

Modernising Trust Ports [second edition]

i. Introduction

This is the second edition of *Modernising Trust Ports* (MTP). The first was published in 2000 by the then Department for the Environment, Transport and the Regions, and followed a review of the trust ports sector that focused principally on corporate governance and accountability.

That review highlighted a need for a general improvement in the openness and accountability with which trust ports conduct their business, and prompted the Department to stipulate governance guidelines which it expected all trust port boards to use as the benchmark of best practice — *Modernising Trust Ports*. A similar exercise was undertaken with respect to municipal ports. The general improvement sought by the Government has been widely in evidence in the years since then, and the sector should be congratulated for the considerable strides it has taken in this direction.

In 2006 the successor Department for Transport embarked upon a thorough review of ports policy, in light of devolution in the UK planning and political systems, and the evolution of global trading patterns. The review looked among other things at the future of the mixed ports sector, including the outlook for trust ports in the coming decades. This was set against the backdrop of the decision by the Office of National Statistics (ONS) in 2001 to classify the largest trust ports as public corporations, which had the effect of placing those ports' borrowing on the Department's accounts, and the relevant ports' subsequent applications, now on hold, to remove themselves from perceived public sector controls through the pursuit of appropriate Harbour Revision Orders (HROs). The Orders would disapply certain apparent controls which the Department retains over the ports, namely the power of compulsory privatisation and of central or local government to appoint a majority of the board members.

So as well as looking at the future of the sector in general, the Department wishes to make sure that appropriate safeguards and practices are in place to ensure an efficient, accountable and competitive trust port sector.

To that end the Department commissioned a study from its consultants PricewaterhouseCoopers LLP. The ensuing report¹ confirmed that existing levels of performance were solid among the trust ports surveyed, but made a series of recommendations with the aim of strengthening the sector, and building on the improvements made so far by enhancing efficiency, transparency and delivery of stakeholder benefits. In the Ports Policy Review Interim Report, issued in July 2007, the Department stated that it would refresh the guidance offered in *Modernising Trust Ports* alongside a resumption of the work to address the outstanding question of the accounting status of the larger English and Welsh trust ports².

The following guidance represents a new benchmark for best practice, and is issued after full consideration of the PwC trust port advice, and subsequent discussion with the industry, including among others the British Ports Association (BPA), UK Major Ports Group (UKMPG), the Chamber of Shipping (CoS) and the Royal Yachting Association (RYA). Much of what follows is a restatement of that which *Modernising Trust Ports* established in 2000, but brought up to date, and supplemented with new guidance on, among other things, reporting, KPIs and stakeholder policy.

¹ Available on the Department's website at: <http://www.dft.gov.uk/pgr/shippingports/ports/trust/>

² Ports Policy Review Interim Report, July 2007, para. 30.

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The Department recognises the wide range of ports within the sector and that some parts of this guidance would not necessarily be appropriate for, in particular, the smaller ports. The Department nevertheless expects all trust ports in England and Wales to take steps either to comply with the guidance or to state openly where and why they have decided not to. Overall compliance will be monitored by the Department on behalf of the Secretary of State for Transport.

ii. Background

As part of the review, the provisions of *Modernising Trust Ports* have been compared against those of the Combined Code on corporate governance. The latest edition of the Combined Code was issued by the Financial Reporting Council in June 2006.³ The document sets out standards of corporate governance expected of publicly listed companies, and has evolved over the years since the Cadbury Report in 1992, and final report of the Hampel Committee in 1998. It represents a valuable resource for those seeking to achieve best practice and accountability in their corporate governance arrangements. At points throughout this guidance we have drawn attention to relevant specifications of the Combined Code, and sought to include them in these standards.

There are over a hundred trust ports in the UK (Annex B) 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.

iii. Coverage

These standards are designed to provide a benchmark of best practice for all trust ports in England and Wales. As a benchmark, they apply whatever the size, turnover or type of port. However, as stated in the introduction we recognise that in a diverse sector, a degree of proportionality is required in the extent of compliance we expect to see.

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. In Chapter 2 on reporting requirements, 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.

³ which can be found at:

<http://www.frc.org.uk/documents/pagemanager/frc/Combined%20code%202006%20OCTOBER.pdf>

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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'*⁴. 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.

The Government intends that these standards should be considered by all trust ports in England and Wales. Ports policy is a devolved matter in Scotland and Northern Ireland, and the Scottish and Northern Ireland Executives respectively will consider the extent to which they wish to adopt these standards for trust ports within their territory.

Nothing in this guide should be taken as overriding the current fiduciary, statutory or legal obligations laid upon board members, officers and employees of trust ports. It does not have the force of law. However it should be taken as a pointer indicating changes which may be appropriate to a port's working practices. If a port identifies changes to local legislation which are necessary in order to comply with the guidance, the Harbour Authority should give consideration to seeking a Harbour Revision Order which would make those changes.

1.1 Stakeholders and beneficiaries

1.1.1 The Department's 2006-07 review of trust ports tended to confirm the fundamental principle which underpins their existence. Trust ports are independent statutory bodies, run by independent boards, for the benefit of stakeholders.

1.1.2 There are some parallels with a trust in the legal sense, where a fund, or property, is owned and managed by one party for the benefit of another. In that context the beneficiaries of the trust, in whose interests the trustees work, are usually clearly and definitively identified. The benefit too, is easily recognised, taking the form of an income or, eventually, the enhanced property or fund itself. In a conventional trust, those who stand to benefit are normally at least one step removed from the fund or property that is managed by the trustees.

1.1.3 In contrast, some of the beneficiaries of a trust port are often intricately bound up in the port's operation, perhaps as users or employees of the port. The classes are varied and numerous, and there is a degree of ambiguity about what form of benefits should accrue, and to whom. One of the aims of this revised guidance, particularly this first chapter, is to establish greater certainty and transparency in this respect.

1.1.4 *Modernising Trust Ports* 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'*. Through the running and maintenance of this asset, though, others stand to benefit. Although not an exhaustive list, the following may all be considered stakeholders or 'beneficiaries' of a trust port:

- Port Users
- The local community
- Local and regional economies and authorities
- Port employees

⁴ Available on the Department's website at:
<http://www.dft.gov.uk/pgr/shippingports/ports/opportunities/>

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Related interest groups

The national economy and Central Government

Local and regional businesses

1.1.5 As stakeholders, or 'beneficiaries' in the port, the interests of these groups must at all times be the guide by which trust port boards direct the port. There are bound to be conflicts of interest from time to time between — and in some cases within — the various stakeholder groups. It is the duty of the boards, at all times, to strike a balance that fully respects the interests of all stakeholders, not just one group, in the light of objectives of the port, including commercial considerations, and what constitutes the 'common good' for all stakeholders (current and future) and the port itself.

1.1.6 In order for trust ports to fulfil that obligation, they must have a firm idea of what constitutes the objectives of the port. It is the responsibility of the boards, having identified their stakeholders and consulted them, to arrive at a clear description of these objectives.

1.1.7 In some cases stakeholders will have more than one form of relationship with the port. Users of the port for example, can often be primarily customers with whom ports will have purely commercial relationships. They may also have other forms of relationship though and trust port boards should hold this in mind as they manage the port.

1.1.8 Trust ports should always deal with stakeholders in an accountable manner. A responsibility lies too upon the stakeholders who, in the absence of shareholders, should monitor the port's performance and hold the board to account for the benefits the board has identified as accruing to stakeholders.

1.2 Commercial Accountability and Target Level of Return

1.2.1 Trust port boards should transact port business in the interest of the whole community of stakeholders openly, accountably and with commercial prudence. Trust ports should be run as commercial businesses, seeking to generate a surplus which should be ploughed back into the port, or otherwise directed towards the interests of the port's stakeholders. The Government expects trust ports to be operated efficiently and effectively, and to generate a commercially acceptable rate of return.

1.2.2 Modernising Trust Ports set out a target level of return in line with the Treasury's then Green Book recommendation of 6% for public sector services and 8% for publicly provided commercial services. More recent Green Book guidance "unbundles" the discount rate to 3.5% in real terms, based on social time preference, while taking account of other factors separately which were in practice often implicitly bundled up in the old 6% and 8% real figures.. In particular, the Green Book now recommends explicit adjustment to address the systematic underestimation of costs and overestimation of benefits that historically afflicted public sector appraisals. The Green Book recommendations are primarily aimed at public sector investment in public sector owned businesses, rather than commercial operators in a competitive open market. All trust ports should set themselves a target level of return for existing activities and new projects, determined by the board. The target level of return should reflect the need to provide a contingency and, in addition, make optimism bias adjustments commensurate with the perceived level of risks associated with any particular activity or investment.

1.2.3 In pursuing that target level of return, it is in the interests of all stakeholders that a trust port should set its dues, evaluate its investments, and charge for its services, at commercial and competitive rates, neither exploiting its status as a trust port to undercut the market, nor abusing a dominant position in that market.

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1.2.4 Harbour dues must be set at a level that allows for proper maintenance of the trust port's harbour and/or conservancy duties, and geared to attaining the target level of profitability. Harbour Authorities in general have a duty to publish standard dues tariffs.

1.2.5 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 the port, and the proceeds 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 port.

1.2.6 Investment policies too should be fair and equitable. A trust port's investment policy should be set out in broad terms in its accounts and strategy, for the benefit of stakeholders. A board should act not only to protect the commercial position of the port, but also to take investment opportunities which offer maximum benefit across the whole stakeholder group. Having regard to such wider stakeholder benefit may legitimately result in longer term investment planning, or other actions which bring additional benefits for stakeholders.

1.2.7 Ports of all complexions have the potential to compete with other users to offer services within the port area. As with dues and investment policies, it is essential that this competition be seen as fair and open. While it is legitimate to impose charges relating to services contributing to safety (including pilotage), protection of the environment or general well-being of the port user, charges should not be imposed for services that port users do not need. Boards should recognise that different users have different service level requirements. This should be recognised in levying charges. Where it is practical and cost effective, ports should offer a service tailored to the individual user's needs.

1.2.8 Having determined service levels, the board should be able to demonstrate that it has met these without incurring unreasonable cost. Boards should seek to obtain value for their stakeholders by:

- challenging the way in which services are provided or obtained and whether they are needed;
- comparing performance of in-house service provision with external options and agreeing performance measures derived in conjunction with users and suppliers on a regular basis;
- consulting all stakeholders (including staff) on current performance, options for improvement and suitable performance measures and targets; and
- considering the competitive position (how well does a service bear comparison with the best available elsewhere? Is there a case for working in partnership with other providers to obtain good value?).

1.2.9 Users should be consulted about the provision of services and those services provided in-house should be the subject of market testing to ensure that this is the best option for the trust port and its stakeholders. The board should be able clearly to demonstrate in its annual efficiency statement that where it is providing in-house services, it does so to a standard that does not incur unnecessary costs for stakeholders, and should, subject to not breaching commercial confidentiality, explain its commercial decisions clearly.

1.3 Performance Indicators

1.3.1 Given that trust port boards hold the local monopoly right to justify an asset (which can deliver public goods as well as private benefits), and that there are no formal shareholders to scrutinize performance, it is especially important that trust ports actively demonstrate their levels of efficiency, and strive for improvement where necessary. It must be possible for a trust port's stakeholders to measure the performance of the port in a

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straightforward manner, to compare it with relevant market competitors, where these exist, and with the port's own historical performance. A great many trust ports already do this, but the Department believes that greater benchmarking across the sector would be valuable.

1.3.2 Annex A sets examples of performance indicators which, where appropriate, can assist a stakeholder in determining a port's performance year on year. They constitute indicators of both financial and operational efficiency, and also of wider impacts, which can be calculated relatively easily and aim to demonstrate the overall economic contribution that the port makes to the economy.

1.3.3 The relevant indicators could include:

Financial	Profitability	Return on Capital Employed (RoCE)
	Weighted Average Cost of Capital (WACC)	Gearing
Operational	Labour productivity	Profitability of land holdings
	Channel Depth Management	Berth Utilisation
Wider Impact	Gross Value Added/Net Value Added	

1.3.4 The cycle of making an assessment of these factors, subsequently setting targets for improvement, and then reporting on them, should form an integral task of a trust port board, in pursuing the interest of the port's stakeholders.

1.3.5 Nonetheless the Department acknowledges also that performance assessment should not become such a burden that it inhibits performance itself. Performance indicators have been selected that are readily obtainable through relatively simple calculations, and easily defined.

1.3.6 Assessment of these indicators should be included in the board's Annual Report, and aspirational targets included in the port's strategy document.

1.4 The Stakeholder Benefit

1.4.1 Trust ports can expect to generate a significant return. In a private company, after deducting strategic investments and contingencies, that return would be distributed among shareholders in the form of a dividend. Trust ports, having no shareholders, must use any profits generated to support the long term viability of the port and thus for the benefit of the whole community of stakeholders.

1.4.2 A conventional trust often distributes income generated by the trust's assets among its beneficiaries. There are some trust-like organisations where such a payment is possible. An example is Glas Cymru, owners of Dŵr Cymru (Welsh Water), which is able to distribute a standardised dividend among its uniform stakeholders. The Department does not however recommend the distribution of a 'dividend' among trust port stakeholders. A trust port's stakeholder group is by comparison much more varied and indirect and a simple dividend payment is not possible.

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1.4.3 There is instead a range of ways in which a trust port's surpluses may be, and are, justifiably employed. Rather than a direct dividend, these uses constitute a stakeholder benefit, and may include any of the following, subject to the important caveat that some may be outside a port's legislative powers:

- investing in infrastructure with a longer-term view than might be expected of a private company port, which may need to generate a return over a shorter period;
- investing in infrastructure, or another good such as environmental protection, to a higher standard or greater extent than might maximise profits, but where this brings direct quantifiable benefits to stakeholders;
- undertaking activities that have a lower commercial return than might be acceptable to a company port, but which have other benefits for stakeholders — eg for the local community;
- providing employee packages, including training, above the market rate, where this helps to build the local skills base;
- making charitable grants or donations of time; and
- making other financial investments, for example in local enterprises or community projects, with social as well as economic returns.

1.4.4 The benefits that accrue to stakeholders in this way should be actively determined by the board after consultation with stakeholders, and transparently recorded. After consultation with stakeholders the board should consider and decide upon the nature of stakeholder benefit. The appropriate time frame is at the board's discretion but can include consideration of future benefits. This process should be conducted in conjunction with the setting of a target level of return, as discussed earlier in this chapter.

1.4.5 There must be a clear rationale for the choices made, and they should be aligned with the commercial expectations. In other words the stakeholder benefit should not be directed towards practices which threaten to distort the market in which the port operates.

1.4.6 Undoubtedly, some uses of the stakeholder benefit will be difficult to quantify. For example, identifying a marginal increase in standards sought by a port's investment would be more difficult than pointing to a proportion of profits diverted towards charitable grants. Nonetheless, trust ports should aim to describe the extent of the stakeholder benefit as fully as possible.

1.5 The Role of Stakeholders and Consultation

1.5.1 In the absence of shareholders, or an independent regulator, a trust port must be held to account for its performance and actions by its stakeholders, including the wider community it serves. The best way to ensure accountability is for the board to create a culture of transparency and effective communication and for the board and the Department to ensure a better understanding among stakeholders of their collective responsibility. For the responsibility is double-edged, and a trust port's stakeholders must be prepared to interest themselves in the port's operation, and to challenge the board where they believe performance has fallen short.

1.5.2 We expect trust ports to identify their stakeholders and to include them in formal consultation on significant decisions. Stakeholders should also be consulted on the possible forms and extent of any stakeholder benefit that the board proposes. That way, the stakeholders, in whose interests the port is maintained and operated, can have an opportunity to articulate what they believe those interests to be.

1.5.3 The Department does not seek a position whereby trust port boards are faced with multiple irreconcilable demands from stakeholders, or that each and every decision must be

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consulted on in depth. Boards must be free ultimately to make decisions on all issues facing the port, having weighed the various representations and advice received. The board is best placed to judge the overall impact of any recommendation. Stakeholders, while articulating their concerns and holding ports to account, must therefore also be considering the interests of the port as a whole.

1.5.4 The Department, as a stakeholder, particularly in the nationally significant trust ports, will monitor performance and challenge where necessary, as all stakeholders should be prepared to do. It does not propose, however, to involve itself in every decision the board makes nor to question the board's judgment, having considered the views of stakeholders, about what is best for the port.

1.5.5 As a means by which to consult, trust ports may find it beneficial to establish formal stakeholder groups, as already recommended in Modernising Trust Ports, which meet regularly and have representation from the various stakeholders. These could be created to consider specific issues or manage specific projects within their area of competence, and could report to, and advise, the board through the submission of papers or with the assistance of a board member with the appropriate skills and interests.

1.5.6 Alongside consultation, the provision of information is an important pillar of a accountability. Having made decisions, it is crucial that the board communicate them, and their results, to its stakeholders. The second chapter of this guidance discusses in more detail the requirements for publishing formal reports, accounts and strategy documents, but there are other ways in which trust ports can interact with their constituency.

1.5.7 One of the most important stakeholder groups for any trust port is the local community. Often the port is at the heart of that community. Trust ports should ensure that there is an effective, continuing dialogue with the local authorities in its immediate hinterland. This will do much to promote the improved partnership that is sought between the trust port sector and local government.

1.5.8 As well as considering stakeholder consultation groups, trust port boards should consider the need for local liaison and focus groups to ensure that the local community is informed and on side. This should include a functioning and updated website, and might be supplemented by regular publication of newsletters, reports of board meetings, and holding public 'performance meetings' to discuss port operations and plans. As a minimum, all trust ports should hold a widely and effectively advertised open annual meeting (AM) and, where practicable and appropriate, other meetings as required to discuss significant matters of interest to their stakeholders. The Chairman should arrange for all directors to attend the AM in line with the recommendation of the Combined Code, and also ensure that notice of the AM, together with the relevant documentation, is sent out to stakeholders at least 20 working days before the meeting.

1.5.9 Trust ports and their executives should actively seek to engage with the local community through liaison with local groups, schools etc. They should actively participate in local and regional debate on plans (local and regional Government, development agencies etc). Above all, the port and its executive should be seen to be accessible to the community at large.

1.5.10 Trust ports should monitor proposals to extend the scope of Freedom of Information Act 2000. In any event, trust ports, as independent statutory bodies, should aim to comply with the spirit of the Act in responding to reasonable requests for information from the public.

2.1 Annual Reporting Requirements

2.1.1 Accurate and pertinent reporting to stakeholders and the public at large is a critical responsibility of the trust port board. The annual report and accounts, together with a strategy document should be available to all. As well as being sent to the Department, as required by law, a single document containing all three elements should be:

- provided to key local and regional bodies (local authorities, devolved assemblies, RDAs, Government Offices);
- forwarded to the local library service and to the local and regional media;
- published on the port's website; and
- made available free, or for a token charge designed to cover costs, from the port offices on request.

2.1.2 The annual report should include a performance and efficiency statement, recording the performance against targets set for the year for each of the indicators chosen. The statement should also include the results of any market-testing of services provided by the port, and describe any steps taken by the port to enhance procurement and service provision.

2.1.3 All trust ports should also produce an annual 'strategy document'. This is not intended to result in the publication of commercially sensitive information. The document should address issues of interest to stakeholders in general terms. Typically, the plan should contain information on the board, issues of accountability and port operation, current performance and future plans. In the strategy document boards should make clear their targets for the coming period, including the target level of return, and also outline their intentions regarding the use of profits for stakeholder benefit.

2.1.4 In the case of large trust ports, the strategy document may take its lead from a Port Master Plan, the production of which is now recommended by the Department for all major ports, including major trust ports.

2.1.5 Where a trust port considers itself too small to produce an annual strategy document, the board should instead provide a detailed report alongside the accounts. This should cover the same ground but in less detail. It should summarise: the trust port's operations and future plans; progress against their targets; and their continuing compliance with and improvement with the benchmarks set.

2.2 Accounts and Audit

2.2.1 The Harbours Act 1964 requires all non-fishery trust ports in England and Wales to deliver their annual reports and accounts to the Secretary of State relating to harbour and associated activities.

2.2.2 Section 42 of the Harbours Act 1964 provides that, subject to any regulations made by the Secretary of State⁵, the accounts and reports to be delivered must be prepared in accordance with the provisions of the Companies Acts 1948-2006 relating to the form and content of company accounts and reports. In particular the trust ports report on matters covered by the accounts must be prepared in accordance with Companies Act requirements

⁵ The Statutory Harbour Undertakings (Accounts) Regulations 1983 exempted statutory harbour undertakings where turnover was less than £250,000 from the provisions of the Companies Acts referred to in the Harbours Act. It removed the exemptions, in relation to accounts, granted to small and medium sized companies under sections 5-10 of the Companies Act 1981 from any Statutory Harbour Undertaking preparing reports and accounts in accord with the provisions of Section 42 of the Harbours Act.

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applicable to directors' reports. It is essential that all boards ensure that their accountants and auditors are conversant with the special provisions in relation to statutory harbour authorities. The Department will continue to take a close interest in the presentation and content of trust ports' accounts and their compliance with the provisions of the Harbours and Companies Acts.⁶

2.2.3 The purpose of a set of accounts is to provide a true and fair view of the business' financial performance, position and cashflows. To meet this purpose, the Companies Act 2006 permits an entity to prepare its accounts in accordance with either UK or International GAAP (note, however, that the consolidated accounts of listed entities must comply with International GAAP). Boards should 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.

2.2.4 The accounts should be supplemented by a Business Review, contained in the Directors' Report. The Business Review should be forward-looking, comprehensive, neutral and comparable over time. The narrative should explain the main factors underlying the ports' current position and performance and how these will be affected by key trends or factors in the future.

2.2.5 It is also expected that the Business Review would include arrangements to repair or replace business critical plant and machinery when the need arises. Ports will need to be ready to meet the associated costs and should be considering alternative methods of financing these to achieve best value for money. Such methods may include the accumulation of a pool of liquid assets, funded by retained profits, to cover the eventuality that external financing may not be available when it is needed. Failure to make adequate plans to meet such costs may jeopardise the long-term survival of certain Ports and as such may represent a key strategic risk.

2.2.6 The Business Review should therefore discuss the risk of failure of business critical plant and machinery and the strategy adopted to mitigate this risk, including methods of financing replacement costs. Where the Port does not retain profits in the form of liquid assets as part of its financing strategy, the Business Review should note and explain the rationale for this approach.

2.2.7 The following provisions of the Combined Code should also be reflected in trust ports' governance and reporting:

- Board members should explain in the annual report their responsibility for preparing the accounts;
- Board members should report that the business is a going concern, or provide qualifications as necessary;
- The board should maintain a sound system of internal control to safeguard the port assets and the future benefits to stakeholders, in particular
 - The board should, at least annually, conduct a review of the effectiveness of the system of internal control,
 - It should include in its annual report that it has reviewed the system of internal control (financial, operational, compliance and risk), and

⁶ Board members and stakeholders should be aware that the Financial Reporting Review Panel and the Department for Business, Enterprise and Regulatory Reform have procedures for reviewing and investigating complaints regarding the annual accounts of companies in respect of departures from the accounting requirements of the Companies Acts. If persuaded they can apply to the courts for an order for the preparation of revised compliant accounts.

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- It should satisfy itself that at least one member of the audit committee has recent and relevant financial experience;
- The audit committee should have primary responsibility for the appointment, reappointment and removal of external auditors; and
- Where the auditor provides non-audit services, an explanation of how auditor independence is safeguarded should be included in the annual report.

2.3 Compliance

2.3.1 This guidance represents a code of good practice. All trust ports should review their governance arrangements against the standards set out here. The audit committee should take on responsibility for oversight of implementation and adherence to this guidance and all other codes of practice within their port.

2.3.2 Trust ports should do all they can to comply with the guidance. The Department acknowledges though, that not all trust ports will be in a position to comply with every provision. In some cases the size and nature of the trust port's operation may mean that a particular stipulation doesn't apply, or that compliance would be excessively burdensome.

2.3.3 Annually as part of their report, trust ports should detail in full their compliance with the guidance, and where they have not been able to comply, explain their reasons. This is an approach consistent with the Combined Code, and offers stakeholders the opportunity to see how far a trust port is meeting the good practice requirements set out here, and to challenge if not satisfied. In such an instance the port will be expected to respond constructively.

2.3.4 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.

2.3.5 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.

2.3.6 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.

2.4 Good Housekeeping

2.4.1 It is essential that the statutory and legal framework underpinning the effective operation of the trust port be maintained. This framework constrains the operation of the port. This means that 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. Information on new legislation, including environmental legislation, comes in many forms and from many sources. The chief executive and/or harbour master should be tasked with keeping abreast of changes.

2.4.2 Port legislation, byelaws and compliance with the Port Marine Safety Code must 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. Reviews should be conducted by competent port management, possibly supported by a board committee comprising members with appropriate skills. This group should report to the board with whom the final responsibility for effecting change must rest.

2.5 Data Handling

2.5.1 Recent high profile data losses within Government have led to a review of data handling activities and recommendations on data handling procedures. Trust port boards are strongly encouraged to review their own procedures and should aim at achieving the following four measures:

- Achieving better data handling through core measures to protect information and making that transparent to others;
- Fostering a culture that values personal and other data;
- Strengthening accountability by addressing risks to your information, including personal data and keeping the issue high on the agenda for senior management
- Strengthening scrutiny of performance and ensuring any lessons are learned and shared.

2.5.2 Actions that can be considered in implementing these measures could include:

- Appointing Information Asset Owners for those data assets under the board's control and setting them clear objectives;
- Identifying what information is held and what falls into the personal category;
- Implementing measures to prevent unauthorised access to information including holding it in secure systems or premises, or, where that is impossible, providing secure remote access or encryption;
- Wherever possible avoiding the use of removable media and where this is impossible use should be strictly controlled and additional protection measures used, such as encryption;
- Implementing systems to ensure the disposal of information and storage media in a secure and controlled manner;
- Setting out and recording all arrangements and decisions regarding data handling in writing, including an information risk assessment.
- Completing the roll-out of protective measures through the trust port's delivery chains (suppliers, contractors, data sharing partners) where a port can mandate the use of particular measures, and putting plans in place to encourage the use of protective measures where a port cannot mandate their use

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- Completing initial changes to your HR policies to put in place procedures to reward good practice and penalise poor performance in data handling and have in place and commence cultural change plans.
- Considering the need to formalise your information risk policy and publish an information charter.
- Obtaining accreditation for new systems containing protected personal data.
- Inserting standard Office of Government Commerce framework contract clauses in new contracts.
- Completing Privacy Impact Assessments for new information collection and/or sharing activities.
- Introducing or reaffirming access controls.

3.1 Constitution

3.1.1 In line with good commercial practice, a trust port board should comprise between 8 and 12 members. Larger boards are unwieldy. Their effectiveness tends to decline in proportion to the number of members. A move from representatives to independent board membership removes the need for a large and potentially ineffective board structure. Trust port boards should seek instead to achieve an effective balance of skills to meet operational and strategic needs as set out in these standards. It is perfectly feasible for any board to embrace all of its core skill requirements within 8-12 members.

3.1.2 The executive should be represented on the board as of right. The scale of executive representation should be appropriate to the size of the port. In larger ports it would be appropriate to follow the guidance of Cadbury/Greenbury and look to 25% executive representation including the chief executive⁷. The most senior managers would be other appropriate members. In smaller to medium-sized ports it would probably be appropriate to confine executive representation to whichever senior manager is deemed to be the operational head of the port.

3.1.3 Whatever the representative structure, it is important that the harbour master should be able to maintain a direct line of contact with the board as he is immediately responsible for the safe and effective operation of the port facilities. It is equally important that the position of harbour master be held by someone with the appropriate experience and qualifications to personally fulfil that role.⁸ A harbour master's powers and duties should not be delegated except for certain specific matters as approved by the board or prescribed by legislation (providing that these do not impact on the overall responsibility for the conduct of a harbour master's duties which must remain with the appointee at all times).

3.1.4 The board and executive management are the joint focus for the accountability of the trust port in the conduct of the port's business. The executive management of a trust port has a vitally important role to play in operation of these standards of accountable governance. Once these standards are in place there will be a regular turnover of board membership. In many ways the chief executive or senior manager will become the guardian of this guidance, the legal and fiduciary duties and the powers of authority. They should be in a position to lend support to the chairman in ensuring that the board operates within them. The chief executive is, in effect acting as adviser and counsellor to the board on its conduct, duties and responsibilities.

⁷ 'chief executive' is used throughout this document as a catch-all term to refer to the most senior officer or manager below the level of the board.

⁸ Section 53 of the Harbours, Docks and Piers Clauses Act 1847 gives ports specific powers to appoint a harbourmaster. Boards must exercise these in a reasonable manner.

3.2 Management

3.2.1 A trust port, in common with any commercial undertaking, requires effective strategic direction based on a complete understanding of the direction being taken and its associated opportunities and risks. Prudent financial management is central to the duties to be discharged by every trust port board member and officer. The principal role of its chairman is to ensure that the board works effectively in directing the affairs of the port and has a clear understanding of its role and responsibilities. The chairman has a key role to play by leading the board in giving the port this direction. Given the key role of chairman, unless there are strong and persuasive reasons to the contrary, such as where the Secretary of State retains power of appointment over nationally significant ports, the chair should be appointed by the board. Subject to the provisions in section 3.4 below about length of term, such appointment should not be dictated by rotation. It should be made on the basis of qualifications and experience.

3.2.2 The ultimate effectiveness of the trust port is dependent to a substantial extent on the quality of the information it receives. The chairman should ensure that the executive regularly provides the board with a clear picture of financial and business performance against the plans previously agreed by the board. The chair should also ensure that the executive provides the board, on a regular basis, with clear and comprehensive reports on specific projects. The chair is responsible for regularly reviewing the quality of information thus provided to the board. The chair is also responsible for ensuring that papers are circulated and meetings notified in good time to all board members.

3.2.3 The chair should manage the board and ensure that it and its officials stand above sectional interests and act as true independents. The chair should have the ability to take an overview of board discussion and summarise it with an intelligent commentary, including his or her own personal views.

3.2.4 Both the board and the chief executive have the capacity and responsibility to direct the affairs of the trust port in accordance with the criteria of prudent management. However, it is very important that there be a positive demarcation between their roles. The primary concern of all involved is the welfare of the port and all its stakeholders. However, it is for the board to give strategic direction to the port and to provide management with the challenge that ensures maintenance of a cost effective and accountable service. It is for the executive to use their professional skills to achieve board objectives through day to day control of port operations.

3.2.5 These functions should not overlap. The board should be in a position to take an independent and detached view of management and its performance. The board should not seek to interfere directly in the day to day management of the port. They should collectively ensure that officers have clear strategic direction and reporting lines so that they can effectively manage the port. Clear separation of board and executive functions provides valuable checks and balances against undue (potentially unaccountable) concentration of power within the trust port. The executive should not seek to exercise a strategic policy making function in launching on any significant course of action or incurring significant expenditure (outside of normal delegations) without prior approval of the board.

3.2.6 Although the board should not interfere in the daily operation of the port, members should understand how their decisions affect the running of the port and the wider economy. It falls to the board to satisfy both the legitimate needs of customers and the legitimate wider interests of all stakeholders.

3.2.7 It should be clearly understood that the officers and employees of a trust port are the servants of the board collectively, not of individual board members. The executive is only answerable to the board, collectively, for the conduct of port business. Non-executive members acting individually should not attempt to involve themselves in operational matters

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unless specifically requested by the board or the executive. These areas are the prerogative of the board in full session. Individual board members may bring their concerns to the attention of the executive and provide them with advice. They should not attempt to direct or influence the actions of the executive or employees in day-to-day management of the port, its relationships with all stakeholders or the interpretation of the statutory and legislative framework within which it operates (including its own byelaws) without prior authorisation of the board. Any attempt by individual members to influence the actions of the board's servants in this manner should be reported to the chairman and/or board by the chief executive. The board should, if merited, issue a formal warning to the board member concerned. Further instances should result in termination of the member's appointment.

3.2.8 Irrespective of size it is essential that the boards meet regularly. Unless there are truly exceptional circumstances all trust port boards should convene at least 6 times a year. This is the minimum required to ensure effective governance of the port and transaction of its business. Every effort should be made to ensure that board meetings are held at a time convenient to all members. The special needs of those in full time employment, with family commitments or with disabilities should be taken into account in setting the time and venue. Board members' concerns should be recorded in the minutes as a matter of course.

3.2.9 In trust ports of all complexions there can be a valuable role for sub-committees of board members to provide continuity between board meetings, to resolve specific issues and manage specific projects. Such committees should be adequately resourced to carry out the functions asked of them by the board. These committees should be subservient to the board, but may be given some powers to deal with including making decisions on routine matters. Standing committees should be restricted to finance, audit and remuneration.

3.2.10 The number of board meetings, the attendance record of board members, and the membership and function of all board committees should be clearly set out in the port's annual report and/or strategy document.

3.3 Guiding Principles - Appointment

3.3.1 This chapter of the guidance, covering appointment, is intended to set out a basic set of standards around which individual trust ports may build an appointment process tailored to their specific requirements. The basic tenets of the appointment process are set out below, and are based on existing good practice in both public and private sector.

3.3.2 The objective is to obtain a board that is independent and fit for purpose rather than representative of particular interests. The intention is to open up the process to allow trust ports to range wider to locate the expertise that they need to function effectively. All trust ports must work to phase out any remaining reserved appointments from their constitution. Even where existing reserved appointments (eg where the local authority appoints) are conducted according to these principles, trust ports should look to go one step further and create entirely open competition for board membership.

3.3.3 The following basic process should be adopted to provide a simplified, consistent, open and accountable system for board appointment:

- All vacancies should be filled against job descriptions to ensure the correct balance of skills and competencies across the board. Core skills, characteristics and experience required by a board member are outlined in these standards, and should be made clear to potential candidates. Annex 2 contains examples of existing job descriptions and a model advertisement and application form which can be customised.

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- All vacancies should be advertised in the local and regional press, on local radio, notice boards, websites and in specialist publications as appropriate. All applications and nominations should be sifted by the intended interview panel and a short list for interview put to the board.
- The criteria by which a selection panel will judge the candidates for the post must be made clear to applicants in advance. The selection panel must adopt selection procedures that accurately measure candidates against those criteria, and must be in a position to provide evidence to support its eventual decision. All candidates should be offered the chance to receive feedback on their performance in the application process.
- The selection panel should comprise the chairman or deputy chairman, a stakeholder representative and an independent. It would be acceptable for the chief executive to advise this group. The independent member might be drawn from the Government or local authority listings of independent assessors, provided by the local authority from among its officers (Personnel Director or equivalent), or from some other locally accredited and recognised independent source to be determined by the board.
- All unsuccessful candidates should remain confidential and the papers should be destroyed or returned to the applicants.

Seven Guiding Principles of Trust Board Appointment, adapted from the Code of Practice established by the Commissioner for Public Appointments.⁹

Responsibility

The ultimate responsibility for making an appropriate appointment of someone fit for purpose rests with the chairman of the board.¹⁰

Merit

All appointments should be governed by the overriding principle of selection based on merit and the well informed choice by the board of new members who through their abilities, personal experience and qualities match the needs of the trust port.

Independence

No appointment will be made to any board to provide representational rights for specific groupings or interests. All appointments must result from an open and competitive selection process operated by a panel containing at least one member independent of the port.

Equal Opportunities

Ports must sustain recruitment policies and practices aimed at delivering the principles of equal opportunity and achieving demographic balance on the board.

Probity

Appointees must be committed to the principles and values of the port and be ready to fulfil those duties with integrity in a completely disinterested and impartial manner.

Openness and Transparency

The principles contained in this guidance must be applied to the entire appointment process. Its workings must be transparent and information about the appointments made must be publicised. The criteria against which candidates for a role are to be

⁹ Which itself provides useful background material and can be found at:
http://www.ocpa.gov.uk/upload/assets/www.ocpa.gov.uk/codeofpractice_aug05.pdf

¹⁰ In the case of certain nationally significant ports this responsibility will remain with the Secretary of State.

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judged must be clearly set out. Candidates should receive feedback on their performance in the application process, and those making the appointment must be prepared to justify their decision to unsuccessful candidates.

Proportionality

Appointment procedures must be geared to the nature of the post and the weight of its responsibilities and should not require disproportionate amounts of time and effort on the part of candidates or the port itself.

3.3.4 The aim should be clearly to demonstrate that the appointment process is open and accountable, ensuring that appointees are demonstrably independent and fit for purpose. As wide a field as possible should be trawled in order to obtain effective board members, appointed on merit, who meet the specific needs of the port.

3.3.5 In the majority of trust ports the chairman and deputy chairman are appointed by the board from within the ranks of the existing experienced board members. This should be standard practice, although the Department will continue to appoint chairmen to the boards of a handful of strategically important trust ports. In line with recommendations of the Combined Code, the chief executive of a port should not go on to become its chairman, to preserve the important distinction between the board and executive.

3.3.6 Boards will be expected to confirm they have adopted the guiding principles; publicise and explain the appointment process; and indicate the avenue of appointment for individual board members in their annual report accompanying the accounts and strategy document.

3.4 Length of Term

3.4.1 All trust port board appointments except executive members (who should serve for their term of office) should be of three years duration. Any less than three years inevitably hampers consistency and stability within the board, and a regular turnover of board appointments may result in the loss of valuable 'corporate memory'.

3.4.2 Subject to continued eligibility, each board member may be appointed for a maximum of three terms (i.e. reappointed twice), although reappointment for the third term should be only in exceptional circumstances. Reappointment should never be automatic. No board member should be reappointed for a second or third term unless the chairman is satisfied that the board consider not only that the member in question has performed satisfactorily during the current term of office and has a good attendance record, but also that a new appointee would be unlikely to offer greater value to the board. This test must be emphatically passed in the exceptional event of a board member being reappointed for a third term. In such an event the board should also have the option to consider the incumbent against a wider selection of candidates through a more formal selection process.

3.4.3 Chairmen, appointed by the board, should normally have served at least one term as a board member. The chairman should be appointed for a three year term, even if mid-way through a term as board member. The chairman should be subject to an absolute maximum of 12 years service on the board in whatever capacity.

3.4.4 All boards should seek to avoid a situation whereby all board appointments have a common term and end date. Synchronised roll over is disruptive to the overall effective management and business of the port.

Termination of Appointment

3.4.5 Specific breaches of the standards contained in this guidance and any activities deemed inappropriate to the interests of the trust port, including those likely to bring the

port into disrepute (including moral turpitude), or plainly outside the trust port's legislative or statutory framework, should result in disqualification of the board member.¹¹

3.4.6 In addition, a board member, including the chairman, should cease to hold office if a majority of the board requests his or her resignation in writing, and supports this with a resolution, passed at a full board meeting, that the board member has vacated office. The board should make public the reasons for its actions (within the constraints imposed by civil and criminal law).

3.4.7 Boards should also consider whether, in the interest of natural justice, they should institute an independent appeals mechanism for members whose appointments have been terminated. Whatever the route taken it should be clearly seen to offer an open, accountable and impartial forum of final recourse for consideration of the board's decision.

3.5 Guiding Principles - Membership

3.5.1 All board members should adhere to the following guiding principles in the conduct of trust port business. Board members must fully understand their duties and responsibilities. Individual boards might consider adapting these to publish their own Code of Practice, possibly in the context of the annual report and/or their published strategy document.

Eight Guiding Principles of Trust Board Membership, adapted from seven principles of public life as defined in the Nolan Committee's First Report on Standards in Public Life.

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 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

¹¹ Commissioners Clauses Act 1847

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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.

Boards have a duty to ensure that new appointees are provided with clear information on all aspects of their duties as a trustee of the port. As a minimum all board members should be provided with a copy of these standards on appointment and be required to sign a binding declaration on joining.

3.6 Board Skills and Diversity

3.6.1 Trust port boards should contain an appropriate balance of skills, competencies and experience to control the port effectively and provide it with leadership, motivation and strategic direction. They will be a mix of professional and personal. Entrepreneurial skills need to be balanced with a public service commitment. Experience and independence are of equal importance. The effective skills balance for each port will be different, depending on its circumstances and the environment within which it operates. However, common requirements are likely to include:

Personal skills/competencies	Professional skills
Drive, vision, independence, confidence	Relevant and current commercial expertise
Challenging, proactive approach to board business	Relevant current maritime experience
Ability to motivate and engender respect	Health and Safety
Negotiating and communication	Management
Impartiality and integrity	Public relations/community issues
Interpersonal - the ability to develop good relations inside and outside the port	Shipping/fishing/cargo handling
Ability to work as a team member/supportive of colleagues	Finance/management accounting
Ability to make a constructive contribution to group discussion - clear expression of ideas	Leisure, boating management, voluntary, and commercial sectors
Analytical approach to problem solving	Environmental experience and expertise
Ability to formulate strategy	
Grasp of priorities	

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3.6.2 In assessing potential board members against the above criteria, relevant life experience and track record should be considered as important as skills obtained through a conventional career path and professional qualifications.

3.6.3 Trust port boards should contain a good balance and breadth of competencies. In recognition of the fact that trust ports are commercial entities, this should include, as a priority, adequate financial and commercial expertise. The board should use the annual report actively to demonstrate that they have achieved this balance.

3.6.4 Beyond individual specialties and skills, all board members need to foster a public service ethic. They need to display a genuine commitment to the welfare of the port and all its stakeholders. They should have understanding of, and a commitment to, the needs of the local and regional communities and economies which depend upon the effective operation of the port.

3.6.5 As with competencies, a trust port board will be most effective if constituted by members with a broad and diverse range of backgrounds and perspectives. Trust ports should actively seek applications for board vacancies from a diverse range of people, and not be content solely to recruit candidates with similar backgrounds to existing board members. Trust port boards should also analyse their ways of working to identify any practices (such as the timing of meetings) which may inadvertently hinder the chances of recruiting from certain groups of people.

3.6.6 There is no age limit or minimum requirement on board membership. The overriding requirement is for the board to be optimally effective, and this is most likely to be achieved with a diverse range of members, in which age should not be a relevant factor, but in which a breadth and depth of skills and experience should be paramount.

3.6.7 Plans for achieving a balance, and success in implementation, should form part of the annual published strategy document and be detailed in each port's plan for meeting this guidance.

3.7 Role

3.7.1 There is little difference between the duties of a trust port board member and those of the member of a private company port's board. Company port boards are accountable to their shareholders, the trust ports to their stakeholders. Both have a clear and unambiguous duty to these groups and are accountable to the general public for the way in which they exercise the statutory powers and duties devolved onto them by Parliament.

3.7.2 In general terms, board members should:

act independently and in good faith in the best interests of the trust port and all its stakeholders (Commissioners Clauses Act 1847)	ensure that they receive adequate training for the discharge of their responsibilities
ensure that all their actions and the operation of the port are undertaken within the statutory framework. They must not knowingly allow the port to breach or fail to discharge legal or fiduciary obligations	acquire a proper understanding of the business including - delegated authorities, the strategic plan, budget, structure and relationships, financial controls and systems, customers, competition and markets (eg rights and responsibilities)
have a duty of care to the trust port and its current and future stakeholders	always respond appropriately to complaints from stakeholders

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forge strong working relationships with other members of the board and executive	ensure that the executive is managing the port honestly, efficiently, effectively and acting within its powers
attend all board meetings unless, exceptionally, excused by the chairman	be prepared to submit a paper to the board on their views
send a letter explaining their views on major issues if they cannot attend	read the board papers and ensure that all their decisions are properly informed
declare any outside interests, hospitality, gifts etc, which might conceivably be seen to be in conflict with the duties and responsibilities of an impartial, independent board member	be honest in their dealings with no hidden agenda and respect the confidentiality of information obtained as a board member, and of board discussions
ensure they have all of the information they need to fulfil their obligations to the trust port	be team players sharing knowledge and views with fellow board members and abiding by the view of the majority
participate in the appointment of the executive	place their skills at the disposal of the port and its executive
actively participate in board discussions - be testing - be prepared to be challenging and to act independently (in a constructive manner)	declare an interest in any board discussion at the outset but be prepared to contribute factually to the debate

3.7.3 In general terms, board members should not:

represent specific interests when acting as a board member	ignore or unreasonably oppose the views of the majority
use information obtained as a board member for personal gain, the gain of any third party, or misuse it in any other way	allow membership of any other organisation, club or society to influence his/her decisions or actions as a board member
allow the executive to exercise undue control over the port and board	become complacent or stagnant
cast a vote or attempt to influence or persuade the board on any item in which they have an interest	enter into contracts or other arrangements for personal gain with the port (Commissioners Clauses Act 1847)
attempt to influence the decisions of direct the activities of the trust port servants without recourse to the board	interfere or participate in operational matters unless specifically requested by the chairman and executive

3.7.4 In addition to his or her role as an active board member, outlined above, in general terms a chairman should:

Provide effective leadership for the port	manage the board process effectively
form a strong partnership with the executive to ensure effective governance of the port	act as an ambassador for the port, representing the views of the board to the stakeholders of the trust port and public

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ensure that new board members receive appropriate training	forge an effective working relationship with the executive
maintain a close interest in the operation of the port	ensure that the board meets at appropriate intervals
assess performance of individual board members with the chief executive	discipline (including sacking where permissible) board members if required
ensure that the port is compliant with all legislative and other Government requirements	ensure that the port complies with this guidance and where compliance is not achieved explain why
ensure that the board has the capacity and information required to take a balanced view on every matter	ensure the probity and timely publication of the report, accounts and strategy document, and effective corporate plan
ensure that every member of the board maintains a complete grasp of his or her responsibilities to the trust port, statutory duties and legal obligations	ensure that the board maintains an appropriate skills mix through successive appointment rounds
ensure the board does not exceed its powers or functions	promote the active participation of all board members in debate

3.7.5 In general terms a chairman should not:

intervene in operational matters or establish alternative lines of command within the port's hierarchy
set up "chairman's committees" which transact port business without recourse to the board
prevent board members (subject to the provisions of the Data Protection Act) from seeing, on request, any document relating to the business of the port

3.7.6 All of the above principles also hold good for the executive management of a port. The executive provides the operational interface between stakeholders and the port or conservancy. The executive is responsible for the effective transaction of the trust port's business. In addition and specifically, the chief executive should:

act as custodian and guardian of the basic principles and aims of the trust port (and this guidance)	conduct themselves with integrity, impartiality and honesty in relations with the board and public
be accountable to the board (the board to decide on strategy and direction, the executive to implement) in terms of actions that are within their power...	provide the board with clear financial and operational reports, allowing decisions to be based on accurate and balanced information
...but able to act independently of the board, in the interests of the trust port, if the board's directions exceed their powers.	forge strong working relationships with the board and act as the link between the board and the Departments
be responsible for ensuring that the board and port operate within the statutory framework and procedures	ensure that a port's statutory and legislative framework is fully fit for purpose

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discharge public and statutory functions reasonably and according to law	provide the board with strategic advice to inform their decision making
oversee the appointment and electoral processes of the board	be bound by the same code of standards as applies to the board

3.7.7 The chief executive should not:

allow the port to breach or fail to fulfil its legal obligations	allow vested interest, or any other improper conduct to flourish unchecked among board members
allow any board members to dictate or manipulate the presentation of plans, reports and accounts or otherwise improperly interfere with, or compromise the exercise of, the statutory duties of the trust port both as a port and as a commercial organisation	become complacent and stagnant

3.7.8 In the case of the board, chairman and executive, serious and/or continued activities contrary to these basic guidelines should be considered adequate grounds for formal warnings and/or termination depending on the gravity of individual non-compliance and the potential impact of this on the accountable operation of the trust port.

3.8 Performance Management and Board Remuneration

3.8.1 The performance and contribution of the individual board members should be monitored on a regular basis by the chairman, deputy chairman and chief executive. As with the general performance of the port, the performance management of board members should constitute a cycle of assessment and appraisal, followed by new target setting, and the subsequent reporting of progress. Board members should expect an annual appraisal of their performance by the chairman.

3.8.2 The performance of individual board members can obviously be appraised in part through looking at the general performance of the port, and the resultant benefits to stakeholders. The annual appraisal should also seek to evaluate the board member's individual contribution to the life of the port and the working of the board, as well as factors such as attendance. This evaluation should take place against objectives agreed with the board member at the beginning of the year.

3.8.3 The board should appraise the performance of the chief executive, the chairman and deputy chairman on a similar basis. As a general rule the board should be responsible for appointment of the chairman and deputy chairman from amongst its members with regard to previous performance.

3.8.4 The administration of remuneration policy should be the preserve of a remuneration committee of the board, which should comprise two or three members and should make available its terms of reference. It should have delegated responsibility to set the remuneration levels of board members and the chairman. The remuneration committee should also recommend and monitor the remuneration of the senior executives.

3.8.5 Again in line with the provisions of the Combined Code, the remuneration committee should, as part of its duties, consider the compensation commitments that would be entailed in the event of early termination of appointments, and where remuneration consultants are appointed, a statement should be made detailing any links that they may have with the port.

3.8.6 At any stage through the year, but particularly during formal appraisal process, if an assessment is made that a board member is not felt to have made an effective contribution

to the trust port, through both regular attendance and input to the work of the trust port, he or she should receive a formal written warning setting out the chairman's views. Specific further targets to achieve should be set on the understanding that a lack of improvement within an agreed time scale will result in termination of his or her appointment, either through resignation or a vote of no confidence from the board. The chairman, deputy chairman and chief executive should be prepared to work with these members to offer encouragement and support.

3.9 Probity and Interests

3.9.1 Prudent management requires that every trust port should be subject to the direction and management of a board that is fit for purpose. Individual board members should also 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. It can also be determined by whether membership of an individual would or does pose a threat to the interest of the whole including all the stakeholders. Suitability is for the board to consider before an appointment is made, and for the chairman and executive to consider on a continuing basis and certainly before reappointment is recommended.

3.9.2 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 criminal conviction remaining unspent. An appointee should not be a current or recent member of another trust, company or municipal port board, where the other board might be viewed as a direct or indirect competitor of the appointing body.

3.9.3 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.

3.9.4 One of the commonest complaints levelled at members of trust port boards and their executives by members of the public is that they are not acting in an independent and impartial manner. Candidates who declare a potential conflict of interest should not be automatically debarred. However, should they be short listed, they should be able to demonstrate an ability to act in an independent manner in the interest of the trust port to the satisfaction of the selection panel. Appropriate questions would need to be asked to determine whether there is a genuine conflict of interest and whether it would hamper an individual's compliance with the requirements of board membership and the national standards.

3.9.5 In accord with Government best practice, all trust ports should maintain a register of interests for its board. The information provided by appointees in their screening questionnaire should form the basis of their entry. This should be freely open to inspection by the public on request. It is the responsibility of the chairman, chief executive and individual members to ensure that it is kept up to date. In addition all trust ports should, through the chairman and chief executive provide 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.

3.9.6 Registers of interest should include:

- pecuniary and non-pecuniary interests of members, their close family and associates which relate closely to the port's activities¹² ; and

¹² (i.e. employment, proprietorship, directorships, controlling interests, ownership or title to land and property within the port's sphere of activities, membership or office of another organisation,

- hospitality or gifts that could not be considered insignificant accepted by the board member of close family associated with the port and its operations.

3.9.7 Key elements of the register should be published in the annual report. Failure to disclose an interest otherwise discovered should be a matter for formal censure by the board, supported by a written warning from the chairman or chief executive in the first instance. Further lapses (depending on seriousness) should be considered as grounds for termination.

3.9.8 In the course of board business it is possible that a member's declared interest may present a conflict with the matter under discussion. In these circumstances, board members must declare such conflicts of interest either before or at the board meeting in advance of any discussion of the item concerned, and must offer to withdraw. The chairman, 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 can 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.

3.9.9 The principles relating to a conflict of interest should not apply to exclude the members of any consultative or advisory committee created or routinely consulted by the board.

3.9.10 As with declaration in the register, if it is subsequently discovered that a participating member failed to declare a relevant interest in the course of conducting board business, the chairman 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.

3.10 Personal Liability

3.10.1 Trust port board members have a duty of care to the trust they are appointed to oversee. Incorporation by a trust port of Section 60 of the Commissioners Clauses Act 1847 into its local legislation means that Board members cannot be sued or prosecuted for lawfully exercising their powers as a member. In addition a 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.

3.10.2 All boards should adopt the provisions of the Commissioners' Clauses Act into their local Act in the interests of good governance.

3.10.3 Section 60 also provides that members shall be indemnified out of funds held by the board for all payments made or liability incurred, and all losses/costs/damages which they may suffer, in respect of acts done in exercise of members' powers.

3.10.4 Boards may wish to consider ensuring that they have appropriate modern wording for the indemnity provisions in their local legislation. The wording used in Section 60 is not ideal as it does not make explicit that the indemnity applied only in respect of acts done lawfully in the exercise of the relevant powers. However if a change is required to the port's local legislation, a Harbour Revision Order would be needed.

3.10.5 Directors should have access to professional advice at the port's expense where they judge it necessary to discharge their responsibilities.

membership of political parties, non-profit-making organisations such as housing associations, clubs and closed societies such as the Masons).

3.11 Training

3.11.1 In order to achieve the goals set by the standards it is essential that board members receive training to enable them to undertake their role effectively. Many trust ports have very limited resources and the Department will endeavour to ensure that training requirements are not a heavy financial burden.

3.11.2 Based on the experience of the years since Modernising Trust Ports was first produced the Department is considering how the training is best delivered but it will be based on two strands.

3.11.3 These are:

- On-the-job training at port level. This will ensure all board members are familiar with board procedures, port operations, and current strategies. This functional training could be tailored to meet the needs of individual board members (taking their existing experience and skills into account) and must reflect the circumstances of individual ports; and
- Seminar formats on the impact of this revised guidance to deliver clear messages on the conduct of boards and the wider issues of ports policy (set in the context of transport policy), board members' statutory duties, their responsibilities under this guidance and the Port Marine Safety Code.

3.11.4 As a minimum, all new board members should aim to attend functional training within 6 months of appointment.

3.12 Succession Planning

3.12.1 In order to provide reasonable continuity and ensure that a chairman has an effective grasp of trust port affairs, appointees should normally have served at least one term as a board member of the port. In line with the Government's Nolan doctrine, no chair should serve more than 9 years in that office. Boards should take a considered approach to succession. Boards should avoid a situation where the chair and chief executive both change within a comparatively short period. Likewise they should attempt to avoid a concentrated roll-over of key officers in the trust port.

3.12.2 The board should clearly identify and groom a successor to the post of chairman in good time. The chairman should ensure that the board has an established approach to board and management succession which is kept updated in the light of changing circumstances. There should always be at least one member of the board capable of stepping into the chairman's shoes at short notice. The chairman should plan ahead to ensure that the balance of skills on the board remains fit for purpose. The chairman is responsible for ensuring that essential skills are effectively refreshed and replaced through the appointment process. The chairman is also responsible for ensuring that existing skills are supplemented in good time by any additional skills the port will require to support its operations in the medium term.

4.1 Structural Change

4.1.1 This Government has stated that it does not wish to use its powers under the Ports Act 1991 to force through the privatisation of a port.

4.1.2 Nevertheless the Department strongly encourages trust ports to analyse their corporate structure and keep it under review, with a view to identifying opportunities to enhance their efficiency and get value from their assets. The Department expects all trust ports with an annual turnover in excess of the 1991 Act threshold to have reported to it by

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April 2010 on their analysis of structural change, and to explain and justify their intended course of action.

4.1.3 In particular, the Department invites trust ports to consider the two models highlighted by PwC in their report as being of potential benefit.¹³ The first of these is a two-tier model under which an operating subsidiary would be responsible for the commercial running of the port, and would pass up every year a 'dividend' to the board, which would focus its attentions on administering the stakeholder benefit. The second is the introduction of a third party operator or equity stake in an operating subsidiary. Both models would potentially allow a clearer delineation of the management structure, and allow the board to focus more completely on the use of profits for the benefit of all stakeholders. The second of these models also creates the prospect of greater efficiency, driven by the disciplines and incentives of private investors.

4.1.4 Changes of the type envisaged above are subject to what local legislation permits and may need Harbour Revision Orders to carry them out.

¹³ Available of the Department's website at: <http://www.dft.gov.uk/pgr/shippingports/ports/trust>

Annex A

Performance Indicators

Financial

Profitability (Profit (EBITDA^{*})/Turnover)

While not a measure of efficiency and rather a blunt measure of performance that does not take into account port size or asset base, profitability is important in assessing a company's health. Year on year data also allows effective identification of changes in performance.

* ie Earnings before interest, tax, depreciation and amortisation.

Return on Capital Employed (RoCE)

RoCE is a widely used measure of a company's success in generating return against an asset base and it therefore indicates how effectively the ports assets are being utilised. One way of looking at RoCE is the number of pence each pound of useable asset generates. For an individual port in isolation RoCE is not a particularly useful indicator but it can be a very useful comparator. Year on year data can assist in examining longer term changes in performance.

Weighted Average Cost of Capital (WACC)

It is possible to benchmark RoCE against WACC, which is the blended cost of financing a company's operations and represents the average cost of debt and equity funding weighted by the proportion of the company's capital structure that those two components constitute.

Gearing (Total Debt/Total Assets)

This can assist a company in assessing its financing position and it is also a useful comparator across sectors, potentially indicating whether there may be in/efficient financing and investment levels ie if gearing is very different between similar companies. For trust ports low gearing may not indicate inefficiency but may simply be a function of not having to pay a dividend since in the absence of further investment cash would instead be retained within the company.

Operational

Labour productivity (EBITDA/Man hours per annum)

A measure of operational performance can be gained from labour productivity. Undertaking this broad calculation allows a comparison across all ports. Man hours per annum can be obtained by the ports from Health and Safety Reports or other records.

Profitability of Land Holdings (EBITDA/Number of Hectares)

Number of hectares relates to the land the port owns and uses, owns and rents to others, and rents off-site for its own use. This is another indicator of asset utilisation.

Channel Depth Management

Channel depths could be reported alongside strategic justification for planned dredging, deepening and widening activities. In one sense channel depths alone are not a particularly useful indication but the strategic justification will give a transparent explanation as to why a particular approach has been taken. Channel depths are easily available as should be the justification and therefore how well the port is responding to the market.

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Berth Utilisation (Time Berth in Use/Time Available)

Information on berth utilisation is recorded by ports that manage berths as this is an important tool in their management. An indicator on berth utilisation would provide a measurement that could reflect various operational performance issues such as under-utilisation, capacity issues etc that a port may be experiencing. It would also raise further issues in terms of, for example, a port which is not open 24/7, but could increase opening times to accommodate capacity requirements rather than invest in a new berth.

Wider Impact

Gross Value Added/Net Value Added

(Gross Value Added = Employee costs + EBITDA/Number of employees)

(Net Value Added = Employee Costs + EBITDA – DA)/Number of Employees).

GVA and NVA can be used as measures of the value added by a company. In effect, both measures the 'retained wealth' created by a company and its employees ie wages plus the profit made from undertaking its activities. This is also a proxy measure of the local economic impact of the port, assuming there is a high level of local employment and procurement. NVA subtracts the costs of depreciation and amortisation which takes into account the costs associated with its assets. These two indicators fit well with the wider stakeholder remit that trust ports have, in that they assess the wider impacts of a port's activity. We accept that that they are also quite crude in that they do not take into account some subtleties that affect a port.

Annex B

List of Trust Ports

England and Wales – non-fishery

Berwick Harbour Commissioners
Blyth Harbour Commissioners
Brightlingsea Harbour Commissioners
Caernarfon Harbour Trustees
Cattewater Harbour Commissioners
Chichester Harbour Conservancy
Cowes Harbour Commissioners
Crouch Harbour Authority
Dart Harbour & Navigation Authority
Dover Harbour Board
Falmouth Harbour Commissioners
Fowey Harbour Commissioners
Gloucester Harbour Trustees
Great Yarmouth Port & Haven Commissioners
Harwich Haven Authority
Kings Lynn Conservancy Board
Lancaster Port Commissioners
Langstone Harbour Board
Littlehampton Harbour Board
Port of London Authority
Lymington Harbour Commissioners
Maldon Harbour Improvement Commissioners
Maryport Harbour Commissioners
Milford Haven Port Authority
Neath Harbour Commissioners
Newport (Gwent) Harbour Commissioners
Orford Town Trustees
Padstow Harbour Commissioners
Poole Harbour Commissioners
River Yealm Harbour Commissioners (Newton Ferrers)
Sandwich Port & Haven Commissioners
Shoreham Port Authority
Teignmouth Harbour Commissioners
Tyne Port Authority
Warkworth Harbour Commissioners
Whitehaven Harbour Commissioners
Yarmouth (IOW) Harbour Commissioners

England & Wales – Fishery

Bridlington Pier & Harbour Commissioners
Flamborough North Sea Landing Harbour Commissioners
Hope Cove Harbour Commissioners
Looe Harbour Commissioners
Mevagissey Harbour Trustees
Mousehole Harbour Commissioners
Newlyn Pier & Harbour Commissioners
North Sunderland Harbour Commissioners (Seahouses)

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Polperro Harbour Trustees
Port Isaac Harbour Commissioners
Portloe Harbour Commissioners
Saundersfoot Harbour Commissioners
Sennen Cove Harbour Commissioners
Staithe Harbour Commissioners
Wells Harbour Commissioners

Scotland – non-marine works

Aberdeen Harbour Board
Brownies Taing Port Trust (Lerwick)
Collieston Harbour Trustees
Cromarty Firth Port Authority
Inverness Harbour Trustees
Lerwick Harbour Trustees
Montrose Harbour Trustees
Peterhead Port Authority
River Nith Commissioners (Dumfries)
Urr Navigation Trustees (Palnackie)

Scotland – marine works

Non-fishery

Balintore Harbour Trustees
Rosehearty Harbour Commissioners
St Margarets Hope Pier Trust (South Ronaldsay)
Skerry Harbour Trustees
Urr Navigation Trustees (Dalbeattie)

Fishery

Annan Harbour Trustees
Avoch Harbour Trustees
Burnmouth Harbour Trustees
Cruden Bay Harbour Commissioners
Eyemouth Harbour Trustees
Fraserburgh Harbour Commissioners
Gardenstown Harbour Trustees
Mallaig Harbour Authority
Pennan Harbour Trustees
Port Seton Harbour Commissioners
St Abbs Harbour Trust
St Andrews Harbour Trustees
Scrabster Harbour Trustees
Stornaway Pier & Harbour Commissioners
Tarbert (Loch Fyne) Harbour Trustees
Ullapool Harbour Trustees
Whitehills Harbour Commissioners
Wick Harbour Trustees

Status Unknown

Cromarty Harbour Trust
Dunbar Harbour Trust