

**By email: [portsconsult@dft.gsi.gov.uk](mailto:portsconsult@dft.gsi.gov.uk)**

1 April 2009

Mr Tony Springthorpe  
DfT Ports Division  
Zone 2/34, Great Minster House  
76 Marsham Street  
LONDON  
SW1) 4DR

Dear Mr Springthorpe

**"MODERNISING TRUST PORTS (SECOND EDITION)"**

Summary of Main Points:-

- The core recommendations, such as stakeholder benefits and the use of performance indicators, are right in principle so long as they are applied flexibly.
- Misconceptions remain about the commercial role and value of trust ports.
- The unresolved public corporation issue has led to unacceptable uncertainty and delay.

Thank you for consulting us on the new Guidelines. The BPA represents the overwhelming majority of trust ports in England and Wales.

1. The BPA took a substantial role in drawing up Version 1 of the Guidelines published in 2000. Although this was the first time that guidance for the sector had been issued, its success was based on the way in which, by focusing largely on corporate governance issues, a sector with diverse markets could be accommodated within one document. The result was substantial change, especially the slimming down of boards and more rigorous appointment procedures.

*The British Ports Association – Speaking for UK Ports*

**a:** 4<sup>th</sup> Floor Carthusian Court, 12 Carthusian Street, London EC1M 6EZ **t:** +44 207 260 1780 **f:** +44 207 260 1784

**e:** [info@britishports.org.uk](mailto:info@britishports.org.uk) **w:** [www.britishports.org.uk](http://www.britishports.org.uk)

2. There have been two major developments since Version 1, namely the PWC report and the reclassification of the larger trusts as public corporations. PWC's study of the trusts and, in particular, how they compare financially with privatized ports has fed through into Version 2 to the extent that almost all the changes can be traced back to their report. We take issue with the influence some of the PWC recommendations are having, particularly in the negative image they attach to trusts. For example, in the consultation letter, it refers to the fact that PWC found that "in some cases" for the largest trusts, "their financial performance falls short of that of their private sector comparitors". To us this is a statement of the obvious. If trusts compared exactly with profit maximizing organizations, then this would beg a number of questions about the port's trust status; it is inevitable that financial performance will be different; this in no way suggests that it falls short.
3. The consultation letter also refers to inviting "private sector" participation as though this would be something new. Trust ports are already private sector, acting in private sector ways within their own organizational model and engaging with private sector partners. Their defining feature is their financial independence. Although the anomaly of "public corporation status" suggests otherwise, the reality is that trusts compete in the market on very similar terms to competitors. There may be gaps in the way trusts demonstrate the value they produce, but that is a separate issue.
4. Another example of general negativity about trust status is the new section 4.1 on "Structural Change". It is right for all organizations to keep their structures under review to ensure that they are fit for purpose. However, the requirement for reclassified trusts to report on their analysis of structural change and "to explain and justify their intended course of action" implies that trust status is inherently unsustainable. Nor does it explain why the justification has to be provided to the Department for Transport and not to stakeholders in general. It suggests that the Department can make judgements on the best models for trusts, whereas there are references in various policy documents to the government's strong reluctance to become involved in management decisions of this type. Para 4.1.3 makes assertions, for example, that the two tier model would "allow the board to focus more completely on the use of profits for the benefit of all stakeholders". We would be interested to see any evidence why a board under its current trust structure cannot fulfil this task. Yet it is seen as a principal driver for structural change.
5. A major change since Version 1 has been the reclassification of the larger trusts as public corporations; this was not a relevant or even known factor with Version 1. Public corporation status is now causing major problems. We would like to place on record our deep concern at the way in which the public corporation status issue has been handled. From the position we had in mid-2004 when Harbour Revision Orders could, on the original advice of the ONS, disapply public corporation status, we are no further. When the HROs were put on hold on the advice of DfT, we were assured that the Ports Policy Review would clarify trust port policy and lead to a re-launch; this was then delayed when it was decided to agree new Guidelines in advance of the HROs. Yet it will be almost 2 years from that decision till Guidelines are, presumably, agreed.

6. The most serious aspect is the lack of information about what qualifies a port for public corporation status, and what the options are to reverse that status. As this was a situation created within government, we would expect the government to be able to clarify what the position of the reclassified ports is. Yet no clarification has been forthcoming, with the result that the reclassified trusts have faced unnecessary uncertainty and delay. We regard this as unacceptable.
7. Turning to the detail of Version 2, the Guidelines will cover a very broad range of trust ports with huge variations in size, markets and location. This should be brought out more clearly in the Guidelines probably in the introduction under “Coverage”. We agree that all trusts, whatever their size, should consider all the recommendations and their relevance to them and their stakeholders; it is up to individual ports to decide, with justification, which of the recommendations will be adopted.
8. The core recommendations concern stakeholder benefits and performance indicators. We very much support the reasoning behind the change from stakeholder dividend to stakeholder benefit. We note the recommendation that stakeholder benefits should be determined after consultation with stakeholders. Stakeholders may have very varied views on what constitutes a stakeholder benefit and it would be up to the board to take what could be difficult decisions in assessing the claims of various groups. We agree it is important that bearing in mind inevitable differences in financial performance between trusts and others, the value that trust ports generate should be expressed. There should be the flexibility to be able to express the benefit in both quantitative and qualitative terms. We assume that the examples given will be treated flexibly and if ports deviate significantly from the recommendations, clear justification is provided.
9. On performance indicators, we agree that trusts (and all ports) should report in a clear and quantifiable way on their performance using annual indicators, and that the main comparison should be with the port’s own performance; it is extremely difficult to get meaningful comparisons between ports operating in very different markets and with different pressures.

We have already commented on structural change in para 4.

10. The section on data handling should be deleted. It is clearly lifted from Guidelines for government departments and reads oddly when set against the more port focused sections of the Guidelines. There is no particular reason we know of why trust ports should be subject to the same rules and believe that the references to the Freedom of Information Act are sufficient.
11. As to the findings of the draft impact assessment, we believe that it is broadly correct, but if there were to be substantial structural change along the lines set out in Section 4, then this could generate substantial individual port costs. We also believe that the annexes in Version 1 are not necessary in Version 2, although there should be clear references to where they can be located.

12. Finally, we believe that any agreement on Guidelines should be part of a broader agreement that will deliver on undertakings made at various times to speed up the HRO process, to take action on agreeing changes to byelaws and to provide other legislative tools which ports need. There seems to be little urgency in dealing with Harbour Revision Orders. The chances of achieving changes to byelaws are minimal, and now that the Marine Navigation Bill is not in the government's legislative programme, the prospect of taking on general powers of direction and the benefit of other reforms have effectively disappeared. Admittedly, general powers of direction could be achieved through Harbour Revision Orders, but the track record of HROs is such that many are reluctant to go down this route. We have made little progress on any of these fronts since Version 1 eight years ago.

Yours sincerely

A handwritten signature in blue ink that reads "David Whitehead". The signature is written in a cursive, slightly slanted style.

David Whitehead  
Director

*The British Ports Association – Speaking for UK Ports*

**a:** 4<sup>th</sup> Floor Carthusian Court, 12 Carthusian Street, London EC1M 6EZ **t:** +44 207 260 1780 **f:** +44 207 260 1784

**e:** [info@britishports.org.uk](mailto:info@britishports.org.uk) **w:** [www.britishports.org.uk](http://www.britishports.org.uk)