

Consultation Response Document

On 16 May 2011 the Secretary of State launched a targeted consultation on the criteria the Government should apply in deciding on the sale of trust ports in England and Wales. The letter of consultation is available at the following link:

<http://www.dft.gov.uk/consultations/dft-20110516j>

The consultation closed on 27 June and the Department for Transport received 43 responses.

The letter of consultation asked four 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?

Overall, the respondents agreed that it was appropriate to launch a consultation on the criteria to be applied. Taking each of the questions in turn, a general summary of responses and the Secretary of State's consideration, where appropriate, is provided below. Several respondents raised points with regard to the sale process rather than the criteria.

The Secretary of State's guidance note on the sale of trust ports, which includes guidance on liaising with the Department, publicising of sale and access to information and arrangements for inviting and considering bids, has been updated in line with the new criteria and published on the Department's website. The latter addresses many of the points raised on the sale process.

- Do you agree that these are the right criteria to apply to the consideration of applications for sale of a trust port?

Overall, respondents were supportive of the criteria, though some offered further criteria or revisions to the criteria.

Respondents were generally supportive of the inclusion of the 'Community Participation' criterion. Some concern was expressed about a perceived lack of specificity. Some respondents stated that the criteria should be specific and define community participation, either structurally or financially. Others wanted the criteria to set a fair price mechanism. The Secretary of State has considered these concerns but, given the criteria are to apply to a wide range of ports, does not wish to be prescriptive in specifying a set model given the different circumstances in each of the major trust ports in England and Wales. A further consideration is that the community and set of stakeholders is specific to each port and the Secretary of State does not wish to define community or

stakeholders for one major trust port and thus either exclude or include others unnecessarily when it comes to another.

The Secretary of State does not wish to be as specific as some respondents wanted, for instance in requiring a port to agree long term development plans with stakeholders, including several proposals that were specific to the circumstance of a given trust port. This is because the purpose of the proposed revisions to the criteria was to take account of Government policies and to allow the trust ports, should they wish to do so, the flexibility to come forward with innovative schemes. The Secretary of State does not wish to be over prescriptive and is conscious of the great variety that exists in the trust ports sector. The Secretary of State accepts that there is some room for interpretation in relation to the criteria, but considers that they are sufficiently certain to provide a framework which will assist industry and guide Ministers when making decisions on sale proposals.

There was some concern expressed about the potential politicisation of a port through local influence or that a community could enjoy power and influence without the financial responsibility that came with ownership, though some respondents wanted to reinforce this criterion. Others saw potential benefits in terms of planning and community relations in having this strong link. Some respondents felt that the community was being elevated over all other stakeholders. The Secretary of State has considered the concerns expressed in this regard but, in line with the Government's big society and localism agendas, is satisfied that the criteria enable an appropriate balance to be struck between community participation and other considerations. The criteria also make clear that community participation does not require a role in the operation of a port.

Concern was expressed that the inclusion of community participation could depress the value of a trust port and therefore proceeds to the taxpayer in the event of a sale. The Secretary of State recognises this but wishes to apply an overall balance to the criteria, recognising that while it is important to secure value for money for the taxpayer, it is also important to ensure an approved scheme has appropriate provision as regards community participation and the remaining criteria. While content to allow trust ports to change their status, the Secretary of State is keen that ports which do so maintain some of the benefits and stakeholder/community emphasis of the trust port model.

Some respondents expressed their outright opposition to the sale of any trust port, while others argued that all major trust ports should be privatised. The Secretary of State's goal for the sector is for trust ports to have the right commercial ambitions to grow. The Government has no plans to order the privatisation of any trust port but would consider any voluntary proposals.

The importance of the future development of a trust port in the event of a sale was repeatedly emphasised. Several respondents argued that access to capital and increased investment should be the drivers behind a decision on a transfer scheme. The Secretary of State has elaborated this criterion to reflect these points.

Some respondents argued against employees receiving financial gain or shares from the sale of a major trust port, while others felt this could be important in ensuring the future success of a port. The Secretary of State has considered these suggestions and is satisfied that the criterion, as proposed and taking account of the provisions of the Ports Act 1991, is not prescriptive and allows sufficient flexibility to include financial gain or not depending on the circumstances of the individual port. A further consideration is that any proposed scheme would be consulted on before a decision is made, allowing consultees to comment on proposals with regard to employee participation.

- Do you consider that the relative weighting of the criteria is appropriate?

Overall, respondents were satisfied that the weighting of the criteria was appropriate. That the weighting was implicit rather than explicitly stated was commented on and some respondents felt that this was unclear. The Secretary of State has considered this point and feels that the implicit ranking of the criteria (essential, highly desirable and desirable) gives sufficient clarity to the sector and to the decision Minister for any scheme. Nevertheless, he has made their hierarchy more explicit.

Some suggested that 'transport networks' should be essential rather than highly desirable. The Secretary of State has considered this suggestion and has not been minded to make this essential, given that the future development of the port, in combination with 'transport networks' as highly desirable, will be considered as essential.

That the 'sale process' criterion should be essential rather than highly desirable was a further suggestion by several respondents. The Secretary of State has sympathy with the points made but feels that, through the Department's guidance note on the sale of trust ports and the process itself, which allows a "minded to" letter to cover certain matters which the Secretary of State wants further assurance or action before making the Order and confirming the sale, sufficient safeguards are already provided.

Some respondents argued that the criteria should each have equal weighting. Others argued that the 'Future Development of the Port' or 'Community Participation' criteria should be the most important of the criteria. One respondent suggested that access to capital should be the paramount consideration. Some comments suggested that the 'Community Participation' should merely be highly desirable. The Secretary of State has considered these suggestions but is satisfied that schemes coming forward to meet these criteria would have to take due account of the different requirements (with 'Community Participation', 'Future Development of the Port', 'Fair Price' and 'Fair Competition' being essential criteria) and that a clear signal as to their respective weighting is needed. He does not wish to make either 'Future Development' or 'Community Participation' more important than the other.

- Do you consider that there are any other criteria which should be included?

Respondents were overall satisfied with the criteria and few additional criteria were suggested for inclusion. Some respondents did urge the Secretary of State to include an environmental criterion. The Secretary of State has considered this request but is not minded to include a further environmental criterion. The Secretary of State is mindful of the great importance of environmental stewardship for a port, be it private or trust, but does not feel that this goal is best achieved via an inclusion in these criteria.

Some respondents argued for the inclusion of a criterion requiring the continued delivery of high quality services. The Secretary of State considers this to be very important but would argue that it is adequately covered by the 'future investment and development of the port' and the 'transport networks' criteria. One of the aims of a trust port bringing forward a scheme must be to ensure that its proposed successor achieves this goal.

A 'claw back' mechanism was suggested for inclusion. This is already included in the provisions of the Ports Act 1991 and there is therefore no need to include it in the criteria.

The Secretary of State considers that some suggestions, such as the current strategic aim of a port being adopted by a new operator, were too specific. Equally, a suggestion that the Secretary of State include a criterion whereby he must be satisfied that the proposed management team be fit for purpose was felt to be better addressed through the sale process itself rather than the criteria.

One respondent suggested that a further criterion should be added which safeguarded any historical, non-property, assets a trust port owned. The Secretary of State has considered this request but feels it is too specific for these criteria and is confident that such concerns can be satisfactorily addressed on a case by case basis.

- Do you agree that the same criteria should apply to compulsory and voluntary sales?

Almost all respondents who answered this question agreed that the criteria should apply to both. One respondent suggested that the Government may wish to look at privatisation on a case by case basis this suggested that the decision on the criteria applying to voluntary and compulsory sales should not be taken at this time. Another felt it was not able to answer this question at this time. The Secretary of State has considered these points and has concluded that, given the overall support of respondents and for reasons of clarity, the criteria should apply to both voluntary and compulsory sales. In doing so, the Secretary of State notes that the criteria represent a statement of Government policy, and while it is to be expected that the Government will follow its policy, particular circumstances (including special justifications for departing from a policy) will always be considered on a case by case basis.