



Harbour authorities for trust ports

Standard Note: SN/BT/4089
Last updated: 8 December 2009
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Section: Business and Transport

This note outlines the responsibilities of statutory harbour authorities for trust ports; how to make a complaint against them and the procedure for their removal. It also outlines the Government's proposals regarding the reform of harbour authorities.

You can find details of individual harbours on the [Ports and Harbours of the UK website](#).

For information on the privatisation of the trust ports under the *Ports Act 1991*, see Library Standard Note [SN/BT/10](#); for information on ports policy more generally, see Library Standard Note [SN/BT/3037](#). Port security issues are covered in [SN/BT/3106](#).

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1 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 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. The Port of London Authority's HRO has been granted but the remaining six are outstanding.² Further to the consultation currently underway (see below), these applications may be revised.

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, [Trust port advice: final report](#), 18 May 2007, p1

³ DfT, [Modernising Trust Ports \(second edition\)](#), August 2009, p2

⁴ op cit., [Trust port advice: final report](#)

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

The *Ports Act 1991* provides powers for the compulsory privatisation of trust ports whose annual turnover exceeds £5 million in 1991 prices (currently approximately £7.6 million). Between 1992 and 1997 seven former trust ports were privatised.⁶ There are currently six further ports that meet the turnover requirement for privatisation.⁷ The current Government's policy is to invite these ports to "explore options for the commercialisation of their assets". The Government's asset portfolio, published in 2009, sets out its future plans for a number of Government-run and -owned entities, including trust ports. It states:

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.

[...]

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.⁸

⁵ DfT, [Ports policy review – interim report](#), 19 July 2007, paras 27-30

⁶ Clyde, Dundee, Forth, Ipswich, Sheerness, Thamesport and Tilbury

⁷ Dover, Tyne, Harwich, Milford Haven, Poole, Shoreham

⁸ HMG, [Operational Efficiency Programme: Asset Portfolio](#), 2009, pp73-74

The Conservative Party's Economic Competitiveness Policy Group recommended in its August 2007 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.⁹

2 Duties of harbour authorities

The duties of the statutory harbour authority were, for nine years, set out in [Modernising Trust Ports: A guide to good governance](#), published in January 2000. However, in January 2009 the Government launched a [consultation](#) to revise the guidance, in accordance with the advice it received from PwC (for more information see [section 2.2 of SN/BT/3037](#)). The aim of the consultation was as follows:

In broad terms, the PwC report concluded that the trust model retained 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 termed their 'stakeholder dividend'.

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

We accepted the broad thrust of these conclusions and they have been incorporated into the guidance. In addition as envisaged in the Chancellor's 2008 Pre-Budget Report we will be exploring with the major trust ports options for commercialisation of assets. This means for example looking at alternative business models, commercialisation, and new market opportunities.

Although welcoming the concept, we have not referred in the guidance to stakeholder dividend as we felt this might be too suggestive of financial rewards when in fact the key factor is wider stakeholder benefits.

Another issue raised at the time of the Policy Review was that of accountability to stakeholders and the potential for some form of outside regulator to consider complaints about the activities of the trust ports. Neither the PwC report nor other responses to the Review produced sufficient evidence to suggest that the creation of such a body would represent value for money and therefore we are proposing that the existing arrangements of Departmental investigation remain in place.

We recognise the need for proportionality when it comes to compliance with the guidance and this is restated within it. Clearly, given the wide range of size and resources of trust ports not all can be expected to comply with each and every item in the guide. We do think it reasonable however for a port of any size to be able to explain openly where the guidance is not being complied with fully.¹⁰

[Responses to the consultation](#) were published in August 2009 along with the new edition of the guidance. [Modernising Trust Ports \(second edition\)](#) states that the “standards are

⁹ the report's recommendations have not yet been accepted as Party policy, see: [Freeing Britain to Compete: equipping the UK for globalisation](#), August 2007, p35

¹⁰ DfT, [Updated Trust Port Good Governance Guide - Consultation Letter](#), 12 January 2009

designed to provide a benchmark of best practice for all trust ports in England and Wales” and, further:

The core principles of openness, accountability and fitness for purpose form a common thread running through these standards and should feature in the direction and management of all ports in the trust sector ... we introduce the approach of 'comply or explain', to allow room for ports in certain circumstances to explain why, in a specific case, a particular standard has not been met. In the few places where a particular standard is aimed solely at a certain size of port this is made clear in the text. For all others, these standards should be read as applying to the sector as a whole.

The Government considers that private company ports and municipal ports should also seek to act in accordance with the guidance, while recognising of course the differences in structures and that certain aspects of the guidance will not be directly applicable.

It is accepted that smaller ports will not necessarily be able to comply with all the standards in the guidance.

Although it is aimed specifically at trust ports, all ports are encouraged to use the relevant elements of this guidance as a benchmark, as all ports on whom Parliament has devolved statutory powers and duties in the public interest should be accountable for their use. Municipal ports should, however, focus on 'Opportunities for Ports in Local Authority Ownership'. Given the similarities between the two sectors, it provides useful supplementary reading alongside this document, and vice versa. The aim is to encourage the continued development of an open and accountable relationship between all ports, their users and local communities.¹¹

2.1 Complaints and removals

If an individual believes that the harbour authority is in breach of the guidance, there is a complaints procedure, as outlined in *Modernising Trust Ports*:

The Department will be actively monitoring compliance with these standards but interested parties should play their part in bringing to the Department's attention any examples of unaccountable behaviour in the trust ports sector. If anyone believes that a board, its members or its officials are acting in a manner which:

- is illegal, improper, outside their powers, unethical or otherwise in breach of the principles of the trust port;
- might involve maladministration, fraud, criminal or unlawful activity or misuse of port assets; or
- is otherwise inconsistent with this guidance or any other professional code

he or she should raise the matter with the executive and/or board in the first instance (or approach in confidence a nominated official or board member entrusted with the duty of investigating such allegations). The trust port should provide a written response to a complainant within a reasonable time scale. This should explain whether they consider the complaint justified and set out the remedial action they intend to take. Where the complainant does not believe the response is reasonable in addressing the grounds of his or her concern, the matter should be reported to the Department.

¹¹ op cit., [Modernising Trust Ports \(second edition\)](#), pp2-3

The previous paragraph is not intended to discourage stakeholders from reporting matters to the police or other authorities, or issuing legal proceedings themselves, in appropriately serious cases.

However, the Department has no locus in regulating commercial decisions or activities of a trust port. Nor does it involve itself in 'good neighbour' disputes as these are matters for the board to resolve. Its interest is in ensuring that the board does not take decisions in an arbitrary unaccountable manner.¹²

One would first need to bring their complaint to the attention of the authority who should respond within a 'reasonable timeframe' (this should be something like 21 working days). If the complainant is unhappy with the authority's response they can bring the complaint to the attention of the Ports Division within the Department for Transport. Although the Department has no power to intervene in any dispute, they can make representations to the authority and ask for an explanation of the authority's actions.

In the rare situation where the Department perceives that there has been a serious breach of the guidance, there does exist the power for it to remove the authority under section 15A of the *Harbours Act 1964*:

15A Ministers' powers to make orders about port appointments

(1) Each of the Ministers may, subject to subsection (2) of this section, by order vary the constitution of a harbour authority so far as it provides for the appointment of him of any member or members of the authority-

(a) so as to abolish the power of appointment (except where the power is to appoint the chairman of the authority); or

(b) so as to provide for the power of appointment to be exercised by such other person or persons as may be specified in the order (...)

2.2 Objections and appeals against charges

Unless provided for in the port's own local legislation, the only specific statutory control (in England, Wales and Scotland) over the exercise of statutory powers by harbour authorities is harbour users' right of appeal (under section 31 of the *Harbours Act 1964*) to the Secretary of State (or, in Scotland, to the Scottish Ministers) over the reasonableness of harbour dues levied by the port.¹³ The Government's Ports Review, published in May 2006, highlighted the problems associated with this arrangement:

There is no appellate body (other than the High Court through judicial review) which considers complaints against statutory harbour authorities, and they are not included in any ombudsman schemes.

Economic regulation of ports is restricted to the section 31 power, plus general oversight by the Office of Fair Trading and the Competition Commission; there is no sector-specific regulatory regime for ports ...

There are very few applications to the Secretary of State under section 31, and although there have been a number of references to the OFT, mainly in relation to company-owned ferry ports, there has been no evidence of abuse of market power in the ports sector and no suggestion that the existing powers of the competition

¹² *ibid.*, p11

¹³ for Northern Ireland, see: *Harbours Act (Northern Ireland) 1970*, section 7

authorities are insufficient to deal with any such abuses. There have, however, been a number of disputes on administrative rather than economic actions by a trust where efforts to broker a voluntary solution have failed, and the objector is left dissatisfied by Government's inability to enforce compliance with the *Guide*.¹⁴

In the document, the Department asked for views as to whether the arrangements for the supervision of harbour authorities' powers is adequate and, if not, what changes should be made; and whether there is a case for an external regulatory function, either through providing the Secretary of State with new powers to direct statutory harbour authorities, or by bringing the trust ports under some independent regulatory (or ombudsman) regime, to deal with problems caused by a statutory harbour authority's exercise, or failure to exercise, of its statutory functions.¹⁵

¹⁴ DfT, [Ports policy – your views invited](#), May 2006, paras 8.28-8.30

¹⁵ *ibid*, p59