and reports to DfT, ideally via email to ports@dft.gsi.gov.uk.

2.23 The purpose of a set of accounts is to provide a true and fair view of the port's financial performance, position and cash flows. To meet this purpose, the Companies Act 2006 permits an entity to prepare its accounts in accordance with either UK or International GAAP (Generally Accepted Accounting Principles. Note, however, that the consolidated accounts of entities with listed securities, debt or equity traded on an EU regulated market must comply with International GAAP). Boards should

⁷ The Statutory Harbour Undertakings (Accounts) Regulations 1983

ensure that their accounts are properly prepared in accordance with either UK or International GAAP in all material respects, in order to provide a true and fair view.

2.24 A SHA's annual report should:

- include a Directors' report, setting out the SHA's responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, are fair, balanced and understandable and provides the information necessary for stakeholders to assess the port's position and performance, business model and strategy. Where one exists, there should be a statement by the auditor about their reporting responsibilities;
- as appropriate, clearly identify the chair, the deputy chair, other NEDs and the chief executive, as well as the chairs and members of the board committees. It may also contain the number of meetings of the board and those committees and individual attendance by directors; and
- contain a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.

2.25 Some SHAs will be subject to the Companies Act which requires businesses to prepare a Strategic Report as part of an annual report. The overarching aim of this report is to allow shareholders to assess how a company's Directors are performing their duty to promote the success of the company. The contents of a Strategic Report should:

- provide information on the company's business model, its main strategy and objectives;
- describe the principle risks it faces and how they may affect its future prospects; and
- provide an analysis of its past performance.

2.26 Though currently under review, The Financial Reporting Council produces 'Guidance on the Strategic Report'⁸ which SHAs may wish to refer to.

2.27 As well as providing accounts and reports to the Secretary of State, SHAs should also make them available more widely to stakeholders as a key way of providing transparency about their activities. Posting accounts and reports, including Strategic Reports, on websites is likely to be an important way of achieving this.

⁸ <https://frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Guidance-on-the-Strategic-Report.pdf>



Transparency

- 2.28 Private and trust port SHAs in England and Wales are not subject to the Freedom of Information Act 2001 (FOI). A number of SHAs operate in an open and transparent manner with Annual Reports, Annual General Meetings and public engagement events. All SHAs are encouraged to consider meeting reasonable requests for information from stakeholders, where practical. This does not mean that SHAs should be expected to make available information that is commercially or otherwise sensitive or that requires a disproportionate resource or effort to provide. LAs are subject to the Freedom of Information Act and the Environmental Information Regulations, so SHAs owned by LAs are also subject to that legislation.
- 2.29 All SHAs should consider having in place a formal system to consider any complaints about their activities by members of the public or any other stakeholder. Information about how to make a complaint through such a system should be clearly available through a website or other publication. SHAs should aim to respond fully and in writing to any complaints made in an appropriate timescale. For particular arrangements for trust ports, see Part B.

Section 4 - Safety

Introduction

- 2.30 Ensuring marine and land side safety is a key function of all SHAs. This section summarises key elements of an SHA's safety responsibilities, drawing on existing guidance, in particular the PMSC.

Principles

- The PMSC sets out a national standard for every aspect of port marine safety. Its aim is to enhance the safety of everyone who uses or works in the UK port marine environment. The PMSC is not mandatory but Government has a strong expectation that all SHAs and harbours will comply with it.
- SHA board members should be familiar with the PMSC, in particular the responsibilities it places on boards and their members as duty holders, where relevant.

- SHAs are also responsible for ‘landside’ safety within their harbours, as regulated by the Health and Safety Executive.

Supporting discussion

- 2.31 A key responsibility of all SHA boards is enhancing safety for all those who use, or work at, a port, both in the marine environment and on land. The PMSC⁹, published by DfT and the Maritime and Coastguard Agency (MCA), sets out a national standard for every aspect of port marine safety to help achieve this aim.
- 2.32 The PMSC has been developed to improve safety in the port marine environment and to enable SHAs to manage marine operations to a nationally agreed standard. It provides a measure by which organisations can be accountable for discharging their statutory duties to run harbours safely and effectively. Its aim is to reduce the risk of incidents occurring and to clarify the responsibilities of organisations within its scope.
- 2.33 Of particular relevance to good governance is the concept in the PMSC of the ‘duty holder’. All SHAs must have a ‘duty holder’ who is accountable for compliance with the PMSC and in ensuring safe marine operations. In many SHAs, the role of the duty holder will be undertaken by the board, or management team, who are publicly accountable for marine safety under the PMSC, both individually and collectively.
- 2.34 The duty holder is responsible for ensuring that the SHA complies with the PMSC. As set out at para 1.8 of the PMSC, in order to do undertake this role effectively, a duty holder should:
- be aware of the SHAs powers and duties related to marine safety;
 - ensure that a suitable Maritime Safety Management System (MSMS) which employs formal safety assessment techniques is in place;
 - appoint a suitable designated person to monitor and report on the effectiveness of the MSMS and provide independent advice on matters of marine safety
 - appoint competent people to manage marine safety;
 - ensure that the management of marine safety continuously improves by publishing a marine safety plan reporting performance against the objectives and targets set; and
 - report compliance with the Code to the MCA every 3 years.
- 2.35 Duty holders cannot assign or delegate accountability for compliance with the PMSC to others, such as a Harbour Master.
- 2.36 Duty holders should take time to gain an appropriate insight and understanding of their port marine activities, MSMS and supporting policies and procedures. Serious consideration should be given to appointing a board member with relevant maritime experience who can act as the initial point of contact to a designated person. The duty holder should also ensure that appropriate resources are made available for discharging their marine safety obligations.
- 2.37 In addition, the board or duty holder must ensure that sufficient resources are available to discharge its marine safety obligations, with the level of harbour dues set accordingly.
- 2.38 Fulfilling the above duties effectively and fully are an essential part of a board’s role in delivering good governance in its broadest sense. The PMSC sets out measures that SHAs need to take to comply with it in order to fulfil the above duties. The

⁹ www.gov.uk/government/publications/port-marine-safety-code

PMSC is an essential document for board members and senior executives of all SHAs to read and be familiar with, particularly those with specific responsibilities or duties in relation to safety.

Landside safety

- 2.39 SHAs are also likely to have legal duties to comply with under the Health and Safety at Work Act 1974 (the HSW Act) and certain regulations made under it as regards 'landside' activities at ports and harbours.
- 2.40 An Approved Code of Practice 'Safety in Docks' prepared by the Health and Safety Executive (HSE) with support from the ports industry (Ports and Safety Skills) and the unions provides broad guidance on certain sections of the HSW Act and regulations made under it in respect of some of the work activities carried out in docks. More detailed Health and Safety guidance is provided in a series of guidance documents hosted by Ports and Safety Skills and developed with input from industry, unions and the regulator. All these guidance documents set out the basic requirements of how employers can comply with the law by ensuring so far as reasonably practicable, that their employees or others are not exposed to health and safety risk arising out of their work activities.
- 2.41 Port Skills and Safety¹⁰ (PSS) was originally established by the ports industry in 2002 with a remit to promote and raise health, safety and skills standards within the industry. Further information available from PSS website (see link at footnote 10 below).



Section 5 - Other duties, harbour dues, and security

Principles

- SHAs should have regard to the range of general duties and powers in carrying out its responsibilities for the harbour. While not an exhaustive list these include:

¹⁰ <http://www.portskillsandsafety.co.uk/>

- Safe and efficient port marine operations: Having regard to the efficiency, economy and safety of operation of the services and facilities provided as well as ensuring that appropriate resources are made available for discharging their marine safety obligations;
- Open Port Duty: the harbour must be open to anyone for the loading and unloading of goods and passengers, on payment of the rates and other conditions set by the SHA;¹¹
- Environmental duty: Exercising its applicable functions with regard to nature conservation and other environmental considerations;
- Civil Contingencies duty: taking account of the organisation’s responsibilities under the Civil Contingencies Act 2004 including planning, preparing and co-ordinating responses to emergencies which threaten serious damage to human welfare, the environment or security;
- Harbour authority powers: being aware of their statutory powers and responsibilities under both primary and secondary legislation.

Supporting discussion

- 2.42 SHAs will have specific powers and duties in their own local legislation, as well as in general legislation, which they should also be aware of. Specific powers and duties should be reviewed from time to time to provide assurance that they are still relevant and sufficient for managing a harbour in light of identified risks, changing usage or other factors, Where necessary, SHAs can vary their powers or duties through applying for an HRO to the Marine Management Organisation (MMO), revising their byelaws, subject to confirmation by the Secretary of State, or issuing general or harbour directions where they have the appropriate powers.
- 2.43 It is essential that the statutory and legal framework underpinning the effective operation of an SHA be maintained. This framework governs the operation of the port. The chief executive or harbour master is best placed to determine the need for change and to bring it to the attention of the board. Boards also need to keep abreast of new legislation that has implications for the port.
- 2.44 Port legislation, byelaws and compliance with the PMSC should be the subject of regular and automatic review and boards should ensure this process is undertaken. These reviews should take account of changes in local circumstances and national legislation. They should also attempt to accommodate likely short to medium term future requirements.

Harbour dues

- 2.45 Section 26 of the Harbours Act 1964 gives SHAs the powers to levy ship, passenger and goods dues on those using the harbour. SHAs can also levy other charges for the provision of specific services, such as the licensing or provision of a mooring.
- 2.46 Harbour dues should be set at a level that allows for, at least, proper maintenance of a harbour and to meet conservancy and other duties. Harbour dues may also need to allow for a return on investments. SHAs have a duty to publish standard dues tariffs.
- 2.47 There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user. Users are first and foremost customers of a port. For trust ports, the proceeds

¹¹ Section 33 of the Harbours Docks and Piers and Clauses Act 1847

from their custom should be utilised prudently to maximise benefit to all stakeholders and in the best and most effective interest of the future of the trust ports.

- 2.48 The Harbours Act also gives interested parties a right of objection to the Secretary of State against ship, passenger and goods dues harbour dues levied by an SHA, The objection can be that the dues should not be imposed at all, that it should be imposed at a lower rate or that the charge should not be imposed, or be at a lower rate, for certain types of ship, passenger and goods dues generally or in particular circumstances.
- 2.49 The Department expects that harbour users who do not agree with harbour dues levied should first raise the matter with the SHA to seek to resolve any concerns through discussion if possible. Raising a formal objection with the Secretary of State should only be considered should this not produce a satisfactory outcome.
- 2.50 After considering the objection and any representations, the Secretary of State can decide to approve the charge or give the SHA a direction about that charge that would address the grounds for objection.

EU Port Services Regulation

- 2.51 Regulation (EU) No.2017/352, known as the Port Services Regulation (PSR), will have effect from 24 March 2019 for a period that is uncertain at the time of writing. It applies to ports of the Trans-European Network ('core' and 'comprehensive'). Ministers have consistently indicated that they do not consider the PSR appropriate to the UK's uniquely decentralized ports sector, and expect to ask Parliament to dis-apply it at an early opportunity once we have left the EU. The box below sets out the areas that it covers. The text of the regulation can be found at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0352>
- 2.52 This is intended as a general guide — the Department cannot provide legal advice on interpretation.

Port Services Regulation

The PSR deals with: provision of port services; employees' rights; transparency of public funding; port charges; training; consultation; and enforcement (handling of complaints, and appeal mechanisms):

- The services within scope of Chapter II on service-provision are: bunkering; mooring; waste-collection and towage. Before the Regulation comes into effect, ports should review their arrangements for procuring these services to the extent that they are involved in this process. Where services are provided direct to the ship operator by a third party, and where there is full open access to offer these services subject to minimum requirements which already comply with the requirements in arts. 4-5, there will be no change.
- On employees' rights, the provisions of TUPE (Transfer of Undertakings — Protection of Employment) will continue to apply. The Government does not intend to alter those existing rights.
- As to charging, the requirements to post standard charges, which already apply under the Harbours Act 1964, will effectively continue, while ports will continue to be allowed to negotiate confidential discounts with users. Ports should review their processes for setting, consulting on and notifying changes in their charges to ensure compatibility for so long as the PSR may apply.
- On financial transparency, public funding of UK ports is very limited and where it does occur, is usually already transparent. However, those ports receiving such funding should ensure compliance with art. 11.
- The Department expects that most if not all UK ports already comply with the requirements of art. 14 on training. They should, of course, continue to do so.
- Art. 15 requires ports to consult port users and "other relevant stakeholders" on a range of matters, and also requires port service providers to provide information about the nature and level of charges. There is flexibility over the mechanisms and frequency of such consultation and ports should decide on these according to local circumstances and the convenience of consultees.
- Decisions will be taken in due course on mechanisms for handling of complaints (arts. 16-17), appeals (18) and penalties (19).
- Article. 1(6) provides that the Government could apply the PSR to other ports as well, but it currently has no intention of doing so.

Port Security

2.53 The aim of maritime security is to detect and deter security threats and take preventative measures against security incidents affecting ships or port facilities and to protect from harm passengers, crews, ships and their cargoes, port facilities and the people who work and live in port areas. Effective governance also helps to reduce the risk of corruption in ports.

2.54 Following the terrorist attacks in New York on 11 September 2001 the International Maritime Organisation adopted a new international instrument called the International Ship and Port Facility Security Code (the ISPS Code) which contains a

comprehensive set of security requirements to be complied with. Regulation (EC) 725/2004 on enhancing ship and port security mandated Part A of the ISPS Code and certain recommendation in Part B in EU law. The regulation is directly applicable in UK law but certain implementation measures were required to be put in place through 2 statutory instruments.

- 2.55 In 2005 the European Commission issued Directive 2005/65/EC on enhancing port security which applied security measures to the wider port area beyond the immediate port facilities¹². Thirty-three UK ports were considered in scope of the Directive. At each a Port Security Authority (PSA) has been set up, a Port Security Officer appointed and a PSA boundary delineated which encompasses the individual port facilities within it. Port authority personnel are usually members of the PSA along with Port Facility Security Officers. The PSA must carry out a security risk assessment and compile and maintain a port security plan based on it.
- 2.56 DfT is responsible for port security policy and compliance and can be contacted about a security matter by e-mailing: MARITIMESecurity@dft.gsi.gov.uk

Cyber security

- 2.57 The increasing use of digital technologies in the management of ports enables new ways of working, increased efficiency and the ability to compete in the global market. However, such technologies expose ports to cyber security vulnerabilities and boards need to be aware of the security risks.
- 2.58 The Department published guidance in June 2016 “Code of Practice: Cyber Security for Ports and Port Systems”¹³ setting out guidance for port security (and other port personnel (e.g. financial/operational staff) on cyber security risk assessment, mitigation measures, handling security breaches and incidents and highlighting the key national and international standards and regulations to be followed.

¹² <https://www.gov.uk/government/publications/brief-overview-of-the-uk-national-maritime-security-programme/brief-overview-of-the-uk-national-maritime-security-programme>

¹³ The Department published Guidance in June 2016:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546160/cyber-security-for-ports-and-port-systems-code-of-practice.pdf

3. Guidance for Trust Ports (Part B)

Introduction

- 3.1 The guidance in Part A of this document applies to all SHAs, including trust ports. This section provides more detailed guidance for trust ports, in particular on aspects of good governance including stakeholder engagement. This arises because of the particular nature of trust ports as independent statutory bodies.
- 3.2 Trust ports should therefore read this part of the good governance guidance in conjunction with the guidance to all SHAs in Part A. The Department recognises that smaller trust ports may not necessarily be able to comply with all aspects of it. Where a trust port decides not to comply, it should clearly and publicly explain the reasons for this, for example in its annual report.
- 3.3 Trust ports are independent statutory bodies, with responsibility to manage, maintain and improve a harbour. Trust ports operate on a commercial basis generally without ongoing public sector financial support but have no shareholders. Surpluses are re-invested in the harbour for the benefit of stakeholders, including harbour users, local communities and government (see discussion below). Trust ports are accountable to those stakeholders.
- 3.4 Previous governance guidance issued by DfT described a trust port as ‘a valuable asset presently safeguarded by the existing board whose duty it is to hand it on in the same or better condition to succeeding generations. This remains the ultimate responsibility of the board and future generations remain the ultimate stakeholder.’ This definition remains very valid.

Section 1 - Corporate Governance

Appointments

Principles

- As adapted from the Governance Code on Public Appointments, December 2016¹⁴, the key principles for trust port board appointments are:
- Merit: all appointments should be made on the basis of merit, with candidates drawn from a strong and diverse field whose skills, experience and qualities meet the needs of the board;
- Openness: the process for appointment should be open and transparent;

¹⁴ <https://www.gov.uk/government/publications/governance-code-for-public-appointments>

- **Diversity:** appointments should reflect the diversity of society, and should be made taking account of the need to appoint a board which includes a balance of skills and backgrounds;
- **Fairness:** the selection process should be fair and impartial and each candidate should be assessed against the same criteria for the role in question.

Supporting discussion

- 3.5 Previous good governance guidance established that trust port board members should be appointed on the basis of merit and that board member should act independently in the best interests of the board, rather than represent the interests of particular stakeholders. This remains a key principle underpinning trust port board membership and appointments.
- 3.6 Trust port board members should be appointed in a way that is consistent with the key principles of public sector appointments and best practice from both the public and corporate sectors. However, if there is a conflict between this guidance and provisions relating to appointments in a trust port's own legislation, such as an HRO or a local act, then the legislation takes precedence.
- 3.7 The responsibility for board appointments rests with trust port boards, except for the largest five trust ports where the Secretary of State continues to make certain appointments. Chair appointments made by the Secretary of State must be done in accordance with the Governance Code on Public Appointments. In such cases the Department will work collaboratively with the port throughout the process. The Department will contact the port nine months before the appointment is due.
- 3.8 The aim is for trust ports boards to have the necessary mix of skills and experience to effectively and successfully carry out its role and functions. For some trust ports appointing a NED who specifically brings an understanding of how the business can work and engage in positive dialogue with stakeholders groups, including the surrounding community is important. Similarly, a public policy background and experience of working with local or national government may be desirable. An outline process for board appointments is set out in the box below. As noted above, trust ports should also follow any provisions relating to appointments in their HROs and local acts.

Selection process

The basic process for appointments outlined below should be used by trust ports to provide a simplified, consistent, open and accountable system for board appointments of Chairs and NEDs.

- All board vacancies should be filled against a job description, including the skills and experience needed for the position. This should be based on an audit of the skills and experience across the board and an assessment of those needed by the board over the coming years.
- The advert and application pack should clearly set out the skills, experiences and other characteristics required from candidates, as well as the criteria against which applications will be assessed.
- All vacancies should be advertised widely in a range of media, such as the internet, local and specialist press. Trust ports may also draw the attention of potential applicants to the vacancy.
- An assessment panel should be set up to run the competition. This should be led by the chair or deputy chair, and should also include an independent member. Another board member could also be on the panel, while DfT will also be on panels for Secretary of State appointments. The Chief Executive should not be on the panel in a formal role for a Chair or NED appointment, but can advise it.
- The assessment panel should agree how applications are to be assessed against the criteria for the post, and should sift all applications to identify a short list of candidates to interview based on that assessment as a basis for a decision.
- All unsuccessful candidates should remain confidential and their applications papers destroyed or returned to applicants.

- 3.9 As wide a field as possible should be trawled in order to obtain board members who meet the specific needs of the port.
- 3.10 Trust port boards should actively consider how they can identify and attract potential candidates to apply for board positions, particularly where the port is an area with relatively low population with a limited pool of potential applicants. This may need to be an ongoing activity rather than just when vacancies are publicised. One trust port's approach to increasing applicants for board postings is outlined below.
- 3.11 Candidates for a board position who declare a potential conflict of interest in their application, or where the selection panel considers there may be one, should not be automatically debarred from consideration. However, if they are short listed, appropriate questions would need to be asked to determine whether there was a genuine conflict of interest and whether it would hamper an individual's ability to meet the requirements of board membership.

Increasing applications for board roles

A trust port experienced a shortage of good quality applicants for board vacancies. The posts were widely advertised in the local press but these met with a poor response which constrained the choice of appointee and meant that the necessary skills that had been identified by the Board were not always present.

The Board perceived that part of the problem was that it had maintained a low profile in the community and was dis-inclined to draw attention to its work. The previous appointment system had created the impression that the Board was a closed organisation with an agenda that did not appear to take into account the aspirations of the community.

A decision was taken to proactively release news via the press to assist with raising the profile of the harbour. Additionally the Board sponsored a high profile annual event as a method of achieving stakeholder dividend that was valued by the wider community and also significantly multiplied its investment in terms of economic benefit.

In subsequent recruitment exercises, the number and suitability of applicants began to improve. This improved the performance of the Board which in turn improved its profile and made it more attractive to be connected with.

- 3.12 While chairs may be appointed from existing board members, the case for holding a competition for the appointment of a new chair should always be considered. As part of this, the board should assess the particular skills and experience a chair will require over the coming years and whether these exist within any individual currently on the board who might be suitable for appointment. Even where this is the case, there may be arguments to hold a competition in order to test a wider pool of candidates. Appointment of a new chair from existing NEDs on the board remains an option. All chair appointments made by the Secretary of State should be on the basis of a competition, except of course where a re-appointment is being considered.

Term of appointment

- 3.13 Chairs should be appointed for a 3 year term, including if they are part way through a term as an existing member of the board. NEDs should also generally be appointed for a 3 year term. This ensures consistency and stability of a board and the retention of corporate memory, but also allows the board to be refreshed periodically with new individuals.
- 3.14 Subject to continuing eligibility and good performance, Chairs and NEDs can be re-appointed for a second 3 year term. Re-appointment for a third term should only be considered in exceptional circumstances.
- 3.15 Reappointments should not be automatic. Board members can only be re-appointed if the chair and board are satisfied that the member has performed at least satisfactorily and that a new appointee would be unlikely to offer greater value. In highly exceptional circumstances where a board member is being considered for a third term, boards should carefully assess the option of a competition to ensure that the incumbent remains the best choice.

- 3.16 The maximum period any individual should serve on a board in any capacity is 12 years. This would only be relevant where an existing NED has been appointed Chair.
- 3.17 DfT recognise the difficulties that some trust ports may have in attracting candidates for board positions, including in circumstances where board positions are not remunerated. The text box above on increasing application for board posts may be of some use in increasing the number of applicants, as well as use of the flexibility allowed for in this guidance.

Board membership

Principles

All board members should adhere to the guiding principles below in the conduct of trust port business. These principles have been adapted from the seven principles of public life, first set out by Lord Nolan:

- Independence - A trust port is an independent statutory body. All board members are appointed to act independently in the best interests of the trust port and all of its stakeholders both present and future.
- Accountability - Board members are accountable for their decisions and actions to all stakeholders of the trust port, and should submit themselves to whatever scrutiny is appropriate to their office.
- Openness - Board members should be as open as possible with all stakeholders about the decisions and actions they take. They should publicise the reasons for their decisions and restrict information only to the extent that matters of commercial or personal (personnel) confidentiality are involved.
- Selflessness - Board members should take decisions solely in terms of the interest of stakeholders of the trust port. They should not do so in order to gain financial or other material benefits for themselves, their family and friends or any group or organisation with whom they are associated.
- Integrity - Board members should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- Objectivity - In carrying out trust port business, including making appointments, awarding contracts, or recommending individuals for rewards and benefits, board members should make choices on merit.
- Honesty - Board members have a duty to declare any private interests which might influence their trust port duties, and to take steps to resolve any conflict arising, in a way that protects the interests of stakeholders of the trust port.
- Leadership - Board members should promote and support these principles (and ensure that they are adopted by fellow board members) by leadership and through example.

Supporting discussion

- 3.18 Boards have a duty to ensure that new appointees are provided with clear information on all aspects of their duties. As a minimum, all board members need to be provided with a copy of this guidance and the PMSC on appointment and be required to sign a legal declaration on joining, usually contained in HROs or local legislation.

- 3.19 It is also essential that board members receive appropriate training to enable them to undertake their role effectively. As a minimum, all new board members should aim to attend initial training within six months of appointment.
- 3.20 Training can take the form of individual or tailored activities at the port or at seminar style sessions such as, although not exclusive to, the trust board briefing sessions jointly organised by the British Ports Association (BPA) and DfT.

Fit and proper persons

- 3.21 Trust port board members should be 'fit and proper' persons. Suitability can be determined with regard to an individual's competence, probity, soundness of judgement, personal reputation and character, and diligence. Suitability is for the board to consider before an appointment is made, and for the chair and other board members to consider on a continuing basis including if reappointment is recommended.
- 3.22 As a general rule, any board member who has previously been dismissed from any trust port board should not be considered for appointment. Neither should any applicant who is bankrupt or has a relevant criminal conviction remaining unspent. An appointee should not be a current or recent member of another trust, company or local authority port board, where the other board might be viewed as a direct or indirect competitor of the appointing body.
- 3.23 All candidates short listed for board appointment should be asked to complete a screening questionnaire disclosing their interests and answering other questions about their fitness to serve.
- 3.24 All trust ports need to maintain a register of interests for its board members and chairs should be prepared to answer questions from stakeholders about its contents. It is the responsibility of the chair, chief executive and individual members to ensure that it is kept up to date. In addition, all trust ports should, through the chair and chief executive provide board members with guidance and help them to identify and register what may constitute a conflict of interest and what action would be appropriate to resolve it. Registers of interest should include
- pecuniary and non-pecuniary interests of members, their close family and associates which relate closely to the port's activities; and
 - hospitality or gifts, that could not be considered insignificant, accepted by the board member or close family associated with the port and its operations.

Conflict of interest

- 3.25 In the course of board business it is possible that a member's declared interest may present a conflict of interest with the matter under discussion. In these circumstances, board members must declare such conflicts either before or at the board meeting in advance of any discussion of the item concerned, and should offer to withdraw. The chair, in consultation with the board, should decide whether or not a conflict does arise, and if it does should ask the member to withdraw from the meeting for the duration of the item, or invite them to stay to contribute on a factual basis only. The fact that a member has declared an interest and the way in which this is handled should be recorded in the minutes.
- 3.26 If it is subsequently discovered that a participating member failed to declare a relevant interest in the course of conducting board business, the chair should consult the chief executive to decide what action is merited in the interests of accountability and probity. Such action should, at the very least, result in a formal censure by the

board. Further lapses (depending on seriousness) should be considered as grounds for termination.

Personal Liability

- 3.27 Board members have a duty of care to the trust port they are appointed to. The constitutions of trust ports should include provisions that board members are not personally liable for lawfully exercising their powers as a member. In addition a board member's property shall not be subject to legal process because of a contract entered into as a member or because of any lawful act in exercise of members' powers.
- 3.28 Incorporating section 60 of the Commissioners Clauses Act 1847 is a longstanding approach to providing this protection. However, boards may wish to consider ensuring that they have appropriate modern wording for the indemnity provisions in their local legislation.

Succession Planning

- 3.29 The Chair should ensure that the board has an established approach to board and senior management succession which is kept updated in the light of changing circumstances. This should avoid situations where the chair and chief executive both change within a comparatively short period and where a number of NED appointments end at broadly the same time.
- 3.30 The chairman should plan ahead to ensure that the balance of skills on the board remains fit for purpose in light of the ports current and future plans and that essential skills are effectively refreshed and replaced through the appointment process. The local legislation of some trust ports may allow a limited number of individuals to be 'co-opted' to the board for a specified limited time. This can be a further way to supplement a board's skills and experience on a temporary basis.
- 3.31 There should always be at least one member of the board capable of stepping into the chair's shoes at short notice.

Section 2 - Stakeholder engagement

Principles

- Trust ports are independent statutory bodies run on a commercial basis by independent boards for the benefit of their stakeholders. Trust ports are accountable to those stakeholders. The interests of the wide community of stakeholders should at all times be the guide by which the board of a trust port sets the strategy and direction of the port.
- Trust port boards should reinvest surpluses to support the continuing and long term success of the port for the benefit of its stakeholders.
- Trust port boards should consult stakeholders on significant decisions, where appropriate. Trust ports can and should consult and engage with stakeholders in a variety of ways including through an open Annual Meeting.

Supporting discussion

- 3.32 Trust ports need to take into account the views of a wide range of stakeholders when considering and establishing their medium to long term objectives. Key to this is identifying and engaging effectively with stakeholders, as discussed below. In

addition to helping frame strategic objectives, this is also an essential way in which trust ports are accountable to their stakeholders.



Stakeholder Benefit

3.33 Trust ports are expected to generate a commercial return on their operations. After making allowance for strategic investments and contingencies, trust port boards should reinvest surpluses to support the continuing and long term success of a port for the benefit of stakeholders. In addition to additional investment on a commercial basis, there are a number of ways in which a trust port board can do this including:

- investing in infrastructure, with a longer term view than might be expected on a purely commercial basis;
- investing in infrastructure or environmental improvements, to a higher standard or greater extent, bringing quantifiable benefits to stakeholders;
- undertaking activities that have a lower commercial return than a private sector port would undertake, but which delivers benefits for stakeholders, such as local communities;
- providing additional employee training where this helps develop the local skills base; and
- making charitable contributions or grants to community projects or organisations.

3.34 Priorities for delivery of stakeholder benefit should be established by the board following consultation with stakeholders and recorded, perhaps as part of an overall investment strategy. Stakeholder benefits should have a clear rationale and be consistent with the commercial considerations discussed above. Their delivery should not be directed towards practices which may distort the market on which a port operates. Investment in the harbour should be fair and equitable between stakeholders.

Engagement

3.35 Stakeholder engagement and consultation is of an even higher priority than for other SHAs. It is a key way in which trust port boards can demonstrate and ensure

accountability. For many trust ports, interaction with the local community is likely to be particularly important.

- 3.36 As a starting point, trust port boards should consult stakeholders on significant decisions where appropriate. DfT does not envision that all decisions should be consulted on as there are likely to be occasions where this will not be practicable, for example due to timing considerations, or appropriate, for example due to commercial reasons or as it concerns staff-related issues. Boards are responsible for taking decisions on all issues that come before it, having considered and weighed the views and advice received including from stakeholders. The board is best place to judge the overall impact of its decisions.
- 3.37 There are a number of ways in which trust ports can consult stakeholders, which many ports already utilise (see Part A). In addition, trust ports should have an annual open meeting that all stakeholders can attend with the opportunity to put questions to the chair, other board members and senior executives.
- 3.38 There are a wide range of other ways in which trust ports can engage with stakeholders. For example, one trust port has established a stakeholder committee with major port users and local authority interests as a formal board committee to provide a stakeholder views directly to the board.
- 3.39 More broadly, the Chair, board members and senior executives of a trust port should engage with the local community and other stakeholders and be seen as being accessible to stakeholders.

Section 3 - Commercial accountability, compliance and strategic reviews

Principles

- Trust ports are commercial businesses and should be operated efficiently, effectively and prudently to generate a commercially acceptable rate of return.
- Performance indicators are a useful tool for assessing a trust ports efficiency and performance over time. They are also useful for stakeholders as part of holding trust ports to account.
- Trust port boards should review their governance arrangements to check that they remain in line with the best practice and standards in this guidance. Where necessary, revised arrangements should be put in place.
- Trust ports should have a system to consider complaints from stakeholders about governance issues as well as other matters arising from the port's activities.
- Trust ports with an annual turnover of at least £10m (2017 prices) should periodically conduct a strategic review to check that the trust port model remains the best one to deliver its strategic vision and objectives, including investment requirements. These reviews should also consider alternative options where necessary.

Commercial accountability

- 3.40 Trust ports are commercial businesses and so must aim to generate a financial surplus. Trust ports should establish a target level of return for existing activities as well as new investments, including an appropriate element for contingency and risks. When pursuing a target for returns, trust ports should set its harbour dues and other charges and assess its investments at commercial and competitive rates, neither exploiting its status as a trust port to undercut competitors nor abusing a dominant position in a market. Trust port boards should carry out their functions and tasks in the interest of all stakeholders in a transparent and accountable way.
- 3.41 Trust port boards should use performance indicators to help identify their levels of efficiency and performance and how these change over time. This is an important way in which a trust port's stakeholders can measure the performance of a port as part of holding it accountable. A number of performance indicators are available, relating to financial performance, operational performance, safety and the wider impact of a port. Trust port boards are best placed to determine which performance indicators are appropriate for their organisation given the nature of its operations. These could include:
- Profitability - such as Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA)
 - return on capital
 - labour productivity
 - freight handled
 - vessel movements
 - safety performance
 - environmental measures
 - wider economic contribution to Gross Value Added or Net Value Added
- 3.42 .Assessment of performance indicators should be included in a port's annual report, potentially also with targets for future years.

Compliance

- 3.43 Trust port boards should review their governance arrangements to check that they remain in line with the best practice and standards in this guidance. Where necessary, any revised arrangements should be put in place promptly.
- 3.44 While trust ports should make every effort to comply with the guidance in this document, DfT acknowledges that not all trust ports will be able to do so fully. The size and nature of a trust port's operation may mean that elements of the guidance are not relevant or that compliance would be excessively burdensome.
- 3.45 Trust ports should set out in their annual reports where they have not complied with the guidance and the reasons why. Where there are different options for compliance presented in this guidance, trust ports should explain why they have taken the choice they have. Stakeholders can use this information to test with the port the rationale behind its approach to governance.

Complaints

- 3.46 Trust ports should have a system to consider complaints from stakeholders about governance issues or other matters arising from the port's activities. Trust ports

should aim to reply to complaints fully and in writing within a reasonable timescale. Responses should set out whether the trust port considers the complaint to be justified and any remedial action to be taken.

- 3.47 If not satisfied with the response, a complainant can draw it to the attention of DfT. DfT will then consider it and decide whether to take the matter up with the port itself. This is likely to occur in what may appear to be particularly significant issues in relation to governance or where the trust port's complaint handling approach has not been adequate. Where DfT decides not to follow the complaint up with a trust port it will write to the complainant setting out its reasons why.
- 3.48 DfT does not have a role in reviewing the commercial decisions or activities of a trust port or in intervening in essentially localised disputes. Its interest is in ensuring that a trust board is governed well and does not take decisions in an arbitrary or unaccountable manner. The Department itself may decide to consider allegations of poor governance at trust ports that it becomes aware of.

Strategic reviews

- 3.49 One of the recommendations of DfT's Trust Port Study published in May 2016 is that 'Trust ports should periodically review their strategic vision and objectives and consider if the trust port model is the best way of achieving them'.
- 3.50 These reviews should also consider a trust port's investment requirements to meet its objectives and its ability to access the necessary funding for these requirements. The review could include an assessment of alternatives that would allow a trust port to meet its vision and objectives if its current status or structure may not allow this. This could include options while remaining a trust port as well as options involving a change of status.
- 3.51 Trust ports with a turnover of at least £10m in 2017 should carry out such a review every 5 years or so. To be most beneficial, reviews could involve external input to ensure that strategic objectives are clearly identified and that a full range of options have been identified and assessed in a rigorous way. The conclusions of these reviews should be discussed with DfT.
- 3.52 The Department encourages trust ports to analyse their corporate structure and keep it under review, with a view to identifying opportunities to enhance efficiency and get value from their assets. Some Trust Ports may wish to carry out reviews on a more frequent basis, as part of the development of strategic business plans.
- 3.53 Trust ports with a turnover of below £10m may also want to carry out such reviews. The level of analysis and consideration of options would reflect the scale of the port and the challenges it may face in meeting strategic objectives and investment requirements.

4. Guidance for Local Authority Owned Ports (Part C)

Introduction

- 4.1 The guidance in Part A of this document applies to all SHAs, including those owned by local authorities (LAs). This part provides more detailed guidance for LA owned ports in particular on aspects of governance, Harbour Management Committees and a range of other issues including financial matters and business planning. This reflects the SHA's position as part of a wider public sector organisation, i.e. the relevant LA.
- 4.2 LA owned ports should therefore read this part of the good governance guidance in conjunction with the guidance to all SHAs in Part A. LA owned ports should seek to act in accordance with guidance in that part where applicable.

Section 1 - Corporate Governance

Principles

- LA owned ports should be governed and operated in the interests of stakeholders including the local community.
- Establishing a Harbour Management Committee to govern a harbour is one way in which LA's can incorporate good governance principles.

Supporting discussion

- 4.3 In general, LA owned ports are operated for the benefit of stakeholders including the local community and can be an important local asset. In that sense they are very similar to SHAs in other port ownership models, although importantly LA owned ports also operate as part of a wider public sector organisation with a wide range of other functions.
- 4.4 LA owned ports also operate within the governance and decision making structure of the overall decision making structure of the LA. The choice of decision making system adopted will affect the governance arrangements for an LA owned port. Generally, an LA port is unlikely to be governed by a board in the sense that privately owned SHAs or trust ports maybe. Governance of LA owned ports may instead be the responsibility of a Council Committee or a Cabinet member, who may also be responsible for a number of other functions in the LA. LA owned harbours are part of the LA and so ultimately accountable to elected Council members and the local electorate.

- 4.5 However, a number of the broad principles of corporate governance set out in previous Parts of this guidance can be relevant to LA owned ports, particularly in relation to stakeholder engagement and provision of information.

Harbour Management Committees

- 4.6 Some LAs have established Harbour Management Committees (HMCs) as a means of governing their harbours. These have some of the features of a trust port board or board of a private SHA and are a good example of how corporate governance best practice principles can be applied in the context of local authority harbours.
- 4.7 The establishment of a HMC (which would be constituted as a committee within the current LA system) can bring openness and additional accountability to port decisions, along with more expertise and experience (as a skills audit will be carried out prior to board members being decided upon).
- 4.8 LAs may wish to consider formally establishing HMCs by legislative routes. The BPA has produced guidance for LAs that have or are planning to put in place HMCs. Key points are set out in the box below.



Harbour Management Committees

The formation and membership of the committee is critical. It should be strategic and aware of the commercial and legal framework within which ports operate.

Based on particular experiences the Committee should ideally comprise:

- approximately 50% LA elected members of a constituent authority. These do not all have to be LA councillors, but can be co-opted representatives who are appointed by the LA or provide specific skills in support of port management;
- the port chief executive/harbour master should have access to the HMC in an advisory role, but as an officer of the Council they cannot serve on the committee or have voting rights;
- external appointees who are stakeholder representatives or individuals with valuable skills and experiences;
- a Chair appointed on merit, skills and suitability;
- external members should be appointed by public advertisement using the guidance applicable to public appointments, in line with the advice given above.

The HMC Chair should ideally be an elected representative of the LA as this will automatically maintain reporting lines and accountability to the Council. Should the LA favour the appointment of an independent Chair, it is important that reporting lines and voting arrangements are clear and in line with LA corporate governance practice.

Before recruiting, local authorities should undertake a skills audit to assess the balance of skills required to effectively govern the port and deliver against the business plan. These skills should be considered for all committee members.

In order for the HMC to operate effectively a formal memorandum of understanding could be established between the harbour committee and the local authority. The memorandum of understanding could set out the recommended ground rules for a framework between the port and its authority.

Section 2 - Stakeholder engagement

Principles

- LA owned ports should engage fully and effectively with a range of relevant stakeholders.

Supporting discussion

- 4.9 LA owned SHAs should engage with a wide range of stakeholders as for privately owned and trust ports set out in parts A and B. This will facilitate the SHA setting out its position on its current performance and future proposals, as well as allowing it to hear and take account of stakeholder views in formulating its future plans.

Section 3 - Provision of information

Principles

- LA owned harbours should submit annual accounts to DfT in the same way other SHAs do.
- LAs should consider preparing accounts on a commercial accounting basis for its ports to help stakeholders understand its performance.

Supporting discussion

- 4.10 Local Authority owned SHAs should generally operate in an open, transparent and accountable way, making a range of information available to stakeholders about their organisation and activities, subject to commercial and data confidentiality considerations. Annual reports and regularly updated websites are likely to be important ways of doing this.
- 4.11 As part of this, LAs must comply with the requirements of the Transparency Code 2015¹⁵. Information on expenditure by SHAs and other matters would be included in information made available under the Code.
- 4.12 In addition, as LAs are subject to the Freedom of Information Act and the Environmental Information Regulations, SHAs owned by LAs are also subject to that legislation.
- 4.13 Under the Harbours Act, LA owned SHAs are required¹⁶ to submit accounts and reports to DfT in the format required for businesses submitting accounts to Companies House, in the same way that other SHAs are required to. As part of this, they should be audited by qualified auditors and made available for public inspection. Posting accounts and reports on websites is also likely to be an important way of providing transparency about their activities. Rights for local electors to make objections to LA accounts at audit are included in the Local Audit and Accountability Act 2014¹⁷. The rights of objection to the external auditor for local electors are set out in 27(1) of this Act. These rights enable an objection to be made if they consider that there is a matter about which the auditor could make a public interest report or apply for a declaration that expenditure is unlawful.
- 4.14 There may be benefits for LAs in their accounts being shadowed by accounts which show the commercial standing of the port as a separate business. Such shadow accounts would be a useful tool for business planning. We believe that local authorities should produce commercial-style accounts for their ports, as these would be helpful in explaining the financial position of ports to board members without much LA accountancy training.
- 4.15 SHAs that are part of LAs should be aware of the Government's commitment to open and accountable local government. Amongst other things, this requires that meetings of a council's executive, including meetings of its committees and sub-committees must be open to the public except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public¹⁸. This could include such meetings relating to an SHA.

¹⁵ <https://www.gov.uk/government/publications/local-government-transparency-code-2015>

¹⁶ Under section 42 of the Harbours Act 1964

¹⁷ http://www.legislation.gov.uk/ukpga/2014/2/pdfs/ukpga_20140002_en.pdf (section 27)

¹⁸ <https://www.gov.uk/government/publications/open-and-accountable-local-government-plain-english-guide> (pages 10 and 18)

- 4.16 LA owned ports should also follow best practice in Parts 2 and 3 above of this Guidance in terms of making information about their port widely available to stakeholders, such as through annual reports and websites.

Section 4 - Other issues

Principles

- LAs should have a good understanding of the duties and powers set out in a harbour's local legislation, as well as the common law and fiduciary duties of SHAs, and ensure these duties and powers are applied in the governance and management of an SHA.
- Harbour dues and other charges should be set in a way that allows sufficient revenue for an SHA to meet its responsibilities for the safe and efficient operation of the harbour.
- LA owned ports should consider producing a business plan that looks at the future prospects of the port and how it will meet the requirements of the stakeholders, who should be fully involved in its development.

Legal basis

- 4.17 SHA's owned by LAs will have their own local legislation setting out their statutory powers and duties in respect of a harbour, as other SHAs do. These need to be taken into account by an LA in governing and operating a port, alongside powers and duties in local government legislation. It is important therefore that LAs have a clear understanding of the specific powers and duties in its SHA's legislation as well as the common law and fiduciary duties of an SHA outlined in Part A of this guidance.

Financial issues

- 4.18 The local legislation of SHAs owned by LAs often contains provisions in relation to the use of income generated by the SHA. In some cases, this can require income from the harbour to be used for purposes related to the harbour. This means that LAs can be legally precluded from transferring income generated by the harbour for use on other services provided by the LA. LAs should also ensure matters of marine and landside safety are sufficiently financed.
- 4.19 Linked to the above, some SHAs have assured accounts, whereby surplus funds are protected from being transferred to other parts of the local authority not connected with the port. These can be beneficial in allowing the port the ability to plan for the long-term, to have funds available for maintenance and development, but also to be able to cope with unexpected events where funds are required at short notice. Potential further benefits include not being dependent on the council, or not needing to compete with other council services for funds.

Commercial accountability

- 4.20 Where LAs provide a substantial or continuing subsidy to a SHA, or any subsidiary engaged in port related operations, the authority should seek to establish and implement a strategy to put port operations on a commercial basis wherever this is possible.
- 4.21 LA SHAs should set harbour dues and other charges that allows sufficient revenue to meet its statutory responsibilities for the safe and efficient operation of the harbour, as well as other statutory obligations including in relation to conservancy.

Strategy and Business Planning

- 4.22 The approach taken in the LA ports sector to strategy and business planning is closely linked with decision making processes within a LA. Sound business planning arrangements may provide a framework within which a LA owned port is able to respond flexibly to changes in the commercial environment.
- 4.23 There would be benefits to local authorities in developing clear plans for what they want to achieve from their operation of a port, such as provision of leisure and tourist facilities or as a commercial harbour, depending on the specific circumstances of the harbour.
- 4.24 LA owned ports should consider producing a business plan that looks at the future prospects of the port and how it will meet the requirements of the stakeholders, who should be fully involved in its development.

Department for Transport, March 2018

Glossary and Links

Glossary

BPA	British Ports Association
DETR	Department for Environment, Transport and the Regions
DfT	Department of Transport
EBITDA	Earnings before Interest, Taxes, Depreciation and Amortization
EU	European Union
FOI	Freedom of Information Act 2001
FRC	Financial Reporting Council
GAAP	Generally Accepted Accounting Principles
HMC	Harbour Management Committee
HRO	Harbour Revision Order
HSE	Health and Safety Executive
HSW	Health and Safety at Work Act 1974
ISPS	International Ship and Port Facility Security Code
LA	Local Authority
MCA	Maritime and Coastguard Agency
MMO	Marine Management Organisation
MSMS	Maritime Safety Management System
MTP	Modernising Trust Ports
MTP2	Modernising Trust Ports, 2nd Edition
NEDs	Non-Executive Directors
PMSC	Port Marine Safety Code
PSA	Port Security Authority
PSR	Port Services Regulation 2017/352
PSS	Port Skills and Safety
SHA	Statutory Harbour Authority
UKCGC	UK Corporate Governance Code

Links

Brief Overview of the UK National Maritime Security Programme:

<https://www.gov.uk/government/publications/brief-overview-of-the-uk-national-maritime-security-programme/brief-overview-of-the-uk-national-maritime-security-programme>

Cyber Security for Ports and Ports Systems, Code of Practice:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546160/cyber-security-for-ports-and-port-systems-code-of-practice.pdf

Financial Reporting Council 'Guidance on the Strategic Report':

<https://frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Guidance-on-the-Strategic-Report.pdf>

Governance Code on Public Appointments:

<https://www.gov.uk/government/publications/governance-code-for-public-appointments>

Local Audit and Accountability Act 2014:

http://www.legislation.gov.uk/ukpga/2014/2/pdfs/ukpga_20140002_en.pdf

Local Government Transparency Code:

<https://www.gov.uk/government/publications/local-government-transparency-code-2015>

Modernising Trust Ports, 2nd Edition:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9222/mtp-good-guide-to-governance.pdf

Open and Accountable Local Government Plain English Guide:

<https://www.gov.uk/government/publications/open-and-accountable-local-government-plain-english-guide>

Opportunities for Trust Ports in Local Authority Ownership:

<http://webarchive.nationalarchives.gov.uk/http://www.dft.gov.uk/pgr/shippingports/ports/opportunities/opportunitiesforportsinlocal4960.pdf>

Port Marine Safety Code:

www.gov.uk/government/publications/port-marine-safety-code

Port Services Regulation

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0352>

Ports Skills and Safety:

<http://www.portskillsandsafety.co.uk/>

UK Corporate Government Code:

<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>