



Department
for Transport

Trust Port Study Key Findings and Recommendations

Department for Transport, May 2016

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Ministerial Foreword



The fifty two trust ports in England and Wales play a very important role in our national and regional economies as well as in local communities.

They range from some of our largest nationally significant ports playing a key role in our economy, to medium-sized ones that play an important role in regional economies to the smallest ones where the harbour can be the focal point of a community.

The trust port model is a longstanding and a unique one. These ports are independent organisations that operate commercially without government support. They are accountable to stakeholders including port users, local communities and Government, who in some ways play the same role of shareholders in a private company.

Trust port governance has improved enormously over the 15 or so years since the first version of Modernising Trust Ports was published in 2000 and its successor in 2009, and trust ports deserve much credit for this. But the unique nature of trust ports does give rise to particular issues, for example about their governance and the strengths and weaknesses of such a model in today's commercial world. It is right that the Government as an important stakeholder considers these important matters from time to time.

Over the past eighteen months the Trust Port Study has looked at governance, accountability and the ability to invest for the largest trust ports to reach a view about the overall effectiveness of this model of port ownership. Its conclusions are set out in this report. The Study found that the model is generally effective and makes a number of recommendations to enhance its effectiveness so that these ports can continue to deliver successfully for their stakeholders, the economy and local communities in the years ahead.

I am very grateful for all the advice and expertise provided to the Study by its External Reference Group, as well as by trust ports themselves, the British Ports Association, and other stakeholders to the Study. Their contributions are much appreciated.

I am proud of Britain's maritime history and the significant role that trust ports have played in this and I look forward to trust ports continuing to be an important part of our excellent ports industry in future.

Executive Summary

- 1 The aim of the Trust Port Study is to consider the overall effectiveness of the trust port model and to make any recommendations needed about how its effectiveness could be improved. The factors that gave rise to the Study include the Department for Transport's (DfT) role as a key stakeholder in trust ports, the effect of borrowing by the largest trust ports on DfT's capital expenditure budget and the need to update good governance guidance for the sector currently set out in Modernising Trust Ports 2 (MTP2). The focus of the Study is the 8 largest trust ports in England and Wales, termed the Major Trust Ports.
- 2 The Study has been carried out by DfT, working closely with Major Trust Ports, the British Ports Association as well as with other stakeholders. In the course of the Study, Ministers met the five trust port Chairs appointed by the Secretary of State on three occasions to get their insights on issues being considered. DfT's approach to the Study was a proportionate one reflecting the resources available to undertake it.
- 3 The key themes of the Study are the accountability and governance of trust ports and also their ability to invest. Five main areas were considered, and a summary of the main findings and recommendations under each are set out below.
 - Secretary of State appointments While Secretary of State appointments are an important channel of accountability between Ministers and the five trust ports, there are questions about whether the current number of Non-Executive Director (NED) appointments is an effective way of helping deliver that, as the appointment process can be unwieldy and has resource implications. In future, Ministers should appoint the Chair and be consulted on the selection of the Deputy Chair at these five ports, but not appoint other NEDs (apart from at Dover due to its particular circumstances).
 - Relationship with DfT The Department has a positive relationship with Major Trust Ports but more could be done to enhance this further to improve lines of communication and accountability for the benefit of both parties. There should be a more structured relationship between Ministers and DfT on one hand and the Major Trust Ports on the other, formed around regular meetings between Minister and each Chair, held at least annually. These would discuss governance, the port's recent performance and its future plans. An agreed standard agenda would be the basis of these discussions with information to support discussions being provided by the ports.
 - Stakeholder engagement Major Trust Ports invest significant time in identifying and engaging with a range of stakeholders in an effective and appropriate manner. Boards should assure themselves at regular intervals that all relevant stakeholders have been identified and are engaged with effectively.
 - Investment capability While trust ports have been able to invest successfully in their businesses, there may be circumstances where the model could potentially act as a barrier to investment and growth. This relates to large scale transformative investments. Also, borrowing by trust ports requires

cover from DfT's capital budget. While this has been managed in the past, increased investment by trust ports may make this more difficult in future. Trust ports should periodically review their strategic objectives, including investment requirements to deliver them, and consider if being a trust port is the best way to deliver those objectives.

- 4 A list of all the recommendations is at annex A.
- 5 On the basis of the areas considered the trust port model is broadly effective. There are ways in which this effectiveness can be improved further as outlined above, while the trust port model may not necessarily be the correct one to deliver strategic objectives of ports where they involve major transformative investments.
- 6 DfT, working with trust ports, the BPA and other interested parties aims to take forward the recommendations to implement them in the course of 2016 and 2017. A number of recommendations will be included in good governance guidance ports to replace MTP2.

Introduction

Background to the Study

- 1.1 This report sets out the key findings and recommendations of the Trust Port Study carried out by the Department for Transport (DfT).
- 1.2 The Study began in the summer of 2014. Its main aim is to consider the overall effectiveness of the trust port model and, where necessary, make recommendations about how the model's effectiveness can be enhanced.
- 1.3 There are a number of factors that gave rise to the need for the Study, the three main ones being:
 - Trust ports, as independent statutory bodies without shareholders, have a unique ownership structure which sets them apart from private ports and municipally owned ones. As a key stakeholder of trust ports, DfT needs to consider if this model is effective at meeting its key aims, such as accountability to stakeholders and ability to invest to help ensure the future of the port as well as to drive economic growth.
 - The largest trust ports are classified as 'public corporations' by the Office of National Statistics (ONS), in most cases as a consequence of the powers Ministers' have to require them to be privatised in the Ports Act 1991. Government accounting rules mean any borrowing these Trust Ports undertake has an impact on DfT's capital expenditure budget.
 - It is some time since DfT last reviewed its good governance guidance for trust ports – Modernising Trust Ports 2 (MTP2) was published in 2009. Good governance practice is likely to have evolved over that period. However, before revisiting the Guidance it makes sense first to consider wider questions about how effectively the trust port model is working.
- 1.4 To reach a view on the overall effectiveness of the trust port model, the Study looked at a number of key areas. These included; the accountability of trust ports to Ministers and their relationship with DfT; their relationship with other stakeholders; and their ability to invest including implications of Major Trust Ports' classification as public corporations. The focus was the 8 largest trust ports in England and Wales, referred to as the Major Trust Ports¹ (see below for further discussion).
- 1.5 The initial phase of the study was to gather evidence from trust ports and their stakeholders about the key areas of the Study. This included a questionnaire sent to all trust port Chief Executives (or equivalents) on 1 August 2014, discussions with CEOs of Major Trust Ports and questionnaires sent to a diverse range of stakeholders at the Major Trust Ports.

¹ That is Blyth, Dover, Harwich Haven, Port of London Authority, Milford Haven, Poole, Shoreham and Tyne

- 1.6 The resulting evidence base was used to inform discussions and develop findings and recommendations about the effectiveness of the model set out in this report. While most of the evidence gathered relates to Major Trust Ports, the letter of 1 August 2014 asked all trust ports for their views on five key questions for the Study. A summary of responses to those questions from the 19 trust port that responded who aren't Major Trust Ports is at annex B.
- 1.7 The Study was led by DfT, working closely with the Major Trust Ports and the British Ports Association (BPA), as well as with other stakeholders. DfT's approach to the Study was a proportionate one, reflecting the resources available to undertake it.
- 1.8 An important element of the Study was the External Reference Group. This was set up to help guide the Study, to act as a challenge to its emerging findings, and as a source of expert advice on the sector. The Group comprised David Whitehead (Director of the BPA), Andrew Moffat (Chair of the BPA and Chief Executive of Port of Tyne), Rodney Lunn (Deputy Chair of BPA and Chief Executive of the Port of Shoreham) and Robin Mortimer (Chief Executive of Port of London Authority). It met four times in the course of the Study.
- 1.9 In addition, the BPA and CEOs of all the Major Trust Ports were briefed periodically on the progress of the Study and provided a further challenge to its emerging findings and expert advice on a range of issues.
- 1.10 DfT Ministers also met the Secretary of State appointed trust port Chairs on three occasions to get their insight on issues being considered as part of the Study.
- 1.11 DfT would like to thank all those who contributed to the Study.

Background to Trust Ports

- 1.12 Trust ports are not-for-profit, independent entities. They are tasked with operating in a commercially viable manner, whilst being accountable to their stakeholders. Stakeholders include port users, employees, the local community, local authorities, DfT and other organisations, groups or individuals with an interest in the port. Indeed, the definition of 'stakeholder' is broad. There are no shareholders and any profits made are reinvested back into the port for the benefit of the stakeholders.
- 1.13 The overarching aim of a trust port has previously been encapsulated in the following quote taken from MTP2. This states that a trust port is 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”*
- 1.14 Being independent statutory bodies, each trust port is governed by its own local legislation, for example as set out in a Harbour Revision Order (HRO) or private act of Parliament, and led by an independent board.
- 1.15 Income is generated from charges levied on port users and other commercial sources. Trust ports generally receive no ongoing subsidy or grants from Government, although some trust ports may receive funding

for specific projects through sources such as the EU Connecting Europe Facility (CEF) programme or through Local Enterprise Partnerships.

- 1.16 There are 52 trust ports in England and Wales which are diverse in terms of size and function (see annex C), performing a range of roles in support of the national, regional and local economies. For example they include the Port of London Authority, responsible for conservancy and pilotage along the diverse 95 miles of the River Thames serving facilities such as London Gateway and Tilbury, medium sized organisations such as Falmouth and much smaller organisations such as Maldon serving predominantly leisure craft and occasional inshore fishing.
- 1.17 DfT is an important stakeholder for all trust ports, and has issued non-statutory good governance guidance in the form of MTP2. The Secretary of State also appoints the Chair at the five largest trust port as well as some Non-Executive Directors (NEDs) at four of these (see Section 2 for further discussion).
- 1.18 Aside from this, DfT has an arm's length relationship with trust ports, as appropriate to independent businesses operating commercially in a competitive environment. For example, DfT has no role in establishing trust ports strategic plans or approving investment proposals. These are decisions for the ports' boards. Board members appointed by Ministers have a duty to independently serve the best interests of the port and are not representatives of Minister or DfT. (The same principle applies to all Board members including the remaining small number who are appointed by, for example, local authorities rather than the Board.)
- 1.19 All trust ports listed in annex C (apart from the Port of London Authority, see below) are subject to the provisions of the Ports Act 1991, which enables trust ports to put forward privatisation proposals for approval from Ministers. If Ministers approve the proposals and a sale takes place, a levy on the sale proceeds is paid to DfT.
- 1.20 Currently seven trust ports have an annual turnover in excess of the threshold in the Ports Act that means Ministers can require them to put forward privatisation proposals. The threshold as at November 2015 is £9.7m, and increases each year in line with RPI inflation (hereafter referred to as the 'Ports Act threshold').
- 1.21 The Port of London Authority also has a turnover above this threshold, however it is not subject to either the voluntary or required privatisation provisions in the Ports Act 1991, as its last operational port business, the Port of Tilbury, was privatised in the early 1990s.
- 1.22 These eight trust ports are termed the Major Trust Ports. Their annual turnover for 2014 is shown in table 1. They are all classified by the Office of National Statistics (ONS) as 'public corporations'. This means any borrowing by these ports has to have cover from DfT's capital budget (or Capital Departmental Expenditure Limit - CDEL) (see Section 5 for further discussion).

Table 1: Major Trust Ports by turnover

Port	Turnover 2014 £m
Port of Tyne	71.5
Port of Dover	60.6
Port of London Authority	51.3
Milford Haven Port Authority	23.1
Harwich Haven Authority	22.1
Port of Blyth	17.8
Shoreham Port Authority	12.5
Poole Harbour Commissioners	9.6 ¹

¹ 2013/14

Devolution

1.23 Port development policy including the power to make HROs and Harbour Empowerment Orders are fully devolved to Scotland and Northern Ireland. Responsibility for shipping, navigation and marine safety matters remain reserved UK functions for DfT and the Maritime and Coastguard Agency.

1.24 With regard to Wales only small fishing and recreation harbours are currently devolved. However, on 20 October 2015, the Government published the draft Wales Bill, containing the primary legislation needed to implement the devolution settlement outlined in 'Powers for a Purpose' published on 28 February 2015. The provisions in the draft Bill in relation to ports devolve to Welsh Ministers responsibility for port development policy including harbour revision orders and oversight of trust ports for all ports in Wales with the exception of Major Trust Ports. Given the significance of Major Trust Ports to the wider UK economy, the policy is for them to be reserved to the UK government. The only Major Trust Port in Wales is Milford Haven.

1.25 All trust ports in the UK operate on the same general model of independent statutory bodies outlined above. That said, relationships between DfT, the devolved administrations in Scotland and Northern Ireland and trust ports in the respective areas of the UK do have some

differences in particular with regard to Ministerial appointments, as discussed in section 2 below.

Structure of the Report

1.26 The rest of this report is structured as follows:

- *Section 2: Secretary of State Appointments*
- *Section 3: Relationship with the Department for Transport*
- *Section 4: Stakeholder Engagement*
- *Section 5: Investment Capability*
- *Section 6: Conclusions and Next Steps*
- *Annexes*

2. Secretary of State Appointments

Current Model

- 2.1 A notable aspect of the accountability relationship between Department for Transport and the five largest trust ports is through the Secretary of State for Transport's powers of appointment to the Boards of these ports. The Secretary of State appoints the Chairs at all five of these ports, and a number of Non-Executive Directors (NED) Board members at four of them. These powers are set out in each port's local legislation, such as HROs or private acts of Parliament.
- 2.2 The Secretary of State's powers to appoint Chairs at these ports reflects their nationally important role and the Government's position as a significant stakeholder in them. The number of NEDs vary from none at Milford Haven to all at Port of Tyne, as governance at each of the five ports has evolved over time. Appointments at each port are set out in table 2 below.

Table 2: Secretary of State appointments at 5 nationally significant Trust Ports.

Port	Secretary of State appointments, Chair and NEDs ¹
Port of Tyne	Chair plus 6 or 7 NEDs (of a total 10 to 12 board members)
Port of Dover ²	Chair plus 4 NEDs (of a total 8 board members)
Port of London Authority	Chair plus 1 to 3 NEDs (of a total 7 to 12 board members)
Harwich Haven Authority	Chair plus 4 NEDs (of a total 10 board members)
Milford Haven Port Authority	Chair only (of a total 10 to 12 board members)

¹Board members not appointed by the Secretary of State may be NEDs appointed by the Board itself or the port's chief executive officer or other senior executives

² Since the Study's completion, a new board structure for the Port of Dover is set out in the Dover Harbour (Constitution) Revision Order 2016, with the Chair and 2 NEDs appointed by the Secretary of State out of a board of 9 members.

- 2.3 These five trust ports are the largest in terms of turnover, and they also have an economic and maritime significance wider than at local or regional level. However, there appears to be no clear rationale for the varying numbers of appointments across the five trust ports. The current arrangements at the ports were established at various times over the past

40 years, and no doubt reflect the views of the Board and Ministers at the various time the legislation was put in place. The most recent change in the number of appointments made by the Secretary of State was at Milford Haven Port Authority in 2012. Here, the number of Ministerial appointments was reduced from the Chair and eight or nine NEDs to just the Chair.

- 2.4 It should be noted that the Secretary of State (or other Ministers) has no power to direct the Chairs or NEDs that he or she appoints (or indeed trust port boards more generally). Once appointed, all board members have a legal duty to act independently in the best interests of the port. This means that Secretary of State appointed board members to trust ports are not representatives of the Secretary of State or of DfT.
- 2.5 A trust port's legislation sets out the number of appointments to be made by the Secretary of State. It may also contain a number of other relevant legal requirements, such as the maximum and/or minimum term each board member must serve, arrangements for casual vacancies to be filled and also circumstances under which a Board member can be required to resign.
- 2.6 To accompany this, DfT's good governance guidance, MTP2, sets out best practice for all trust port board appointments, including those made by the Secretary of State. This is based on the principle that appointments to trust port boards should be open, fair and transparent, with vacancies filled on the basis of specific job requirements and skills.
- 2.7 DfT also follows the Office of Commissioner for Public Appointments (OCPA) Code of Practice for Secretary of State appointments to trust port boards, although the appointments are not formally regulated by OCPA. The Code of Practice sets out the appropriate involvement of Ministers in the appointment process.
- 2.8 Typically, when making a Secretary of State appointment, the trust port will lead the appointment process working closely alongside DfT officials. The selection panel typically includes the Chair (or Deputy Chair for Chair appointments), another Board member, an independent member and a representative from DfT. For most appointments the trust port also employs executive search firms to assist with the process. DfT officials provide the link to Ministers for their input at defined key stages as set out in the OCPA Code of Practice including of course the decision on who to be appointed.
- 2.9 As mentioned above, the approach to Ministerial board appointments varies across the UK. In Northern Ireland, the Department for Regional Development (DRD) appoints all Board members for the three main trust ports (Belfast, Londonderry and Warrenpoint). A number of Board members at each of these ports must also be members of the relevant local authority, appointed following consultation with DRD. Conversely, Transport Scotland makes no ministerial appointments to trust port boards in Scotland. Transport Scotland has said that this does not prevent good working relationships being established with trust port boards.

Discussion

- 2.10 Secretary of State appointments are an important mechanism through which these five nationally significant trust ports are accountable to the Secretary of State and DfT as key stakeholder.
- 2.11 Trust Ports have said that Secretary of State appointments are helpful to a Board as they contribute to a positive external perception of the port and add to its status and as well as showing a clear line of accountability.
- 2.12 The appointment process has delivered high quality candidates that meet the needs of the Board, as ideally identified in a skills matrix prepared by the trust port's Chair. The appointment process is public, open and transparent, with vacancies advertised and recruitment taking place against a job specification set principally by the port and agreed with Ministers. Selection is based on merit.
- 2.13 However, trust ports have articulated some concerns about the current model. They expressed the view that involvement by DfT and Ministers can slow down the appointment process. While DfT's input to the appointment process was seen as effective and of good quality, trust ports questioned whether it necessarily added significant value to the outcome of the process. A number of the ports also successfully appoint NEDs without Ministerial involvement.
- 2.14 The process of Secretary of State appointments, of which there are a potential twenty three in total, has resource implications for DfT. Each appointment is made every three years, although in a number of cases incumbents may be re-appointed for a second term, subject to performance, and in very exceptional cases for a third term, in line with MTP2.
- 2.15 The recruitment process involves a reasonable amount of time input from DfT staff, although other costs, for example, where search consultants are employed and advertising the positions, are borne by the Ports. There is an argument that this time input could be more effectively used on other activity in relation to trust ports, such as building further and strengthening the relationships that already exist.
- 2.16 While there is an ongoing relationship between an appointed Chair, Ministers and DfT following appointment, this is not usually the case for NEDs appointed by the Secretary of State. In many cases there is little by way of further interaction between other NEDs and Ministers and DfT following appointment. This raises the question of how effective these appointments are in terms of enhancing accountability to the Secretary of State.
- 2.17 The Secretary of State currently has the power to terminate a Chair's appointment in particular limited circumstances for example, in cases of sustained illness or illegal acts. The same also applies to NEDs appointed by the Secretary of State. The Secretary of State generally does not have the ability to dismiss an appointed Chair or NED for poor performance. Arguably the lack of such a power is a gap in the accountability relationship between the Secretary of State and the five nationally significant trust ports.

2.18 At present, the Secretary of State makes appointments at 5 Trust Ports. As well as having a national economic and maritime importance, these are also the five largest trust ports by annual turnover. It could be argued however that the Secretary of State should make appointments to the boards of all 8 Major Trust Ports, given that any net borrowing undertaken by these Ports affect DfT's capital budget and as their size makes DfT a particularly significant stakeholder.

Conclusions

2.19 There is a clear rationale in favour of the continuation of Secretary of State appointments, as they represent an important channel of accountability between the largest trust ports, Ministers and DfT. However, it is not clear whether the current number of appointments, particularly in relation NEDs, is the most effective or appropriate way of helping deliver that accountability.

2.20 There is a consensus among the nationally significant trust ports to reduce the number of Secretary of State appointments from the status quo, given the limited value added from this involvement, such as the potential delays that it can bring. There is also a consensus to have a more consistent approach across ports towards the number of appointments made to each Board.

2.21 Whilst the value of DfT's involvement in appointments is recognised, its current form can be unwieldy and also has resource implications for the Department, without clarity about the benefits arising from all of the appointments. Those resources might be put to better use in other aspects of DfT's relationship with trust ports.

2.22 There are other aspects of Secretary of State appointments that would also benefit from a revised approach, specifically the power to dismiss a Chair who is under-performing and also a more structured approach to determining if a Major Trust Port should have Secretary of State appointments.

Recommendations

2.23 Given the conclusions above, there are a number of options for changes to the number of Secretary of State appointments which are discussed below:

a. Removal of all Secretary of State appointments

2.24 Whilst removal of all appointments would reduce the administrative burden associated with appointments, and is also the approach followed in Scotland, it would also remove what DfT believes is a key accountability mechanism between the nationally significant trust ports and Ministers. For this reason this approach is not advocated. Ministerial appointments provide an important line of accountability between DfT and these trust ports.

b. The Secretary of State appoints the Chair only

- 2.25 This approach enables Ministers to retain accountability by appointing the Chair at each of the nationally significant trust ports, but reduces the administrative and time costs associated with Ministerial appointment of NEDs. This is the preference of the nationally significant trust ports who in general do not perceive significant added value in appointments beyond a Chair. It follows the approach put in place at Milford Haven in 2012. A potential concern is that just appointing the Chair at each port may not deliver the level of accountability Ministers desire, although this could be mitigated by other changes in the relationship, as discussed in section 3 below.
- c. *The Secretary of State appoints the Chair and has an involvement in the appointment of the Deputy Chair*
- 2.26 This option builds on option b. above, but in addition to the Secretary of State appointing the Chair, he or she would also have an involvement in the selection of the Deputy Chair. This decision is taken by the Board at all the ports, and would continue to be so. But Ministers could be involved through discussion or consultation with the Chair. The Deputy Chair would be a further channel of accountability between Ministers and the Board if needed, and a potentially important one given the Deputy Chair's position as the senior NED, similar to the role of a Senior Independent Director in a PLC.
- d. *The Secretary of State appoints the Chair and one or two NEDs*
- 2.27 As an alternative to option c. above, rather than be involved in the Deputy Chair appointment, Ministers could appoint an additional NED, or possibly two. While providing a further and more formal accountability channel to Ministers and representing a reduction on Board appointments at most ports, there would continue to be administrative and time costs associated with the NED appointments with limited value added. However this approach may be appropriate to the particular circumstances of some Ports.
- 2.28 **Recommendation 1: The Secretary of State appointing the Chair and being involved in the selection of the Deputy Chair (option c) seems to strike a good balance between preserving accountability and Ministers relationship with the Boards of these trust ports while reducing administrative burdens.**
- 2.29 This recommendation would not apply to the Port of Dover given the changes to its Board as set out in the Dover Harbour (Constitution) Order 2016. Structure. The way forward for Secretary of State appointments should be seen in light of other potential changes to the relationship between DfT and trust port Boards. A number of these are discussed in Section 3.
- 2.30 Two further recommendation relating to Secretary of State appointments are:
- 2.31 **Recommendation 2: The Secretary of State should be able to dismiss an underperforming Chair appointed by him or her.** This would extend the ability of the Secretary of State to dismiss Chairs, beyond the current limited criteria to include underperformance, for example failure to meet agreed performance metrics.

- 2.32 It is not envisaged that this ability would be exercised frequently and would clearly be an option of last resort. To be effective, it would require performance metrics to be agreed between the Chair and the Secretary of State against which performance could be assessed, and a mechanism for the circumstances under which a Chair could be dismissed for failing to meet them. These could be included in each port's legislation or in a separate contractual agreement or a combination of the two.
- 2.33 **Recommendation 3: DfT should consider the case for Secretary of State appointments when a trust port passes the Ports Act threshold.** At present there are no clear criteria for determining at which trust ports the Secretary of State should make Board appointments to. In future, when a trust port breaches the Ports Act threshold, currently £9.7m, DfT officials should formally meet with the CEO and Chair of the trust port to consider the governance mechanisms of the port and whether Secretary of State appointment of the Chair would be appropriate.
- 2.34 Introducing Secretary of State appointments would not be considered simply on the basis of crossing this threshold, but whether the nature and role of the trust port warrants the enhanced accountability that Secretary of State appointments bring. By the same token, where a port with current Secretary of State appointments falls below the Ports Act threshold DfT should consider whether it would be appropriate to discontinue those appointments. Again, this would be decided on similar terms as above.
- 2.35 DfT has no current plans to introduce Secretary of State appointments to the Major Trust Ports who do not currently have them, namely Blyth, Poole and Shoreham.
- 2.36 The above recommendations should be seen as a package to enhance the nature of the accountability relationship between trust ports and Ministers through the Secretary of State appointments made to trust port Boards.

3. Relationship with the Department for Transport

Current Model

3.1 Within Government, DfT currently has overall policy responsibility for trust ports in England and Wales, and as such is clearly a significant stakeholder for all trust ports. The accountability of trust ports to DfT that this entails is an important aspect of the trust port model.

3.2 The more specific role DfT plays as stakeholder varies from port to port. The main aspects are:

- Issuing good governance guidance for all trust ports, most recently in MTP2. The guidance is non-binding and recognises that parts of it may be less applicable in some circumstances, particularly for smaller trust ports. However all trust ports are expected to comply with the guidance or explain to stakeholders why they have not done so for certain parts of it.
- Considering complaints from stakeholders where they believe that trust ports may not be following aspects of MTP2 and where discussions between the stakeholder and a trust port have not been able to resolve them.
- Making Board appointments to the five nationally significant trust ports, as discussed in Section 2
- Collecting information on a quarterly basis from Major Trust Ports on their net borrowing plans -because of their public corporation status and the implications this has on DfT's capital budget- under a framework document agreed in early 2015 (see discussion in Section 5 below).
- Meetings with trust port senior executives individually and collectively with the BPA to discuss Departmental policy towards trust ports as well as a range of other issues, both specific to particular ports and more generally.
- In addition to the above point, meetings between DfT appointed Chairs and Ministers. These always take place following an appointment or re-appointment, but also can occur at other times, often prompted by a particular issue arising.
- Attendance where possible at Major Trust Port Annual Consultative Meetings

3.3 DfT's relationship with major trust ports is therefore an 'arms-length' one, as broadly appropriate for independent statutory bodies, operating on a commercial basis and generally not in receipt of funding from Government.

Discussion

- 3.4 Based on the arrangements outlined above, DfT has positive relationships with the sector characterised by open and honest communication. There is a sense of partnership, with trust ports being consulted on relevant policy matters by DfT, and trust ports in turn seeking Departmental support and advice in respect of particular issues or concerns. This is evidenced by the comprehensive engagement by Major Trust Ports in this study.
- 3.5 The guidance in MTP2 is generally well regarded and seen as helpful, although the need to update it so that is in line with the current thinking on corporate governance and potentially expand it to include governance guidance to other ports, such as those owned by Local Authorities, is recognised. Trust ports show a desire to continue engagement with DfT and recognise the benefits this can bring. The framework document in relation to information on net borrowing by Major Trust Ports (see Section 5 below) is an example of how the relationship can evolve and develop in response to particular issues.
- 3.6 However, notwithstanding the above, it can be argued that there are few structured mechanisms through which DfT and Major Trust Ports engage with each other on a regular and ongoing basis.
- 3.7 The lack of more formalised relationship may indicate that the most is not being made of the opportunities for strategic and meaningful engagement. There is not a consistent approach to the relationship across the Major Trust Ports and it is arguable whether the area which accounts for much of DfT's interaction with the five nationally significant trust ports, that is appointments, contributes significantly to that relationship.

Conclusions

- 3.8 DfT is an important stakeholder for trust ports and has a positive relationship with them, yet it does not make the most of this relationship to the advantage of both parties. Secretary of State appointments to the five largest nationally significant trust ports by themselves do not necessarily ensure a robust and accountable relationship.
- 3.9 A clear finding from this Study is the opportunity to develop and enhance further the relationship between the Major Trust Ports and DfT, ensuring improved lines of communication and accountability.

Recommendations

- 3.10 The Study identified a number of mechanisms through which the relationship between DfT and trust ports can be enhanced further, as set out below.
- 3.11 **Recommendation 4: There should be regular one to one meetings between the Chair of a nationally significant trust port and the Minister.** This would involve more formalised meetings with between Chairs and the Minister for Shipping and Ports, on at least an annual basis. It would give the opportunity for DfT to formalise its relationship

with these trust ports and to strengthen accountability. It would also provide the trust ports with planned access to Ministers.

- 3.12 These meetings would provide an opportunity for both a review of a trust port's performance and future strategy. A standard agenda of areas to consider should be developed to form the basis of these discussions (see following recommendation), with the port providing the necessary supporting information in advance of the meeting to allow Ministers and DfT officials to consider it beforehand.
- 3.13 The meetings would provide the opportunity for both the Minister to raise any concerns or issues with the Chair and for the Chair to outline future strategic plans and developments. This would help DfT understand how the trust ports are meeting their mandate.
- 3.14 Similar annual meetings should occur between senior officials and the CEOs of the Major Trust Ports whose Chairs are not appointed by the Secretary of State.
- 3.15 **Recommendation 5: A standard agenda should be created as a basis for the meetings between Chairs and the Minister.** This agenda would form the basis for discussion in the one to one meetings between Ministers and the trust port Chairs that they appoint. It would allow for consistent assessment across these ports. The agenda would cover matters such as: governance and board issues including where relevant the selection of a Deputy Chair; recent performance, both financial and against the port's performance indicators; investment proposals and any associated borrowing; the future strategy for the port and, stakeholder engagement. The contents would be developed by DfT working with the Major Trust Ports
- 3.16 **Recommendation 6: There should be annual round-table meeting between the Minister and Chairs of the nationally significant trust ports.** This would be another opportunity for the accountability relationship between DfT and these five trust ports to be deepened, providing the opportunity to discuss issues of common interest, including how reforms taken forward as consequence of this Study are bedding down. Three meetings of this nature were held as part of carrying out this Study, which provided an effective way of discussing a number of important issues and helping develop the way forward.
- 3.17 **Recommendation 7: DfT officials should continue to attend annual stakeholder events of all Major Trust Ports.** This is another important way to continue an ongoing relationship between DfT and Major Trust Ports. This practice will enhance DfT's understanding of the ports' operations, approach to stakeholder engagement and provide insight into different stakeholders views of the port.

4. Stakeholder Engagement

Current Model

4.1 A fundamental principle underpinning the trust port model is that trust ports are accountable to their stakeholders and ultimately run for the benefit of those stakeholders. This theme runs strongly through MTP2. Central to the success of the trust port model is each port's ability to identify and engage meaningfully with its stakeholders in order to identify their interests to help guide the strategic direction of the port, as well as on more day to day issues.

4.2 The current model of stakeholder engagement is outlined in MTP2. This includes that:

- trust ports are expected to identify their stakeholders and to include them in formal consultation on significant decisions
- a trust port's stakeholders must be prepared to interest themselves in the port's operation and consider the interests of the port as a whole
- trust ports may find it beneficial to establish formal stakeholder groups
- trust ports should provide information and communicate this to their stakeholders
- one of the key stakeholder groups for any trust port is the local community. Trust ports should ensure that there is an effective, continuing dialogue with the local authorities in its immediate hinterland.
- trust ports should consider the need for local liaison and focus groups to ensure that the local community is informed. This should include a functioning and updated website, that could be supplemented by news letters
- Open annual meetings , and other meetings where appropriate, should be held to discuss significant matters of interest to stakeholders at which Board members should attend

4.3 MTP2 also includes a non-exhaustive list of the types of stakeholders for trust ports, a version of which is as follows:

- Port users
- The local community
- Local authorities
- Port employees
- Related interest groups
- Local and regional businesses
- DfT and other government departments

Discussion

- 4.4 The Study collected considerable evidence from the Major Trust Ports about the how they identify and engage with their stakeholders. The evidence includes a survey of the views of a selection of stakeholders at each trust ports.
- 4.5 While there are some differences of approach between trust ports, reflecting their different shape, location and business model, it is clear that all the Major Trust Ports put considerable effort into identifying who their stakeholders are and then engaging with them. Some of the key points and examples arising from the evidence gathered are set out below.

Identification of stakeholders

- 4.6 A good example of how trust ports identify stakeholders is PLA, who produce a stakeholder map, showing key stakeholders and interest groups along three main sections of the River Thames. Further examples include Milford Haven, which lists its stakeholders in its Business Review and Dover who have carried out a detailed analysis of each of their stakeholders and the port's relationship with them.

Engagement with stakeholders

- 4.7 The Major Trust Ports carry out a wide range of stakeholder engagement activities. Almost all of the ports hold an Annual Meeting of one form or another. These are on the whole held as open public meetings, with the opportunity for questions and answers, and/or informal discussion with Senior Executives and Board members. Two of the Major Trust Ports, Tyne and Harwich Haven take a slightly different approach and hold invitation only rather than open events. Poole has attracted up to 300 attendees to its Annual Meetings, while other Major Trust Port's open annual meetings can attract over 100 attendees.
- 4.8 In terms of other meetings, examples include Dover, which has established a Port and Community Forum with an independent Chair and representatives from a range of organisations where the port can 'explain and justify its actions' and 'is open to challenge'. Milford Haven has a biannual statutory Advisory Committee with port user representatives and key stakeholders and is also establishing a stakeholder panel to advise its Board. Blyth has 3 to 4 resident liaison group meetings per year. Almost all ports have arrangements for regular discussion with port users, both commercial and leisure, through Port User Groups.

Direct communications

- 4.9 All Major Trust Ports have websites providing direct access to information about its activities to a wider range of stakeholders, including some or all of harbour users, local communities, leisure users, government and other stakeholders as appropriate. Dover, Milford Haven, PLA, Shoreham and Tyne have informative and user friendly websites that are professional and kept up to date. The websites of Blyth and Harwich Haven also have a good range of information for port users and also for other stakeholders.
- 4.10 A number of Major Trust Ports have a presence in social media for example through using Twitter. This can be an appropriate way for ports to communicate with stakeholders about its activities, as well as providing up

to date information for passengers about access to the port and the maritime services operating from it.

Community engagement

- 4.11 All Major Trust Ports have active community engagement programmes aimed at local residents and communities. As part of this a number of the ports, including Dover, Harwich Haven and Tyne, have established or contribute to community funds, financially supporting local initiatives to help communities in a variety of ways. Dover and Tyne have committed to paying 1% of pre-tax profits in to their respective funds. All the Major Trust Ports undertake or support an often wide range of broader community engagement activities. Examples include Milford Haven's staging of the Milford Fish Festival in 2015, as well as Shoreham and Blyth's engagement with local schools.
- 4.12 The Port of Dover has also selected two community directors to give the community a voice at the heart of the Port's decision making. The role of these community directors is not to represent the community but to bring a wide ranging appreciation of the community and its views to the Board in its work. The community directors were selected following a process involving locally elected representatives.

Feedback from stakeholders

- 4.13 DfT sent a questionnaire to a small number of stakeholders at each of the ports, in order to get their view on the port's accountability and engagement. The stakeholders contacted for the survey were agreed with each trust port and were a small number of total stakeholders at each port, but their survey responses provided a valuable perspective on the issue of stakeholder engagement. The stakeholders included port users, local authorities, community organisations and others.
- 4.14 All stakeholders who responded indicated that the ports were effective or very effective at their engagement with them. Stakeholders seemed satisfied that they could raise day to day operational issues with the ports as well as general matters or concerns. If concerns were raised, they were heard and dealt with reasonably. Stakeholders thought, in that most of the time they were also informed and could raise issues on the port's plans for the future.
- 4.15 Stakeholders at Dover and Milford Haven in particular pointed to improvements in accountability and engagement by those ports in recent years.
- 4.16 A number of quotes from the survey responses are given below to give a further flavour of stakeholder's views.
- *In my view, the port takes stakeholder engagement very seriously, not only closely attending to the requirements of commercial users, but also looking after those who use the port for leisure etc*
 - *Irrespective of the numerous forums that exist, contact is available at any time*
 - *[The trust port is] very good at maintaining contact and engaging with the.... Association, keeping us well informed of their plans and consulting us on issues which may affect our members.*

- *I am chairman of a local residents association, well supported by the port. They are exemplary, in all their PR, well supported by residents.*
- *Engagement strong for long term plans. Day to day operations can be a little more difficult, but for significant issues it is always possible.*

4.17 In addition, DfT discussed the key themes of the Study with the Chamber of Shipping as a key representative body for port users. The Chamber's view is that the trust port model appears to work well, contributing to the mix of port ownership models in the UK. This mix enables the ports' market to function effectively and to serve the needs of a wide range of port users. Evidence from Chamber members suggests that there are significant differences in approach between trust ports, with some seen as commercially better ports than others to deal with. The Chamber also suggested areas where good governance guidance for trust ports might be strengthened.

Conclusion

4.18 From the above, there is widespread evidence of meaningful engagement by Major Trust Ports with a range of stakeholders, including the local community. The Major Trust Ports appear to be engaging with stakeholders in an effective and appropriate manner, although there are always likely to be stakeholders who are less content with their engagement with a port or with the outcome of engagement that does take place. MTP2 recognises the potential difficulties of trust ports reconciling the differing views of a range of stakeholders.

4.19 Whilst some ports do seek structured feedback from their stakeholders, this is not consistent across all the Major Trust Ports. Seeking such feedback at regular intervals - perhaps biannually - seems a good way for trust ports to check that their relationships are functioning as they expect. This might be part of a broader internal assurance process in relation to a Port's approach to stakeholder engagement, including whether all current stakeholders have been identified, recognising the dynamic environment in which the Major Trust Ports operate.

Recommendations

4.20 **Recommendation 8: As part of best practice in stakeholder management, the nature and extent of stakeholder and community engagement should form part of a port's ongoing self-assurance process.**

4.21 A regular review of stakeholder engagement should act as a challenge as to whether stakeholders have been appropriately identified and engaged with effectively, and provide the opportunity for each port to develop and assess appropriate stakeholder engagement strategies.

5. Investment Capability

Current Model

- 5.1 Trust ports operate on a commercial basis generally without financial support from government. As part of their remit to act as stewards for the harbour to pass it on to future generations, from time to time trust ports will need to invest to improve or replace their existing assets as well as to develop or acquire new ones.
- 5.2 Trust ports have a number of potential ways of funding such investment, including from their own resources (i.e. retained profits and reserves), borrowing from commercial sources and entering into Joint Ventures (JVs) with third parties. Some investments may be funded by a combination of some or all of these approaches. In some circumstances, it may also be possible for ports to access publicly provided support, for example through Local Enterprise Partnerships and Growth Funds or from EU sources such as the Connecting Europe Facility (CEF).
- 5.3 There are a number of current and recent examples of Major Trust Ports undertaking investments. These include but are not limited to Dover's investment over recent years of £85m in its existing ferry terminal including the Traffic Management Improvement scheme to improve traffic flow in the port. The Port of Tyne's is investing £25m to lengthen and extend its Riverside quay. At Shoreham substantial amounts have been invested over the past 4 years, funded partly by the port and partly by the operators of the facilities. Milford Haven had invested significant amounts in a solar farm and replacement lock gates. Most recently, the PLA has invested £7m in a new river maintenance vessel.

Legal position

- 5.4 As statutory bodies, trust ports need specific legal powers in their HROs or private Acts that allow them to borrow, as well as to enter into JVs and certain other transactions.
- 5.5 The great majority of Major Trust Ports now have legal powers to borrow an unlimited amounts and to use their revenues or assets as security. Most recently, in 2014 and 2015 HROs for the Ports of Dover and Blyth have put in place powers such as these. A number of trust ports have specific powers that allow them to enter into JVs, for example Tyne and Poole.
- 5.6 The Major Trust Ports said that legal powers were not a constraint on their ability to borrow or entering into JVs. Where existing borrowing powers needed revising or supplementing, this was generally straightforward to achieve through a HRO, as Blyth has recently done.

Implications of Office for National Statistics classification

- 5.7 All the Major Trust Ports, along with some others, have been classified as 'public corporations' by the Office for National Statistics (ONS). ONS view that Government's legal powers in relation to these trust ports means that they are effectively controlled by Government. The main legal power is the Government's ability under the Ports Act to require major Trust Ports to privatise themselves and for Government to receive levy from the proceeds. While PLA is outside the powers in the Ports Act, it is also classified as a public corporation, probably because of Secretary of State appointments to its board. Under Government accounting rules, classification as a public corporation means that any borrowing by these trust ports has to have budget cover from DfT's capital expenditure budget, regardless of that fact that the ports do not actually borrow from DfT or any other part of government.
- 5.8 However, DfT needs to be able to manage all aspects of its capital budget. To facilitate this, the Major Trust Ports and DfT agreed a framework document in early 2015 about the information ports would provide to DfT on their borrowing plans. There is also an associated confidentiality agreement.
- 5.9 The aim of the framework document is to allow DfT to have the information it needs to manage its budget effectively, both in-year and also setting budgets for future years. This includes providing more detailed information on projects involving over £10m of borrowing - for example on any risks to the budget and timing. The document also covers borrowing by JVs that trust ports may be part of. Under ONS rules, in turn based on an EU regulation, where a Major Trust Port enters into a 50:50 'deadlocked' JV with a 3rd party, 50% of any borrowing by that JV is classed as borrowing by the trust port so requires cover from DfT's capital expenditure budget.
- 5.10 The framework document makes clear that it is not a mechanism for DfT to approve trust port's borrowing proposals. Trust ports, as independent statutory bodies with legal powers to borrow and invest to help secure their statutory obligations, do not require such approval. It does not therefore act as a constraint on borrowing undertaken by trust ports. The document does however provide DfT with information to help manage its budget. The intention is to review the operation of the framework document in 2016.
- 5.11 In March 2015, the Scottish Government introduced a Bill in the Scottish Parliament that would repeal the sections in the Ports Act dealing with compulsory privatisation in relation to Scotland. Part of the aim of this is to change the ONS classification of major trust ports in Scotland as public corporations, so removing the need for the Scottish Government to provide budget cover for those ports' borrowing.
- 5.12 The amount of net borrowing by Major Trust Ports in recent years has generally not been that substantial, only once in the past 10 years has it been above £10m and it has been possible to manage this within DfT's capital budget. However, plans for significant additional borrowing for investment by Major Trust Ports may make this more difficult to achieve in future years.

Discussion

- 5.13 In discussions with Major Trust Ports, some saw the trust port model as providing certainty and reassurance for investors as it gave a long-term, stable platform for investment. A number of existing lenders had a good understanding of the trust port model on this basis. The trust port model was therefore positive or at least neutral in terms of securing finance for investment.
- 5.14 More generally, the trust ports' view was that investment proposals from them would be assessed by lenders on the same basis as proposals from any other businesses. This would be on the commercial viability and financial robustness of the underlying business case, encompassing the quantum and riskiness of cashflows associated with a proposal, as well as the balance sheet capacity and strength and the overall strategic direction of the port. If a trust port has a strong balance sheet, good underlying quality of earnings and the right project proposals, it would be considered on a basis no different from other businesses when seeking borrowing.
- 5.15 However, some Major Trust Ports argued that some lenders, in particular those new to lending to trust ports, had difficulty in understanding the trust port model and therefore in agreeing to lend to them. Even where the port has a strong balance sheet, a good underlying quality of earnings and the right project proposal, the barriers to unlocking new sources of financing could be the unusual legal basis of trust ports or issues around security over assets where these are required to strengthen the case for lending.
- 5.16 Some ports also thought that the uncertainty caused by the Secretary of State's powers under the Ports Act to require their privatisation was unhelpful in discussions with potential lenders.
- 5.17 A further issue raised is related to the scale of trust ports, specifically where large, transformative investments are under consideration to enable the port to grow significantly.
- 5.18 In some instances, a trust port's balance sheet and revenues might not be of sufficient scale or the risks might be sufficiently complex and significant such that borrowing necessary to fund such a project may not be available. In a similar situation a private sector port might consider raising new equity to help fund the project, or, if it were part of a group structure involving a number of ports, use the balance sheet or credit facilities of the associated with the broader group (as well as benefits from diversification from being part of a group).
- 5.19 Trust ports however do not have access to such a range of options, as they have no shareholders and so do not have access to new equity and are not part of wider groups of ports potentially with access to wider and deeper sources of funding. Trust ports ability to invest in other ports or to expand their activities may also be limited by their legislation which generally limits a port's activities to a single clearly defined harbour.
- 5.20 Many Major Trust Ports do have legal power to establish JVs, a potential means to deliver significant investment project. While this can be an effective and successful way of facilitating investment by involving third parties, some Major Trust Ports' experience with JVs has not always been positive. Ensuring that the objective of both parties are aligned with each

other at the outset was seen as an important factor if a JV was to be successful.

- 5.21 An alternative option to finance such major investments in these circumstances could be to pursue voluntary privatisation under the Ports Act, although there are clearly a number of important issues to address before undertaking this significant step, the outcome of which was uncertain.

Conclusions

- 5.22 Major Trust Port's legal powers in relation to borrowing do not act as a significant barrier to investment. Their classification by ONS as public corporations and consequential requirement for DfT to provide budget cover for net borrowing has been managed in the past and the new framework document agreed helps provide DfT with the information it need to manage this. However, increased borrowing by trust ports in order to fund investment may make this more difficult to sustain in future.
- 5.23 While Trust Ports have been able to successfully attract commercial lending, as well as of course funding investment from their own resources, the Study has identified some circumstances relating to large scale, transformative investments or other expansion plans where the model could potentially act as a barrier to investment and growth. This potential constraint on borrowing may limit a trust port's ability to carry out a transformative and expansionary strategy should it wish to do so.

Recommendations

- 5.24 **Recommendation 9: Trust ports should periodically review their strategic vision and objectives and consider if the trust port model is the best way of achieving them. This should include a port's ability to attract the necessary funding for investment needed to deliver its vision and objectives. The review could include an assessment of the alternatives that would allow it to meet its vision and objectives if the conclusion that it was not possible to do so within the trust port model. Reviews should be carried out periodically, at least every 5 years and the conclusions discussed with DfT. Major Trust Ports that have not carried out a specific review of this nature may wish to consider doing so.**
- 5.25 To be most beneficial, such a review would most likely need to involve external input to help ensure that strategic objectives are clearly identified, and that the range of options to help achieve them have been identified and assessed. For trust ports with Chairs appointed by the Secretary of State, the progress and outcome of such a review would be part of the discussions between each Chair and Ministers proposed in Section 3.

6. Conclusions and next steps

Overall effectiveness

- 6.1 Pulling together the conclusions and recommendations from the preceding Sections, a view about the overall effectiveness of the trust port model can be reached.
- 6.2 There is scope to develop further the accountability relationship between the nationally significant trust ports, Ministers who appoint the Chair and DfT. This relationship would benefit from being less focussed on the process of appointing a number of Board members and more on the appointment of the Chair and an exchange of information and developing understanding of each ports' performance and strategic objectives. By doing this, the Chair and Board can be better held to account by Ministers, including where there may be under-performance.
- 6.3 Major Trust Ports invest considerable time and effort in developing and maintaining relationships with their wide range of stakeholders. This is an essential aspect of the trust port model and lies at the core of what trust ports should be seeking to achieve. The evidence collected for the Study shows that the major trust ports are successful at stakeholder engagement, although occasional dissatisfaction from some stakeholders is almost inevitable given the wide range and different interests of those stakeholders. Major Trust Ports operate in a dynamic context so in order to maintain continuing high quality stakeholder engagement, there should be a Board level process for assuring that its stakeholder engagement activities are targeting the right businesses, other organisations and interest groups and that its engagement activities across the port remain appropriate and effective.
- 6.4 The Study's findings in relation to the Major Trust Ports' ability to invest are significant. Major Trust Ports can and do invest to renew and improve their harbour facilities on a regular basis. However, there is evidence that the trust port model could be a constraint in circumstances where a port is considering major transformative investment which borrowing against its balance sheet alone could not support. While there are options for trust ports to access private finance through JVs, trust ports generally face a more limited range of options on how to deliver this type of investment compared to ports in private ownership. These include the lack of access to equity finance and also the lack of diversification benefits that being in a group of ports with access to corporate sources of credit. In this respect the trust port model could constrain ports ability to invest in some circumstances. Major Trust Ports should therefore periodically review their strategic objectives, including investment requirements, to ensure that the trust port model is the best way of delivering these.

- 6.5 On the basis of the areas considered by the Study and the conclusions outlined above, the trust port model is broadly effective in terms of governance, accountability and ability to invest. The model whereby Major Trust Ports operate on a commercial basis as independent bodies with accountability to government and other stakeholders is a proven one. This recognises government's role as a stakeholder whilst ensuring trust ports retain control over all aspects of their activities, commercial and financial activities.
- 6.6 There are ways in which its effectiveness can be improved further however, as outlined above, and it should also be recognised that the trust port model may not be the right one to deliver the strategic objectives of some ports where they involve transformative investments or other changes.

Next Steps

- 6.7 There are nine recommendations arising from the Study, which are listed at Annex A. DfT, working with trust ports, the BPA and other interested parties aims to take these forward over the course of 2016 and 2017.
- 6.8 More specifically, the recommendation in relation to reducing the number of Secretary of State appointments to Boards will need one or possibly two HROs to implement, which DfT aims to take forward in 2016.
- 6.9 The recommendations concerning the relationship between Ministers, DfT and nationally significant trust ports, for example on regular meetings between Ministers and appointed Chairs and preparing standard agenda for discussion will be taken forward between DfT and relevant trust ports in 2016.
- 6.10 A number of the recommendations will be included in the revised good governance guidance to replace MTP2, for example in relation to regular assurance of stakeholder engagement effectiveness as well as strategic reviews of objectives and investment requirements. This will be part of a broader review of good governance guidance contained in MTP2 to take account of experience in using it over the past 6 years and wider developments in good governance practice. DfT plans to start work on preparing revised guidance, working with trust ports and others in 2016. While the focus of the guidance will be trust ports, the intention is for it also to include good practice guidance for local authority ports and potentially other ports. A further issue to consider is whether the guidance should be issued jointly by DfT and industry.

Annex A: List of recommendations

Recommendation 1: The Secretary of State appointing the Chair and being involved in the selection of the Deputy Chair (option c) seems to strike a good balance between preserving accountability and Ministers relationship with the Boards of these trust ports while reducing administrative burdens.

Recommendation 2: The Secretary of State should be able to dismiss an underperforming Chair appointed by him or her.

Recommendation 3: DfT should consider the case for Secretary of State appointments when a trust port passes the Ports Act threshold.

Recommendation 4: There should be regular one to one meetings between the Chair of a nationally significant trust port and the Minister.

Recommendation 5: A standard agenda should be created as a basis for the meetings between Chairs and the Minister

Recommendation 6: There should be annual round-table meeting between the Minister and Chairs of the nationally significant trust ports

Recommendation 7: DfT officials should continue to attend annual stakeholder events of all Major Trust Ports.

Recommendation 8: As part of best practice in stakeholder management, the nature and extent of stakeholder and community engagement should form part of a port's ongoing self-assurance process.

Recommendation 9: Trust ports should periodically review their strategic vision and objectives and consider if the trust port model is the best way of achieving them. This should include a port's ability to attract the necessary funding for investment needed to deliver its vision and objectives. The review could include an assessment of the alternatives that would allow it to meet its vision and objectives if the conclusion that it was not possible to do so within the trust port model. Reviews should be carried out periodically, at least every 5 years and the outcome discussed with DfT. Major trust ports that have not recently carried out a specific review of this nature may wish to consider doing so.

Annex B: Summary of responses from trust ports who are not Major Trust Ports to questions in letter from DfT of 1 August 2014

Responses were received from the following other trust ports: Cattewater Harbour Commissioners, Dart Harbour, Falmouth Harbour Commissioners, Gloucester Harbour Trustees, Great Yarmouth Port Authority, Hope Cove Harbour Commissioners, Lancaster Port Commission, Langstone Harbour, Littlehampton Harbour, Lymington Harbour Commissioners, Maldon Harbour Improvement Commissioners, Mevagissey, Neath Port Authority Newlyn Pier and Harbour Commissioners, Teignmouth Harbour Commission, Warkworth Harbour Commissioners, Wells Harbour Commissioners and Yarmouth (IOW) Harbour Commissioners

1 How does your trust port engage with stakeholders, for example are there formal advisory groups, port user groups, annual or other regular stakeholder meetings/events or other arrangements? Is there a complaints system in place?

- All trust ports responding had arrangements in place to engage with stakeholders. A number of trust ports had formal advisory committees, with their role and constitution set out in an HRO. These met at least twice a year to discuss strategic or other issues relating to the port. At these meetings, the Harbour Master or equivalent often attended as an observer or to provide a report to the committee on the port's recent activity. At one port, the advisory committee met before each Board meeting to consider the same agenda as the Board.
- In addition, most trust ports had port user groups that met regularly, at least two times a year. Some ports had separate user groups for commercial and leisure users. A number of ports reported their involvement with wider stakeholder groups concerned with the broader location the port operated for example on safety issues.
- As recommended in MTP2, annual public meetings were held at most ports. In addition some ports also had informal public meetings and other stakeholder events. A number of ports had arrangements that allowed the public to participate in Board meetings, for example by holding the initial part of the meeting on an

open basis or having questions from the public as a standing item on the agenda. One port said it had an open door policy for local residents and small leisure craft users.

- Websites, annual reports and newsletters were also seen as important ways of engaging with stakeholders, by for example, making available minutes of meetings notes and other information.
- Arrangements for stakeholder engagement at some of the very smallest ports varied. Some said that some stakeholders were represented on boards which provided a mechanism for engagement. At others, stakeholder engagement arrangements were more informal.
- Most trust ports reported that a complaints process had been established. Complaints could be made in person, in writing, at meetings, via email or websites, some of which allowed complaints to be submitted by website. Public meetings were a further way mentioned for stakeholders to raise concerns with the port. Complaints were dealt with by the Harbour Master/Chief Executive or Board members.
- The responses identified a wide range of trust port stakeholders, including commercial port users, leisure users, local authorities, other port facility operators, marina operators, fishermen, environmental organisations, businesses and of course the local community.

2 How effective do you think these arrangements are? In your opinion, do your stakeholders think their views are heard and taken account of by the trust port?

- Most trust ports felt that stakeholder engagement arrangements were effective and allowed stakeholder's views to be taken into account, with good relationships with stakeholders being reported.
- Some ports recognised that a port could not accommodate all views and opinions so not all stakeholders would be totally satisfied by a port's response to an issue.
- Two ports said that their view was that the amount of stakeholder engagement was proportionate to a harbour of their size, allowing stakeholders to voice their views without placing a disproportionate administrative burden on the port
- One port said that attendance at advisory committee was generally poor and it offered little feedback to the board. Another port said that it reviewed the membership of its committee annually to recognise and include new organisations with an interest in the harbour.

3 Have you had recent experience of investment projects to allow your port to develop? Does the legal framework for your port help or hinder investment projects and the effective operation of the port more generally?

- Three ports reported having undertaken significant investment projects of over £1m in the recent past, using a range of approaches. One investment involved the port and local authorities working together to enter a partnership with a 3rd party to that allowed construction of major new harbour facilities.

- Another port had also worked with its local authority, and other organisations, in order to fund major work to protect the harbour from the risk of significant coastal erosion. Finally, a port had invested in a quayside extension to allow safer and more efficient harbour infrastructure maintenance
- One port felt that banks did not understand the trust port model and had been unwilling to lend given the lack of port physical assets to provide security, notwithstanding its statutory powers to raise harbour dues. The potential for trust ports having direct access to Public Works Loans Board funding was also raised.
- Two ports mentioned the significant time and cost involved securing consent for developments through Harbour Revision Orders as a concern.
- Small ports including those primarily concerned with fishing had been able to access grants from the European Fisheries Fund to meet harbour investment and maintenance costs.
- A number of trust ports said that because their role was that of conservancy, rather than operating harbour facilities, they had little or no need to invest to allow the port to develop. A small number of others thought that the sensitive environment the port operated in meant that investment to allow development would be difficult to achieve.

4 What sections of MTP2 are still relevant and appropriate to your port and what parts need revision? Are there any additional areas that should be covered in guidance or that should be removed or reduced? How useful is the guidance on the appointment of board members?

- MTP2 was still seen as a relevant and useful document by almost all trust ports that responded.
- Many of those responding were smaller ports and supported the flexibility in applying MTP2's requirement to reflect their circumstances. Some raised the question of whether the guidance might be more tailored to different types or sizes of port. Others suggested that the guidance should cover trust and municipal ports, focussing on good governance more generally
- Specific areas that were seen as particularly relevant and useful in MTP2 were those on appointments and about the role of board members. One port also found the section on the role of the Board and executive very useful, although another called for further clarity on this point.
- The main concern with MTP2 was about the length of term of board member appointments, which was raised by a number of ports. The specific concern was the requirement that board members should serve a maximum of 3 terms. A number of ports, particularly smaller ones, felt it was difficult to attract board members of sufficient quality and experience, particularly where the appointments were not remunerated. Requiring board members to step down after 3 terms could mean losing valued and experienced board members who were still willing to serve on the board.
- Other sections of MTP2 which some respondents felt were less helpful in their circumstances were those on performance indicators, assessing stakeholder benefit and personal liability.

5 Are there any other issues that you think the Study should consider that are important for your port?

- A number of issues were raised in response to this question. These included:
 - the impact of long term pension liabilities and how seriously affected ports could continue to grow and function.
 - the need for DfT or another focal point to provide assistance on changing port constitutions, potential funding sources as well as a strategic national vision for trust ports
 - the difficulty of keeping abreast of changes to environmental legislation and systems to implement requirements, and the risk that the economic consequences of environmental policy were not identified until too late.
 - The impact of sea level rise and cost of investment required by ports to mitigate this, with a suggestion that DfT should contribute a share of the costs.

Annex C: Lists of Trust Ports in England and Wales

Major Trust Ports (those with a turnover above the threshold in the Ports Act 1991)

Blyth Harbour Commissioners

Dover Harbour Board

Harwich Haven Authority

Port of London Authority

Milford Haven Port Authority

Poole Harbour Commissioners

Shoreham Port Authority

Port of Tyne Authority

Major Trust Ports with Ministerial appointment to their Boards due to their national strategic importance

Dover Harbour Board

Harwich Haven Authority

Port of London Authority

Milford Haven Port Authority

Port of Tyne Authority

Other Trust Ports

Berwick Harbour Commissioners

Bridlington Pier & Harbour Commissioners

Brightlingsea Harbour Commissioners

Caernarfon Harbour Trustees

Cattewater Harbour Commissioners

Chichester Harbour Conservancy

Cowes Harbour Commissioners

Crouch Harbour Authority

Dart Harbour & Navigation Authority

Falmouth Harbour Commissioners
Flamborough North Sea Landing Harbour Commissioners
Fowey Harbour Commissioners
Gloucester Harbour Trustees
Great Yarmouth Port Authority
Hope Cove Harbour Commissioners
Kings Lynn Conservancy Board
Lancaster Port Commissioners
Langstone Harbour Board
Littlehampton Harbour Board
Hope Cove Harbour Commissioners
Lymington Harbour Commissioners
Maldon Harbour Improvement Commissioners
Maryport Harbour Commissioners
Mevagissey Harbour Trustees
Mousehole Harbour Commissioners
Neath Harbour Commissioners
Newlyn Pier & Harbour Commissioners
Newport Harbour Commissioners
North Sunderland Harbour Commissioners
Orford Town Trustees
Padstow Harbour Commissioners
Polperro Harbour Trustees
Port Isaac Harbour Commissioners
Portloe Harbour Commissioners
River Yealm Harbour Commissioners
Sandwich Port & Haven Commissioners
Saundersfoot Harbour Commissioners
Sennen Cove Harbour Commissioners
Staites Harbour Commissioners
Teignmouth Harbour Commissioners
Warkworth Harbour Commissioners
Wells Harbour Commissioners
Whitehaven Harbour Commissioners
Yarmouth (IOW) Harbour Commissioners

