

## **Item: 11**

**Policy and Resources Committee: 23 November 2021.**

**Harbour Authority Governance – Role of Duty Holder.**

**Report by Interim Executive Director of Finance, Regulatory, Marine and Transportation Services.**

### **1. Purpose of Report**

To consider the provision of the mandated Duty Holder cover for the Harbour Authority during periods when elected members, as members of the Harbour Authority Sub-committee, are unable to perform that duty.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

The requirement, under the Port Marine Safety Code, to have an identified and designated Duty Holder for the Harbour Authority, which is currently the Harbour Authority Sub-committee.

#### **2.2.**

That at 00:01 on polling day, all elected members demit office, effectively removing the mandated Duty Holder from the Harbour Authority structure, until such time as members are appointed to the Harbour Authority Sub-committee, normally in early June.

#### **2.3.**

Options for the provision of Duty Holder responsibility, as detailed in section 4 of this report, with the preferred option being to induct additional Duty Holder members from the Senior Management Team Permanently and in order to provide continuity during local government election periods.

#### **2.4.**

That, on 26 October 2021, the Harbour Authority Sub-committee recommended, to the Policy and Resources Committee, that the Chief Executive be authorised to nominate members of the Senior Management Team to act as additional Duty Holders for the Harbour Authority to ensure continuity during election periods.

**It is recommended:**

## **2.5.**

That the Chief Executive be authorised to nominate members of the Senior Management Team to act as additional Duty Holders for the Harbour Authority to ensure continuity during election periods.

## **3. Background**

### **3.1.**

The Port Marine Safety Code (PMSC), attached as Appendix 1 to this report, requires a Harbour Authority to identify and designate a Duty Holder. This can be an individual or a body whose members are individually and collectively accountable for compliance with the Code and their performance ensures safe marine operations in the harbour and its approaches.

### **3.2.**

Currently the Council, as the Statutory Harbour Authority, has designated the Harbour Authority Sub-committee as Duty Holder. Elected members fulfil this function for the period of appointment as a member of the Sub-committee. Each member is provided training in their role and responsibility as a Duty Holder, and they exercise these responsibilities through the formal Harbour Authority Sub-committee meetings.

### **3.3.**

However, at 00:01 on polling day, all elected members demit office, effectively removing the mandated Duty Holder from the Harbour Authority structure, until such time as members are appointed to the Harbour Authority Sub-committee, normally in early June. This generates a gap in the role of Duty Holder for the Harbour Authority for a period of several months, until new memberships are constituted, and members trained in their roles and responsibilities under the PMSC.

## **4. Potential Solutions**

There are three potential solutions to the issue, as follows:

- **Option 1** – Maintain the current Harbour Authority Sub-committee members as Duty Holders until appointments have been made to the Sub-committee and training provided.
- **Option 2** – Transfer the responsibility to the Chief Executive for the handover period.
- **Option 3** – Induct additional Duty Holder members from the Council's Senior Management Team. They will then attend Harbour Authority briefings and meetings on a permanent non-voting basis and provide continuity during local government election periods.

## **5. Options Appraisal**

### **5.1.**

Option 1, whilst ensuring continuity of trained Duty Holders, would be unconstitutional and could be legally challenged as such. Any Council member involved in this option would no longer be associated with the Council at 00:01 on the day of polling. Whilst it would provide continuity for the period prior to new appointments to the Harbour Authority Sub-committee, there is no guarantee of continuity beyond that depending upon election results.

### **5.2.**

Option 2 could provide continuity for the full period required. However, it would not provide the independent questioning of systems and operations that the Duty Holder system is intended to provide.

### **5.3.**

Option 3 would give continuity and oversight of the Harbour Authority for the interim period. It could also be made a permanent feature, extending understanding of the Harbour Authority to the wider Council and provide a greater understanding of the issues involved with operations through the Senior Management Team.

### **5.4.**

On 26 October 2021, the Harbour Authority Sub-committee considered the options detailed above and recommended, to the Policy and Resources Committee, that Option 3 be adopted as the most suitable to ensure routine continuity for the role of Duty Holder permanently and during local government elections.

## **6. Human Resource Implications**

Training on the duties of Duty Holder will be required for those members taking up the duty.

## **7. Corporate Governance**

This report relates to the Council complying with governance and scrutiny and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

## **8. Financial Implications**

There are no financial implications arising from the recommendation of this report.

## **9. Legal Aspects**

As the Port Marine Safety Code requires a Harbour Authority to identify and designate a Duty Holder, the recommended option will assist the Council in discharging this duty during an election period.

## **10. Contact Officers**

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## **11. Appendix**

Appendix 1 – Port Marine Safety Code



Department  
for Transport

Appendix 1.



Maritime &  
Coastguard  
Agency

# Port Marine Safety Code

For all UK Harbour Authorities and other  
marine facilities, berths and terminals

**Moving Britain Ahead**



November 2016



# Foreword



The UK ports industry, by virtue of our long coastline and maritime history, is the largest in Europe and so the UK very much depends on its ports and terminals for trade.

Approximately 95 per cent of the volume of all UK import/export trade enters the UK through its ports making a contribution of around £1.4 billion to the UK economy.

Given the significance and importance of our ports, it is crucial that we treasure and protect our industry. Both Government and industry play a vital role in ensuring that we remain committed to continuously improving the standards of safety in our sector and maintaining the vigorous safety record of our ports and harbours.

This Code, and the associated Guide to Good Practice, play an instrumental role in achieving this by providing a pragmatic and proportionate approach to safety standards which enable everyone who is involved, from major ports to smaller marine terminals and harbours, to proportionately apply the principles upon which it is based.

It is strongly recommended that organisations or facilities which are not a statutory harbour authority, including berths, terminals and marinas, seek to comply with this Code through the adoption of a marine safety management system or any alternative similar standard applicable to their sector (such as that for marinas) and underpin this with a formal risk assessment process.

The Government continues to support this non-mandated Code as the most effective and efficient way of maintaining and promoting nationally recognised safety standards for the port marine industry.

A handwritten signature in black ink, appearing to read 'John Hayes', written in a cursive style.

**The Rt Hon John Hayes CBE MP**  
Minister of State for Transport

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## What does the Port Marine Safety Code mean for harbours, Marine Facilities, berths and terminals?



**Duty holder** Formally identify and designate the duty holder, whose members are individually and collectively accountable for compliance with the Code and their performance in ensuring safe marine operations in the harbour and its approaches.



**Designated Person** A 'designated person' must be appointed to provide independent assurance about the operation of the marine safety management system. The designated person must have direct access to the duty holder.



**Legislation** The duty holder must review and be aware of their existing powers based on local and national legislation seeking additional powers if required in order to promote safe navigation.

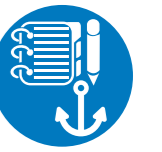


**Duties and Powers** Comply with the duties and powers under existing legislation as appropriate.



**Risk Assessment** Ensure all marine risks are formally assessed and are eliminated or reduced as low as reasonably practicable in accordance with good practice.

**Marine Safety Management System** Operate an effective system which has been developed after consultation, is based on formal risk assessment and refers to an appropriate approach to incident investigation.



**Review and Audit** Monitor, review and audit the risk assessment and marine safety management system on a regular basis – the independent designated person has a key role in providing assurance for the duty holder.



**Competence** Use competent people (who are trained, qualified and experienced) in positions of responsibility for managing marine and navigation safety.



**Plan** Publish a safety plan showing how the standards in the Code will be met and a report assessing performance against that plan at least every three years.



**Aids to Navigation** Comply with directions from the General Lighthouse Authorities and supply information & returns as required.



# Executive summary



## What is the Port Marine Safety Code?

1. The Port Marine Safety Code (“the Code”) sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment. It is endorsed by the UK Government, the devolved administrations and representatives from across the maritime sector and, while the Code is not mandatory, these bodies have a strong expectation that all harbour authorities will comply. The Code is intended to be flexible enough that any size or type of harbour or marine facility will be able to apply its principles in a way that is appropriate and proportionate to local requirements.

## Who is the Code for?

2. The Code is applicable both to statutory harbour authorities and to other marine facilities which may not have statutory powers and duties. These are collectively referred to throughout the Code as ‘organisations’ and may include, but are not limited to, the following:
  - Competent Harbour Authorities (authorities with statutory pilotage duties);
  - Municipal Port or Harbour Authorities;
  - Trust Port or Harbour Authorities;
  - Private Port or Harbour Authorities; and
  - Marine berths, terminals or jetties.
3. It is strongly recommended that organisations or facilities which are not a statutory harbour authority, such as marine berths and terminals, seek a proportionate compliance with this Code through the adoption of a formal risk assessment process and the implementation of a marine safety management system (“MSMS”) which complies with this Code or any alternative similar standard applicable to their sector.
4. Where a marine terminal or jetty is situated within the jurisdiction of a Statutory Harbour Area (“SHA”), it is important for both parties to engage with one another to ascertain the scope and extent of the SHA’s MSMS and whether it incorporates any of the terminal’s or jetty’s marine operations. This engagement will help to define whether it is necessary for the terminal or jetty to develop their own MSMS. If it is decided that an additional system is required then the above engagement should focus on ensuring that the two MSMS complement each other and avoid any duplication of effort.
5. Not all the requirements of the Code are relevant to all authorities or organisations. Some have no compulsory pilotage and a review (risk assessment) would confirm if there was a need to provide such a service. Others have no commercial activity – they handle no commercial vessels and do not possess any of the berthing and/or dock facilities that go with them. Their professional staff may require particular skills for the local circumstances but those associated with a commercial port might not be among them. However, those

members of staff may well support and encourage leisure activities within the port or facility. Objectives will be framed and need to be stated accordingly.

## What does the Code cover?

6. The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope.
7. The Code should be read in conjunction with its companion Guide to Good Practice on Port Marine Operations ("the Guide"). The Guide underpins the ethos of the Code by providing additional guidance and practical examples and has been written and approved by maritime professionals to assist organisations in promoting and executing safe, efficient and accountable port marine operations based on industry best practice.

## Who should read the Code?











8. The Code is primarily intended for the "duty holder" which will, for most organisations, mean those members of the organisation, both individually and collectively, who are ultimately accountable for marine safety. All duty holders should therefore familiarise themselves with the Code and review any implications for their marine operations.
9. It is strongly recommended that the duty holder, and all officers involved in marine safety, also consider the advice on good practice provided in the Guide as well as reviewing the recommendations and the common lessons learned from major accidents and incidents which can be found on the Marine Accident Investigation Branch website<sup>1</sup>.

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<sup>1</sup> At [www.gov.uk/maib](http://www.gov.uk/maib).

## What do I need to do?

10. The Code refers to some of the existing legal duties and powers that affect organisations in relation to marine safety but it does not in itself create any new legal duties. However, although they are not mandatory, there are nevertheless several measures which are key to the successful implementation of the Code. Therefore, in order to comply with the Code, statutory harbour authorities must consider the following 10 measures. Other organisations are advised to identify which of the items may be applicable to their port marine activities. It is recommended that, at the very minimum, items 4, 5 and 6 below should be considered by all organisations.

-  **1. Duty holder:** Formally identify and designate the duty holder, whose members are individually and collectively accountable for compliance with the Code, and their performance in ensuring safe marine operations in the harbour and its approaches.
-  **2. Designated Person:** A 'designated person' must be appointed to provide independent assurance about the operation of the marine safety management system. The designated person must have direct access to the duty holder.
-  **3. Legislation:** The duty holder must review and be aware of their existing powers based on local and national legislation, seeking additional powers if required in order to promote safe navigation.
-  **4. Duties and Powers:** Comply with the duties and powers under existing legislation, as appropriate.
-  **5. Risk Assessment:** Ensure that marine risks are formally assessed and are eliminated or reduced to the lowest possible level, so far as is reasonably practicable, in accordance with good practice.
-  **6. Marine Safety Management System:** Operate an effective MSMS which has been developed after consultation, is based on formal risk assessment and refers to an appropriate approach to incident investigation.
-  **7. Review and Audit:** Monitor, review and audit the risk assessment and MSMS on a regular basis – the independent designated person has a key role in providing assurance for the duty holder.
-  **8. Competence:** Use competent people (who are trained, qualified and experienced) in positions of responsibility for managing marine and navigation safety.
-  **9. Plan:** Publish a safety plan showing how the standards in the Code will be met and produce a report assessing performance against that plan at least every 3 years.
-  **10. Aids to Navigation:** Comply with directions from the General Lighthouse Authorities and supply information & returns as required.

# Introduction



## Content of the Code

11. Many of the organisations to which this Code applies will have important legal duties relating to the safety of people who work at, or use, their harbours or facilities, and to the wellbeing of the port marine environment and community. The responsibility for maintaining port marine safety is governed not only by marine legislation, such as the Pilotage Act 1987 and Merchant Shipping Act 1995 referred to in the Code, but also by general legislation, such as the Health and Safety at Work Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.
12. The Code covers responsibilities for port marine safety but does not purport to cover all the legal duties or responsibilities of organisations or all of their safety responsibilities. The Code does not, for example, relate to duties and responsibilities deriving from health and safety legislation<sup>2</sup>, and (with some exceptions) those relating to the safety of vessels under the Merchant Shipping Acts. However, it has been designed so that compliance with the good practice guidance in the Code should be fully compatible with other duties and responsibilities.
13. The Code is designed to provide general guidance and so, while it describes typical powers and duties, it is not practicable for it to cover the specific legal position for each port, and it should not be relied upon for that purpose. The Code is not legal advice and it is recommended that individual ports seek their own legal advice on the powers and duties which are applicable to them.

## Writing and updating the Code

14. The Code was introduced in 2000 in response to lessons learned from the grounding of the *Sea Empress* in 1996. The Guide followed shortly afterwards. Critical to the success of both documents was the involvement of parties across the maritime sector during their development.
15. Both documents are maintained by a steering group which meets twice yearly and includes representatives from the Department for Transport (“DfT”), the Maritime and Coastguard Agency (“MCA”), the devolved administrations and ports and shipping businesses, trade unions and other professional organisations. The intention is for the Code to be reviewed every 3 years. The Guide, which was always envisaged to be a living document for marine practitioners, will be maintained and reviewed on an annual basis.

## Devolution

16. Generally, policy responsibility for ports (including pilotage) lies with the devolved administrations in Northern Ireland, Scotland and Wales (in Wales this applies only to fishery harbours at the time of writing). Policy responsibility for ports in England, non-fishery ports in Wales and maritime safety around the UK lies with the Department for Transport.

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2 Further information and guidance can be found on the HSE website at <http://www.hse.gov.uk/business/getting-started.htm>

17. The Code reflects UK and English law, but highlights as far as possible where alternative procedures are followed in Northern Ireland, Scotland, or Wales. The term “relevant Minister” is used where matters are decided by the Secretary of State for Transport or a Minister for the appropriate devolved administration.

## Implementation

18. The Government, other regulatory authorities and the industry associations have a very strong expectation that all statutory harbour authorities will comply with the Code and other organisations are encouraged to do so. Authorities should note that:

- The Code does not contain any new legal obligations but includes (amongst other things) references to the main legal duties which already exist.
- Failure to comply is not an offence in itself. However, the Code represents good practice as recognised by a wide range of industry stakeholders and a failure to adhere to good practice may be indicative of a harbour authority being in breach of certain legal duties. Moreover, the organisation may suffer reputational damage if it has publicly committed to the Code’s standards and then fails to meet them.
- Periodically and/or following a major incident or accident, the regulatory authorities will seek assurance that organisations are complying with the Code. The Government will monitor levels of compliance to assess its effectiveness in delivering improved safety performance.
- A link may be drawn between a failure to implement the principles of the Code and prosecution under Health and Safety legislation.

## Exposure from failing to comply with the Code

19. A successful prosecution has been brought against a harbour authority for breach of section 3 of the Health and Safety at Work Act 1974, in that non-compliance with the fundamental elements of the Code evidenced a failure to provide a safe system of work.

## Marine Accident Investigation Branch

20. Under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, the sole objective of the investigation of an accident or incident by the Marine Accident Investigation Branch (“MAIB”) shall be the prevention of future accidents through the ascertainment of its causes and circumstances. It is not the purpose of an investigation to determine liability nor, except so far as is necessary to achieve its objective, to apportion blame.

21 MAIB’s work is integral to the continued development and evolution of the management of safety in the UK port marine environment. There is a clear need to ensure that an organisation’s MSMS evolves and responds to, for example, changes in local trade and the operation of the facility. However, it is also important that lessons are learned and assimilated following related marine incidents and accidents.

## Maritime and Coastguard Agency (“MCA”)

22. The MCA is generally responsible for supporting DfT in developing and implementing the Government’s maritime safety and environmental protection strategy.

23. The MCA is responsible to the Secretary of State for Transport in advising on the composition and application of this Code to all ports in the UK. This includes but is not limited to:
- the conducting of Health Checks (see below);
  - monitoring the compliance of harbour authorities against the Code;
  - the facilitation of regular meetings between port authorities, related to maritime industries operating within ports and government within the context of this Code in order to exchange opinions and developments which may have a bearing on the content of the Code and the way in which it is applied;
  - the production of an annual report highlighting emerging trends identified during health checks; and
  - other technical assistance which may be required by DfT.

## Health Checks

24. A Health Check visit is intelligence led and may be triggered for a variety of reasons ranging from reports which suggests a failure in a port's MSMS to a MAIB recommendation. Ports may also wish to volunteer for a Health Check.
25. The main objective of a Health Check is to measure the ports compliance with the Code and, where appropriate, identify ways in which compliance can be enhanced. It will also aim to identify and share any best practice. Such visits are managed by the MCA's Navigation Safety Branch (see "Enquiries" below). The visit is heavily based on a checklist approach and uses the Code *aide memoire*, a copy of which can be found in the Guide.

## Enquiries

26. Operational or compliance related enquires about the Code should be made to:

Maritime and Coastguard Agency  
 Navigation Safety Branch  
 Spring Place  
 105 Commercial Road  
 Southampton SO15 1EG

[navigationsafety@mcga.gov.uk](mailto:navigationsafety@mcga.gov.uk)

27. Policy-related enquiries about the Code should be made to:

Department for Transport  
 Navigation Safety Branch  
 Zone 2/33  
 Great Minster House  
 33 Horseferry Road  
 London SW1P 4DR

[maritime@dft.gsi.gov.uk](mailto:maritime@dft.gsi.gov.uk)





# The Port Marine Safety Code



The Code should be read in conjunction with the  
Guide to Good Practice on Port Marine Operations

# Contents

- 1. Accountability for marine safety:** This part identifies who is accountable for the management of marine safety. It is based on these general principles:
  - The duty holder is accountable for safe and efficient operations. The duty holder should make a clear published commitment to comply with the standards laid down in this Code.
  - Executive and operational responsibilities for marine safety must be clearly assigned and those entrusted with these responsibilities must be appropriately trained, qualified and experienced and answerable for their performance.
  - A ‘designated person’ must be appointed to provide independent assurance about the operation of its MSMS. The designated person must have direct access to the duty holder.
  
- 2. Key measures to secure marine safety:** This part describes actions that the duty holder should ensure are in place to the extent appropriate for their operations:
  - **Review existing powers:** Harbour authorities and, where appropriate, other organisations, should periodically review their existing powers to ensure that they remain fit for purpose. This may include the need to seek additional powers if a risk assessment determines that these are required. Harbour authorities should check their local Acts and Orders if there is doubt as to whether they have all of the common duties and powers described in this Code.
  - **Use formal risk assessment:** Powers, policies, plans and procedures should be based on a formal assessment of hazards and risks and organisations should have a formal MSMS.
  - **Implement a marine safety management system:** An MSMS should be in place to ensure that all risks are identified and controlled – the more severe ones must either be eliminated or reduced to the lowest possible level, so far as is reasonably practicable (that is, such risks must be kept as low as reasonably practicable or “ALARP”). Organisations should consult, as appropriate, those likely to be involved in, or affected by, the MSMS they adopt. The opportunity should be taken to develop a consensus about safe navigation. The MSMS should refer to the use of formal risk assessment which should be reviewed periodically as well as part of post incident/accident investigation activity.
  - **Competence standards:** Those entrusted with Code-related responsibilities must be appropriately trained, experienced and qualified to undertake their duties.
  - **Incident reporting and investigation:** It is essential that the MSMS addresses the potential for incidents to occur and provides instruction and guidance on any investigations and enforcement action including any statutory reporting requirements that may be required

- **Monitoring performance and auditing:** The MSMS must incorporate a regular and systematic review of its performance.
  - **Enforcement:** Byelaws, directions, policies and procedures, adopted in order to manage identified marine risks must be backed by an appropriate policy on enforcement.
  - **Publication of Plans and reports:** A safety plan for marine operations should be published at least once every three years.
  - **Consensus:** The organisation should strive to maintain a consensus about safe navigation. This can be achieved through formal programmes of stakeholder engagement a review of relevant risk assessments with users of the facility or harbour.
  - **Monitoring Compliance:** The duty holder must contribute to a three yearly compliance exercise by declaring to MCA their compliance with the Code.
- 3. General duties and powers:** For the purposes of the Code, the duty holder should ensure that the harbour authority or organisation discharges its responsibilities for:
- **Safe and efficient port marine operations:** Having regard to the efficiency, economy and safety of operation of the services and facilities provided as well as ensuring that appropriate resources are made available for discharging their marine safety obligations.
  - **Open Port Duty:** Taking reasonable care, so long as the harbour or facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property.
  - **Conservancy duty:** Conserving the harbour or facility so that it is fit for use; this duty also includes providing users with adequate information about conditions in the harbour or facility.
  - **Revising duties and powers:** The harbour authority should keep its powers and jurisdiction under review and take account of the various mechanisms, such as harbour orders, which are available to amend statutory powers in an authority's local legislation.
  - **Environmental duty:** Exercise its applicable functions with regard to nature conservation and other environmental considerations.
  - **Civil Contingencies duty:** Take account of the organisation's responsibilities under the Civil Contingencies Act 2004 including planning, preparing and co-ordinating responses to emergencies which threaten serious damage to human welfare, the environment or security.
  - **Harbour authority powers:** Harbour authorities must be aware of their statutory powers and responsibilities under both primary and secondary legislation.

**4. Specific duties and powers:** The duty holder should also be aware of other specific duties and powers which are relevant to port marine safety and may be relevant to the organisation, including the following:

- **Powers of Direction:** Powers to direct vessels are available and should be used where appropriate to support safe navigation.
- **Regulation of dangerous vessels and substances:** Dangerous vessels and dangerous substances (including pollution) must be effectively managed.
- **Pilotage:** A pilotage service must be provided if required in the interests of safety as determined by risk assessment.
- **Local lighthouse authorities:** All statutory harbour authorities and some other organisations have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks, obstructions or changes in the navigable waterway managed effectively.

# 1. Accountability for Marine Safety



1.1 This chapter identifies who is accountable for maritime safety. It is based on the following general principles:

- **The duty holder is accountable for safe and efficient marine operations.**
- **An organisation has a range of statutory and non-statutory duties.**
- **Organisations should make a clear, published commitment to comply with the standards laid down in the Code.**
- **The Code represents the national standard against which the policies, procedures and performance of organisations may be measured.**
- **Executive and operational responsibilities for marine safety must be clearly assigned and those entrusted with these responsibilities must be appropriately trained, experienced and qualified to undertake their duties and be answerable for their performance.**
- **A ‘designated person’ must be appointed to provide independent assurance about the operation of an organisation’s MSMS. The designated person must have direct access to the duty holder.**

1.2 The key to effective discharge of the functions described in the Code is the development and proper operation of a MSMS for marine operations. That, in turn, depends upon a clear assignment of relevant executive and operational responsibilities to the organisation’s staff.



## Duties and Powers

1.3 Harbour authorities have a range of statutory and non-statutory duties and powers relating to marine operations; other organisations may not have access to the same range of powers but will still have duties under general legislation and non-statutory provisions.

1.4 For a harbour authority, these duties include a duty of care to those using the harbour which means they have an obligation to conserve and facilitate the safe use of the harbour as well as a duty of care against loss caused by the harbour authority’s negligence. Duties to ensure the safety of marine operations are matched with general and specific powers to enable the authority to discharge these duties. There are procedures for these to be changed where necessary.

1.5 Some duties, and each harbour authority’s powers, are contained in local Acts and Orders and, although they have much in common, the detail varies from port to port. Most are established by the incorporation or transposition into local Acts and Orders of model provisions in the Harbours, Docks and Piers Clauses Act 1847. Other duties and powers are in general legislation – for example, the Harbours Act 1964, the Dangerous Vessels Act 1985, the Pilotage Act 1987 and the Merchant Shipping Act 1995.



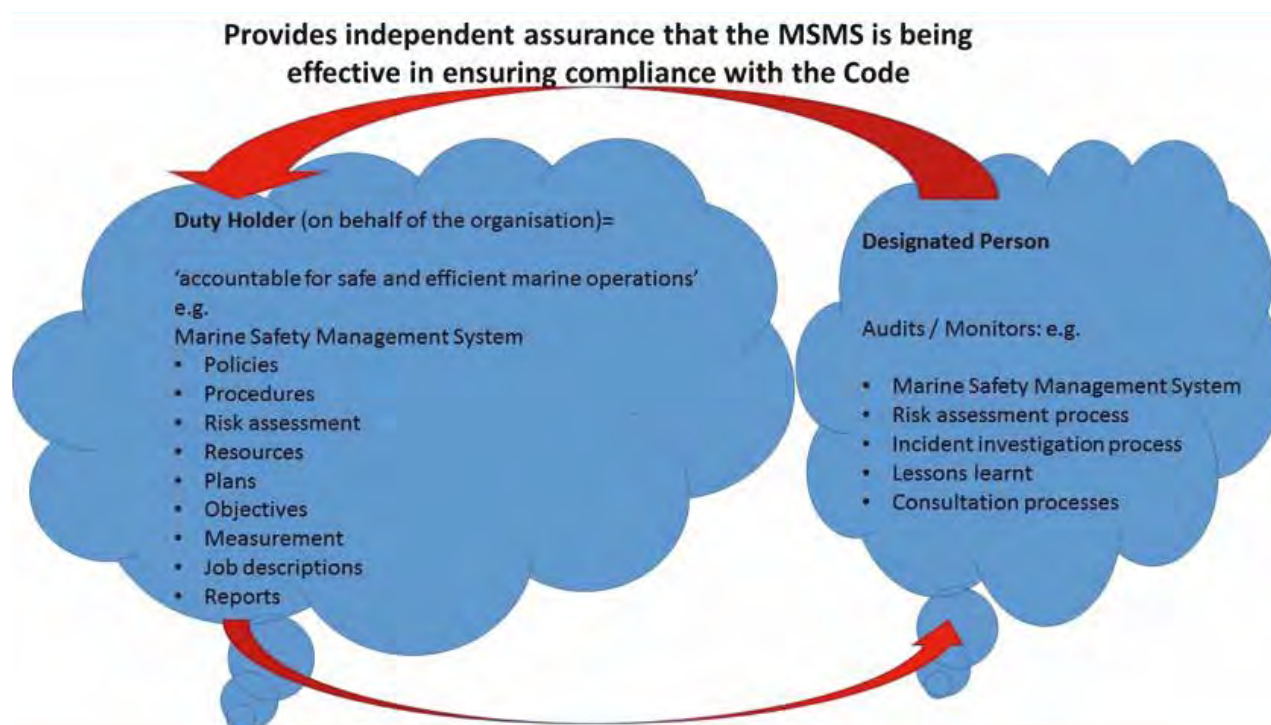
## The Duty holder

- 1.6 Organisations must have a “duty holder” who is accountable for their compliance with the Code and their performance in ensuring safe marine operations. For most organisations, the role of duty holder is undertaken by members of the management team or a board who are (both collectively and individually) publicly accountable for marine safety under the Code.
- 1.7 If however, the management team or board is not directly accountable for marine safety, or has limited decision-making powers in this respect, it is acceptable for the role of duty holder to reside elsewhere. This might be the position in some municipal ports for example, where accountability for marine safety is overseen by a local authority committee. If so, the organisation should publish and confirm who the duty holder is.
- 1.8 The duty holder is responsible for ensuring that the organisation complies with the Code. In order to effectively undertake this role they should:
- be aware of the organisation's powers and duties related to marine safety;
  - ensure that a suitable MSMS, which employs formal safety assessment techniques, is in place;
  - appoint a suitable designated person to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety;
  - appoint competent people to manage marine safety;
  - ensure that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set; and
  - report compliance with the Code to the MCA every 3 years.
- 1.9 Harbour authorities have powers to appoint a harbour master and may properly entrust the operation of the harbour to such professional people; but the duty holder cannot assign or delegate its accountability for compliance with the Code.
- 1.10 All duty holders should take time to gain an appropriate insight and understanding of their organisation's port marine activities, MSMS and supporting policies and procedures. This can be accommodated through briefings and operational visits. Serious consideration should be given to appointing a member to the board who has relevant maritime experience and who can act as the initial point of contact for the designated person. The duty holder should also ensure that appropriate resources are made available for discharging their marine safety obligations.

## The Designated Person

- 1.11 Each organisation must appoint an individual as the “designated person” to provide independent assurance directly to the duty holder that the MSMS, for which the duty holder is responsible, is working effectively. Their main responsibility is to determine, through assessment and audit, the effectiveness of the MSMS in ensuring compliance with the Code.
- 1.12 In order to fulfil this function the designated person must have a thorough knowledge and understanding of the requirements of this Code (and supporting Guide to Good Practice) and associated port and marine legislation. Their role does not obscure the accountability of the organisation’s duty holder.

**The diagram below demonstrates the linkages between the designated person and the duty holder:**



## Chief Executive or equivalent

- 1.13 The Chief Executive, or equivalent, is accountable for the operational and financial control of the organisation. They will advise the organisation on all matters related to its duties and powers, with appropriate advice from the harbour master and other officers. They will:
- oversee the implementation of its policies and decisions;
  - have overall executive responsibility for the safety of operations and staff; and
  - will oversee the recruitment and training of staff.



## Harbour Master

- 1.14 The Harbour Master has day-to-day responsibility for managing the safe operation of navigation and other marine activities in the harbour and its approaches. The post holder must be competent and a suitably qualified person with sufficient experience for the role. They must also be competent to undertake other relevant duties particularly in relation to the Health & Safety at Work etc. Act 1974 and Merchant Shipping legislation. A rigorous assessment process leading to the award of a Harbour Master Certificate, endorsed by the MCA, is available in the UK which mirrors the content of the National Occupational Standards for Harbour Masters.
- 1.15 Whilst the specific role of the Harbour Master will vary dependant on the size and type of the harbour, the following are examples of some of the roles they are likely to undertake:
- Regulation of the time and manner of vessel movements
  - Responsibility for developing and implementing emergency plans and procedures, for regulating dangerous goods<sup>3</sup> in transit on ships and for counter-pollution and waste disposal plans.
  - Responsibility, where appropriate, for the provision and maintenance of any aids to navigation.



### The organisation's officers

- 1.16 The appointment of officers is a matter for the organisation. Delegations must be clear, formal and must not obscure the accountability of the organisation and its duty holder. It is important that:
- executive and operational responsibilities are appropriately assigned to properly trained people;
  - if some of the functions are combined, a proper separation of safety and commercial activities needs to be maintained; and
  - all employees must have training that is appropriate for their level of responsibility.
- 1.17 Delegations are no substitute for the duty holder being directly involved in safety management. At least one principal officer, holding delegated responsibilities for safety, should therefore attend duty holder meetings.

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<sup>3</sup> See also the Dangerous Goods in Harbour Areas Regulations 2016 (SI 2016 No 721) and supporting Approved Code of Practice available from [www.hse.gov.uk/pubns/books/l155.htm](http://www.hse.gov.uk/pubns/books/l155.htm).

## 2. Key measures to secure marine safety



2.1 In addition to carrying out duties and applying the powers outlined in chapters three and four of the Code, organisations must also develop and maintain an effective MSMS. Plans and reports should also be published as a means of improving the transparency and accountability of organisations as well as providing information and reassurance to users. The following general principles apply:

- **Powers, policies, plans and procedures should be based on a formal assessment of hazards and risks and harbour authorities should have a formal MSMS in place.**
- **The MSMS should be in place to ensure that all risks are controlled – the more severe ones must either be eliminated or reduced to the lowest possible level, so far as is reasonably practicable (that is such risks must be kept as low as reasonably practicable or “ALARP”).**
- **All parties involved in the safety of navigation must be competent and qualified in accordance with a minimum national standard.**
- **Organisations should monitor, review and audit the MSMS on a regular basis.**
- **Organisations should publish plans and an assessment of their performance in meeting their obligations at least once every three years.**

2.2 Further guidance to assist organisations in complying with the Code is contained in the Guide to Good Practice on Port Marine Operations (“the Guide”). Organisations may also find it useful to consider reviewing the following to recognise potential dangers and the means of avoiding them in the future:

- past events or incidents;
- MAIB or other marine accident investigation reports; and
- the MCA's Annual Report on health check trends.



### Review existing powers

2.3 Existing powers should be reviewed on a periodic basis by organisations to avoid a failure in discharging their duties or risk exceeding their powers. A summary of the main duties and powers for organisations is included in chapters three & four of the Code; not all of these are relevant to every harbour authority or organisation.

2.4 Harbour authorities must understand their local legislation – harbour acts, harbour orders and byelaws – as well as the procedures and systems that are in place. Additional powers should be sought, if a risk assessment concludes that this would be the best means of meeting their safety obligations.

- 2.5 In particular, harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already.
- 2.6 Conversely, there may be circumstances where a risk assessment concludes that a harbour authority should relinquish powers, for example pilotage functions, or its status as a statutory harbour authority. The Marine Navigation Act 2013 has provided simplified processes for this to be achieved.



## Use formal risk assessment

- 2.7 The risks associated with marine operations need to be assessed and a means of controlling them needs to be deployed. The aim of this process is to eliminate the risk or, failing that, to reduce risks as low as reasonably practicable. Formal risk assessments should be used to:
- identify hazards and analyse risks;
  - assess those risks against an appropriate standard of acceptability; and
  - where appropriate consider a cost-benefit assessment of risk-reduction measures.
- 2.8 Risk assessments should be undertaken by people who are competent especially when deciding which techniques to use and when interpreting the results. Risks should be judged against objective criteria, without being influenced by the financial position of the authority, to ensure they are reduced to the lowest possible level, so far as is reasonably practicable (that is such risks must be kept as low as reasonably practicable or “ALARP”). The greater the risk, the more likely it is that it is reasonable to go to the expense, trouble and invention to reduce it. There is a hierarchy of risk control principles:
- a. minimise risks – by suitable systems of working;
  - b. combat risks – by taking protective measures to prevent risk; and
  - c. eliminate risks – by avoiding a hazardous procedure, or substituting a less dangerous one.
- 2.9 The process of assessment is continuous so that both new hazards to navigation and marine operations and changed risks are properly identified and addressed. Where appropriate organisations should publish details of their risk assessments.
- 2.10 Risk assessments should be reviewed on a planned periodic basis. The MSMS should prescribe the organisation’s policy on review frequency as well as any related procedures or processes. The MSMS should also refer to a procedure which ensures that risk assessments are reviewed appropriately in the following circumstances:
- on a planned periodic basis;
  - post-incident/accident; and
  - post-review of relevant marine accident or health check trend report.

2.11 Risk assessment reviews are best conducted by utilising user groups or representatives who use the harbour or facility regularly. This helps to ensure that practical and relevant experience can be captured, promotes good consultation and demonstrates the organisation's commitment to engaging with users.



## Implement a Marine Safety Management System

2.12 An MSMS – which manages the hazards and risks along with any preparations for emergencies – must be developed, implemented and maintained. This should be operated effectively and revised periodically. The MSMS should also document and capture any custom and practices which may have become the standard approach to various port marine operations. By formalising and documenting these practises, organisations can place themselves and their staff in a more accountable position as well as ensuring that there is continuity when new staff are recruited to an organisation.

2.13 The MSMS should incorporate safety policies and procedures to:

- ensure there is proper control of vessel movements by regulating the safe arrival, departure and movement within the harbour of all vessels;
- protect the general public from dangers arising from marine activities within the harbour;
- allow functions to be carried out with special regard to the possible environmental impact; and
- prevent acts or omissions that may cause personal injury to employees or others.

2.14 The MSMS should also:

- confirm the roles and responsibilities of key personnel at the organisation;
- outline present procedures for marine safety within the harbour or facility (including the port approaches);
- measure performance against targets (organisation must have a database or system to record incidents, including near misses);
- refer to emergency plans that would need to be exercised; and,
- be audited (internally) on an annual basis.

2.15 A statement about the standard of the organisation's performance should be included in the duty holder's annual report.

2.16 Where appropriate, the MSMS should assign responsibility for associated matters – such as the safety of berths; maintaining channels; marking dangers; hydrographic surveys; environmental monitoring; and the provision of appropriate engineering and environmental advice.

2.17 Organisations should consult, as appropriate, those likely to be involved in or affected by the MSMS they adopt. The opportunity should be taken to develop a consensus about safe navigation in the harbour or facility.



## Competence standards

- 2.18 Under the Code, all persons involved in the management and execution of marine services should be qualified and trained to the appropriate national standard<sup>4</sup>. Organisations must assess the fitness and competence of all persons appointed to positions with responsibility for marine and navigation safety. A policy on revalidation or maintenance of qualifications should also be considered. Achieving port marine safety is a team operation and people in these roles must be competent and adequately trained, qualified and experienced.

## Incident reporting and investigation

- 2.19 However effective the safety management regime is, marine incidents do occur. Such incidents may involve death, serious injury, pollution and other undesirable outcomes and they may involve breaches of national or local laws.
- 2.20 It is, therefore, essential that the MSMS addresses the potential for incidents to occur and provides instruction and guidance on the reporting and recording of incidents and any investigations and enforcement action that may be required as a result.
- 2.21 Investigations of marine incidents have two essential purposes:
- to determine the cause of the incident, with a view to preventing a recurrence of that incident (or similar); and
  - to determine if an offence has been committed: if so, there may be the need, on the part of the organisation, to initiate enforcement action that may lead to prosecution in their own right or through an agency of another authority such as the Police or the MCA.
- 2.22 The duty holder may require a robust, rigorous, independent investigation to be carried out in cases where it is desirable to obtain external assurance that their obligations for compliance have been addressed. It may also be appropriate to consider the contents of the Police and Criminal Evidence Act 1984.
- 2.23 Organisations should report any accident which meets the criteria established by the MAIB, to the chief inspector and any other appropriate authorities, by the quickest means available<sup>5</sup>.



## Monitoring performance and auditing

- 2.24 The MSMS must incorporate a regular and systematic review of its performance. This should be based on information from monitoring the system itself and from independent audits of the whole system. Performance of the MSMS should be assessed against internal performance indicators and, where appropriate, by benchmarking against other similar organisations that have adopted good practice.

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4 National Occupational Standards are available on the Port Skills & Safety website:  
<http://www.portskillsandsafety.co.uk/skills>

5 Marine Guidance Note MGN 289 [M+F] "Accident Reporting and Investigation" is addressed to Harbour Authorities, amongst others and explains the reporting requirements of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (SI 2012 No 1743). A copy of MAIB's incident report form is annexed to the Guide.

## Enforcement

2.25 Organisations must ensure that all policies and procedures are properly and effectively enforced and that adequate resources are available for this purpose. Byelaws and directions adopted in order to manage identified marine risks must be backed by an appropriate policy on enforcement. Organisations should have a clear policy on prosecution, which is consistent with the risk assessment on which its directions are based.



## Publication of plans and reports

2.26 To demonstrate the organisation's commitment to marine safety and to ensure the involvement of harbour users, a safety plan for marine operations should be published at least once every three years. The plan should illustrate how the policies and procedures will be developed to satisfy the requirements under the Code. It should commit the organisation to undertake and regulate marine operations in a way that safeguards the harbour/facility, its users, the public and the environment. It should refer to commercial activities; the efficient provision of specified services and the effective regulation of vessels including near miss reporting. It should also explain how commercial pressures would be managed without undermining the safe provision of services and the efficient discharge of its duties.

2.27 The duty holder must also publish an assessment of the organisation's performance against the plan. Information gathered from the monitoring and auditing of the MSMS should be used to support the analysis and conclusions.

2.28 The form of each organisation's plan and report will be for it to determine so long as it covers all the relevant requirements of the Code. At minimum plans and reports should be published every three years. Organisations are increasingly seeing the benefits of using web sites to publish their plans and reports.

## Consensus

2.29 Notwithstanding the duties and powers an organisation may have, it should seek to maintain a consensus about safe navigation in its harbour or facility with users and service providers as far as possible.

## Monitoring compliance

2.30 Every three years, the duty holder should sign a statement describing their organisation's compliance with the Code. If the organisation is not compliant, or not fully compliant, the statement should also describe the organisation's intentions for achieving compliance, including planned timescales.

- 2.31 The next round of compliance statements is due on or before the **31st March 2018**. Statements should be sent, preferably by e-mail, to [navigationsafety@mca.gov.uk](mailto:navigationsafety@mca.gov.uk) or in hard copy to:

Navigation Safety Branch  
Maritime and Coastguard Agency  
Spring Place  
Commercial Road  
Southampton  
SO15 1EG

- 2.32 The MCA seeks to undertake at least eight PMSC health check visits annually with the aim of visiting a range of different types of organisation across all parts of the UK. A visit may be triggered by evidence of a problem (or potential problem) at a harbour or facility, self-reported non-compliance with the Code or a request for assistance. A health check is intended to identify any weaknesses in compliance and strengths of good practice and should not be seen as a formal inspection or enforcement action.

## 3. General Duties and Powers



- 3.1 Many of the duties and powers described in this section may only be applicable or relevant to statutory harbour authorities. However, other organisations are also encouraged to consider this section to determine what guidance may be relevant to themselves and their organisations.
- 3.2 For example: A marine terminal, jetty or berth operator may not have any statutory powers or duties but will need to consider the appropriate interpretation and applicability of 'conservancy duty' or 'environmental duty' and their common law duty of care to all harbour users, etc. Users of port marine facilities should still be provided with adequate information about conditions at the facility (such as depths, navigation marks, any appropriate reporting requirements, marine or navigational information about the facility, etc).
- 3.3 For the purposes of the Code, the duty holder should ensure that the organisation discharges its responsibilities in respect of the following areas:

### Safe and efficient port marine operations

- **Take reasonable care, so long as the harbour/facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property.**
  - **Conserve and promote the safe use of the harbour/facility and prevent loss or injury through the organisation's negligence.**
  - **Have regard to efficiency, economy and safety of operation as respects the services and facilities provided.**
  - **Take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of the harbour/facility.**
- 3.4 In addition, the duty holder must ensure that sufficient resources are available to discharge its marine safety obligations and set the level of dues accordingly<sup>6</sup>. Such actions will in some cases – for example the erection of works or the placing of aids to navigation – be subject to consents or other authorisations.

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<sup>6</sup> Section 26 of the Harbours Act 1964.



## Open port duty

3.5 Almost every harbour authority's statutory powers are subject to what is known as the 'open port duty'. This means that the harbour, dock, or pier must be open to anyone for the shipping and unshipping of goods and the embarking and landing of passengers, on payment of the rates and other conditions set by the local legislation for that port<sup>7</sup>.



## Conservancy duty

3.6 A harbour authority has a duty to conserve the harbour so that it is fit for use as a port and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to utilise it safely. They should provide users with adequate information about conditions in the harbour. This duty covers several specific requirements:



- to survey as regularly as necessary and find and mark the best navigable channels;
- to place and maintain navigation marks in the optimum positions which are suitable for all conditions;
- to keep a 'vigilant watch' for any changes in the sea or river bed affecting the channel or channels and move or renew navigation marks as appropriate;
- to keep proper hydrographic and hydrological records;
- to ensure that hydrographic information is published in a timely manner; and
- to provide regular returns and other information about the authority's local aids to navigation as the relevant General Lighthouse Authority may require<sup>8</sup>.

3.7 Where a harbour authority establishes that there is a certain depth of water at a part of the harbour over which vessels may be obliged to pass, it must use reasonable care to provide that the approaches to that part are sufficient, under normal conditions, or give warning that the advertised depth has not been maintained. Harbour authorities should supply the UK Hydrographic Office with information that may be needed for their Admiralty charts and other publications.

<sup>7</sup> Section 33 of the Harbours, Docks and Piers Clauses Act 1847.

<sup>8</sup> Section 198 to the Merchant Shipping Act 1995.

## Environmental duty

- 3.8 Harbour authorities have a general duty to exercise their functions with regard to nature conservation and other related environmental considerations<sup>9</sup>. They may now seek additional powers for these purposes. They also have an obligation, where a Special Protection Area for Birds or a Special Area of Conservation has been designated under the Wild Birds or Habitats Directives, to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions<sup>10</sup>. Harbour authorities also have to comply with The Natural Environment and Rural Communities Act 2006 which strengthened the requirement for public bodies, including statutory undertakers<sup>11</sup>, to have regard for bio-diversity in undertaking their activities<sup>12</sup>.

## Civil contingencies duty

- 3.9 The Civil Contingencies Act 2004 provides a framework for civil protection in the event of an emergency that threatens serious damage to human welfare, the environment or security. Harbour authorities are classified as category 2 “cooperating bodies”. They will be involved in the associated planning work, and heavily involved in incidents that affect their sector. They are responsible for co-operating and sharing relevant information with category 1 (emergency services and local authorities) and other category 2 responders<sup>13</sup>.



## Harbour authority powers

- 3.10 Every authority has the power to make the use of services and facilities provided by them at a harbour subject to the terms and conditions that they think fit<sup>14</sup> (although any fees charged by may be subject to statutory control).
- 3.11 Each harbour authority should keep their powers, and the extent of their jurisdiction, under review. A harbour empowerment order can be sought by an organisation that wishes to secure the statutory powers of a harbour authority.

## Revising duties and powers

- 3.12 A harbour revision order can be used to amend statutory powers in a harbour authority’s local legislation. It can be used to achieve various outcomes<sup>15</sup>, one of which is to impose or confer additional duties or powers on a harbour authority (including

9 Section 48A of the Harbours Act 1964.

10 Regulation 3(4) of the Conservation (Natural Habitats &c) Regulations 1994 (SI 1994 No 2716).

11 Section 262 of the Town and Country Planning Act 1990.

12 Section 40 of the Natural Environment and Rural Communities Act 2006.

13 Further details can be found in the Act, the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (SI 2005/2042) and the guidance document Emergency Preparedness which can be found at:

<http://www.cabinetoffice.gov.uk/resource-library/emergency-preparedness>

14 Section 40 of the Harbours Act 1964.

15 Schedule 2 of the Harbours Act 1964.

powers to make byelaws). It can also be used in the context of the Code to substitute or amend existing duties and powers. The following are some examples of the purposes for which duties and powers may be imposed or conferred, substituted or amended by a harbour revision order:

- improving, maintaining or managing the harbour;
- marking or lighting the harbour, raising wrecks or otherwise making navigation safer; and
- regulating the activities of other individuals and groups in connection with the harbour and the marine/shoreside interface.

Harbour revision orders can also be used to change the harbour limits and to extend compulsory pilotage beyond the harbour<sup>16</sup>.

3.13 Harbour revision orders are made by the Secretary of State or the Marine Management Organisation (“MMO”) to whom order-making powers have been delegated (or to the Scottish Ministers or the Welsh Ministers where the order-making powers have been devolved). The order can only be made if the person making it is satisfied that the order would be desirable:

- to secure the improvement, maintenance or management of the harbour in an efficient and economical manner; or
- to facilitate the efficient and economic transport of goods by sea; or
- be in the interests of the use of sea-going ships for leisure purposes.

3.14 A harbour closure order may be sought when an authority wishes to relinquish its statutory powers in cases where a harbour is no longer commercially viable or necessary<sup>17</sup>. These orders are made by the Secretary of State or the Scottish Ministers or the Welsh Ministers where powers have been devolved.

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16 Section 7(5) of the Pilotage Act 1987.

17 Sections 17A to 17F of the Harbours Act 1964.

## 4. Specific Duties and Powers



- 4.1 The duty holder should also be aware of other specific duties and powers which are relevant to port safety, and usually applicable to harbour authorities, including the following:
- Those powers to direct vessels which are available and should be used to support safe navigation.
  - Dangerous vessels and dangerous substances (including pollution) which must be effectively managed.
  - Provision of a pilotage service if required in the interests of safety.
  - Harbour authority duties and powers as local lighthouse authorities: provision and proper maintenance of aids to navigation as necessary and effective management of any danger to navigation from wrecks or obstructions.

### Appointment of a Harbour Master

- 4.2 A harbour authority is likely to have the power in its local legislation to appoint a harbour master<sup>18</sup>. The authority may have the power to make byelaws relating to the powers and duties of the harbour master and the duties of harbour users in relation to the harbour master<sup>19</sup>. The harbour master is accountable to the authority for the safety of marine operations in the harbour. The harbour master should familiarise themselves with the extent of his or her legal powers, including those set out in general and local legislation, byelaws and any applicable general directions<sup>20</sup>.

### Byelaws

- 4.3 Byelaws can be made by any authority that has the powers to do so, as laid down in its local Acts and Orders<sup>21</sup>. The procedure for making and confirming byelaws is modelled on the long-established procedure used for local authority byelaws<sup>22</sup>.
- 4.4 Byelaws must be within the scope of the harbour authority's byelaw-making powers. They are used to regulate activities in the harbour, reflecting local circumstances and enabling the operation of the harbour to be conducted efficiently and safely. They are generally available to regulate rather than prohibit: therefore, an activity cannot be banned from the entire harbour unless the appropriate byelaw-making power so specifies. Byelaw-making powers go beyond simple management to include a power

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18 Local legislation may set out the power or incorporate, with or without amendment, section 51 of the Harbours, Docks and Piers Clauses Act 1847.

19 Local legislation may set out the power to incorporate, with or without amendment, section 83 of the Harbours, Docks and Piers Clauses Act 1847.

20 Sections 40A to 40D of the Harbours Act 1964 which were inserted by the Marine Navigation Act 2013.

21 This is often achieved by incorporating with or without amendments section 83 of the Harbours, Docks and Piers Clauses Act 1847.

22 Section 236 of the Local Government Act 1972.

to create criminal offences for breach of the bye-laws punishable on conviction in the courts by fines<sup>23</sup>.

- 4.5 Harbour authorities need to consult users before advertising sealed byelaws and byelaws must be confirmed by the relevant Minister<sup>24</sup>.

## Directions (usually referred to as Special Directions)

- 4.6 The harbour master duly appointed by a harbour authority generally has, under local legislation, powers of direction to regulate the time and manner of ships' entry to, departure from and movement within harbour waters, and for related purposes<sup>25</sup>. These powers are provided not for setting general rules but for the purpose of giving specific directions to specific vessels for specific movements, although the powers may be expressed to allow directions to be given to a class of vessels, or all vessels, in an emergency. A harbour master's directions may be referred to as 'special directions' to distinguish them from 'general directions' given by the authority itself. Directions may include the use of tugs and other forms of assistance.
- 4.7 If permitted under local legislation, the powers of direction may also be exercisable by a harbour master's assistant, vessel traffic services operator, or any other person designated for the purpose. Local legislation usually provides that it is an offence not to comply with directions<sup>26</sup> but may add a qualification that the master – or pilot – of a vessel is not obliged to obey directions if they believe that compliance would endanger the vessel. It is the duty of a harbour master in exercising these powers to consider the interests of all shipping in the harbour.

## General Directions and Harbour Directions

- 4.8 Some harbour authorities (but not all) have powers, through their local enabling legislation, to give 'general directions' to regulate the movement and berthing of ships. These are in addition to the powers of a harbour master to give 'special directions'; although some authorities have a combined power to give special and general directions. The power is exercisable by the authority itself, although they are for the harbour master to enforce, and thereby regulate the movement of vessels. General directions may only be made after users have been consulted. This is not a requirement for the harbour master's 'special directions', which are more appropriate for emergencies or short-term use.
- 4.9 The Marine Navigation Act 2013 created a new procedure for harbour authorities to obtain powers to issue harbour directions, similar to general directions in that they can be used to regulate the movement, mooring, equipment and manning of ships within the harbour<sup>27</sup>. They also must be consulted on before being made. To obtain this power, harbour authorities must be designated in an Order made by the relevant

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23 Currently a maximum of £2,500 (Level 4 on the standard scale) although not all offences under byelaws are sufficiently serious for Level 4 fines

24 This may be the Secretary of State for Transport, the Scottish Ministers, the Welsh Ministers or the Northern Ireland Ministers as appropriate.

25 Local legislation may set out the power or incorporate, with or without amendments, section 52 of the Harbours, Docks and Piers Clauses Act 1847.

26 Local legislation may set out the power or incorporate, with or without amendment, section 53 of the Harbours, Docks and Piers Clauses Act 1847.

27 Sections 40A to 40D of the Harbours Act 1964 which were inserted by the Marine Navigation Act 2013.

Minister<sup>28</sup>. A non-statutory Code of Conduct<sup>29</sup> on the use of this power has been agreed between representatives of the ports, commercial shipping and recreational sailing sectors.

## Dangerous Vessel Directions

4.10 A harbour master may give directions prohibiting the entry into, or requiring the removal from, the harbour of any vessel if, in their opinion, the condition of that vessel, or the nature or condition of anything it contains, is such that its presence in the harbour might involve a grave and imminent danger to the safety of persons or property or risk that the vessel may, by sinking or foundering in the harbour, prevent or seriously prejudice the use of the harbour by other vessels<sup>30</sup>. They must have regard to all the circumstances and to the safety of any person or vessel. Such directions may be over-ridden by the Secretary of State's representative for maritime salvage and intervention who may issue contrary directions to the harbour master in the interests of safety.

## Pilotage and Pilotage Directions

4.11 Under the Pilotage Act 1987, a Competent Harbour Authority ("CHA") has a duty to assess what, if any, pilotage services are required to secure the safety of ships, and to provide such services as it has deemed necessary<sup>31</sup>. CHAs should determine these matters through risk assessment.

4.12 CHAs must issue pilotage directions if they decide, based on their assessment of the risks, that pilotage should be made compulsory. The pilotage directions must specify to which ships they apply and the area and circumstances in which they apply<sup>32</sup>.



## Authorisation of Pilots

4.13 A CHA may authorise suitably qualified pilots in its area<sup>33</sup>. Authorisations may relate to ships of a particular description and to particular parts of the harbour. The CHA determines the qualifications for authorisation in respect of medical fitness standards, time of service, local knowledge, skill, character and otherwise. Qualifications of EEA State nationals must be recognised. The CHA may also – after giving notice and allowing a reasonable opportunity to make representations – suspend or revoke an authorisation in certain circumstances.



28 This may be the Secretary of State for Transport, the Scottish Ministers or the Welsh Ministers.

29 See [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279337/harbour-directions.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279337/harbour-directions.pdf)

30 Section 1 of the Dangerous Vessels Act 1985.

31 Section 2 of the Pilotage Act 1987.

32 Section 7 of the Pilotage Act 1987.

33 Section 7 of the Pilotage Act 1987.

- 4.14 CHAs are encouraged to implement the international recommendations on the training and certification and operational procedures for pilots contained within International Maritime Organisation resolution A960<sup>34</sup>.

## Pilot Exemption Certificates

- 4.15 CHAs must grant a 'Pilotage Exemption Certificate' ("PEC") to a ship's deck officer (including the Master) who applies for one if they demonstrate they have sufficient skill, experience and local knowledge to pilot the ship within the compulsory pilotage area. The requirements for granting a PEC must not exceed or be more onerous than those needed for an authorised pilot<sup>35</sup>.
- 4.16 A CHA may suspend or revoke a PEC if it ceases to be satisfied that the holder possesses the required skill, experience and local knowledge, or in cases of professional misconduct or the provision of false information<sup>36</sup>.

## Collecting dues

- 4.17 Harbour authorities and CHAs have powers to collect harbour dues and pilotage charges from users and should raise enough to provide resources to enable them to pay for the discharge of their statutory functions<sup>37</sup>. The level of dues and charges should be properly accounted for and brought to the notice of those persons likely to be interested<sup>38</sup>.
- 4.18 Members of the harbour board and/or the duty holder are responsible for ensuring that adequate resources are provided to its officers to enable them to operate the policies, procedures and systems effectively. This includes adequate resource for training. 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.
- 4.19 A CHA may make reasonable charges in respect of the pilotage services it provides. Such charges may be applied to vessels with an authorised pilot aboard and to vessels where the deck officer holds a pilotage exemption certificate in respect of the area and vessel in question<sup>39</sup>.
- 4.20 The harbour authority's power to levy dues and pilotage charges<sup>29</sup> is subject to a statutory right of objection to the relevant Minister<sup>40</sup>.

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34 IMO Resolution A960.

35 Sections 8 & 15 of the Pilotage Act 1987.

36 Section 8(A) of the Pilotage Act 1987.

37 Section 26 of the Harbours Act 1964 and section 10 of the Pilotage Act 1987

38 Section 26(2) of the Harbours Act 1964.

39 Section 10 of the Pilotage Act 1987.

40 Section 10(6) of the Pilotage Act 1987 applying section 31 of the Harbours Act 1964. Relevant Minister means the Secretary of State for Transport (England and Wales), the Scottish Ministers or, in relation to pilotage, the Northern Ireland Ministers.

## Aids to Navigation

- 4.21 Each harbour authority is a local lighthouse authority for their area<sup>41</sup>. They have the power to carry out and maintain the marking or lighting of any part of the harbour within the authority's area<sup>42</sup>.
- 4.22 The General Lighthouse Authorities are responsible for the superintendence and management of all lighthouses, buoys or beacons within their respective areas<sup>43</sup>. They have a duty to inspect all lighthouses, buoys, beacons and other navigational aids belonging to, or under the management of, a local lighthouse authority. They may also give directions concerning the provision and positioning of aids to navigation.
- 4.23 A local lighthouse authority shall not, without the General Lighthouse Authority's consent, erect, remove or vary the character of any lighthouse, buoy or beacon<sup>44</sup>.
- 4.24 All aids to navigation maintained by harbour authorities and any other existing local lighthouse authorities must be maintained in accordance with the availability criteria laid down by the General Lighthouse Authorities, and must be subject to periodic review. The characteristics of these aids to navigation must comply with the 'International Association of Lighthouse Authorities Guidelines and Recommendations'. Information and periodic returns must be supplied, when required, to the appropriate General Lighthouse Authority<sup>45</sup>.



## Wrecks and Abandoned Vessels

- 4.25 Where there is a wreck in, or near, the approaches to a harbour which is or is likely to become a danger to navigation the harbour authority may take possession of, remove or destroy it. They may mark the location of the wreck until it is raised, removed or destroyed<sup>46</sup>.
- 4.26 Harbour authorities must exercise their wreck-marking and removal powers where, in their opinion, a wreck is – or is likely to become – an obstruction or danger to navigation. They have a duty to have regard to the environment in the exercise of this and all other duties and powers.
- 4.27 Harbour Masters may also have powers, under the Harbour, Docks and Piers Clauses Act 1847 (as incorporated into local harbour legislation) in particular under sections 52, 56 and 57, to remove any unserviceable vessel located within the harbour and should do so wherever these present a risk to safety. The expense of removing such vessels may be charged to the owner.

41 Section 193 of the Merchant Shipping Act 1995.

42 Section 201 of the Merchant Shipping Act 1995.

43 Section 195 of the Merchant Shipping Act 1995.

44 Sections 198 and 199 of the Merchant Shipping Act 1995.

45 Section 198 of the Merchant Shipping Act 1995.

46 Section 252 of the Merchant Shipping Act 1995.



- 4.28 Under section 1 of the Dangerous Vessels Act 1985 (directions by harbour master concerning dangerous vessels etc.), a Harbour Master may give a direction to remove a vessel from a harbour if in his opinion the condition of the vessel is such that it poses a grave and imminent danger to the safety of any person or property (note that the powers under this section are subject to limitations).
- 4.29 Where discretionary powers are granted by legislation, Harbour Masters and harbour authorities have a duty to exercise these powers in the public interest and they may impose a duty to take action where there is a threat to life.
- 4.30 Harbour authorities and their employees (including the Harbour Master) owe a duty of care under the common law to those who reasonably and foreseeably are within the harbour area.
- 4.31 The Secretary of State (through his representative, SOSREP) also has powers to intervene and give directions under section 108A and Schedule 3A Merchant Shipping Act 1995. If it is considered that it may be more appropriate for SOSREP to act, he should be contacted directly or via the MCA.
- 4.32 Where harbour authorities or Harbour Masters are uncertain of their powers, they should seek appropriate legal advice.