



**Department
for Transport**

To:

Birkenhead Port Limited;
Heysham Port Limited;
The Manchester Ship Canal
Company Limited;
The Mersey Docks and Harbour
Company Limited;
Port of Sheerness Limited.

Maritime Centre
Port of Liverpool
Liverpool
L21 1LA

Dear Sirs

**Consent to Mortgaging or Charging Dues on Ships under section 24 of the
Merchant Shipping Act 1853**

Birkenhead Port Limited, Heysham Port Limited, The Manchester Ship Canal Company Limited, The Mersey Docks and Harbour Company Limited and Port of Sheerness Limited (the "**Harbour Authorities**") have requested consent to the mortgaging or charging of dues, tolls, rates and charges levied by those Harbour Authorities. A copy of the request is attached to this letter.

Section 24 of the Merchant Shipping Law Amendment Act 1853 (the "**1853 Act**")¹ provides that "no dues, tolls, rates or charges of what nature soever levied or leviable or hereafter to be levied or leviable on any ships or on any goods carried in any ships in any part of Great Britain for any purpose whatever shall be mortgaged or charged in any manner or for any purpose without the consent of the Board of Trade first obtained". The power of the Board of Trade to give consent under section 24 of the 1853 Act is now vested in the Secretary of State².

¹ 1853 c.131.

² 1919 c.50; S.I. 1970/1681; S.I. 1979/571; S.I. 1981/278.

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Decision

On behalf of the Secretary of State I am authorised to confirm that consideration has been given to the Harbour Authorities' request and that under section 24 of the 1853 Act, consent is given to the charging by each of the Harbour Authorities of dues, tolls, rates or charges of what nature soever levied or leviable or hereafter to be levied or leviable by it on any ships or on any goods carried in any ships in the port or harbour for which each Harbour Authority is the statutory harbour authority for any purpose whatever. This consent extends to each of the security documents described in paragraphs 11, 18 and 19 of the attached letter requesting this consent.

Advertisement of public notices

Notices for the application for consent was published in various newspapers. The notices invited representations and objections to be made in writing to the Department for Transport and copied to Travers Smith LLP, solicitors for the Harbour Authorities, within 28 days from date of publication of the notices.

The notices were published in newspapers local to the Harbour Authorities. The relevant newspapers and date of publication are listed below:

- Liverpool Echo on 3 September 2012 - end of 28 day period 1 October 2012;
 - Manchester Evening News on 31 August 2012 - end of 28 day period 28 September 2012;
 - Sheerness Times Guardian on 5 September - end of 28 day period 3 October 2012;
 - The Sittingborne News Extra on 5 September - end of 28 day period 3 October 2012; and,
 - The Westmorland Gazette on 6 September - end of 28 day period 4 October 2012.
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The Department for Transport did not receive any formal representations or objections in writing during the relevant advertising periods.

Reasons

The Secretary of State notes that the directors of each of the Harbour Authorities have concluded, for the reasons set out in the application, that it will be in the best interests of each of the Harbour Authorities to enter into the guarantee in respect of the Debt Programme and to enter into the Debt Programme Security. Furthermore the Secretary of State notes that granting the guarantee in respect of the Debt Programme and granting the Debt Programme Security will not prevent any of the Harbour Authorities from continuing to perform its obligations as a statutory harbour authority. The Secretary of State has no reason to believe that this is not the case and accordingly has no reason to withhold consent.

A copy of this letter will be published on the Department's website in due course.

Yours sincerely

Thomas Barry

Deputy Director, Maritime Safety and Environment

MERCHANT SHIPPING LAW AMENDMENT ACT 1853

Application to the Secretary of State For Consent to the Mortgaging or Charging of Dues on Ships, etc. by the following harbour authorities:

- **Birkenhead Port Limited;**
- **Heysham Port Limited;**
- **The Manchester Ship Canal Company Limited;**
- **The Mersey Docks and Harbour Company Limited; and**
- **Port of Sheerness Limited**

Introduction

1. It is provided by section 24 of the Merchant Shipping Law Amendment Act 1853 (the "**1853 Act**") that no dues, tolls, rates or charges of what nature soever levied or leviable or hereafter to be levied or leviable on any ships or on any goods carried in any ships in any port of Great Britain for any purpose whatever shall be mortgaged or charged in any manner or for any purpose without the consent of the Board of Trade first being obtained.
2. The power of the Board of Trade to give the consent referred to in section 24 of the 1853 Act is now vested in the Secretary of State.
3. By this application, each of Birkenhead Port Limited ("**BPL**"), Heysham Port Limited ("**HPL**"), The Manchester Ship Canal Company Limited ("**MSCC**"), The Mersey Docks and Harbour Company Limited ("**MDHC**") and Port of Sheerness Limited ("**POS**") (together, the "**Harbour Authorities**") requests that the Secretary of State grants the consent referred to in section 24 of the 1853 Act in relation to charges to be granted by each of the Harbour Authorities as more fully described in paragraphs 11, 18 and 19 below.

Background

4. Each of the Harbour Authorities is a member of the Peel Ports group.
5. MSCC, MDHC and other members of the Peel Ports group had borrowed sums under facilities (the "**Original Facilities**") made available by The Governor and Company of the Bank of Scotland. The Original Facilities were refinanced by facilities made available by a syndicate of lenders initially consisting of The Royal Bank of Scotland plc, Barclays Bank PLC and Dexia Crédit Local, London branch under a facilities agreement (the "**Senior Facilities Agreement**") dated 3 November 2006 made between, amongst others, those lenders and Peel Ports Holdings (CI) Limited (an indirect holding company of each of the Harbour Authorities).

6. Each of the Harbour Authorities acceded to the Senior Facilities Agreement as borrowers and/or guarantors and each of MSCC and MDHC borrowed sums under the Senior Facilities Agreement which it used to repay its indebtedness under the Original Facilities.
7. Each of the Harbour Authorities also entered into a security agreement under which it granted security (the "**Security**") in favour of The Royal Bank of Scotland plc (the "**Security Trustee**") for the secured parties (as defined in the Senior Facilities Agreement).
8. Under the Security each of the Harbour Authorities granted security for its obligations as a borrower and/or as a guarantor under the Senior Facilities Agreement and for its obligations under the Security itself.
9. The Security did not create security over any dues, tolls, rates or charges as are mentioned in Section 24 of the 1853 Act (the "**Harbour Dues**") but each of the Harbour Authorities was obliged under the terms of the Security to seek the consent of the Secretary of State to a charge (the "**Security over Harbour Dues**") being created over such assets in favour of the Security Trustee. The Harbour Authorities applied for that consent on 17 January 2007 but did not follow up on that application pending the re-registration of each of MSCC and MDHC as a company under the Companies Acts as referred to below.
10. Each of MSCC and MDHC was a company incorporated under statute whose constitution restricted its activities to a much greater extent than would be the case for a company incorporated under the Companies Acts. These restrictions used to restrict the obligations which may be secured by security granted by MSCC or MDHC.
11. Each of MSCC and MDHC has obtained a statutory instrument pursuant to which it has re-registered as a company under the Companies Acts with a constitution which permits it to create security over its assets to secure any type of obligation. Each of MSCC and MDHC is obliged under the Senior Facilities Agreement to grant further security (together with the Security over Harbour Dues, the "**Further Security**") to the Security Trustee to secure such further obligations in respect of the Senior Facilities Agreement and related finance documents as the Security Trustee may require. The Further Security will take the form of fixed and floating charges over all, or substantially all, of each Harbour Authority's assets, including the Harbour Dues.

Reasons for entering into the Security

12. The directors of each of the Harbour Authorities had concluded that it was in the best interests of each Harbour Authority to accede to the Senior Facilities Agreement and enter into the Security. The reasons for this were, inter alia, the proximity of the final maturity date by which the Original Facilities would need to be repaid and the cheaper interest rate payable under the Senior Facilities Agreement as compared to the Original Facilities. The directors of each of the Harbour Authorities had also concluded that acceding to the Senior Facilities Agreement, granting the Security and the Further Security and performing its obligations to grant further security under the Security and the Further Security and the Senior Facilities Agreement would not prevent any of the Harbour Authorities from continuing to perform its obligations as a statutory harbour authority.

Proposed refinancing of the Senior Facilities Agreement

13. The final maturity date of the Senior Facilities Agreement is 31 December 2013 and, given the current uncertainty in the financial markets, the directors of the Harbour Authorities have concluded that it is appropriate to begin the process of refinancing the Senior Facilities Agreement now.
14. It is proposed that each of the Harbour Authorities, and certain other members of the Peel Ports group, will establish a new secured corporate debt programme (the "**Debt Programme**") under which another member of the Peel Ports group, for example Peel Ports Limited (the "**Borrower**"), will be able to raise the following types of debt:
 - (i) loans under loan agreements made between a newly incorporated member (the "**Issuer**") of the Peel Ports group and the Borrower under which the proceeds of notes issued by the Issuer will be on-lent to the Borrower;
 - (ii) private placement debt;
 - (iii) term bank debt;
 - (iv) term debt provided by institutional lenders;
 - (v) capex facilities;
 - (vi) working capital facilities; and
 - (vii) ancillary hedging entered into by the Borrower or other members of the Peel Ports group under the Debt Programme.
15. The purposes to which monies raised under the Debt Programme will be applied, include the repayment of monies owing under the Senior Facilities Agreement and the on-lending of monies to the operating companies within the Peel Ports

group (including the Harbour Authorities) to help fund their capital expenditure and working capital requirements and for general corporate purposes.

16. At the time of the refinancing of the Senior Facilities Agreement using debt raised under the Debt Programme it is proposed that the Security and the Further Security granted pursuant to the Senior Facilities Agreement will be released in full.
17. Under the Debt Programme it is proposed that each of the Harbour Authorities will guarantee the obligations of the Borrower and the other guarantors (being other members of the Peel Ports group) under the Debt Programme and will grant security in relation to the Debt Programme. That security will take the form of two security documents (the "**Debt Programme Security**") as described below.
18. One proposed security document will be a debenture in favour of the security trustee (the "**Debt Programme Security Trustee**") appointed under the Debt Programme who will hold that security on trust for the benefit of all secured creditors of the Borrower who are entitled to that security under the terms of the Debt Programme. That debenture will constitute fixed and floating charges over the whole, or substantially the whole, of the assets of the Harbour Authorities (and the other members of the Peel Ports group party to it). It is important that the debenture constitutes charges over the whole, or substantially the whole, of such assets in order that the Debt Programme Security Trustee is entitled to appoint an administrator in respect of each Harbour Authority under paragraph 14 of Schedule B1 of the Insolvency Act 1986 in the event that that debenture needs to be enforced. If the debenture did not create security over the Harbour Dues there would be a material risk that it did not create security over substantially the whole of each Harbour Authority's assets and that therefore the Debt Programme Security Trustee could not appoint an administrator in respect of each Harbour Authority upon the enforcement of that debenture.
19. The other proposed security document will be a floating charge agreement which will secure only those obligations referable to the capital markets investments which may be issued under the Debt Programme (e.g. the notes which fund the loans made by the Issuer to the Borrower referred to in paragraph 14(i) above and the private placement debt referred to in paragraph 14(ii) above). That security will be created in favour of the Debt Programme Security Trustee and assigned for the purpose of enforcement to the holders of the capital market investment or any representative on their behalf. This second security document is proposed to be granted so that the relevant secured parties are able to appoint an administrative receiver in respect of each Harbour Authority's assets under the

"capital markets exception" from the general prohibition on appointing an administrative receiver under section 72A of the Insolvency Act 1986. In order for the secured parties to appoint an administrative receiver in respect of each Harbour Authority's assets they would need to hold a floating charge over the whole, or substantially the whole, of the assets of that Harbour Authority. If the floating charge agreement did not create security over the Harbour Dues there would be a material risk that it did not create security over substantially the whole of each Harbour Authority's assets and that therefore the secured parties could not appoint an administrative receiver in respect of that Harbour Authority's assets upon the enforcement of that floating charge agreement. It is likely that such an eventuality would adversely impact the rating of the capital market investments that are to be issued under the Debt Programme.

20. The directors of each of the Harbour Authorities have concluded that it will be in the best interests of each Harbour Authority to enter into the guarantee in respect of the Debt Programme and to enter into the Debt Programme Security. The reasons for this are, inter alia, the proximity of the final maturity date by which the facilities made available under the Senior Facilities Agreement need to be repaid (31 December 2013) and the greater access the Debt Programme will give each Harbour Authority to sources of funding for its capital expenditure and working capital requirements and for general corporate purposes. The directors of each Harbour Authority have also concluded that granting the guarantee in respect of the Debt Programme and granting the Debt Programme Security will not prevent any Harbour Authority from continuing to perform its obligations as a statutory harbour authority.

Request for consent from the Secretary of State

21. We hereby request:

- (a) that the Secretary of State grants his consent under section 24 of the 1853 Act to the Company charging such dues, tolls, rates and charges as are mentioned in section 24 of the 1853 Act pursuant to the charges described in paragraphs 11, 18 and 19 above; and

- (b) that the Secretary of State grants such consent in the form of draft consent appended to this application, or in such other form as he may see fit.

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Duly authorised for and on behalf of
BIRKENHEAD PORT LIMITED
HEYSHAM PORT LIMITED
THE MANCHESTER SHIP CANAL COMPANY LIMITED
THE MERSEY DOCKS AND HARBOUR COMPANY LIMITED
PORT OF SHEERNESS LIMITED