



Ports: privatisation of trust ports

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This note sets out the legislative procedure put in place by the previous Conservative Government to allow for the privatisation of trust ports; how this was implemented in the mid-1990s; and the possibility of more trust ports being privatised in the future. It also gives information about the proposed privatisation of the Port of Dover, which has been the subject of much controversy and was finally rejected by the Government in December 2012.

Information on other ports-related issues, including security, the role of harbour authorities for trust ports and policy generally since 1997 can be found on the [Shipping Topical Page](#) on the Parliament website.

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1 What are trust ports?

Ports in the UK are owned and operated by broadly three kinds of authority: private ports, trust ports and municipal authority ports.

Trust ports are set up by an Act of Parliament and controlled and administered by a self-governing independent statutory body, often known as Conservancy Boards or Harbour Commissions. Many trust ports are small, and at present there are approximately 20 trust ports with an annual turnover in excess of £1 million. In 2001, the Office for National Statistics (ONS) reclassified the seven largest trust ports as Public Corporations.¹ The effect was that these ports' new borrowings have had to be accounted for within the Department's budget. These seven ports have since applied to the [Marine Management Organisation \(MMO\)](#) for Harbour Revision Orders (HROs) that would disapply certain controls that the Department has over them with the result that they would cease to be classified as Public Corporations. Port of London Authority's HRO has been granted, one has been withdrawn and the remaining five are outstanding.²

In a similar way to trust ports, a local authority may act as a landlord with private terminal operators acting as tenants. They are usually small and commercially insignificant, though there are exceptions such as Sullom Voe and Portsmouth.

The Department for Transport describes trust ports as follows:

There are over a hundred trust ports in the UK ... of which only a small number could be classed as being of national significance. Most trust ports were set up, and remain, specifically to serve regional and local interests. They represent a broad cross section of undertakings. Trust ports are independent statutory bodies, each governed by its own, unique, statutes. There are no shareholders or owners. Any surplus is ploughed back into the port for the benefit of the stakeholders of the trust port.

The use of the term 'trust' in this document needs to be clear. Trust ports are not trusts in the legal sense, nor are trust port boards trustees in that sense. But we have not found a sensible replacement for the term 'trust port', the concept of which is well understood in the sector.³

In May 2007 the Department for Transport published a report by PricewaterhouseCoopers into the trust port sector;⁴ this was followed in July 2007 by the interim report of the ports review. The interim report stated:

In broad terms, the PwC report concludes that the trust model retains a legitimate role within a mixed ports sector but that, in the absence of shareholders, trust ports should do more to identify, and account for, the use of their overall returns — what the report terms their 'stakeholder dividend'.

The report also concludes that, while the largest trust ports operate on a sound commercial basis, in some cases their financial performance falls short of that of their private sector comparators, and it recommends measures to ensure that trusts, playing a crucial role in regional or national infrastructure, are able to fulfil their potential.

¹ Dover, Harwich, Milford Haven, Poole, Shoreham, London and Tyne

² DfT, [HTrust port advice: final report](#), 18 May 2007, p1; and: [HHC Deb 26 January 2011, c265W](#)

³ *ibid.*, p2; back in the early 1990s, the then Secretary of State said of trust ports: "They are not owned by anybody except the state, nor are they accountable to anybody. Their status is a strange limbo which makes them neither properly public nor properly private, answerable neither to the shareholders nor to the Government" (see: [HHC Deb 28 January 1991, c671H](#))

⁴ DfT, [HTrust port advice: final report](#), 18 May 2007

Levels of accountability among trust ports are also found generally to be good, but with room for improvement, and the resultant recommendations point towards enhanced reporting and updated governance arrangements. PwC explored various voluntary options for structural change including the creation of an operating subsidiary below the level of the trust board, which could provide a basis for inviting private sector participation.

The Department accepts the broad thrust of these conclusions, including in particular the stakeholder dividend concept, which we consider to be useful and appropriate. We are considering how best to promote its wider application, and will first take two actions this Autumn:

- **Refreshed guidance to be published** We intend, later this year, to produce revised guidance for trust ports, incorporating the stakeholder dividend concept. This will reflect our considered response to PwC's detailed recommendations for improving efficiency, transparency and delivery of community benefits.
- **Status** Alongside this, we will resume work, through Harbour Revision Orders, to address the outstanding question of the accounting status of the larger English and Welsh trust ports.⁵

2 Privatisation

2.1 Background

From 1948 to the early 1980s about a third of UK harbours, including many of the major ports were managed by nationalised bodies. Initially these were controlled by the British Transport Commission⁶ and, after its abolition in 1962, the assets were transferred to the British Transport Docks Board (BTDB), the British Waterways Board and the British Railways Board. In 1982 the BTDB was reconstituted under the name Associated British Ports (ABP).⁷ This was formally privatised in February 1983⁸ when 49 per cent of the share capital was sold to the public. The government sold its residual holding in 1984.⁹

However, the Conservative Government's privatisation programme was slow to reach municipal and trust ports. In March 1988, in a speech to the British Ports Federation, the then Secretary of State for Transport, Paul Channon, expressed his disappointment at the lack of interest shown by local authorities and trust ports to being privatised and stated that the government regarded all ports not already constituted as companies as *prima facie* candidates for privatisation.¹⁰ In the House in May 1990 the then Minister for Aviation and Shipping, Patrick McLoughlin, reiterated the government's view as to the 'desirability' of trust ports being privatised:

Trust ports are slightly odd bodies. They are independent and not accountable to anyone. Their powers and sources of finance are limited, but they must compete with ports run by companies, such as Associated British Ports and Felixstowe, which have the flexibility and accountability that the trust ports lack. It has long been in the

⁵ DfT, *HPorts policy review – interim report*, 19 July 2007, paras 27-30

⁶ the BTC was established under the *Transport Act 1947* to provide "an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods", excluding transport by air; the BTC came into operation on 1 January 1948

⁷ as a privatised company HABPH now manages 21 ports in the UK

⁸ under Part II of the *HTransport Act 1981*

⁹ *HHC Deb 16 February 1983, c175W*

¹⁰ "Channon presses for privatisation of more ports", *Financial Times*, 10 March 1988

Government's mind that it would be desirable if at least the main commercial trust ports could be converted into companies. Changing the status of a trust port in that way needs primary legislation.

The Government have not been able to find room in their programme for appropriate legislation. It was for that reason that, about a year ago, my right hon. Friend the Member for Southend, West (Mr. Channon), when he was the Secretary of State for Transport, encouraged trust ports, which saw benefits in turning themselves into companies, to bring forward their own private Bills. It is still our intention to bring forward Government legislation on trust ports at the earliest convenient opportunity, but given the pressure on our legislative programme, private legislation is the only way in which any of those ports can quickly be converted into fully fledged private sector enterprises.¹¹

The main explanation for the lack of enthusiasm amongst trust ports for privatisation was the difficulty and the immense effort and expense required to secure the passage of a [Private Bill](#) through Parliament to set up a private legal entity so that the port could be sold. This process was time-consuming particularly in the case of ports because of their complex statutory structure and was usually met with considerable opposition.

As indicated by Mr McLoughlin, above, although it had been the intention to bring forward government legislation, Parliamentary time could not be found, so Ministers continued to advocate private legislation as the only way that trust ports could be converted into private sector enterprises. The Clyde and the Tees & Hartlepool port authorities both promoted Private Bills aimed at changing their status from that of statutory trust ports to that of limited companies with shareholders.¹² The pattern of these local privatisation measures was similar to that of the privatisation of BTDB under the *Transport Act 1981* in that the functions of the body managing the harbour were limited to the statutory functions of a harbour authority. The managing body then became a wholly-owned subsidiary of a company formed under the *Companies Act 1985* with a wide range of powers to engage in various activities. Thus, any diversification into non-harbour activities could be done via the holding company.

Contemporary estimates in 1989-1990 indicated that there were 111 trust ports, approximately one third of all UK ports. Of these 111, 23 were commercially viable, with turnovers in excess of £1 million.¹³ Of these, a further 14 had a turnover of more than £5 million: Blythe, Dover, Harwich Haven, Ipswich, London, Medway, Milford Haven, Poole, Tees & Hartlepool, Tyne; and, in Scotland: Aberdeen, Clyde, Dundee, Forth.¹⁴

2.2 Ports Act 1991

The [Ports Act 1991](#) was an enabling piece of legislation which provided for the transfer of statutory port undertakings (trust ports) to companies limited by shares and registered under the [Companies Act 2006](#).¹⁵ In introducing the Bill at Second Reading, the then Secretary of

¹¹ [HHC Deb 14 May 1990, cc663-664](#)

¹² the Second Reading debate for the *Tees and Hartlepool Port Authority Bill* can be found at: [HHC Deb 15 March 1990, cc732-774H](#); and the Second Reading debate for the *Clyde Port Authority Bill* can be found at: [HHC Deb 14 May 1990, cc650-690](#)

¹³ London, Dover, Tees and Hartlepool, Medway, Forth, Tyne, Ipswich, Clyde, Harwich Haven, Aberdeen, Belfast, Milford Haven, Poole, Lerwick, Blyth, Dundee, Great Yarmouth, Shoreham, Peterhead, Cromarty, Montrose, Warrenpoint and Londonderry (see: [HHC Deb 30 October 1990, c459WH](#))

¹⁴ [HHC Deb 28 January 1990, c676](#)

¹⁵ as indicated above, at the time the Act was originally given Royal Assent, this was the *Companies Act 1985*, it was subsequently amended when the companies law changed

State for Transport, Malcolm Rifkind, identified the benefits the government expected from the legislation:

This would enable them fully to develop their potential and to respond to the commercial environment in which, as large businesses in their own right, they must operate. It would give them access to share capital as well as loan capital. It would make them more attractive, as partners, to companies that might wish to go forward in joint venture. It would enable them to stimulate the development of land surplus to their requirements which, under current legislation, they are sometimes unable to do. It would make it easier for them to diversify their activities, thereby ensuring their viability in years to come. It would make them more accountable.

I emphasise that at the present those ports are not accountable to anyone. If they were companies in the private sector, they would have to be conscious of the need for accountability. Finally, transfer to the private sector would introduce the prospect of substantial employee share ownership. That is not just a theoretical option; as we have seen in the case of Associated British Ports, it is one of the major benefits of the privatisation scheme.¹⁶

The trust ports were already separately organised and there was no national body to be dealt with. Further, because they were not 'owned' by the government, the proceeds from privatisation did not go to the Exchequer. The privatisation procedure adopted in the Bill was simpler than many previous privatisations. For example, the aim of the two-tier system for privatising ABP was to provide a definite link between the statutory obligations of conservancy and regulation of the old authority and the new successor company. However, this was considered unnecessarily inflexible and complex by the government by the time it came to privatise the trust ports in 1991.

The Act provides for two stages in the privatisation process: the transfer or vesting of the rights or liabilities of the trust port in a new company; and the sale of that new company to another. It is important to note that the Act also ensures that the successor company would still be a harbour authority and would retain the same statutory responsibilities and powers and public legislation provisions as before.

There are two ways a port can be privatised under the Act:

- at the instigation of the port/harbour authority (a section 9 order); or
- at the instigation of the Secretary of State (a section 10 order) where the port has an annual turnover of over £5 million a year.

There is a further power for the Secretary of State to set aside a proposal by the port/harbour authority that they have been ordered to bring forward under section 10 and replace it with one of his own (a section 12 order).

There were strong arguments favouring a change of status for some of these ports. British ports were intensely competitive for many types of cargo and the statutory limitations placed on the trust ports' activities had become very restrictive as trading patterns shifted. With the end of the dock labour scheme, ports were free to trim their workforces and seek more efficient operating practices. Pressure for cost savings was rising as port customers sought a competitive edge. The trust ports were also facing aggressive competition from ABP. Supporters claimed that privatisation would enable trust ports to attract the private capital

¹⁶ [HHC Deb 28 January 1990, c673](#)

needed to develop and meet new trading opportunities and allow the huge, hitherto largely untouched, property portfolios owned by the ports to be commercially developed.

Opponents of privatisation feared that it would lead to asset-stripping by unscrupulous speculators and property development by a company having no serious interest in running the port. The Labour Transport Spokesman at the time, John Prescott, said at Second Reading:

The argument that trust ports should be kept to meet community needs, rather than used for profits and their assets exploited to the advantage of those who own them, is legitimate and should be considered. The Government do not want to put the emphasis on service. They believe that the community's needs will be met through the pursuit of profit and competition. The case has not been proven [...]¹⁷

2.3 Financial arrangements

During the debates on the Bill, the legal position of trust ports was discussed. They were likened in some ways to the Trustee Savings Bank¹⁸ before flotation in that the government did not own them, so the proceeds from a privatisation would not go to the government. It was made clear, however, that the Exchequer should receive a share of the proceeds of any privatisation. The Minister, Mr McLoughlin, raised the same point during the Second Reading of the *Clyde Port Authority Bill* in 1990 when he said:

We agree with the promoters of the Bill that trust ports have no explicit owners, so it is for Parliament to decide, taking into account any views expressed by the Government, not only whether a trust port should be allowed to turn itself into a company, but who should get the proceeds from the sale of the shares of that company. The Government's view is that a proportion of the proceeds of sale should go to the Exchequer. We are considering the best way of securing that, but the intention, which Parliament would be asked to approve, would be that 50 per cent. of the proceeds of the sale of shares should be paid to the Secretary of State and paid into the Consolidated Fund whenever a trust port is converted into a company by means of private Act.

The Government regard that as an equitable share of the proceeds between the Exchequer and the new shareholders. In making that decision, we took into account the initiative shown by the Tees and Hartlepool and the Clyde port authorities in introducing their private Bills, the benefits of early privatisation, and the ports' intention to invest in new developments.

[...]

In the past, we have given certain grants, so it is required that there should be a return to the taxpayer, through the Exchequer, for some of those grants. The percentage was agreed as a broad figure for all trust ports that may introduce private Bills in the future.

We must bear in mind the interests of the taxpayer, who has contributed to the development of the trust ports, and the need to ensure a level playing field between the newly privatised trust ports and those ports already in the private sector.¹⁹

¹⁷ *ibid.*, c686

¹⁸ contemporary information on the TSB privatisation can be found in HC Library Research Note 215 (January 1985), available to Members and their staff on request from HC Library

¹⁹ [HHC Deb 14 May 1990, cc 664-665](#)

On 2 July 1990, a Special Resolution was tabled and debated so that new clauses could be added by the government to that year's *Finance Bill*.²⁰ The new clauses provided for a 50 per cent levy on the proceeds of the privatisation of a trust port. Thus, half the proceeds would go to the Exchequer, leaving the port authorities with the other 50 per cent (less tax). The then Financial Secretary to the Treasury, Peter Lilley, explained the rationale behind the levy and the level at which it was set during the Ways and Means debate on the *Finance Bill* in July 1990:

It is a matter of judgment to decide what is the right proportion that should be taken in the form of a levy. In making their decision, the Government have tried to be fair to all parties, including both the ports and the Exchequer. We had to take into account several factors. Factors which suggested a higher Exchequer share included the need to safeguard the interests of the taxpayer, who has contributed to the development of the trust ports, albeit on a relatively modest scale; and the need to ensure a level playing field between the newly privatised trust ports and ports already in the private sector. Allowing the trust ports to keep the majority of the proceeds would give them an unfair commercial advantage over ports already operating privately.

There were several arguments in favour of a lower Exchequer share. They included the desirability of rewarding the initiative shown by authorities such as the Tees and Hartlepool and the Clyde port authorities of introducing private Bills; the benefits of early privatisation; the need to retain an incentive for other trust ports to seek privatisation; and, of course, the ports' intention to use some of the funds to invest in new developments and develop their existing assets.

[...]

The receipts will be subject to capital gains tax. That has always been the position and it is not being altered. We are merely reducing the net assets that will be liable to taxation.

The incentive to privatise is not only to retain funds from the issue. The ports have made a strong case—I consider it to be a convincing one—that they are hampered by the present deeds and structure of their make-up. They wish to have a private company structure and to be freed from the limitations that are now imposed on the activities in which they can engage. They would not desist because the money that they obtain will be somewhat less than previously was estimated. It seems not unreasonable that we would take 50 per cent. of the proceeds.²¹

Section 13 of the 1991 Act provides for the 50 per cent levy on the proceeds of the immediate sale of a port and section 17 provides for a further levy on the disposal of land within ten years of the sale (the levy is charged at 25 per cent if a sale takes place in the first five years, 20 per cent for years six and seven, and ten per cent for the remainder of the period).

3 First tranche of privatisation, 1993-97

The 1991 Act was primarily an enabling measure to assist trust ports to become limited companies with a view to subsequent voluntary privatisation. However, section 10 of the Act provided the Secretary of State with the power to compel trust ports with a turnover in excess

²⁰ [HHC Deb 2 July 1990, cc783-94](#)

²¹ [ibid., Hcc796-97H](#); see also: [SC Deb \(E\) 3 July 1990, cc554-571](#)

of £5 million to form a limited company and thereafter to draw up a scheme for privatisation.²² This power was exercisable from 25 July 1993, two years after the Act came into force. At the time the Act was passed there were ten ports which met this turnover requirement, although the turnover of two ports, Blyth and Dundee, later fell below the threshold.

In 1993 the National Audit Office published a report on the sale of five trust ports (Tees and Hartlepool, Clyde, Forth, Medway and London) that took place in 1992. It concluded that the government had been generally successful with these first sales and that those sold accounted for over half of the turnover of the 15 largest trust ports.²³ The gross proceeds from the sales totalled some £380 million, from which the government received £169 million.²⁴ The sale proceeds usually represented about twice the value of the port, meaning that the government received a sum roughly equal to the value of the port.²⁵ Tilbury was also privatised in 1992.²⁶

The then Secretary of State for Transport, Dr Brian Mawhinney, confirmed in mid-1995 that Dundee was in the process of privatisation. He also indicated that he was considering giving a direction to Dover, Tyne and Ipswich ports, directing each to form a company and to prepare a scheme for transferring the authority's undertaking to it.²⁷ Dr Mawhinney wrote formally to consult the ports and they were asked to respond within three months. Dover Harbour Board, in its response, asked the government to delay for a further two years any plans to privatise the port so that the full impact of the Channel Tunnel could be assessed.²⁸ Estimates of Dover's future income varied between zero and £150 million depending on the success of the tunnel.²⁹ Ipswich also asked for a two year delay although it too was not opposed to the plans in principle. The Port of Tyne rejected the government's proposal, saying that it offered no benefits and could damage the port, its customers, its workforce and the region.³⁰

In November 1995 the then Secretary of State for Transport, Sir George Young, announced that Dover would be allowed to pursue voluntary privatisation at some point after 1997, while Tyne and Ipswich would be compelled to begin the privatisation process.³¹ A transfer scheme and confirmation order for Ipswich were laid before Parliament in mid-1996 and debated and approved by both Houses.³² Sir George also indicated that he would propose his own transfer scheme for Tyne, to replace the unsatisfactory scheme proposed by the port itself which would "constrain the operation and development of the port".³³ A draft order was

²² the £5 million threshold and the detailed means by which turnover should be calculated are set out in section 11 of the Act

²³ NAO, *Department of Transport: the first sales of trust ports*, 896, 13 August 1993, para 4; the House of Commons Public Accounts Committee also reviewed the sales and published a report in June 1994, see: PAC, *Department of Transport: the first sales of trust ports* (thirty-first report of session 1993-94), 225, 27 June 1994

²⁴ *ibid.*, para 1

²⁵ *ibid.*, para 3.3

²⁶ Tilbury was bought out by its management and employees in 1992 and in October 1995 Forth Ports bought the company for £131.6 million (see: "Forth Ports to pay £132m for Tilbury," *Financial Times*, 29 September 1995)

²⁷ [HHC Deb 19 June 1995, c4W](#)

²⁸ "Delay privatisation plans, ports urges," *Independent on Sunday*, 20 August 1995

²⁹ "Dover pleads for two year delay," *Financial Times*, 4 September 1995

³⁰ "Port of Tyne rejects privatisation proposals," *Financial Times*, 12 September 1995

³¹ DoT press notice, "Sir George Young announces decision on ports privatisation", 7 November 1995 [PN 95/354]

³² see: Sixth DL Committee, 25 June 1996; and: [HHL Deb 24 June 1996, cc657-70H](#)

³³ DoT press notice, "Transport secretary proposes to introduce own scheme to privatise Port of Tyne", 13 June 1996 [PN 96/182]

consequently put before the House and approved in December 1996.³⁴ The approval for the sale of Ipswich went through before the 1997 General Election³⁵ but the new Labour Government cancelled the proposed privatisation of Tyne shortly after it was elected.³⁶

Conclusions about the first tranche of privatisations were mixed. The National Audit Office concluded that the Department had been successful and achieved its intended aims of the privatisations, however it did issue a word of caution about the procedure for how the levy had been collected in these initial sales.³⁷ The Commons Public Accounts Committee expressed concerns about the valuations and the amounts raised by some of the sales.³⁸ In an article for *Lloyd's List*, Iain Dale came to a similar conclusion; that “most of the ports were sold on the cheap”.³⁹

4 Reviving the privatisation programme?

4.1 Developments under the Labour Government, 2009-10

As indicated above, after the 1997 General Election the Labour Government's ports policy, driven by the then Secretary of State, John Prescott, was to encourage trust ports to become more efficient in ways which best suited them, rather than via any compulsory form of privatisation. Labour's main ports policy paper, published in 2000, highlighted those avenues available for trust ports to develop.⁴⁰ This policy continued broadly unchanged for the duration of the Labour Government.⁴¹

However, by 2009 the recession and the state of the public finances led the government to look at new ways of raising money and making public sector efficiencies. The final report of the Operational Efficiency Programme was published in conjunction with Budget 2009 and went into some detail about back-office efficiency savings, via IT, property management etc. and included a few specific examples of how money could be saved in transport-related areas. One of the examples mentioned in the OEP report was trust ports.⁴² In December 2009 the Treasury published its OEP Asset Portfolio which stated that there are currently six further ports that meet the turnover requirement for privatisation: Dover, Tyne, Harwich, Milford Haven, Poole, and Shoreham. Labour's policy, as set out in the Asset Portfolio, was to invite these ports to “explore options for the commercialisation of their assets”:

Major trust ports in England and Wales have been invited to explore options for the commercialisation of their assets. They are currently looking at alternative business models, commercialisation, and new market opportunities. Under current legislation, trust ports can bring forward voluntary privatisation schemes where they believe such a scheme would be favourable. Any scheme brought forward for voluntary privatisation would need to be approved by the Secretary of State for Transport based on its merits at that point.

³⁴ [HHC Deb 5 December 1996, cc1216-41](#)

³⁵ DoT press notice, “Sir George Young approves sale of Ipswich Port Authority”, 14 March 1997 [PN 97/83]; it was sold to ABP for £24.4 million

³⁶ “Prescott scraps privatisation plan”, *Financial Times*, 28 June 1997

³⁷ op cit., *Department of Transport: the first sales of trust ports*, para 5

³⁸ op cit., *Department of Transport: the first sales of trust ports*, para 4

³⁹ “The politics of port privatisation”, *Lloyd's List*, 12 July 1996; Iain Dale is now a well-known publisher and Conservative commentator, he reflected on his previous incarnation as part of the ports and shipping industry in an April 2009 post, towards the end of which he records his contemporary enthusiasm for the privatisation, see: “[My part in the downfall of the dock labour scheme](#)”, *Iain Dale's Diary*, 10 April 2009

⁴⁰ DETR, *HModern Ports: A UK Policy*, November 2000, paras 3.1.20-3.1.21

⁴¹ more information on Labour's ports policies generally can be found in HC Library standard note [HSN3037](#)

⁴² HM Treasury, *HOperational Efficiency Programme: final report*, April 2009, p50

[...]

As part of Modernising Trust Ports, the Government has encouraged all the major trust ports to review their corporate structure. To the extent that trust ports bring forward proposals for voluntary privatisation, there may be an opportunity for private sector investors to purchase part or all of the entity being sold. Any incoming private sector investor will need to take into account the interests of all stakeholders.

In responding to this request several of the major trust ports are developing commercialisation options. The largest trust port, the Port of Dover, is the furthest advanced.⁴³

In January 2010 the Labour Government produced a guidance note on the procedure for privatisation of trust ports under a section 9 order (i.e. at the instigation of the port, not the Secretary of State). This stated that “the Government has stated that it does not currently wish to use its powers under the *Ports Act 1991* to force through the privatisation of a port”.⁴⁴

4.2 Developments under the Coalition Government, 2010-

Generally

There was no mention of this policy area in either the Conservative or Liberal Democrat 2010 Election manifestos and there was no mention of it in the [Coalition Agreement](#). Back in August 2007 the Conservative Party’s Economic Competitiveness Policy Group recommended in its report that a future Conservative Government should continue the policy begun under the 1991 Act. The Policy Group praised the success of those trust ports that had privatised under the Act.⁴⁵ Although not affiliated to the Conservative Party, the right-leaning Adam Smith Institute in April 2008, published a report expounding on the benefits of further privatisation, one of the areas it focused on was trust ports.⁴⁶

The Conservative-Liberal Democrat Coalition Government has said that it will “consider any proposal by a trust port for a sale on its merits”.⁴⁷ In May 2011 the government published a consultation on the criteria to be used when deciding on the merits of any future privatisation scheme for trust ports. The main proposed change from the existing criteria was the addition of a requirement for ‘community participation, informed by the ‘Big Society’ idea and also, perhaps, the Dover bid (see below).⁴⁸ On 3 August the revised criteria were published, the main tenets of which are: community participation; future investment in, and development of, the port; a fair price; and fair competition. On community participation, it states:

The Secretary of State will not approve an application for the sale of a trust port under the 1991 Act unless the sale is considered likely to deliver an enduring and significant level of community participation in the port. Such participation could take a variety of forms, but must include the ability to influence the port’s long term development and may include the right to receive a share in the profits of the port, or the future increase in its value. It does not necessarily require a community role in the operation of the port.⁴⁹

⁴³ HMG, *Operational Efficiency Programme: Asset Portfolio*, 2009, pp73-74

⁴⁴ DfT, *Guidance note concerning procedure for sale of trust ports*, 25 January 2010

⁴⁵ *Freeing Britain to Compete: equipping the UK for globalisation*, August 2007, p35

⁴⁶ ASI, *Privatization – Reviving the momentum*, April 2008, p23

⁴⁷ *HHC Deb 15 February 2011, c676W*

⁴⁸ DfT, *Sale of Trust Ports in England and Wales - Consultation on revised criteria*, 16 May 2011, p3

⁴⁹ DfT, *Sale of trust ports criteria*, 3 August 2011

Dover

In 2009 the Labour Government highlighted Dover as a prime candidate for privatisation, based on its turnover and operations.⁵⁰ Press reports in December 2009 indicated that Dover was considering putting forward a privatisation scheme.⁵¹ In early 2010, Bob Goldfield, chief executive of the Port of Dover, stated that an application for voluntary privatisation had been made to the Secretary of State for Transport.⁵² The statutory period for representations concerning the transfer scheme put forward by Dover Harbour Board ended on 25 March 2010⁵³ but no decision on it was reached before the 2010 General Election.

Dover Harbour Board made the basic case for privatisation in its stakeholder briefing document, as follows:

There is no dispute as to the positive economic and social impact the Port already has on its local and regional community. However, any benefits for the local community whilst the Port retains its current trust port structure can only be indirect benefits derived from the Dover Harbour Board administering, maintaining and improving the Port in the exercise of its statutory functions. In assessing alternatives to the trust port structure, the Board is particularly aware of substantial, additional value that can be realised for the Port business and all stakeholder groups, specifically local interests and government, by adopting an alternative structure and freeing the Port organisation from its present constitutional constraints. Value can be demonstrated by five fundamental outcomes:

- Attracting private investment into the Port, giving access to capital to develop additional capacity as and when it is needed to provide for the current and future needs of the Port's customers
- Enabling the Port to deliver tangible benefits to and align the future operation and development of the Port with the needs of the local community and region
- Involving the employees of the Port in share ownership arrangements that embed loyalty and provide motivation to grow, while maintaining a focus on the Port's operations in Dover
- Allowing the Port organisation to use its strong commercial position and the skills and experience of its staff to unlock potential and expand its horizons into business opportunities at home and abroad, led and managed from Dover, so as to create new opportunities for staff working and living in Dover.
- Subject to the above objectives, to achieve proceeds for the Government from the sale of the Port.⁵⁴

The Board envisaged that the private sector would acquire 'a majority' of shares in the new company and there would be an employee share ownership trust and a 'Port of Dover Charitable Trust. The Board clearly saw this Trust as delivering another sizeable benefit from privatisation:

⁵⁰ op cit., *Operational Efficiency Programme: Asset Portfolio*, pp74-76

⁵¹ "Port of Dover privatisation in 2010?", *This is Kent*, 7 December 2009

⁵² see: "Sale of Port of Dover is unlikely to be plain sailing as local opposition swells", *The Times*, 27 January 2010; and: "Port privatisation discussed amid stormy scenes at Westminster", *This is Kent*, 10 February 2010

⁵³ HHL Deb 30 March 2010, c372WA

⁵⁴ Dover Harbour Board, *Change of Corporate Structure for the Port of Dover: Stakeholder Briefing Document*, section 6

The Port of Dover Charitable Trust ("PDCT") ... is intended to participate in the Dover regeneration agenda, and meet the community's aspirations for a stakeholder benefit from the commercial success of the Port. The PDCT will be established with the cooperation of our major local stakeholders to hold securities in Opco [the eventual privately-owned company]. A flow of funds from Opco will enable the PDCT to act as a charitable grant-giving body for the benefit of stakeholders in Dover – as a trust port, such a financial commitment to stakeholders is not possible.

This represents a major change in the relationship with the Town and District and provides for the first time an opportunity for the community to directly benefit financially from Port activities and share in the Port's success whilst at the same time retaining through the formation of the PDCT some of the stakeholder values existing in the trust port status. DHB will work closely in partnership with local stakeholders to ensure agreement on the PDCT.⁵⁵

After the election, some representatives of the local community in Dover, including the local Member of Parliament, put together an alternative proposal for the future of the port called a 'People's Port'. Their idea is that instead of being privatised and taken over by a public company the port should be acquired by a community trust. They stated that the benefits of their bid for the port would be as follows:

The Trust recognises that the Port of Dover ("the Port") is an asset of national importance and fundamental to the trade and transport links of the United Kingdom. However, as contemplated by Modernising Trust Ports (2nd edition) ("MTP 2"), the Trust also intends to operate the Port in the interests of the stakeholders, namely the people and community of Dover, local authorities, local business, port users and port employees ("Stakeholders").

It is clear that over the last five years, the relationship between Dover Harbour Board ("DHB") and some of its stakeholders has failed to operate in an appropriate or harmonious manner, and DHB are not accountable to the community. It is also the view of the Trust that there has been a failure to maintain and develop the assets of the Port in a manner that exploits their full potential.

The current status of the Port, including its inability to borrow to fund capital investment, also acts as a constraint on the development of the assets of the Port in the interests of the stakeholders and the nation.

The structure incorporated in the Offer is designed to overcome these failings. We do not address this offer to the DHB, who we note have been considerably hostile both to the Trust and the views of numerous stakeholders in the privatisation process.

The Offer is also a means of regenerating Dover and its surroundings which, despite its location in the South East of England, have suffered from severe deprivation and unemployment for some years.

If the Offer is accepted, the Trust intends to operate the Port on a fully commercial basis, recognising its importance to the national economy, and embedding the following within its constitution and operation:

- i. the Trust's objective to run the Port as a competitive and commercial enterprise providing a consistent, high quality service;
- ii. restrictions on the Port's ability to exploit or abuse its monopoly pricing powers;

⁵⁵ *ibid.*, section 7.2

- iii. obligations to consult with stakeholders and a commitment to transparency when setting its charges and planning capital investment;
- iv. means to incentivise management to run the Port more efficiently and invest with strategic vision; and
- v. stakeholder and employee representation.⁵⁶

Information on the [Dover Harbour Board's scheme](#) can be found on their website; the [People's Port](#) has its own website with information about their proposals.

In July 2010 the then Transport Minister, Mike Penning, announced that he had asked Dover Harbour Board to publish additional information about their plans and to allow for a further period of consultation on the proposals until 27 August.⁵⁷ On 15 September Mr Penning stated that Dover Harbour Board had informed him of their intention to apply for privatisation, under the new criteria.⁵⁸ In December 2010 Mr Penning indicated that in the first instance the decision would be about selling off the port in principle, rather than taking a view on its final configuration.⁵⁹ Following the publication of the revised criteria that the Government consider relevant when considering the appropriateness of the sale of a major trust port in August 2011 (see above), Dover Harbour Board submitted further information to the Department in pursuance of their application. There followed a period of representations in June-July 2012.

The Government finally announced its decision on Dover in December 2012. The Minister for Transport, Simon Burns, stated that he had decided not to approve the privatisation. He told the House:

I have decided not to confirm DHB's transfer scheme. I reached my conclusion taking into account the published policy. I concluded that the transfer scheme proposed would not ensure a sufficient level of enduring community participation in the port. I also concluded that so far as the board made the application in order to be able to obtain the additional finance necessary to undertake the proposed redevelopment of the Western Docks, there were other options available to secure that redevelopment.⁶⁰

Dover Harbour Board said that it was "surprised and extremely disappointed" by the decision:

Responding to the Minister's statement, Bob Goldfield, Chief Executive of the Port of Dover, said: "The decision is frustrating for the Port and for the community, for whom this was a unique opportunity to benefit from the success of this major international gateway. Developing the Port, providing an important contribution to the regeneration of Dover, growing and adding value to the business, were key objectives for the DHB scheme and will continue to be our focus as we remain as a trust port. It is, however, a great pity and a disappointment to the Members of the Dover Harbour Board that the people of Dover will not now benefit from the injection of many millions of pounds into local community projects, via our proposed Port of Dover Community Trust that would have been possible had the decision been in our favour".

⁵⁶ Dover People's Port, [HLetter to the Prime Minister](#), 1 November 2010; the idea was backed by local residents in a non-binding local referendum held in March 2011, see, e.g.: "[HResidents vote in favour of Dover 'People's Port'](#)", *BBC News Online*, 24 March 2011

⁵⁷ [HHC Deb 21 July 2010, c22WS](#)

⁵⁸ [HHC Deb 15 September 2011, c65WS](#)

⁵⁹ [HHC Deb 6 December 2010, c62W](#)

⁶⁰ [HHC Deb 20 December 2012, c126WSH](#); the full letter detailing the Minister's decision is available on the [HGov.uk website](#)

We will now take some time to consider the analysis behind the Ministerial decision in detail and assess its impact on our future strategic and financial plans.⁶¹

The local MP, Charlie Elphicke, who campaigned for the People's Port, called it a "magnificent victory".⁶² P&O Ferries, which sails from the port, have welcomed the announcement. *Kent Online* reported:

P&O chief executive Helen Deeble said: "The fundamental justification for Dover Harbour Board's scheme has always been the need to raise capital for redevelopment of the Western Docks.

"We have always questioned this argument and note that the secretary of state has concluded there are other ways to raise capital without having to privatise."⁶³

⁶¹ DHB press notice, "[HPort of Dover surprised and disappointed by Minister's decision](#)", 20 December 2012

⁶² [HCharlie Elphicke MP news](#), 20 December 2012 [accessed 2 January 2013]

⁶³ "[HPort of Dover privatisation plan rejected by Government](#)", *Kent Online*, 20 December 2012