

MODERNISING TRUST PORTS

**A GUIDE TO GOOD
GOVERNANCE**

Introduction

1. A review of trust ports was undertaken by DETR Ports Division in 1998. It involved a detailed scrutiny of the trust sector with specific regard to the standards of corporate governance and accountability of its operation. The review concluded that the concept of a trust port had stood the test of time and continues to perform a valuable role in support of the local, regional and national economy. However, it highlighted a need for general improvement in the openness and accountability with which trusts conducted their business. Trusts need to revisit the first principles of their foundation¹. This guide to national standards of accountability was proposed as a benchmark to provide good practice for the future.
2. These standards are practical measures. Through providing a benchmark based on modern accountable practice in Government and industry, they seek to ensure that the concept of a trust port remains a viable and effective option into the next century. They provide clear and unequivocal guidance designed to assist all trust port boards meet the standards of independence, openness and accountability on which they were founded, as the review recommended². Municipal and privately owned ports³ are also invited to consider how well they match these standards and what improvements they could make.
3. These guidelines have been drawn up by the Department of the Environment, Transport and the Regions (DETR) with assistance from the Scottish Executive, the Ministry of Agriculture, Fisheries and Food (MAFF), the trust sector and its representative bodies. **All trust ports should examine themselves against these standards and then draw up and submit to DETR or the Scottish Executive within the next 6 months plans and timetables for achieving them.** The Government expects to see all trusts take positive steps towards compliance within the next two years. Full details of the Government's timetable are provided in the final section of these standards (Implementation). Compliance will be monitored by the DETR on behalf of the Secretary of State and by the Scottish Executive on behalf of the First Minister of the Scottish Parliament.
4. The Departments stand ready to provide advice and assistance to **all** ports on compliance. Any port in England and Wales wishing to discuss the impact of these standards on their operations should contact

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¹ As independent statutory bodies run by independent boards in the best interests of all stakeholders.

² Review of Trust Ports - a summary consultation paper including the review recommendations was published by the DETR in December 1998. Free copies are still available on request from Ports Division, DETR, Second Floor, Zone 29, Great Minster House, 76 Marsham Street, London SW1 4DR.

³ Harbour authorities are not simply commercial undertakings concerned with their customers' interests. They have a duty to exercise their statutory functions in an open and accountable manner. The Government has a duty to set appropriate standards to guide them in discharging these duties. Government wishes to see all harbour authorities openly accountable for duties and powers, policies and standards.

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Background

5. The Government's White Paper on the Future of Transport "A New Deal for Transport: Better for everyone" provided a clear new statement of ports policy⁴. The Government recognises that ports are a vital link in the supply chain and the need to integrate their operations with the wider transport networks. The Government's broad policy aims in relation to ports can be summarised as
 - Promotion of UK and regional competitiveness by encouraging reliable and efficient distribution and access to markets;
 - Enhancement of environmental and operational performance by encouraging the provision of multi modal access to markets;
 - Making the best use of existing infrastructure, in preference to expansion wherever practicable;
 - Promotion of best environmental standards in the design and operation of ports, including where new development is justified.

Efficient and forward thinking ports can play an important part in the success of the integrated transport strategy. The Government's ports policy aims to meet that challenge and to help ports make the best of the opportunity. Success will not only be good for them; it will also be good for the public interest. If trust port boards are to rise to this challenge they will need to move with the times. These standards point the way ahead.

6. There are over a hundred trust ports in the UK (**Annex 1**) of which only a small number could be classed as being of national significance. The majority of trust ports were set up (*and remain*) specifically to serve regional and local interests. They represent a broad cross section of the UK ports industry ranging from general cargo through fishing to conservancy undertakings. Trust ports are independent statutory bodies, each governed by its own, unique, local legislation and controlled by an independent board. Their common feature is their unique status as trusts. There are no shareholders or owners. Any surplus is ploughed back into the port for the benefit of the stakeholders of the trust. The stakeholders are all those using the port, employees of both the port and its users and all those individuals, organisations and groups having an interest (*not necessarily pecuniary*⁵) in the operation of the port.
7. In most cases members of trust boards (*in effect the trustees*) are nominated by local interests reflecting the local and regional needs they serve. The boards of 13 trust ports are in whole or in part appointed by the Secretary of State for the Environment, Transport and the Regions, MAFF or the First Minister of the devolved Scottish Executive. There are some 87 such appointments in total, of which 48 might be termed direct (*via publicly advertised competition*) with the

⁴ This is expanded upon and explained in the Ports Policy Paper .

⁵ Harbour Authorities serve a public right to use the harbour and a public interest in the harbour. Right and interest are of equal value. Reasonable regard must be given to all legitimate interests.

remainder made after consultation with various nominating bodies. It is important that, once appointed, these members owe allegiance to the trust rather than the Secretary of State or First Minister or any business or organisation to which they belong. Broadly similar arrangements apply in Northern Ireland where the Department of Regional Development appoints harbour commissioners

8. Government appointments to trust port boards are generally⁶ made in strict accord with its policy on the appointment of all non executive directors and board members of public bodies. This appointment process is regulated in England and Wales by guidelines set by the Office of the Commissioner for Public Appointments (*the Nolan rules*) which apply to appointments to all non Departmental Public Bodies. Although these guidelines are not mandatory for Departmental appointments to Trust Port authorities, their application ensures that all Government appointees gain office through a system which is both open and transparent. In Northern Ireland it has been the policy to apply the PEACH principles to all public appointments to harbour boards. We expect that this policy will continue to be applied.
9. Government good practice in the appointments field is not generally followed in the appointments process of the trust sector. Many of the local Acts governing the conduct of trusts and appointment of board members have remained basically unchanged since their inception⁷ and, in many cases, fall far short of what might, today, be considered open and accountable. Many boards adhere to the basic principles of the trust, discharging their duties in a conscientious open and accountable manner. However, much depends on the integrity of individual board members for, unlike a private company where the board is accountable to its shareholders, in the final analysis trust boards only need to be accountable to themselves.
10. The activities of board members of non Departmental Public Bodies are also regulated through guidelines provided by the Cabinet Office but these do not currently extend to the trust port appointees⁸. The Government's selection process and codes of practice represent a benchmark for fairness, openness and accountability. These are now supplemented with the DETR's "A New Approach to Public Appointments" initiative aimed at making appointments from a much broader range of backgrounds.
11. Against this background the accompanying guidance, compiled with advice and assistance from within the trust sector, draws on the best of Government, trust port and commercial good practice. It sets out a framework of openness and accountability against which all trust ports should review themselves and, if necessary, adopt to improve on their existing standards.

⁶ A small number of MAFF appointments are presently made through nomination. This practice will cease on transfer of responsibility to DETR. Future appointments will be made strictly in accord with these standards.

⁷ The existing appointment system may well have suited the foundation of the trust in the last century or earlier when those contributing felt that they had a right to inclusion, but times and standards have moved on. Unfortunately in many instances ports' constitutions have not kept pace with society's views on what constitutes good governance.

⁸ Trust ports are not classified as non Departmental Public Bodies.

12. Ministers expect every trust port to study these standards and within 6 months submit plans and timetables for achieving equivalent or higher standards within two years. This may require some changes to ports local Acts but much will rely on changes in working arrangements and practices. The DETR will advise and support all trust ports in adopting these standards.
13. Nothing in this guide should be taken as overriding existing fiduciary, statutory or legal obligations laid upon board members, officers and employees of trust ports. It should be taken as a pointer to changes required to each port's working practices and local legislation to fulfil these duties.

Coverage

14. These standards are designed to provide a benchmark of excellence for all trust ports whatever their size, turnover or type. They will apply equally whether a trust deals with cargo, fishing or conservancy. Only the emphasis will differ. The core principles of openness, accountability and fitness for purpose form a common thread running through these standards and should feature in the direction and management of all ports in the trust sector.
15. Although these standards are aimed specifically at trusts, all ports are encouraged to use them as a benchmark as all ports on whom Parliament has devolved statutory powers and duties in the public interest should be accountable for their use. **The aim is to encourage the development of an open and accountable relationship between all ports, their users and local communities.**
16. The Government intends that **these standards should be applied by all trust ports in England and Wales.** The Scottish Executive has the option to adopt and amend these standards for application to the Scottish trust sector but intends that **these standards will apply across all Scottish trust ports.** The Department of the Environment for Northern Ireland conducted its own review of the Northern Irish trust ports. **While the Ports in** Northern Ireland subscribe to this guide the Department of Regional Development has indicated that **NI Ministers will wish to consider, in due course, whether to adopt this guidance or to amend it to reflect local operating conditions.**

Stakeholders and beneficiaries

17. The trust port review confirmed the basic principles of trust ports. They are independent statutory bodies run by independent boards of trustees for the benefits of all stakeholders⁹.
18. These stakeholders form two distinct tiers
- **beneficiary stakeholders** who are entitled to benefit from the use of trust facilities. These would include users of the harbour who pay a commercial rate (*owners of cargo, passengers, operators of ships etc.*) and others who derive direct benefit from the trust (*employees, those with a direct commercial interest in the port's operation - traders and their employees*)
 - **non beneficiary stakeholders** representing the broad range of those with an indirect interest (*but without the specific statutory entitlement of users*) in the port and its accountable and effective operation (*local authorities and the community at large, trades unions, the Government, partners, investors, lenders and creditors the national and regional economy, specific interest groups covering environmental, conservation and transport matters amongst others*).
19. There is a differing emphasis to be laid on the way in which the trust is responsible to each of these stakeholder groupings. Boards should be clear that paying for the port's services creates a particular interest but not a special one that displaces or overrides others. There are bound to be conflicts of interest from time to time between the various stakeholder groups (*e.g. user v environmental interests*). **It is the duty of the board, at all times, to strike a balance that fully respects the interests of all stakeholders, not just one group, in the light of the objectives of the trust and what constitutes the "common good" for all stakeholders (current and future) and the trust itself. In achieving this it is essential that the needs and views of the non beneficiary stakeholders are not overlooked¹⁰ or discounted.** The basic principles of accountability and openness set out in these standards should provide the framework for their dealings with all sectors of the port community as outlined above. A trust port's stakeholders are the true beneficiaries of these standards.
20. **Trusts are run for the benefit of all their stakeholders.** Any surpluses are ploughed back into operation of the trust. All trust ports have a duty to maximise the benefits available to all their stakeholders (*existing, potential and future*). They should always be subject to, and constrained by, their duty to uphold the rights of all stakeholders and treat them in an accountable manner. It is the duty of each trust board to steer this course, fulfilling their commercial operational and strategic requirements against the framework laid down in this guide. The manner in which

⁹ For the purposes of the National Standards stakeholders are considered to equate to the beneficiaries of a trust in the context of trustee law.

¹⁰ Harbour Authorities already have explicit duties in relation to a range of interests other than their paying customers (e.g. the environment) which they share with other bodies such as local authorities.

they work to strike the balance in their port and their effectiveness in achieving it should be clearly set out in their annual reports and strategy documents.

The appointment process

21. The appointment process in the trust port community is almost as varied as the ports themselves. Given the diversity of ports in the trust sector it would be hard to establish a standard process that could be applied to all. However, this guidance is intended to set out a basic set of standards around which individual ports may build an appointment process tailored to their specific requirements.
22. The basic tenets of the appointment process are set out below. These are based on existing good practice in both public and private sector. **The objective is to obtain a board that is independent and fit for purpose rather than representative of particular interests. The intention is to open up the process to allow trusts to range wider to locate the expertise (whether gained through professional or life experience) that they need to function effectively.** This will ensure that people appointed to trust ports are more independent, selected in a more open and accountable manner, and are fit for the purpose of providing the port or conservancy with effective strategic direction.

The eight guiding principles of trust board appointment

Responsibility

The ultimate responsibility for making an appropriate appointment of someone fit for purpose rests with the chairman of the board¹¹.

Merit

All appointments should be governed by the overriding principle of selection based on merit and the well informed choice by the board of new members who through their abilities, personal experience and qualities match the needs of the trust.

Independence

No appointment will be made to any board to provide representational rights for specific groupings. All appointments must result from an open and competitive selection process operated by a panel containing at least one member independent of the port.

Equal opportunities

Trusts must sustain recruitment policies and practices aimed at delivering the principles of equal opportunity and achieving demographic balance on the board.

Probity

Appointees must be committed to the principles and values of the trust and be ready to fulfil those duties with integrity in a completely disinterested and impartial manner.

Openness

Board membership must depend on merit. It must be open to all those who can prove that they are fit for purpose through their ability to meet the criteria laid down for appointment to the board. Membership of another group or organisation should not be a precondition of acceptance.

¹¹ Where the Secretary of State has rights of appointment this responsibility will be shared between the Chairman and the DETR.

Transparency

The principles contained in this guidance must be applied to the entire appointment process. Its workings must be transparent and information about the appointments made must be publicised.

Proportionality

Appointment procedures must be geared to the nature of the post and the weight of its responsibilities. Within the basic framework of openness and accountability they need not be disproportionate in terms of time and effort to the importance of the post applied to. They should be seen to encourage applications from a broad cross section of the community.

23. The following basic process should be adopted to provide a simplified, consistent, open and accountable system for board appointment.

- All vacancies to be filled against specific job descriptions¹² to ensure the correct balance of skills and competencies across the board. Core skills, characteristics and experience required by a board member are outlined in these standards. **Annexes 2-5** contain examples of existing job descriptions and a model advertisement and application forms which can be customised.
- All vacancies to be advertised in the local and regional press, on local radio, notice boards, web sites and in specialist publications as appropriate¹³. An example of a typical advertisement issued by the DETR is included at **annex 3**.
- The existing right of appointment by local authorities is recognised but it is proposed that local Authorities should seek to adopt Nolan¹⁴ procedures in making these appointments. Local Authorities should institute a competitive, advertised, open recruitment process in line with their existing recruitment practices. This should be against a job description agreed with the trust board and should, ideally, utilise the same application forms - based on those contained in these standards. Appointment

¹² Job specifications should be drafted in a way which does not discourage or eliminate applications from women, ethnic minorities or the disabled.

¹³ The key objective in advertising is to make as many suitably qualified people from as wide a field as possible aware that posts are available. It also helps to demonstrate that a trust's appointment processes are open and transparent and not reserved for the chosen few.

¹⁴ Issued and regulated by the Office of the Commissioner for Public Appointments (OCPA). Overarching Government policy on the appointment of non executive directors to Executive Non Departmental Public Bodies is set by the OCPA. OCPA was set up following the recommendations of the first Nolan Committee. Although published guidance does not specifically relate to Port appointees it is considered to be recommended best practice and the remit of OCPA is due to be extended by this Government.

OCPA guidance directs that all appointments must be based on the following seven principles

- Ministerial responsibility - *Ministers are ultimately responsible*
- Merit - *experience and qualities matching needs of organisation*
- Independent scrutiny - *proposals to validated by panel including members drawn from outwith recruiting organisation*
- Equal opportunities
- Probity - *appointees must perform duties with integrity*
- Openness and transparency- *recruitment process to abide by principles of open Government*
- Proportionality - *appointment procedures need to be appropriate to importance of post*

should be open to all, not restricted to council members. **As representatives of the local communities served by these ports, local Authorities should ensure that those they appoint to trust boards comply with the basic criteria set out in these standards** and are able to make an effective contribution to the workings of the trust. Local Authorities should consider involving the chairman and chief executive/ senior manager of the trust in the selection process.

- The existing rights of appointment held by users and other vested interests should be phased out. The franchise for membership should be broadened to encompass all stakeholders. **The aim should be to clearly demonstrate that the appointment process is open and accountable ensuring that appointees are demonstrably independent and fit for purpose**. These “independent” appointments should be publicly advertised by the trust in the local and regional media. Nominations can also be sought from within existing interest groupings. These can be incorporated into the selection process. **The intention is to trawl as wide a field as possible to obtain effective board members who meet the specific needs of the port and are appointed on the basis of merit.** All applications and nominations should be sifted by the intended interview panel and a short list for interview¹⁵ put to the board. The selection board should comprise the chairman or deputy chairman, a stakeholder representative and an independent. It would be acceptable for the chief executive/ senior manager to advise this group. The independent member might be drawn from the Government or local authority listings of independent assessors, provided by the local authority from amongst its officers (*Personnel Director or equivalent*), or from some other locally accredited and recognised independent source to be determined by the board. The DETR or the Scottish Executive could also consider providing this member of the panel if requested.
- **Where appointments are made by trades unions they will be expected to adhere to these standards and the Nolan principles in making appointments that are demonstrably fit for purpose.** Such appointments should be made as a result of a competitive selection process rather than by a simple nomination. In making appointments they will be expected to consult fully with the trust boards as to the skills required from their appointees in order to achieve a balanced and effective board and to explain the reasoning behind their selection.

All unsuccessful applications should remain confidential and the papers should be destroyed or returned to the applicants.

24. The preceding paragraphs treat the appointment process from the perspective of selecting a new appointee. The principles of reappointment are dealt with in the succeeding section on age and term of appointment.
25. In the majority of trust ports the chairman and deputy chairman are appointed by the board from within the ranks of existing, experienced, board members. This should be standard practice, although the Government will continue to appoint chairmen to the boards of a handful of strategically important trust ports such as Dover and Harwich. It is for individual boards to decide whether they wish appointments to the chair and deputy chair to be renewable annually or whether they wish to make them for a fixed term. Any fixed term offered to a chairman should not exceed the appointee’s remaining current term of office as a board member.
26. Retention of appointment rights does not mean maintenance of the existing number of seats on the board. As recommended in the Trust Port Review, **boards should be of a manageable size**¹⁶. It

¹⁵ Interviews should be conducted in a way sympathetic to those with less formal experience of job hunting.

¹⁶ Recommendation 15 in the Trust Port Review “ Boards should be reduced to a manageable size (8-12), any anachronisms weeded out, and provided with the optimum balance of skills and expertise. See also the later section in these standards headed “constitution of the board”.

will be for individual trusts in consultation with their stakeholders to determine how the board will be composed in order to manage the port in the most effective way.

27. Boards will be expected to

- confirm they have adopted the guiding principles;
- publicise and explain the appointment process;
- and indicate the avenue of appointment for individual board members;

in their annual reports accompanying the accounts and the published strategy document.

28. **The senior officers of the trust are critical to its effective performance.** It is essential that they are fit for purpose in the same manner as the board. Appointment should follow the same principles of openness and accountability. Vacancies should be publicly and effectively advertised against a specific job description reflecting the need for fitness for purpose. The selection procedure should be fair and open and based on merit. Each step of the process from formulation of the job description through advertisement to confirmation of appointment should be sanctioned by the full board. **The importance of selecting suitable qualified staff fit for the purpose of running the day to day operations of the trust cannot be over emphasised.** Medium and smaller sized trusts should seriously consider approaching their local authorities to seek professional assistance (*from council personnel services*) with the selection and recruitment process.

The eight guiding principles of trust board

membership - *Adapted from the Cabinet Office code of practice for board members of advisory non Departmental Public Bodies*

29. All board members should adhere to the following principles in the conduct of trust business. **Board members must fully understand their duties and responsibilities**. Individual boards might consider adapting these to publish their own code of practice, possibly in the context of the annual report and/or their published strategy document.

Independence

A trust port is an independent statutory body. **All board members are appointed to act independently in the best interests of the trust** and all of its stakeholders both present and future.

Accountability

Board members are accountable for their decisions and actions to all stakeholders of the trust and should submit themselves to whatever scrutiny is appropriate to their office.

Openness

Board members should be as open as possible with all stakeholders about the decisions and actions they take. They should publicise the reasons for their decisions and restrict information only to the extent that matters of commercial or personal (*personnel*) confidentiality are involved.

Selflessness

Board members should take decisions solely in terms of the interest of stakeholders of the trust. They should not do so in order to gain financial or other material benefits for themselves, their family and friends or any group or organisation with whom they are associated.

Integrity

Board members should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out trust business, including making appointments, awarding contracts, or recommending individuals for rewards and benefits, board members should make choices on merit.

Honesty

Board members have a duty to declare any private interests which might influence their trust duties and to take steps to resolve any conflict arising in a way that protects the interests of stakeholders of the trust.

Leadership

Board members should promote and support these principles (*and ensure that they are adopted by fellow board members*) by leadership and example.

30. **Boards have a duty to ensure that new appointees are provided with clear information on all aspects of their duties as a trustee of the port.** As a minimum all board members should be provided with a copy of these standards on appointment and be required to sign a binding declaration on joining similar to the example provided at **annex 6**.

Board skills

31. Trust port boards should contain an appropriate balance of skills, competencies and experience to control the port effectively and provide it with leadership, motivation and strategic direction. They will be a mix of professional and personal. Entrepreneurial skills need to be balanced with a public service commitment. **Experience and independence are of equal importance.** The effective skills balance for each port will be different depending on its circumstances and the environment within which it operates. However common requirements are likely to include

Personal skills /competencies	Professional skills
Drive, vision, independence, confidence.	Relevant and current commercial expertise.
Challenging, proactive approach to board business.	Relevant current maritime expertise.
Ability to motivate and engender respect.	Health and safety.
Negotiating and communication.	Management.
Impartiality and integrity.	Public relations/ community issues.
Interpersonal - the ability to develop good relations inside and outwith the trust.	Industrial relations.
Ability to work as a team member/ supportive of colleagues.	Shipping/ fishing/ cargo handling.
Ability to make a constructive contribution to group discussion – clear expression of ideas.	Finance/ management accounting.
Analytical approach to problem solving.	Leisure, boating management, voluntary and commercial sectors.
Ability to formulate strategy .	Environmental.
Have a grasp of priorities.	

32. **In assessing potential board members against the above criteria relevant life experience and track record should be considered as relevant as skills obtained through a conventional career path and professional qualifications.**
33. These are the basic criteria against which all trust port board members should already be able to measure themselves if they are effectively fulfilling the responsibilities of a port trustee. Above all **board members need to foster a public service ethic. They need to display a genuine commitment to the welfare of the port and all its stakeholders. They should have understanding of and a commitment to the needs of the local and regional communities and economies** which depend upon the effective operation of the port.

The role of a trust board member

34. There is little difference between the duties of a trust board member and the member of a private board. Private port boards are accountable to their shareholders, the trusts to their stakeholders. Both have a clear and unambiguous duty to these groups and are accountable to the general public for the way in which they exercise the statutory powers and duties devolved onto them by Parliament. The basic principles of truth, integrity, honesty, loyalty and acting within their powers hold good.

35. As a general rule¹⁷

A board member should	A board member should not
act independently and in good faith in the best interests of the trust and all its stakeholders (<i>Commissioners Clauses Act 1847</i>).	represent specific interests when acting as a board member.
have a duty of care to the trust and its current and future stakeholders.	enter into contracts or other arrangements for personal gain with the port (<i>Commissioners Clauses Act 1847</i>)
be honest in their dealings with no hidden agenda and respect the confidentiality of information obtained as a board member and board discussions.	use information obtained as a board member for personal gain, the gain of any third party or misuse it in any other way.
acquire a proper understanding of the business including - delegated authorities, the strategic plan, budget, structure and relationships, financial controls and systems, customers, competition and markets (<i>e.g. rights and responsibilities</i>).	allow membership of any other organisation, club, or society to influence their decisions or actions as a board member.
ensure that all their actions and the operation of the port are undertaken within the statutory framework. They must not knowingly allow the port to breach or fail to discharge legal or fiduciary obligations.	allow the executive to exercise undue control over the port and board, become complacent or stagnate.
read the board papers and ensure that all their decisions are properly informed.	be a passenger.
attend all board meetings unless, exceptionally, excused by the chairman.	cast a vote or attempt to influence or persuade the board on any item in which they have an interest.
be prepared to submit a paper to the board on their views.	attempt to influence the decisions or direct the activities of trust servants without recourse to the board.
send a letter explaining their views on major issues if they cannot attend.	ignore or unreasonably oppose the views of the majority.

¹⁷ N.B. Reference to the executive in this and succeeding tables can be taken as a reference to the senior officer employed by the trust whatever their title.

A board member should	A board member should not
be a team player sharing knowledge and views with fellow board members and abiding by the view of the majority.	be a loose cannon.
actively participate in board discussions - be testing - be prepared to be challenging and to act independently (<i>in a constructive manner</i>).	interfere or participate in operational matters unless specifically requested by the chairman and executive.
ensure they have all of the information they need to fulfil their obligations to the trust.	
participate in the appointment of the executive.	
place their skills at the disposal of the port and its executive.	
forge strong working relationships with other members of the board and executive.	
ensure that the executive is managing the port honestly, efficiently, effectively and acting within its powers.	
ensure that they receive adequate training for the discharge of their responsibilities.	
always respond appropriately to complaints from stakeholders involving board colleagues and the executive as appropriate.	
declare any outside interests, hospitality, gifts etc. which might, conceivably, be seen to be in conflict with the duties and responsibilities of an impartial, independent board member.	
declare an interest in any board discussion at the outset but be prepared to contribute factually to the debate.	

36. The chairman should be seen as an ambassador for the trust. Where necessary they should present its public face taking responsibility for presentations, speeches and other public occasions. In addition to their role as an active board member outlined above, in general terms ;

A chairman should	A chairman should not
form a strong partnership with the executive to ensure effective governance of the port.	prevent board members (<i>subject to the provisions of the Data Protection Act</i>) from seeing, on request, any document relating to the business of the port and servants of the trust.
provide effective leadership for the port.	intervene in operational matters or establish alternative lines of command within the port's hierarchy.
ensure that the board meets at appropriate intervals.	set up "chairman's" committees which transact port business without recourse to the board.
represent the views of the board to the stakeholders of the trust and public at large.	
ensure that new board members receive appropriate training.	
forge an effective working relationship with the executive.	
maintain a close interest in the operation of the port.	
manage the board process effectively.	
assess performance of individual board members with the chief executive/ senior manager.	
discipline (<i>including sacking where permissible</i>) board members if required.	
ensure that the port is compliant with all legislative and other Government requirements.	
ensure that the port complies with this guidance or has a plan and timetable to do so.	
ensure the board has the capacity and information required to take a balanced view on every matter.	
to promote the active participation of all board members in debate.	
ensure that every member of the board maintains a complete grasp of its responsibilities to the trust, statutory duties and legal obligations.	

A chairman should	A chairman should not
ensure that the board maintains an appropriate skills mix through successive appointment rounds.	
ensure that the port has an effective corporate plan.	
ensure the probity and effective timeous publication of the report, accounts and strategy document.	
ensure that the board does not exceed its powers or functions.	

37. All of the above principles hold good for the executive of a port. The executive provides the operational interface between stakeholders and the port/ conservancy. The executive is responsible for the effective transaction of the trust's business. In addition and specifically;

A Chief executive/ most senior official should be	A Chief Executive / most senior official should not
fit for purpose.	be allowed to become complacent and stagnate.
overseer of the appointment and electoral processes of the board.	allow the port to breach or fail to fulfil its legal obligations.
the custodian and guardian of the basic principles and aims of the trust (<i>and this guidance</i>).	allow vested interest, or any other improper conduct to flourish amongst board members unchecked.
accountable to the board (<i>the board to decide on strategy and direction, the executive to implement</i>) in terms of actions that are within their powers but able to act independently of the board, in the interests of the trust if the board's directions exceed their powers.	allow any board member to dictate or manipulate the presentation of plans, reports and accounts or otherwise improperly interfere with or compromise the exercise of the statutory duties of the trust both as a port and as a commercial organisation.
able to provide the board with strategic advice to inform their decision making.	
able to provide the board with clear financial and operational reports on which to make accurate and balanced decisions.	
responsible for ensuring that a port's statutory and legislative framework is fully fit for purpose.	
responsible for the operation of board and port within the statutory framework and procedures.	
able to forge strong working relationships with the board.	
expected to discharge public and statutory functions reasonably and according to law.	
expected to conduct themselves with integrity impartiality and honesty in relations with the board and public.	
the link between the board and the Departments.	
bound by the same code of standards as applies to the board.	

38. **In the case of board, chairman and executive serious and/or continued activities contrary to these basic guidelines should be considered as adequate grounds for formal warnings and/or termination depending on the gravity of individual non compliance and the potential impact of this on the accountable operation of the trust.**

Age and term of appointments

39. **All board appointments except executive members (who should serve for their term of office) should be of a maximum three years duration**¹⁸. Subject to continued eligibility each board member may be, exceptionally, appointed for a maximum of three terms. **Reappointment should not be automatic.** No-one should be reappointed automatically for a second or third term unless the chairman is satisfied that the board consider the outgoing member has performed satisfactorily during the current term of office and have a good attendance record. **Reappointment for a third term should be regarded as the exception rather than the rule.** In reaching its decision on a third term the board should be able to demonstrate that the individual has the capacity to provide exceptional value to the trust. The board should also have the option to consider the incumbent against a wider selection of candidates through a more formal selection process.
40. Chairmen, appointed by the board, should normally have served first at least one term as a board member. **The chair should also be subject to an absolute maximum of 12 years service on the board in whatever capacity.** These standards will ensure all boards maintain an appropriate healthy balance of current skill and experience.
41. **There is no age limit to board membership. However the overriding requirement is for all members to remain fully effective and fit for purpose. They should also continue to bring CURRENT practical and relevant experience to the board table.** Unless exceptional circumstances (e.g. *lack of suitable alternative candidates*) dictate, board members should not seek to serve beyond the age of 70. Nor, given the investment in training required for new board members, should a first appointment be offered to anyone who will reach 65 within their initial term of office. In these instances trusts should be prepared to demonstrate to stakeholders that they have been unable to find a suitable alternative but continue to actively seek an appropriate replacement for the member in question at the end of their existing term.

¹⁸ Many trust board appointments are currently made for indefinite periods or, if for a term, an unlimited number of terms. This can result in a cosiness and complacency. It also means that the average trust board has a high average age. Defenders of the status quo point to such boards being a repository of experience. Unfortunately it also means that new blood with new ideas and new skills essential for operation of a healthy and effective commercial organisation is often excluded.

Achieving a balance

42. In common with many bodies, trust ports are predominantly governed by boards comprising people drawn from traditional backgrounds, mostly white, male, middle-aged, in a narrow social range, drawn from a conventional background. In many trust ports this leaves a significant proportion of the stakeholders unrepresented on the board. Without the injection of a wider cross-section of the community the trust purports to serve this can also lead to stagnation and introspection.
43. There is a very important role for traditional expertise to fill on trust boards but it should not constrain independence of action. Board members should be fit for the purpose of governing a port and tackling new challenges and responsibilities. **Whatever the impact on demographic balance, the need to obtain a board that is, collectively and individually, fit for the purpose of running the port, is of overriding importance.** However, boards should be taking active steps to develop a wider coverage of their community of stakeholders and membership should span a broad spectrum of interests. The fitness for membership of those stakeholders who have developed relevant skills and expertise through less conventional career paths and life experience should not be discounted. Such people can often bring a different but valid perspective and a common sense approach to port governance. An infusion of such people serving alongside those with long and valued traditional experience might strike an effective balance in board membership.
44. The DETR and the Scottish Executive are taking the lead with trust board appointments in which they are directly involved by seeking candidates
- from a broader range of backgrounds;
 - less reliant on formal qualifications;
 - more representative of national, regional and local demography (*with the number of women and ethnic minority, and disabled appointees more closely reflecting the make up of the community*);
- but above all else,** chosen for the contribution they can make and the skills and experience they can bring to the post.
45. **Board members should collectively examine the current composition of the board and, in trawling for new appointees, actively seek to promote a healthy, effective and representative balance whilst maintaining the board fit for purpose.** Plans for achieving balance and success in implementation, should form part of the annual published strategy document and be detailed in each port's plan for meeting this guidance.

Probity

46. **Prudent management requires that every trust should be subject to the direction and management of a board that is fit for purpose.** Individual board members should also be “fit and proper” persons. Suitability can be determined with regard to an individual’s competence, probity, soundness of judgement, personal reputation and character and diligence. It can also be determined by whether membership of an individual poses a threat to the interest of the whole including all the stakeholders. Suitability¹⁹ is for the board to consider before an appointment is made and for the chairman and executive to consider on a continuing basis and certainly before reappointment is recommended.
47. As a general rule any board member who has been previously dismissed from any trust board should not be reconsidered for appointment, neither should any applicant who is bankrupt or has a criminal conviction remaining unspent. Other than in very special circumstances appointees should not already be members of another port board, trust or private, or have been members in the recent past. This is especially the case where the other board might be viewed as a direct or indirect competitor of the appointing body.
48. Specific breaches of the standards contained in this guide and any activities deemed inappropriate to the interests of the trust, likely to bring the trust into disrepute (*including moral turpitude*) or plainly outside the trust’s legislative or statutory framework should result in disqualification of a board member²⁰. In addition a board member should cease to hold office if a majority of the board request his or her resignation in writing and support this with a resolution, passed at a full board meeting, that the member has vacated office. The board should make public the reasons for its actions (*within the constraints imposed by civil and criminal law*).
49. Boards should also consider whether, in the interest of natural justice, they should institute an independent appeals mechanism for members whose appointments have been terminated. Whatever the route taken it should be clearly seen to offer an open, accountable and impartial forum of final recourse for consideration of the board’s decision.

¹⁹ But see footnote 8 (Secretary of State’s rights of appointment).

²⁰ Commissioners Clauses Act 1847.

Board Remuneration

50. Rates of remuneration (*where provided*) vary considerably across the trust sector. In a number of cases the level of remuneration seems to have exceeded what might be considered directly comparable in the private sector. In others it is an honorarium, pegged considerably below rates for a comparable position in the private sector. Smaller ports (*with some notable inconsistencies*) are governed by boards who receive no fee and very often draw no expenses. In this sector of the trust community, board membership is viewed as a public service akin to that provided by membership of local councils and the like. The larger commercial trust ports pay something akin to the “market rate” for non- executive directors. Between these two extremes a considerable array of different rates apply with little apparent regard for the importance of the post or the health of the port.
51. Unpaid appointments reflect the close links between the smaller ports and the local community they serve. In common with local councillors, such board members should be eligible for reasonable expenses. The commitment and responsibilities of board members in larger trust ports should attract payment but this payment should reflect the burden of responsibility and, more importantly, the performance and profitability of the port. In some cases payment might also be linked to the performance of individual members. Any board remuneration should be determined by a properly constituted remuneration committee in line with best practice set out in the Cadbury/Greenbury Code²¹ and DTI Guidance to small businesses. As a general rule both the chairman and deputy chairman should be members of the committee which should be chaired by a non executive board member. However, membership should be sufficiently broad and flexible to ensure that no-one is directly involved in deciding their own remuneration.
52. Levels of board remuneration and expenses claimed should be detailed in the annual report and/or strategy document. This should also confirm that levels of remuneration have been set by a properly constituted remuneration committee and detail its membership, terms of reference and operation. Any general increase in board remuneration should be explained therein for the benefit of all stakeholders in the trust. Likewise details of any board member voluntarily forgoing remuneration and instances where a board member’s fees are paid to a third party (*i.e. an employer*) should be clearly noted.

²¹ The combined Cadbury Greenbury Code published by the Committee on Corporate Governance. ISBN 1 86089 036 9 Gee Publishing Ltd. London NW3

²² The Open Government Code and guidance on codes of practice require that registers should be open for public inspection.

Declaration of Interests

53. One of the commonest complaints levelled at members of trust port boards and their executives by members of the public is that they are not acting in an independent and impartial manner. Trust port board members have an absolute duty to be seen as acting with integrity and in accord with the basic principles of the trust. All candidates shortlisted for board appointment should be asked to complete a screening questionnaire disclosing their business interests and answering questions about their fitness to serve. A model questionnaire is provided at **annex 7**. **Candidates who declare a potential conflict of interest should not be automatically debarred. However, should they be shortlisted, they should demonstrate an ability to act in an independent and impartial manner in the interest of the trust to the satisfaction of the interview board.**

54. In accord with Government best practice, all trust ports should maintain a register of interests for its board. The information provided by appointees in their screening questionnaire should form the basis of their entry. **This should be freely open to inspection by the public on request**²². It is the responsibility of the chairman, chief executive/ senior manager and individual members to ensure that it is kept up to date. In addition all trusts should, through the chairman and chief executive/ senior manager provide members with guidance and help them to identify and register what may constitute a conflict of interest and what action would be appropriate to resolve it.

55. Registers of interest should include

- pecuniary and non-pecuniary interests of members, their close family and associates which relate closely to the port's activities (*i.e. employment, proprietorship, directorships, controlling interests, ownership or title to land and property within the ports sphere of activities, membership or office in another organisation, membership of political parties, non-profit-making organisations such as housing associations, clubs and closed societies such as the Masons*²³);
- hospitality or gifts that could not be considered insignificant accepted by the board member or close family from third parties associated with the port and its operations.

56. **Key elements of the register should be published in the annual report and/or strategy document prepared by the port.** Failure to disclose an interest otherwise discovered should be a matter for formal censure by the board supported by a written warning from the chairman or chief executive/ senior manager in the first instance. Further lapses (*depending on seriousness*) should be considered as grounds for termination.

²³ Membership of secret societies such as the Freemasons, close personal or business links with other board members, or business interests offer potential conflicts of interest but should not be viewed as a bar to an individual's membership of a board. Appropriate questions would need to be asked to determine whether there is a genuine conflict of interest or whether it would hamper an individual in complying with the requirements of board membership and the national standards. Ideally these questions should be asked before appointment but could also reasonably be posed if connections are declared by a serving member.

Conflicts of interest

57. **It is essential in the interests of openness and accountability that board members are perceived not to be influenced or motivated by private interests in the discharge of their duties.** It behoves all board members to declare any personal or business interests which might be construed by any reasonable person²⁵ to influence their judgement. As a minimum this should include
- personal, direct and other pecuniary interest in the matter under discussion or its outcome;
 - involvement or association with a third party having personal, direct and other pecuniary interest in the matter under discussion or its outcome.
58. **Board members must declare such conflicts of interest either before or at the board meeting in advance of any discussion of the item concerned and offer to withdraw.** The chairman, in consultation with the board, should decide whether the member should withdraw from the meeting for the item or if they are to be invited to remain and contribute to the discussion on a purely factual basis. The courts have recently held that merely to refrain from taking part in discussion without withdrawing is inadequate, because of the risk of biasing the discussion simply by being present²⁶. In any event the member should be required to leave the meeting whilst the board's decision is made. The fact that a member has declared an interest and the way in which this is handled should be recorded in the minutes.
59. If it is subsequently discovered that a participating board member failed to declare a relevant interest the chairman should consult the chief executive/ senior manager to decide what action is merited in the interests of accountability and probity. Such action should, at the very least, result in a formal censure of the offending member by the board. Further lapses (*depending on seriousness*) should be considered as grounds for termination.

²⁵ The average stakeholder with his dog on the quayside.

²⁶ NDPB Sponsorship Handbook Chapter 5.

Personal liability of board members

60. **Trust board members have a duty of care to the trust they are appointed to oversee.** Board members who have acted honestly, reasonably, without negligence and in good faith will not be faced with personal civil liability for actions taken as a board member. Board members should note that the Commissioners Clauses Act 1847 (*section 9*) provides for automatic disqualification of any board member entering into a contract or other arrangement for personal gain with the board. Anyone entering into such an arrangement is personally liable for any actions taken in purported execution of board functions from that point onwards. **All boards should adopt the provisions of the Commissioners Clauses Act into their local Act in the interests of good corporate governance²⁷.**
61. Although board members cannot be indemnified for a criminal act (*this includes offences under the Water Resources Act*) and the risk of any civil liability being incurred in good faith is extremely small, the Government has provided an indemnity for its own non departmental public body appointees in the following terms;
- “The Government has indicated that an individual board member who has acted honestly, reasonably, in good faith and without negligence will not have to meet out of his personal resources any personal civil liability which is incurred in the execution or purported execution of his board function, save where the person has acted recklessly”.
- It would be advisable for all boards to consider following this lead to ensure that trustees are effectively indemnified for actions taken which are within their powers.**

²⁷ Through inclusion of the provisions in a Harbour Revision Order.

Board Performance

62. The performance and contribution of individual board members should be monitored on a regular basis by the chairman, deputy chairman and chief executive/ senior manager. Performance assessment should be linked both to individual contribution and the overall performance of the port.
- performance indicators should show what is currently being achieved;
 - performance standards should set out the minimum acceptable levels of performance;
 - performance targets should set out what is to be achieved within a specific time frame.
63. **Annex 8** contains examples of the type of performance indicator which might provide relevant information on port performance. The board is directly accountable for its port. The “buck” must be seen to stop here. Performance indicators should not be overly prescriptive. They should focus on local accountability, on outcomes and above all on what stakeholders experience on the ground.
64. If the general size of trust port boards is to be reduced in line with best commercial practice it is essential that all members are effective. Prompt identification and removal of ineffective board members will be of increased importance. All trusts should ensure that their constitutions allow for the identification and prompt removal of non-attending and ineffective members.
65. Board members should expect a regular annual appraisal of their performance by the chairman²⁸. If a board member is not felt to be making an effective contribution to the trust either through regular attendance or input to the work of the trust they should receive a formal written warning setting out the chairman’s views of their shortcomings. They should be set specific targets to achieve on the understanding that a lack of improvement within an agreed time scale will result in termination of their appointment either through resignation or a vote of no confidence from the board. The chairman, deputy chairman and chief executive/ senior manager should be prepared to work with these members to offer encouragement and support.
66. The board should appraise the performance of the chief executive/ senior manager, the chairman and deputy chairman on a similar basis. As a general rule the board should be responsible for appointment of the chairman and deputy chairman from amongst its members with regard to previous performance. The exception to this rule will usually be those specific appointments to the chair of nationally important trust ports currently made by the Secretary of State and the First Minister of the Devolved Scottish Executive.

²⁸ Chairmen should consider the need to undertake appraisal training in order to make the most effective use of this valuable technique. Those interested should contact British Ports Industry Training in the first instance for advice.

Training for new and existing trust board members

67. These standards seek to ensure that all board members, existing and new, are fit for purpose. **In order to achieve the goals set by the standards it is essential that board members receive training to enable them to undertake their role effectively.** Many trust ports have very limited resources and DETR will endeavour to ensure that training requirements are not a heavy financial burden. DETR will work closely with the industry and BPIT (*British Ports Industry Training*) to ensure that the training programme is delivered in a cost-effective manner. The training will be offered to all trusts whether members of these organisations or not.

68. Ideally this training should comprise three strands.

- The first will be essentially on-the-job training at port level. This will ensure all board members' are familiar with board procedures, port operations, and current strategies. This functional training could be tailored to meet the needs of individual board members (*taking their existing experience and skills into account*) and must reflect the circumstances of individual ports. A proposed framework is set out in **annex 9**. BPA, BPIT the DETR and the Scottish Executive will co-operate in the production of a workbook to facilitate and support this training programme.
- The second will involve a series of regional seminars on the impact of this guidance held in co-operation with the BPA and BPIT. These would deliver clear messages on the conduct of boards and the wider issues of ports policy (*set in the context of transport policy*).
- The third strand (*to be organised as a regular series of seminars by the Departments*) will refer to board members' statutory duties, their responsibilities under this guidance and the Port Marine Safety Code. As a minimum, all new board members should attend within 6 months of appointment. Attendance of existing board members would be welcomed.

Certified completion of all three elements of training outlined above will be a precondition of reappointment for all board members.

69. We will produce handbooks to support board training (**annex 10**). These will

- clearly summarise individuals' responsibilities under this guidance;
- provide a checklist of issues with which they should familiarise themselves at port level;
- provide a summary of the statutory and legislative framework within which they must operate;
- suggested further reading;
- and contact numbers for advice;

Trust ports should confirm in strategy documents and annual reports that all board members have received training in accord with these standards

70. Part of the value of organising periodic seminars for new members (*and refreshers for the existing*) will be dissemination of a consistent message on accountability and statutory responsibilities from the centre. It will also serve to publicise and reinforce messages on safety and environmental issues from the DETR and the Scottish Executive. In addition the seminar format will facilitate networking between individual board members from different trust ports. DETR will encourage the formation of mutual support networks across the trust sector and will work with the BPA to facilitate this.
71. In addition to formal structured training as set out above, boards should also consider the value of visits/ exchange of information with other trust ports/ boards in order to improve collective knowledge and understanding. This can prove a mutually beneficial exercise.

Management of the trust

73. A trust port, in common with any commercial undertaking, requires effective strategic direction based on a complete understanding of the direction being taken and its associated opportunities and risks. **Prudent financial management is central to the duties to be discharged by every trust board member and officer.** The principle role of its chairman is to ensure that the board works effectively in directing the affairs of the port and has a clear understanding of its role and responsibilities. **The chairman has a key role to play by leading the board in giving the port this direction.** Given the key role of chairman, unless there are strong and persuasive reasons to the contrary, **the chair should be appointed by the board.** Such appointment should not be dictated by rotation. It should be made on the basis of fitness for purpose.
74. **The ultimate effectiveness of the trust is dependent to a substantial extent on the quality of information it receives.** The chairman should ensure that the executive regularly provides the board with a clear picture of financial and business performance against the plans previously agreed by the board. The chair should also ensure that the executive provides the board, on a regular basis, with clear and comprehensive reports on specific projects. The chair is responsible for regularly reviewing the quality of information thus provided to the board. The chair is also responsible for ensuring that papers are circulated and meetings notified in good time to all board members.
75. The chair should manage the board and ensure that it and its servants stand above sectional interests and act as true independents rather than as representatives of bodies with which they are associated. The chair should have the ability to take an overview of board discussion and summarise it with an intelligent commentary including their personal views.
76. **Both the board and the chief executive/ senior manager have the capacity and responsibility to direct the affairs of the trust in accordance with the criteria of prudent management. However it is very important that there is a positive demarcation between their roles** . The primary concern of all involved is the welfare of the port and all its stakeholders. However, it is for the board to give strategic direction to the port and to provide management with the challenge that ensures maintenance of a cost effective and accountable service. It is for the executive to use their professional skills to achieve board objectives through day to day control of port operations.
77. These functions should not overlap. The board should be in a position to take an independent and detached view of management and its performance. **The board should not seek to interfere directly in the day to day management of the port.** They should collectively ensure that officers have clear strategic direction and reporting lines so that they can effectively manage the port. Clear separation of board and executive functions provides valuable checks and balances against undue (*potentially unaccountable*) concentration of power within the trust. The executive should not seek to exercise a strategic policy making function in launching on any

significant course of action or incurring significant expenditure (*outside of normal delegations*) without prior approval of the board.

78. Although the board should not interfere in the daily operation of the port they should understand how their decisions impact on the running of the port and the wider economy. The Board needs to walk a tightrope between political (*with a small p*) aspirations of the stakeholders, operational and commercial expediency. It falls to the board to satisfy both the legitimate needs of customers and the legitimate wider interests of all stakeholders.
79. **It should be clearly understood that the officers and employees of a trust are the servants of the board collectively, not of individual board members.** The executive is only answerable to the board, collectively, for the conduct of port business. **Members should not attempt to involve themselves in operational matters unless specifically requested by the board or the executive.** These areas are the prerogative of the board in full session. Individual board members may bring their concerns to the attention of the executive and provide them with advice. They should not attempt to direct or influence the actions of the executive or employees in day-to-day management of the port, its relationships with all stakeholders or the interpretation of the statutory and legislative framework within which it operates (*including its own byelaws*) without prior authorisation of the board. Any attempt by individual members to influence the actions of the board's servants in this manner should be reported to the chairman and/ or the board by the chief executive/ senior manager. The board should, if merited, issue a formal warning to the board member concerned. Further instances should result in termination of the member's appointment.
80. Irrespective of size it is essential that boards meet regularly. **Unless there are truly exceptional circumstances all trust boards should convene at least 6 times a year.** This is the minimum required to ensure effective governance of the trust and transaction of its business. Every effort should be made to ensure that board meetings are held at a time convenient to all members. The special needs of those in full time employment, with family commitments or with disabilities should be taken into account in setting time and venue.
81. In trust ports of all complexions there can be a valuable role for sub-committees of board members to provide continuity between board meetings, to resolve specific issues and manage specific projects. However these committees should be subservient to the board. They should not be empowered to make decisions, direct the executive or transact business on the board's behalf. This is the prerogative of the full board. To do so undermines the basic principles of accountability and impartiality of the board structure. Standing committees should be restricted to audit and remuneration. A full list of committees sitting during the year, their membership and responsibilities should be included in the annual report or the published strategy document.
82. The audit committee should take on responsibility for oversight of implementation and adherence to this guidance and all other codes of practice within their port.

83. The number of board meetings, the attendance record of board members, the membership and function of all board committees should be clearly set out in the port's annual report and/or strategy document.
84. There needs to be full and effective communication with a trust's stakeholders in respect of the day to day business of the port. Within the limits imposed by a sensible and reasonable need to maintain commercial confidentiality the transaction of the board's business (*future plans, new byelaws, operational decisions etc.*) should be reported to stakeholders. Many trusts make regular reports to stakeholders via the local media. This is to be encouraged, as are other means of communication such as web sites and direct mailing. Rumour and secrecy breed suspicion. It is beholden on trust boards to clearly and publicly demonstrate their accountability to the community of interests they serve. Trust ports' efforts to maintain open channels of communication with their stakeholders should feature in their plans to meet this guidance and the results reported (*where appropriate*) in their strategy documents.

Size and Constitution of the board

85. **In line with best commercial practice a trust board should comprise no more than 8 - 12 members.** Larger boards are unwieldy. Their effectiveness tends to decline in proportion to the number of members. **A move from representatives to independent board membership removes the need for a large and potentially ineffective board structure.** Trust boards should seek instead to achieve an effective balance of skills to meet operational and strategic needs as set out in these standards. It is perfectly feasible for any trust to embrace all of its core skill requirements within 8 - 12 members.
86. **The executive should be represented on the board as of right.** The scale of executive representation should be appropriate to the size of the port. In larger ports it would be appropriate to follow the guidance of Cadbury/Greenbury and look to 25% executive representation including the chief executive/ senior manager. The most senior managers would be other appropriate members. In smaller to medium sized ports it would probably be appropriate to confine executive representation to whichever senior manager is deemed to be the operational head of the port. **Whatever the representative structure it is important that the harbourmaster is able to maintain a direct line of contact with the board** as he is immediately responsible for the safe and effective operation of the port facilities. It is equally important that the position of harbourmaster is held by someone with the appropriate experience and qualifications to personally fulfil that role²⁹. A harbourmaster's powers and duties should not be delegated except for certain specific matters as approved by the board or prescribed by legislation (*providing these do not impact on the overall responsibility for the conduct of a harbourmasters duties which must remain with the appointee at all times*).
87. The board and management are the joint focus for the accountability of the trust in the conduct of the port's business. **The management of a trust port has a vitally important role to play in operation of these standards of accountable governance.** Once these standards are in place there will be a regular turnover of board membership. In many ways the chief executive or senior manager will become the guardian of this guidance, the legal and fiduciary duties and the powers of the authority. They should be in a position to lend support to the chairman in ensuring that the board operates within them. They should fulfil a similar role to the town or magistrate's clerk in reminding the board of their powers and the limits placed on them. The chief executive/ senior manager is, in effect, the referee of board activity, as well as acting as adviser and counsellor to the board on its conduct, duties and responsibilities. The chief executive/ senior manager fulfils very similar role in advising the board to that adopted by officers of a mutual building society.

Succession planning

²⁹ Sec 52 of the 1847 Harbours, Docks and Piers Clauses Act gives ports specific powers to appoint a harbourmaster. Boards must exercise these in a reasonable manner.

88. In order to provide reasonable continuity and ensure that a chairman has an effective grasp of trust affairs, appointees should normally have served at least one term as a board member of the port. **In line with the Government's Nolan doctrine, no chair should serve more than 9 years in that office.** Boards should take a considered approach to succession. Boards should avoid a situation where the chair and chief executive/ senior manager both change within a comparatively short period. Likewise they should attempt to avoid a concentrated roll-over of key officers in the trust
89. **The board should clearly identify and groom a successor to the chairman in good time.** The chairman should ensure that the board has an established approach to board and management succession which is kept updated in the light of changing circumstances. There should always be at least one member on the board capable of stepping into the chairman's shoes at short notice. The chairman should plan ahead to ensure that the skills balance on the board remains fit for purpose. The chairman is responsible for ensuring that essential skills are effectively refreshed and replaced through the appointment process. The chairman is also responsible for ensuring that existing skills are supplemented in good time by any additional skills the port will require to support its operations in the medium term.
90. **All boards should seek to avoid a situation whereby all board appointments have a common term and end date.** Synchronised roll over is disruptive to the overall effective management and business of the port. The staged approach adopted by local authorities provides for vital continuity.

Consultation Groups

91. Boards should carefully consider the need to establish consultation groups to underpin the work of the board and provide effective links with port user groups and others with a direct interest in the port's operations. The need for these will depend upon the activities of individual ports. Trusts (*especially conservancy bodies*) need to take account of a wide range of environmental and leisure oriented interests. At present this often leads to large unwieldy boards of 15 or more commissioners. A move to a smaller, more effective board structure could be complemented by the establishment of a consultation group or groups to consider specific issues or manage specific projects within their areas of competence. These could report to, and advise, the board through submission of papers or through their sponsorship by a board member with the appropriate skills and interests.
92. Consultation groups should operate in a rational and systematic manner, complying with the key principles of
- accountability
 - objectivity
 - openness

outlined in these standards. Boards should ensure that all issues which might reasonably be judged to warrant consultation are referred to the appropriate group. Advice proffered should be treated on its merits but **it is for the board to decide whether or not to follow the advice given by a group** as it is in the best position to judge the overall impact. Nevertheless boards will be expected to make reasoned assessments of the work of consultation groups (*recorded in the board minutes*) and act on their advice if it is clearly judged to be in the best interests of the port. **The board's decision is final but the reasons behind it should be clearly explained to the group if it is at variance with the advice they tendered.**

93. If there is reluctance amongst port users to participate in groups, trusts should actively consider how they might operate openly and effectively without compromising commercial confidentiality. Trusts might either consider segregating interest groups or ensuring that the groups addressed issues of common interest. The brigading of non-commercial interest groups (*such as residents associations*) should not prove to be so problematic and could be an effective means of resolving conflicts of interest and conflicting priorities before the board is approached for a decision. However none of the above should be viewed by a trust as excusing it from the need to meet with and listen to individual stakeholders if required.

Good Housekeeping

94. **It is essential for the board of a trust port to be demonstrably fit for purpose, it is essential that the statutory and legal framework underpinning the effective operation of the trust is also maintained.** The statutory and legal framework constrain the operation of the port. This means that the chief executive/ senior manager or harbourmaster is best placed to determine the need for change and to bring it to the attention of the board. Boards also need to keep abreast of new legislation that has implications for the port. Information on new legislation comes in many forms and from many sources. The chief executive/ senior manager/ harbourmaster should be tasked with keeping abreast of changes.
95. Port legislation, byelaws and compliance with the Port Marine Safety Code must be the subject of regular and automatic review. **Boards should ensure that port legislation is reviewed at least every 5 years and byelaws every 3 if no change has been deemed necessary in the intervening period.** These reviews should take account of changes in local circumstances and national legislation. They should also attempt to accommodate likely short to medium term future requirements. Reviews should be conducted by competent port management, possibly supported by a board committee comprising members with appropriate skills. This group should report to the board with whom the final responsibility for effecting change must rest.
96. The DETR and the Scottish Executive intend to publish clear and unequivocal guidance to statute, byelaws and process as part of this review. Production of the Port Marine Safety Code will progress in parallel. The guidance will support trusts in maintenance of an effective tranche of operational powers and in safe operation. In the interim the Departments will be happy to discuss the need for and mode of change required with individual ports.

Accounts and Strategy document

97. The Harbours Act 1964 requires all non-fishery trust ports to deliver their annual reports and accounts to the Secretary of State or the First Minister of the devolved Scottish Executive. The Government intends to extend this obligation to fishery ports. In the interim, fisheries ports are invited to participate in this element of the guidance on a voluntary basis. The position in Scotland is being considered separately by the Scottish Executive.
98. Section 42 of the Harbours Act 1964 makes it clear that, subject to any regulations made by the Secretary of State,³⁰ **the provisions of the Companies Acts 1948-81 relating to company accounts shall apply to both the core business and related activities of the trust.** The report on matters covered by the accounts required by the Secretary of State or First Minister is considered to correspond in all respects to the directors report required under the Companies Acts. **It is essential that all boards ensure that their accountants and auditors are conversant with the special provisions in relation to statutory harbour authorities.** The DETR and the Scottish Executive intend to take a far closer interest in the presentation and content of trust's accounts and their compliance with the provisions of the Harbours and Companies Acts in future as part of their ongoing health audit of the trust sector³¹.
99. Attention is particularly drawn to the provisions of Financial Reporting Standard 11 issued by the Accounting Standards Board³². This requires that if the future value of revenue generated by an asset declines below that anticipated when the investment is made its value should be written down. If trusts fail to write down assets which have not made a return commensurate with cost, the balance sheet and profit and loss account will present an unduly favourable picture. This not only presents an inaccurate view of the port to stakeholders and potential lenders, it also hampers the attempts of the DETR and the Scottish Executive to identify and support those ports in difficulty at an early stage.
100. Likewise boards should ensure that treatment of provisions (*such as for dredging programmes, crane replacement, maintenance of dock structures etc*) is consistent year on year. To make provision for maintenance and replacement in good years only serves to distort profits and provide a misleading picture of the underlying profitability of the port. Good housekeeping in accounting matters is as

³⁰ The Statutory Harbour Undertakings (Accounts) Regulations 1983 exempted statutory harbour undertakings where turnover was less than £250K from the provisions of the Companies Acts referred to in the Harbours Act. It removed the exemptions in relation to accounts granted to small medium sized companies under sections 5-10 of the Companies Act 1981 from any Statutory Harbour Undertaking preparing reports and accounts in accord with the provisions of Section 42 of the Harbours Act.

³¹ Board members and stakeholders should be aware that the Financial Reporting Review panel and the Department of Trade and Industry have procedures for reviewing and investigating complaints regarding the annual accounts of companies in respect of departures from the accounting requirements of the Companies Act. If persuaded they can apply to the courts for an order for the preparation of revised compliant accounts.

³² FRS 11 contains advice on dealing with cases of permanent diminution in value of assets in company accounts.

vital to the operation of a port as good housekeeping in keeping statutory powers up to date.

101. The trust port review also proposed that **all trust ports should publish their annual report and accounts and that all those with a turnover in excess of £100,000 pa (1998/9 figures)** should supplement this with an annual “strategy document”. This plan is not intended to result in the publication of commercially sensitive information. It should address issues of interest to the stakeholders in general terms. Plans already produced by Dover, Tyne and Lerwick are commended as role models. Examples of these are provided in **annex 11**. An outline of the information required for a typical plan is set out in **annex 12**. Typically the plan should contain information on the board, issues of accountability and port operation, current performance and future plans. Some suggestions on what might be taken as key performance indicators for a port are given in **annex 8**. They should clearly demonstrate how the port is moving to match this guidance and interfacing with its stakeholders.
102. Each port will need to tailor its report to meet its own circumstances. Smaller ports are not expected to commit themselves to an expensive glossy production, equally a significant port should not content itself with an A4 sheet. The DETR and the Scottish Executive are willing to be consulted by individual ports on formulation of their plans before submission to the Secretary of State. **Ports with a turnover of less than £100,000 are invited to participate in this exercise on a voluntary basis.** Those who do not wish to participate should clearly explain the reasons for their decision to the Departments and the ports’ stakeholders. Publication of these plans will go a considerable way towards improving public confidence in the accountability of the trust sector and will be an important factor in Departmental consideration of future applications for HROs, byelaws, permissions and consents.
103. Currently the Harbours Act 1964 requires all non fishery ports to furnish the Secretary of State or First Minister of the devolved Scottish Executive with an annual report on its affairs to supplement the accounts. This is currently honoured in the breach. **In future all ports will be required to provide a copy of the annual report and accounts**³³.
104. **Those trust ports with a turnover of less than £100,000 not voluntarily producing a strategy document will, in future, be expected to compensate for this by providing DETR with a detailed report to accompany the accounts.** This should cover the same ground but in less detail than the strategy document. It should summarise
- the trust’s operations and future plans;
 - progress against their agreed plan to meet the standards;
 - and their continuing compliance with and improvement on the benchmarks set here.

³³ The Department will consider what amendments are required to public general legislation to accomplish this as part of its implementation of the ports policy paper.

105. **The DETR and the Scottish Executive will, in future, be active in enforcing their statutory rights to this information and will be scrutinising all returns as part of an ongoing health audit of the trust sector.**

106. A port's duty to publish its accounts, report and a strategy document will not, in future, be fully met by simply despatching a copy to the Secretary of State or First Minister in Scotland. All trust ports should ensure that their report and/or strategy document and accounts are freely available. Copies should be

- automatically provided to key local and regional bodies (*local Authorities, RDAs, Government Office etc*);
- forwarded to the local and County library service, local and regional media.
- published on the port's website, if available;
- available free, or for a token charge designed to cover costs, from the port offices on request.

The DETR and the Scottish Executive will seek to amend existing legislation to include these provisions. In the interim trust ports will be expected to regard wider publication of reports, strategy document and accounts, as outlined above, as an essential step in achieving compliance with this guidance. All ports are expected to detail the steps taken to arrange publication and circulation within these documents.

Community Relations

107. **A trust port should be clearly accountable for its actions both to its stakeholders and the wider community it serves.** It should ensure that it forges strong and effective links with its community of stakeholders. Publication of reports, accounts and strategy documents is but one strand. There are many other effective avenues for opening channels of communication.
108. **Trust boards should ensure that there is an effective, continuing dialogue with the local authorities in its immediate hinterland.** This will do much to promote the improved partnership that is sought between the trust sector and local government. Boards should consider the need for local liaison and focus groups to ensure that the local community of interests is informed and on side. This might be supplemented by regular publication of newsletters (*such as Dover's Quaynotes*), reports of board meetings (*having regard to issues of confidentiality*) and holding public "performance" meetings to discuss port operations and plans. **As a minimum all trusts should hold a widely and effectively advertised open annual meeting** and, where practicable and appropriate, other meetings as required to discuss significant matters of interest to their stakeholders.
109. It is Government's intention to create a change of culture within the Public Sector to promote greater openness. The most visible manifestation of this is the Freedom of Information Bill. Trust ports are encouraged to follow the Government's lead in framing their policy on disclosure of information to stakeholders. In dealing with requests for information there should be an overriding presumption that stakeholders have a general right of access to information held by the trust. This right is subject to reasonable considerations of commercial and personal confidentiality and the trust's obligations under the Data Protection Act. Each trust port should aim to publish details of its disclosure policy in the strategic plan. Stakeholders should be entitled to a full explanation of why any request for information could not be met. If they feel that the trust is unreasonably withholding information they should contact the DETR for advice.
110. Trust boards and their executives should actively seek to engage with the local community through its liaison with local groups, schools etc. They should actively participate in local and regional debate on plans (*local and regional Government, RDAs development agencies etc.*). Above all **the port and its executive should be seen to be accessible to the community at large** (*willing to engage in debate on port issues, deal with queries, answer questions etc.*) much in the same manner as members of a local authority should be accessible to their constituents.

Commercial Accountability

111. A trust port can be compared to an heirloom. It is a valuable asset presently safeguarded by the existing board. They have a duty to hand it on in the same or better condition to succeeding generations. Boards have an obligation to transact port business in the interest of the whole community of stakeholders openly, accountably and with commercial prudence.
112. Ministers no longer have, and do not seek, the powers to involve themselves in commercial and investment decisions made by harbour authorities in any sector of the ports industry. However, ports of all complexions have the potential to compete with other users to offer services within the port area. **It is essential that this competition is seen as fair and open.** It should not appear to abuse a dominant position (*which is illegal*). Whilst it is legitimate to impose charges relating to services contributing to safety (*inc. pilotage*), protection of the environment or general wellbeing of the port user, charges should not be imposed for services that port users do not need. Boards should recognise that different users have different service level requirements. This should be recognised in levying charges. Where it is practical and cost effective ports should offer a service tailored to individual users needs.
113. There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user. The board's overriding responsibility is to utilise its income and surpluses prudently to maximise benefit to all of its stakeholders and in the best and most effective interest of the future of the trust.
114. **Dues must seen to be fair and equitable** if they are not to be open to challenge³⁴. It is wrong for some port users to be exempted from dues when others making use of the port pay the market rate. Dues calculated to win traffic at any price that upset the market and drive down charges below a commercially sustainable rate are wrong and should be avoided. **All dues must be set at a level that allows for proper maintenance of the trust's harbour or conservancy duties.** Harbour Authorities in general have a duty to publish standard dues tariffs. There is nothing wrong with offering volume based discounts on the standard tariff but the **availability** of such discounts should be published together with the standard dues tariff so that all those eligible may benefit. Discounts should be calculated and awarded on an equitable basis that bears comparison across the stakeholder group. Boards have a responsibility to operate in the interest of all of their stakeholders. This requires equitable treatment of all businesses within the port and appropriate pricing of the services provided to them.
115. There are many parallels between a trust and local Government. Custody of public assets and the responsibility to manage them effectively rank amongst the

³⁴ If dues were to be found partial and unequal in their operation as between different classes: if they were manifestly unjust: if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say "Parliament never intended to give authority to make such rules: they are unreasonable and ultra vires"

most important. **All trusts have a duty of care to their current and future stakeholders to ensure that assets are managed prudently in order to generate a commercially acceptable return.** In making capital investments local Authorities are guided by the Government's "Green Book" (*Appraisal and Evaluation in Central Government*). This sets an acceptable rate of return on investments of between 6% (*within the public sector*) to 8% (*where made on a commercial basis*). Trust ports should aim to ensure that their plans for capital investment produce a similar rate of return.

116. **As with the levying of dues and competition, investment policies should be fair and equitable.** Trusts should not be seen to abuse their ability to invest all trading surpluses to make unfocussed and unremunerative investment decisions. These have the potential to distort competition within the domestic ports to the detriment of the sector and, ultimately, the stakeholders. A trust's overall investment policy should be as fit for purpose as the board itself. It should be clearly set out in its accounts and strategy document for the benefit of stakeholders. A board should not only act to protect the commercial position of the trust but also to ensure that the investment opportunities taken generate maximum benefit across the whole stakeholder group.

117. It is very important that trusts engaging in competitive commercial activities within their ports extend to these the principles of openness and accountability outlined in these standards. Trust status does not excuse a board from making investment and operational decisions on a sound commercial basis. The Government White Paper "Modernising Local Government" proposes new standards for competitiveness and procurement. The "best value" principles being embraced by local authorities are equally appropriate to the trust sector.

118. Having determined service levels, the board should be able to demonstrate it has met these without incurring unreasonable cost. Boards should seek to obtain best value for the trust's stakeholders by

- **challenging** the way in which services are provided or obtained and whether they are needed;
- **comparing** performance of in-house service provision with external options and against performance measures derived in conjunction with users and suppliers on a regular basis;
- **consulting** all stakeholders (*including staff*) on current performance, options for improvement and suitable performance measures and targets;
- **considering** competitive position (*how well does a service bear comparison with the best available elsewhere? Is there a case for working in partnership with other providers to obtain best value?*).

119. Users should be consulted on provision of services and those services provided in-house should be the subject of market testing to ensure that this is the best value option for the trust and its stakeholders. The board should be able to clearly demonstrate it is providing in-house services to a standard that does not incur unnecessary costs for stakeholders. Whilst acknowledging the need to maintain commercial confidentiality, boards should ensure that the basis for commercial

decisions is made clear to stakeholders and the decision-making process is seen as open and accountable.

Local Authorities a new partnership

120. The Deputy Prime Minister wrote in his Foreword to the Government's White Paper for England and Wales "Modern Local Government: In Touch with the People".

"Among all our public institutions, councils have a special status and authority as local, directly elected bodies. They are uniquely placed to provide vision and leadership to their local communities".

121. **Both local authorities and the trust sector have a broad community focus.** Both have interests in the regeneration and growth of the local economy, integrated transport, sustainable distribution and the environment. Given Government's views on the role and responsibilities of trust ports and the fact that both they and local authorities are statutory bodies whose powers overlap, especially in the planning field, there is scope for a new, productive partnership to be forged between the trusts and their local authorities.
122. Where there are tensions they seem to stem from a lack of mutual understanding of abilities and goals. A closer relationship could redress this and bring benefits to strategic planning and development at a local and regional level. A joint approach to planning should be regarded as an opportunity to provide the best solution for stakeholders rather than a threat to the integrity of the trust. On a practical note local authorities might provide support to small to medium sized trusts in developing appointment practices that comply with these standards. They should certainly play their part in ensuring that their rights to nominate to trust boards are exercised in a way that is compliant with these standards. **As representatives of the local community they have a duty to ensure that their appointees to boards are fit for purpose and able to play a full part in the strategic direction of the port for the benefit of the community.**
123. There should be clear evidence of active co-operation and consultation in the published plans of both parties. There should also be concrete evidence of moves towards a more open and productive relationship. Trust boards should take the initiative in seeking to engage local authorities in a productive dialogue. However, if the need arises, the DETR and the Scottish Executive will actively broker meetings between local authorities and their trust ports to discuss specific important issues (*e.g. the result of a health audit*).

Neighbourhood Watch

124. All trust ports are expected to submit their plans and timetables for meeting these standards. It was also proposed, in the trust port review, that a more open and accountable relationship should be forged between all ports and the public. **This guidance represents the Government's views on the basic standards of openness and accountability to be achieved by the trust sector.** It also provides a benchmark to which all ports should aspire in their dealings with their users, employees and the public. **The standards will be a publicly available document and stakeholders in all ports are encouraged to use them to benchmark port activities.** The DETR and the Scottish Executive will be monitoring compliance with the standards and other recommendations stemming from the trust port review but interested parties should play their part in bringing to the Department's attention any examples of unaccountable behaviour in the ports sector.

125. If anyone believes that a trust board, its members or its servants are acting in a manner which

- is illegal, improper, outside their powers, unethical or otherwise in breach of the principles of the trust;
- might involve maladministration, fraud, criminal or unlawful activity or misuse of trust assets;
- is otherwise inconsistent with this guidance or any other professional code;

they should raise the matter with the executive and/or board in the first instance (*or approach in confidence a nominated official or board member entrusted with the duty of investigating such allegations*). The trust should provide a written response to complainants within a reasonable time scale. This should explain whether they consider the complaint justified and set out the remedial action they intend to take. Where the complainant does not believe the response is reasonable in addressing the grounds of their concern, they should report the matter in writing to the DETR's Ports Division or the Scottish Executive's Development Department Transport Division 2 for further investigation.

126. However, the Government has no locus in regulating commercial decisions or activities. Nor does it involve itself in "good neighbour disputes as these are matters for the board to resolve. It's interest is in ensuring that the board does not take decisions in an arbitrary and unaccountable manner.

Implementation

127. A copy of these standards has been despatched to every trust port in the UK. On receipt **each trust board should prepare a timetabled plan for achieving compliance.** The DETR will offer advice in response to these plans. The starting point for planning change should be these standards rather than a port's existing local Act. All ports should consult their legal advisers in formulating plans. **Plans should be submitted to the DETR or the Scottish Executive for approval within 6 months of publication of these standards and span no more than 2 years.** The DETR will publish a timetable for implementation. This will reflect the priorities agreed for processing each HRO. The Departments expect boards to consult their stakeholders in formulating plans and will be happy to consult and work with boards on their proposals before submission.
128. **The Departments will expect boards to ensure that agreed plans, and moves towards achievement, are publicised in the annual report and accounts.** Larger trusts should also make a report in their published strategy documents. For many trusts compliance will represent a considerable challenge. The challenges posed by resistance from vested interest groups within the trust sector to departure from the status quo should be squarely met. It will prove very difficult for any to make rational objections to proposals which improve the openness and accountability of a trust in line with Government guidelines.
129. Compliance with the standards is likely to require revision of statutory powers. The mechanism for this is a Harbour Revision Order (HRO). The DETR will work with the industry to devise a framework of model clauses. It is important that this process is supported by the prompt preparation of plans to comply with the standards so that emerging needs can be adequately addressed.
130. A significant number of trust ports (*predominantly those with older, unamended local Acts*) will need to raise a HRO. The DETR and the Scottish Executive will be pleased to advise and support. The Departments will prioritise cases to identify ports in pressing need of change and will ensure they obtain priority. Ports whose applications are held further back in the queue will not be penalised if this prevents achievement of full compliance with the standards inside the two years deadline. **However, all trusts should consider in their planning what interim measures might be adopted to achieve parity in advance of obtaining confirmatory powers.** This might include agreement with existing groups having rights of appointment to adopt the selection processes outlined in these standards and liaison with the appropriate local Authorities to forge new links and obtain practical assistance with implementation.
131. **The Departments will closely monitor³⁵ trust ports' moves towards compliance** in accord with their agreed plans and will offer continued support and encouragement in achievement and maintenance of the standards. All trust boards are encouraged to maintain a dialogue with the Departments on compliance with the

³⁵ The DETR will assert its right to receive the annual report and accounts and is considering, in conjunction with the accountancy profession, the extent to which the audit process can address compliance with the standards.

standards. This guidance will continue to evolve in the light of experience and changing circumstances, in order to remain fit for purpose. DETR will continue close co-operation with industry groups, and will publish regular bulletins on the move towards this guidance. DETR will also retain the existing working group of trust port chief executive/ senior managers which has ably supported work on the review and its implementation as an advisory panel. This will ensure that the collective experience of the trust sector in moving to and working with the standards is effectively shared.