



Department
for Transport

Ports Good Governance Guidance Response to the Consultation

Moving Britain Ahead

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Introduction

- 1 The consultation sought views on new draft good governance guidance for ports in England and Wales, the latter until the new devolution arrangements in the Wales Act 2017 come into effect in April 2018. The draft guidance is primarily aimed at Statutory Harbour Authorities (SHAs) whose powers and duties in respect of a harbour are set out in legislation, but its principles are also relevant to all organisations that own or manage harbour and port facilities.
- 2 The draft guidance builds on previous governance guidance to trust ports and to local authority owned ports and sets out key principles of openness, accountability and fitness for purpose in managing harbours in the broad public interest. Its intention is both to provide guidance in itself and also to signpost SHAs to where other more detailed sources of guidance are available, including the UK Corporate Governance Code and the Port Marine Safety Code amongst others.
- 3 The consultation period commenced on 11 September 2017 and ran to 22 October 2017.
- 4 18 responses were received by the Department to the consultation. These ranged across trade organisations (1), ports (10), local authorities (2), industry (2), and members of the public (3). It is quite clear that respondents' replies reflected a deep knowledge of the ports industry. This has given the Department assurance that it has received relevant advice and comment on the draft of the Ports Good Governance Guidance (PGGG). The Department would like to thank all those who responded.
- 5 The responses broadly supported the format of the draft guidance and its content, although a number of changes have been made to the draft Guidance both as suggested by the responses and also from further consideration by the Department. The main points made in responses are summarised below.
- 6 The final version of the Guidance has been published on gov.uk at the same time as this document.

Main points raised in responses

- 7 Much of the comment received centred on the first two parts of the draft Guidance concerning SHAs and trust ports. This is not unexpected given that the first section will apply to all ports while there are a significant number of trust ports. Much of the comments or amendments suggested we have been able to accept and have incorporated into the text. Also, we have taken the opportunity to make changes to improve drafting and presentation of the draft guidance.
- 8 Those areas which generated more comment or to which we have made more substantial changes to the draft Guidance are discussed under each of the consultation questions below.

Q1. Do you have any comments about how we could improve the section on Statutory Harbour Authorities (Part A)?

- 9 Overall, respondents who answered this question broadly supported the content of this section of the draft guidance. Specific observations on the text of the guidance are as follows.
- 10 Comment was made that the wording 'the principles of UKCGC (UK Corporate Governance Code) are relevant to Statutory Harbour Authorities (SHAs) without premium listing of shares, when applied on a proportionate basis' could lead to confusion to ports and third parties. We have simplified the wording to clarify that while the UKCGC does not apply to businesses without a share listing, the Department believes that its principles are relevant to many SHAs when applied on an appropriate and proportional basis. A further amendment has been made to acknowledge the effect of the ownership model as, for example, privately owned SHAs are likely to have different corporate governance arrangements.
- 11 Several respondents referenced the forthcoming corporate governance reforms announced by the Government in August 2017 that will be implemented in 2018 and the need for the guidance to be consistent with those reforms. We agree with this important point and have included a new section which gives a board overview of the intended changes. The reforms will be reflected, as necessary, in future versions of this guidance.
- 12 Some concerns were raised with the wording in regard to harbour dues, which was thought to be too proscriptive. Additional wording has been inserted to make it clear

that the Department expects harbour users who do not agree with the harbour dues levied to first raise the matter with the SHA to seek to resolve any concerns through discussion. Also the text has been modified to acknowledge that harbour dues should be set at a level that allow for, at least, proper maintenance of the harbour and meet conservancy and other duties. Also it is now recognised that they may also need to allow a return on investments.

- 13 It was drawn to our attention that the definition of the open port duty was incorrect. This has now been amended to correctly reflect the requirement to permit open use of port facilities subject to payment of dues.
- 14 Substantial comments from one respondent were received in regard to the Port Services Regulation (PSR). While the information given within the document was welcomed, additional guidance was requested. While the Department recognises the concerns raised, we consider that the comments are outside the scope of the PGGG. However, the Department is separately discussing the implementation of the PSR with stakeholders, which is a more appropriate forum for these issues.
- 15 One respondent proposed that the Department introduce a quality 'kite' mark to identify SHAs that adhere to the guidance. While an interesting idea, we considered that this would prove too bureaucratic to implement. It is open to SHAs to state that they comply with the PGGG and, indeed, we would encourage them to do so. It was suggested we may wish to draw comparison with airport consultative committees in regard to stakeholder representation. However, such committees are established by legislation which imposes certain requirements and we feel they are not directly comparable to SHAs.

Q2. Do you have any comments about how we could improve the section on Trust Ports (Part B)?

- 16 There was broad support for the content of this section from those who responded to this question. Some detailed points were raised which are discussed below.
- 17 A variety of comments on Board appointments were received. Many of these concerned specific points within the guidance, such as better clarity between executive and non-executive director roles, length of appointments and recruitment procedure. Many of these we have been able to accept and suitable changes have been made to the text. Additionally it has been made clear that where there is a conflict between the PGGG and the requirements of a SHA's local legislation, it is the legislation that takes precedence.
- 18 One respondent suggested that the guidance should allow representation from major customers on boards in some circumstances. The Department believes that the move away from representative members on trust port board has been an important aspect in the development of trust port governance over the past 15 years and does not believe it would be in the interest of good governance to change this. It is of course important for boards to understand the views of its stakeholders, including of

course major customers, and the guidance includes some approaches that could facilitate this.

- 19 Concern was raised over the guidance that trust port boards should consult stakeholders on significant decisions, which was felt could be open to misinterpretation by stakeholder groups. While the requirement has been retained, additional wording has been included to make it clear that there will be occasions where this will not be practicable or appropriate. Examples include urgent timing considerations, commercial reasons or staff-related issues.
- 20 It was suggested that the requirement for an annual public meeting should now be replaced with an 'optional' suggestion for such an event. While it is recognised that social media and information technology provides new means for trust ports to interact with their stakeholders, the Department's view is that these are complimentary to a public meeting and not an 'either/or' option.
- 21 Guidance on establishing and maintaining succession planning in regard to board and senior management positions has been included, as requested in a consultation response.
- 22 Also, the opportunity has been taken to reorder some of the text to reflect a number of general comments that we received on this section. Firstly a general description of trust ports has been made more prominent in this section to improve clarity to trust ports and stakeholders. For similar reasons, greater emphasis has been placed to that a trust port is 'a valuable asset presently safeguarded by the existing board whose duty it is to hand it on the same or better condition to succeeding generations'. In considering the comments made on this, the Department agrees this definition remains valid. Finally, there has been a number of small adjustments to the text to re-enforce that trust ports should be run on a commercial basis and that a commercial return should be generated on their operations.

Q3. Do you have any comments about how we could improve the section on ports owned by local authorities (Part C)?

- 23 Fewer observations were received on the specific guidance contained on this section. This perhaps reflects that the guidance in Part A of the PGGG applies to all SHAs, including those owned by local authorities. Therefore many of the comments received to that section apply to local authority ports.
- 24 Under this section, a small number of responses were made in regard to individual local authority owned ports and their wider accountability. Although comments made in relation to specific ports are outside the scope of the draft guidance, the Department is considering the points raised. Local authority owned ports are ultimately accountable to the local authority itself and its elected members.
- 25 In response to a comment received, we have added text that local authorities may

wish to consider formally establishing Harbour Management Committees (HMCs) by legislative routes.

Q4. Is there anything else you think the guidance should cover, or do you have any comments about how we could improve any of the other parts of this guidance?

- 26 A small number of responses were received under this heading. Of these, some have already been covered by comments and amendments elsewhere in the guidance. Comment was received that there should be a formal obligation on SHAs to disseminate Government consultations to their key stakeholders. The Department considers that the imposition of such a requirement is outside the scope of the PGGG.
- 27 A specific view was expressed that a potential conflict of interest exists where an organisation is both an SHA and a port operator and, to mitigate this, they should be separate entities. From its contact with the maritime industry, the Department's view is that this is not a widespread issue.

Q5. What examples of good practice do you have that could be included in the guidance?

Q6. How do you think we could make this guidance easier to use?

- 28 Our response to these two questions have been combined as a handful of replies were made to these sections.
- 29 Several requests were made for a separate short version of the guidance covering the key points. This is under consideration, but given the issues concerned, the scope for further shortening may be limited. Other means by which to assist SHAs and stakeholders in accessing the information contained within PGGG is also being examined, including how it might be best be presented on-line.