

Dear Sir/Madam,

## **SALE OF TRUST PORTS IN ENGLAND AND WALES: CONSULTATION ON REVISED CRITERIA**

I am writing to seek your views on the proposed policy statement in Annex A to this letter. It sets out revised criteria that the Government will regard as particularly relevant when deciding on the appropriateness of the sale of a major trust port under the Ports Act 1991, whether under a voluntary or compulsory sales process. The current criteria, which applied only to a voluntary sales process, are included for the purposes of comparison in Annex B to this letter. The Government has no current plans to launch any compulsory sales process. However, in the event of a compulsory sale, the Government considers it useful to make clear that the same criteria would apply.

### ***Background***

Trust ports are independent statutory bodies. They are not owned by the Government and are vested in their port or harbour authorities. Responsibility for policy towards trust ports is devolved in Scotland and Northern Ireland.

The Ports Act 1991 contains provisions which mean that the Secretary of State for Transport must approve any application by a major trust port<sup>1</sup> authority to sell its trust port. The Act also contains powers for the Secretary of State to compel a major trust port authority to sell its port undertaking to the private sector. In either case, following disposal of the successor company, a 50% levy is chargeable, which means that a sum equivalent to the net proceeds of the sale of the trust port come to the Exchequer.

The Act prescribes few criteria for the Secretary of State when considering applications for, or requiring, the sale of a trust port. To assist trust ports who may have been considering bringing forward applications, in January 2010 the Shipping Minister published a statement of the factors that the Government of the day considered likely to be particularly relevant when considering the appropriateness of sale of a major trust port. The Government has reviewed these factors and is now inviting views on a revised set of criteria which should better reflect current Government policy.

The Government's aim is for trust ports to have the right commercial ambitions to grow. This is a diverse sector and the Government does not seek to be prescriptive in its approach with a one-size-fits-all solution for policy towards trust ports. The purpose of this consultation is to seek the views of interested parties on whether the revised criteria below properly reflect both the objectives of the Government for the sector and the needs and ambitions of the trust ports themselves and their stakeholders.

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<sup>1</sup> For the purposes of the Act, a 'major trust port' is a trust port with an annual turnover above a certain limit (currently £7.6m). In England and Wales this currently includes Dover, Tyne, Milford Haven, Shoreham, Poole, Harwich Haven and the Port of London Authority (though the latter is excluded from provisions on privatisation contained in the Act).

## ***How to respond***

We would welcome your feedback on the proposed revised criteria and in particular, your answers to the following questions:

- Do you agree that these are the right criteria to apply to the consideration of applications for sale of a trust port?
- Do you consider that the relative weighting of the criteria is appropriate?
- Do you consider that there are any other criteria which should be included?
- Do you agree that the same criteria should apply to compulsory and voluntary sales?

The consultation period began on 16 May 2011 and will run until 27 June 2011; please ensure that your response reaches us by that date. Please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Please send consultation responses by email to [ports@dft.gsi.gov.uk](mailto:ports@dft.gsi.gov.uk) or by post to:

Maritime Commerce and Infrastructure  
Department for Transport  
Great Minster House, Zone 2/32  
76 Marsham Street  
London SW1P 4DR

Telephone: 020 7944 6485

Following the consultation, the revised criteria, if confirmed, will replace the existing criteria which were set out in the Written Ministerial Statement on the sale of trust ports of 25 January 2010. The accompanying "Guidance note concerning procedure for sale of trust ports", which sets out the Secretary of State's views on how such sales should be carried, will be updated to reflect the revised criteria and published at the same time.

## ***Consultees***

A list of those consulted follows. If you have any suggestions of others who may wish to be involved in the consultation process, please contact us at the above address.

- Major trust ports in England and Wales
- Devolved Administrations
- UK Major Ports Group
- British Ports Association (BPA)
- Chamber of Shipping (CoS)
- Royal Yachting Association (RYA)
- British Marine Federation
- Marine Management Organisation

## **Annex A - Written Ministerial Statement by the Secretary of State**

### ***Sale of Trust Ports***

I am today launching a consultation on the criteria that the Government considers particularly relevant to the consideration of the appropriateness of sale of a major trust port<sup>2</sup> in England or Wales under the Ports Act 1991.

During the consultation period, which will run for six weeks until 27 June 2011, I am seeking the views of interested parties on the following criteria, which I propose to adopt in place of those set out in the Written Ministerial Statement on the sale of trust ports of 25 January 2010.

In view of this consultation, I have asked my Rt Hon Friend the Minister of State to suspend her consideration of the application for a transfer of the port undertaking made by Dover Harbour Board under the Ports Act 1991 until I announce a decision on the proposed criteria.

### ***The Proposed Criteria***

The following criteria are those which the Government considers particularly relevant when considering an application under the Ports Act 1991 for the sale of a major trust port in England or Wales. This covers the consideration of any proposal for a transfer scheme submitted under section 9 or 10 of the 1991 Act, together with the exercise of the Secretary of State's functions in respect of the subsequent sale of the port to which the scheme relates. The Secretary of State also intends to have particular regard to the policy considerations set out below before making a transfer scheme himself under section 12 of the 1991 Act or subsequently approving the sale of a port to which his scheme relates.

### ***Community participation***

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

### ***Future Development of the Port***

The Secretary of State will not approve an application unless the sale is considered likely to deliver an ownership model with the capability and access to capital to meet future investment needs.

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<sup>2</sup> For the purposes of the Act, a 'major trust port' is a trust port with an annual turnover above a certain limit (currently £7.6m). In England and Wales this currently includes Dover, Tyne, Milford Haven, Shoreham, Poole, Harwich Haven and the Port of London Authority (though the latter is excluded from provisions on privatisation contained in the Act).

### ***Fair price***

The Secretary of State will not approve an application unless the sale is considered likely to represent good value for money, having regard not only to Exchequer proceeds and market conditions, but also to other benefits including those to the community and the wider economy.

### ***Fair competition***

The Secretary of State will not approve an application that is likely to deliver an ownership model which results in unsatisfactory levels of competition in the relevant sector.

### ***Transport networks***

It is highly desirable for an application to be likely to deliver an ownership model which will cause the port to be operated so as to contribute to reliable and efficient transport networks.

### ***Sale process***

It is highly desirable that the sale should be conducted in such a way as to give all bona fide prospective purchasers a fair and equitable opportunity to participate.

### ***Employee involvement***

It is desirable for an application to be likely to deliver port employee participation in the ownership of the port, such as the right to receive equity shares or a share in its future success<sup>3</sup>.

## **Annex B – Current Criteria**

In considering the appropriateness of sale of an asset, the Government will consider a range of factors. The following statement sets out the factors that the Government currently consider likely to be particularly relevant to consideration of the appropriateness of sale of a major trust port.

The factors applying to sales in general include:

- whether it is possible to ensure continued delivery of high-quality services and other policy goals (such as supporting economic competitiveness and growth) with a different form of ownership;
- whether there is or could be a satisfactory degree of competition if the service were provided in the private sector;
- the extent to which the sale could be expected to increase investment, potentially through reduced constraints on borrowing, or enhance efficiency or quality; and

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<sup>3</sup> This is without prejudice to the Ports Act 1991 section 5(3) requirement to have particular regard to the desirability of encouraging the disposal of the whole or a substantial part of the equity share capital of the successor company to managers or other persons employed by the port company etc.

- the feasibility of sale in terms of market appetite and the value for money likely to be achieved.

Other factors applying equally to the sale of trust ports include:

- the desirability of giving all bona fide prospective purchasers a fair and equitable opportunity to make an offer;
- the desirability of encouraging disposal of equity to managers and employees of the port; and
- whether the sale could be expected to help to deliver reliable and efficient transport networks.