



CÒMHDHAIL ALBA TRANSPORT SCOTLAND

Modern Trust Ports for Scotland

Guidance for good governance



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Ministerial Foreword

Scotland benefits from a diverse and successful ports sector that contributes significantly to the national, regional and local economies in which they operate. Trust ports form a vital part of the sector as a whole and it's important that they continue to undertake their duties in an open and transparent manner.

Following the publication of the original guidance in 2000 there have been many improvements in the governance of trust ports across the country. I am very pleased that we have now prepared a Scottish update to the guidance, focusing specifically on the needs of the sector in Scotland.

Trust ports from across the sector have made positive contributions to the development of this revision which now reflects our aspirations for a transparent, vibrant and diverse industry across Scotland.

Since the issue of the original UK wide guidance in 2000 all of the large and medium sized trust ports in Scotland have promoted harbour orders to update their constitutions to comply with the requirements for openness and impartiality in their appointments to the board. Some of the smaller ports have also done so and others are reviewing their situation with a view to promoting an order which can best meet their needs.

Twelve years on from the original guidance, feedback from those who have modernised their constitutions has been extremely positive and this guidance seeks to build upon that strong foundation. It is sufficiently flexible to provide for the differences which make the Scottish trust ports a good fit to the needs of their users and wider communities.

The core principles of openness, accountability and fitness for purpose continue to form a common thread running through this guide and should feature in the direction and management of all ports in the trust sector.

We would look to ports in all sectors to use the relevant elements of this guidance as a benchmark - all ports on which Parliament has devolved statutory powers and duties in the public interest should be accountable for their use.

This document is designed to provide a code of best practice for all trust ports in Scotland. It can apply in proportion to a trust port whatever its size, turnover or type of operation. It is fully recognised that in a diverse sector, a significant degree of flexibility is required in the extent of compliance across the sector.

We welcome the positive contributions from across the sector to the development of this guidance and hope that trusts will benefit from compliance and continue to grow and flourish.

A handwritten signature in black ink, appearing to be 'KB', with a long, horizontal flourish extending to the right.

Keith Brown MSP
Minister for Transport and Veterans

Introduction and Purpose

This guidance seeks to cover issues of importance to Scotland and its trust ports which vary considerably in size and operation both within Scotland and from counterparts in England and Wales.

The Department for Transport issued its revised guidance on *Modernising Trust Ports* in the summer of 2009. That document was substantially based on a report commissioned by the UK department covering a range of specific issues relating to larger trust ports in England and Wales and their ongoing needs. Scottish Ministers felt that the situation in the Scottish trust port sector did not mirror that in England and Wales and unlike the first issue of this guidance, they did not feel it could be applied in its entirety in Scotland.

Scottish Ministers continue to support a market driven approach to ports policy and recognise the contributions of port operators to the economy of Scotland. This is highlighted in five port related projects put forward by the ports themselves, which met the criteria for inclusion in the Second National Planning Framework (NPF2) published in June 2009.

We welcome the ongoing interaction with the whole port sector both through a standing invitation to attend meetings of the British Port Association Scottish Committee and regular meetings with the UK Major Ports Group. We recognise the contribution of these industry bodies to the development of port policy in Scotland. We are also grateful for the welcome extended by individual ports during visits to their facilities which give us a better understanding of port operations and the needs of the industry.

Scottish Ministers would encourage private and municipal ports to seek to act in accordance with the guidance, while recognising of course the differences in structures and that certain aspects of the guidance will not be directly applicable.

Nothing in this guide should be taken as overriding the current fiduciary, statutory or legal obligations laid upon board members, officers and employees of trust ports. It does not have the force of law. The aim is to encourage the continued development of an open and accountable relationship between all ports, their users and local communities.

We would encourage trusts however small to review their constitutions and to talk to us informally for advice on how best to adapt to their current and future needs in the modern ports sector.

1 Trust Ports and their stakeholders

1.1 What is a trust port?

- 1.1.1 Trust ports are independent statutory bodies, governed by their own local legislation and, run by independent boards who manage the assets of the trust for the benefit of stakeholders.
- 1.1.2 There are some parallels to private trusts, where a fund, or property, is owned and managed by one party for the benefit of another. In that context the stakeholders of the trust, in whose interests the trustees work, are usually clearly and definitively identified.
- 1.1.3 All ports are obliged to act in accordance with their local legislation and other relevant law, whether they are trusts, private or local authority owned. In the case of trust ports they are generally creatures of statute and operate only within the powers and duties conferred on them by statute.
- 1.1.4 Trust ports operate in a commercial environment with no direct public funding and compete in the market with private and local authority ports as well as other trust ports. There are no shareholders or owners and profits are reinvested in the port. They make significant contributions to both local, and in many cases, the national economy.

1.2 Who are the Stakeholders?

- 1.2.1 The stakeholders of a trust port are varied and numerous and some are often intricately bound up in the port's operation, perhaps as users or employees of the port. It is also recognised that the range of stakeholders will vary depending on the scale, nature and location of the individual port. In the trust port context the stakeholders do not have a direct financial investment in the port in the way that shareholders do in a private company. It is essential to view any benefits in the round and not purely as monetary gains.
- 1.2.2 *Modernising Trust Ports – A Guide to Good Governance* (“described a trust port as ‘a valuable asset presently safeguarded by the existing board, whose duty it is to hand it on in the same or better condition to succeeding generations. This remains the ultimate responsibility of the board, and future generations remain the ultimate stakeholder’). Through the running and maintenance of this asset, though, others stand to benefit. Although not an exhaustive list, as stakeholders will vary from port to port, the following may all be considered stakeholders of a trust port:

- Port Users
- The local community
- Local and regional economies and authorities
- Port employees including Trade Unions
- Related interest groups
- The national economy and Central Government
- Local and regional businesses

- 1.2.3 As stakeholders in the port, the interests of these groups should at all times be the guide by which trust port boards direct the port. There are bound to be conflicts of interest from time to time between — and in some cases within — the various stakeholder groups. It is the duty of the boards, at all times, to strike a balance that respects the interests of all stakeholders, not just one group, in the light of the objectives of the port, including commercial considerations, and what constitutes the 'common good' for all stakeholders (current and future) and the port itself.
- 1.2.4 In order for trust ports to fulfil that obligation, they must have a firm idea of what constitutes the objectives of the port. It is the responsibility of the boards, having identified their stakeholders and considered their needs, to arrive at a clear description of these objectives. Ports are also aware that stakeholders can change over time especially as the business of the port moves into new areas and new stakeholders may need to be identified and established ones reviewed.
- 1.2.5 In some cases stakeholders will have more than one form of relationship with the port. Users of the port for example, can often be primarily customers with whom ports will have purely commercial relationships. They may also have other forms of relationship, and trust port boards should hold this in mind as they manage the port.
- 1.2.6 A responsibility lies too upon the stakeholders who should monitor the port's performance and hold the board to account in a responsible manner, for the ways in which they manage the assets in their care. Trust ports should always deal with stakeholders in an accountable manner although the board has ultimate responsibility for any decisions taken.

1.3 Benefit to Stakeholders

- 1.3.1 The larger trust ports can expect to generate a significant return which can be reinvested in the operation. In a private company that return would be distributed among shareholders in the form of a dividend. Trust ports, having no shareholders, must use any profits generated to support the long term viability of the port and thus for the benefit of the whole community of stakeholders.
- 1.3.2 A conventional trust often distributes income generated by the trust's assets among its beneficiaries. Scottish Ministers do not however consider that a trust is required to quantify all benefits purely in financial terms. The improvement and modernisation of its assets, services and infrastructure for the benefit of its users cannot always be valued in this way.
- 1.3.3 There is instead a range of ways in which a trust port's surplus may be, and is, justifiably employed. These uses constitute a *stakeholder benefit*, and may include any of the following:
- investing in infrastructure with a longer-term view than might be expected of a private company port, which may need to generate a return over a shorter period;
 - investing in infrastructure, or another good such as environmental protection, to a higher standard or greater extent than might maximise profits, but where this brings direct quantifiable benefits to stakeholders;

- undertaking activities that have a lower commercial return than might be acceptable to a private company port, but which have other benefits for stakeholders — eg for the local community;
- providing employee packages, including training, above the market rate, where this helps to build the local skills base;
- making charitable grants or donations of time; and
- making other financial investments, for example in local enterprises or community projects, with social as well as economic returns.

This list is neither prescriptive nor ranked in priority order and may not be applicable to every port but is indicative of areas to be considered.

- 1.3.4 Trust port boards manage their operations and reinvest any surpluses in an efficient manner within a commercial environment. However their primary aim is not the production of profit for shareholders but the best use of the assets they manage in order to secure that asset for future use. It is for the boards to consider how best to achieve this and they may consider involving stakeholders to assist in determining the best course.
- 1.3.5 The aims of individual boards will vary and while maintenance and improvement of the port infrastructure will generally be a high priority boards must consider the future, changing market conditions and adapt their operations to meet future needs. It is appreciated that this is a particular issue for smaller ports who may need to consider more radical diversification, possibly into new areas such as leisure if, their main business is reducing as is the case in some traditionally fishing harbours.
- 1.3.6 Boards of many ports already quantify their stakeholder benefits within their annual reports and accounts and various strategy documents, but for the smaller ports it may be more difficult to quantify the wider benefits. It is important that stakeholders understand and appreciate the benefits accruing from the port and how they are achieved.

1.4 The Role of Stakeholders and Consultation

- 1.4.1 A trust port is held to account for its performance and actions by its stakeholders, including the wider community it serves. For the responsibility is double-edged, and a trust port's stakeholders must be prepared to interest themselves in the port's operation, and to challenge the board where they believe performance has fallen short. Transparency is crucial to fostering trust within the community of stakeholders.
- 1.4.2 Individual trust ports will be able to identify their stakeholders and to include them in formal consultation on significant decisions where appropriate.
- 1.4.3 It is not intended that trust port boards are faced with multiple irreconcilable demands from stakeholders, or that each and every decision must be consulted on in depth. Boards must be free ultimately to make commercial decisions on all issues facing the port, having weighed the various representations and advice received. The board is best placed to judge the overall impact of any recommendation. Stakeholders, while articulating their concerns and holding ports to account, must therefore also be considering the interests of the port as a whole.

- 1.4.4 Scottish Ministers, as a stakeholder, particularly in the nationally significant trust ports, will maintain an overview of performance and may challenge where necessary, as all stakeholders should be prepared to do. Ministers do not propose, however, to involve themselves in day to day decisions boards make, nor to question boards' judgment, having considered the views of stakeholders, about what is best for the port. It should be noted that the issue of whether any statutory undertaker is operating out with its powers is a matter for the courts and Ministers can only act as informal 'honest broker' in seeking to resolve any disputes.
- 1.4.5 Some trust ports may find it beneficial to establish formal stakeholder groups, which meet regularly and have representation from the various stakeholders. These could be created to consider specific issues or manage specific projects within their area of competence, and could report to and advise the board. Such groups will not be appropriate in all cases particularly in the smaller trusts where the costs, both financial and in resources, may well outweigh any benefits from this approach. Each trust must have regard to the specific provisions in its constitution.
- 1.4.6 Alongside consultation, the provision of information is an important pillar of accountability. Having made decisions, it is crucial that the board communicate them, and their results, to its stakeholders. Section 3 of this guidance discusses in more detail the requirements for publishing formal reports, accounts and strategy documents, but there are other ways in which trust ports can interact with their constituency.
- 1.4.7 One of the most important stakeholder groups for any trust port is the local community. Often the port is at the heart of that community. Trust ports 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 port sector and local government. It is noted that this is an area where there are already strong and improving links, with collaborative working in relation to offshore renewables opportunities being a particular example.
- 1.4.8 Larger trust port boards may consider the need for local liaison and focus groups to ensure that the local community is informed and on side. This could include a functioning and updated website, and might be supplemented by regular publication of newsletters, reports of board meetings, and holding public meetings to discuss port operations and plans. We acknowledge that many ports already undertake this activity and derive benefit from it.
- 1.4.9 As a minimum, all trust ports should hold a widely and effectively advertised open annual meeting (AM) and, where practicable and appropriate, other meetings as required to discuss significant matters of interest to their stakeholders. The Chairperson should arrange for all board members to attend the AM, and also ensure that notice of the AM, together with the relevant documentation, is sent out to stakeholders at least 20 working days before the meeting.
- 1.4.10 Trust ports and their executives should actively seek to engage with the local community through liaison with local groups, schools etc at a level appropriate to their size. They should actively participate in local and regional debate on plans

(local and regional Government, development agencies etc). Above all, the port and its executive should be seen to be accessible to the community at large.

2 Trust Port Boards

2.1 Constitution

- 2.1.1. In line with good commercial practice, a trust port board should comprise between 8 and 12 members appointed by an open and transparent process. Larger boards are unwieldy and their effectiveness tends to decline in proportion to the number of members. A move to independent board membership removes the need for a large and potentially ineffective board structure. Trust port 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 board to embrace all of its core skill requirements within 8-12 members.
- 2.1.2. In most cases the Chief Executive sits on the board as of right but in larger ports additional executive members may be appropriate. The scale of executive representation should be appropriate to the size of the port. In small 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.
- 2.1.3. Whatever the representative structure, it is important that the harbour master should be 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 harbour master be held by someone with the appropriate experience and qualifications to personally fulfil that role.¹ A harbour master's powers and duties should not be delegated except for certain specific matters as approved by the board or prescribed by legislation (providing that these do not impact on the overall responsibility for the conduct of a harbour master's duties which must remain with the appointee at all times).
- 2.1.4. The board and executive management are the joint focus for the accountability of the trust port in the conduct of the port's business. The executive management of a trust port has a vitally important role to play in operation of these standards of accountable governance. There has been a regular turnover of board membership since the original guidelines were implemented which has proved beneficial in the majority of ports. 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 and they should be in a position to lend support to the chairperson in ensuring that the board operates within them. The chief executive may, in effect be the referee of board activity, as well as acting as adviser and counsellor to the board on its conduct, duties and responsibilities. In small harbours where the senior executive may be the harbourmaster or administrator this role may need to be adapted to suit the circumstances.

2.2 Management

- 2.2.1. A trust port, in common with any commercial undertaking, requires effective strategic direction based on a complete understanding of the direction being

¹ Section 51 of the Harbours, Docks and Piers Clauses Act 1847 gives ports specific powers to appoint a harbourmaster. Boards must exercise these in a reasonable manner.

taken and its associated opportunities and risks. Prudent financial management is central to the duties to be discharged by every trust port board member and officer. The principal role of its chairperson 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 chairperson has a key role to play by leading the board in giving the port this direction. Given the key role of chairperson, they should be appointed by the full board. Subject to the provisions in section 2.4 below about length of term, such appointment should not be dictated by rotation. It should be made on the basis of qualifications and experience.

- 2.2.2. The ultimate effectiveness of the trust port is dependent to a substantial extent on the quality of the information it receives. The chairperson 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 chairperson should also ensure that the executive provides the board, on a regular basis, with clear and comprehensive reports on specific projects. The chairperson is responsible for regularly reviewing the quality of information thus provided to the board. The chairperson is also responsible for ensuring that papers are circulated and meetings notified in good time to all board members.
- 2.2.3. The chairperson should manage the board and ensure that it and its officials stand above sectional interests and act as true independents. The chairperson should have the ability to take an overview of board discussion and summarise it with an intelligent commentary, including his or her own personal views.
- 2.2.4. Both the board and the chief executive have the capacity and responsibility to direct the affairs of the trust port in accordance with the criteria of prudent management. However, it is very important that there be 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.
- 2.2.5. These functions should not overlap, although it is accepted that in very small harbour operations this may on occasion occur. 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 port. 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.
- 2.2.6. Although the board should not interfere in the daily operation of the port, members should understand how their decisions affect the running of the port

and the wider economy. It falls to the board to satisfy both the legitimate needs of customers and the legitimate wider interests of all stakeholders.

- 2.2.7. It should be clearly understood that the officers and employees of a trust port 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 acting individually 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 chairperson and/or board by the chief executive. 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.
- 2.2.8. Irrespective of size it is essential that the boards meet regularly. Unless there are truly exceptional circumstances all trust port boards should convene at least 4 times a year. This is the minimum required to ensure effective governance of the port 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 the time and venue. Board members' concerns should be recorded in the minutes as a matter of course.
- 2.2.9. 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. Such committees should be adequately resourced to carry out the functions asked of them by the board. 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.
- 2.2.10. The number of board meetings, the attendance record of board members, and the membership and function of all board committees should be clearly set out in the port's annual report and/or strategy document.

2.3 Guiding Principles – Appointment

- 2.3.1. This chapter of the guidance is intended to set out a basic set of standards around which individual trust ports may build an appointment process tailored to their specific requirements. The basic tenets of the appointment process are set out here, and are based on existing good practice in both public and private sector. It should be noted that Scottish Ministers no longer have a role in any port board appointments since the larger ports have all now modernised their constitutions.

- 2.3.2. 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 trust ports to range wider to locate the expertise that they need to function effectively. All trust ports should work to phase out any remaining reserved appointments from their constitution. Even where existing reserved appointments (eg where the local authority appoints) are conducted according to these principles, trust ports should look to go one step further and create entirely open competition for board membership.
- 2.3.3. The following basic process should be adopted to provide a simplified, consistent, open and accountable system for board appointment:
- All vacancies should be filled against job descriptions 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, and should be made clear to potential candidates. .
 - All vacancies should be advertised using appropriate local or regional media. All applications and nominations should be sifted by the intended interview panel and a short list for interview put to the board.
 - The criteria by which a selection panel will judge the candidates for the post must be made clear to applicants in advance. The selection panel must adopt selection procedures that accurately measure candidates against those criteria, and must be in a position to provide evidence to support its eventual decision. All candidates should be offered the chance to receive feedback on their performance in the application process.
 - The selection panel should comprise the chairperson or deputy chairperson, a stakeholder representative and an independent. It would be acceptable for the chief executive to advise this group. The independent member might be provided by the local authority from among its officers (Human Resources Director or equivalent), or from some other locally accredited and recognised independent source to be determined by the board.
 - All unsuccessful candidates should remain confidential and the papers should be destroyed or returned to the applicants

Annex A contains a summary of the principles of appointment and the aims of the process adapted from the Code of Practice for Public Appointments in Scotland Published in April 2011 by the Commission for Ethical Standards in Public Life

Annex D contains examples of an application form, notes for applicants and advertisement which can be customised.

2.4 Length of Term

- 2.4.1. All trust port board appointments except executive members (who should serve for their term of office) should be of three years duration. Any less than three years inevitably hampers consistency and stability within the board, and a regular turnover of board appointments may result in the loss of valuable 'corporate memory'.
- 2.4.2. Subject to continued eligibility, each board member may be appointed for a maximum of three consecutive terms (i.e. reappointed twice), although

reappointment for the third term should be only in exceptional circumstances. In smaller trusts where the pool of suitable candidates may be geographically limited the board should consider wider advertising to attract new candidates and ensure fresh ideas and experience are brought onto the board. In *exceptional circumstances* consideration may be given to allowing a break in service of one or two terms with the possibility of reappointment after this gap, however boards should consider other options to attract new members before resorting to more numerous reappointments which could defeat the aims of refreshing the membership in the longer term. Sharing of good practice between boards has proved helpful to smaller trusts in attracting suitable candidates. Where any trust wishes to make a robust case for any flexibility due to specific local circumstances Transport Scotland are prepared to discuss their needs on an individual basis when changes to the constitution are proposed.

- 2.4.3 Reappointment should never be automatic. No board member should be reappointed for a second or third term unless the chairperson is satisfied that the board consider not only that the member in question has performed satisfactorily during the current term of office and has a good attendance record, but also that a new appointee would be unlikely to offer greater value to the board. This test must be emphatically passed in the exceptional event of a board member being reappointed for a third term. In such an event the board may also have the option to consider the incumbent against a wider selection of candidates through a more formal selection process. Each trust must have regard to the specific provisions in its constitution relating to appointments.
- 2.4.4. The Chairperson, appointed by the board, should normally have served at least one term as a board member. They should be appointed for a three year term, even if mid-way through a term as board member. The chairperson should be subject to an absolute maximum of 12 years service on the board in whatever capacity.
- 2.4.5. 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.

Termination of Appointment

- 2.4.6. Specific breaches of the standards contained in this guidance and any activities deemed inappropriate to the interests of the trust port, including those likely to bring the port into disrepute (including moral turpitude), or plainly outside the trust port's legislative or statutory framework, should result in termination of that member's appointment.²
- 2.4.7. In addition, a board member, including the chairperson, should cease to hold office if a majority of the board requests his or her resignation in writing, and supports this with a resolution, passed at a full board meeting, that the board member has vacated office. The board may wish to consider making public the reasons for its actions (within the constraints imposed by civil and criminal law including data protection).
- 2.4.8. Boards may also consider whether, in the interest of natural justice, they should institute an independent appeals mechanism for members whose appointments

² Commissioners Clauses Act 1847

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.

2.5 Guiding Principles - Membership

2.5.1. All board members should adhere to the following guiding principles in the conduct of trust port 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.

Eight Guiding Principles of Trust Board Membership, adapted from seven principles of public life as defined in the Nolan Committee's First Report on Standards in Public Life.

Independence

A trust port is an independent statutory body. All board members are appointed to act independently in the best interests of the trust port 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 port, and should submit themselves to whatever scrutiny is appropriate to their office.

Openness

Board members should be as open as possible with all 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 port, 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 port 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 port duties, and to take steps to resolve any conflict arising, in a way that protects the interests of stakeholders of the trust port.

Leadership

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

2.5.2. 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 and the port constitution on appointment and be required to sign a binding declaration on joining.

2.6 Board Skills and Diversity

2.6.1. 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. These 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:

| <u>Personal skills/competencies</u> | <u>Professional skills</u> |
|---|--|
| 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 outside the trust port | Shipping/fishing/cargo handling |
| Ability to work as a team member/supportive of colleagues | Finance/management accounting |
| Ability to make a constructive contribution to group discussion - clear expression of ideas | Leisure, boating management, voluntary, and commercial sectors |
| Analytic approach to problem solving | Environmental experience and expertise |
| Ability to formulate strategy | Oil and gas and decommissioning |
| Grasp of priorities | Renewables |

2.6.2. In assessing potential board members against the above criteria, relevant life experience and track record should be considered as important as skills obtained through a conventional career path and professional qualifications.

2.6.3. Trust port boards should contain a good balance and breadth of competencies. In recognition of the fact that trust ports are commercial entities, this should include, as a priority, adequate financial and commercial expertise. The board should use the annual report actively to demonstrate that they have achieved this balance.

2.6.4. Beyond individual specialties and skills, 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.

2.6.5. As with competencies, a trust port board will be most effective, and more representative of its stakeholders, if constituted by members with a broad and

diverse range of backgrounds and perspectives. Trust ports should actively seek applications for board vacancies from a diverse range of people, and not be content solely to recruit candidates with similar backgrounds to existing board members. Trust port boards should also analyse their ways of working to identify any practices (such as the timing of meetings) which may inadvertently hinder the chances of recruiting from certain groups of people.

- 2.6.6. There is no age limit or minimum requirement on board membership. The overriding requirement is for the board to be optimally effective, and this is most likely to be achieved with a diverse range of members, in which age should not be a relevant factor, but in which a breadth and depth of skills and experience should be paramount. The port sector generally has traditionally been male dominated and boards should consider how they might attract increased participation from women.
- 2.6.7. Plans for achieving a balance, and success in implementation, should form part of the annual published strategy document if appropriate, and be detailed in any plan for meeting this guidance.

2.7 Role

- 2.7.1. There is little difference between the duties of a trust port board member and those of the members of a private company port's board. Company port boards are accountable to their shareholders, the trust ports 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.
- 2.7.2. In general terms, board members should:

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| act independently and in good faith in the best interests of the trust port and all its stakeholders (Commissioners Clauses Act 1847) | ensure that they receive adequate training for the discharge of their responsibilities |
| 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 | 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 (eg rights and responsibilities) |
| have a duty of care to the trust port and its current and future stakeholders | always respond appropriately to complaints from stakeholders |
| 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 |
| attend all board meetings unless, exceptionally, excused by the chairperson | be prepared to submit a paper to the board on their views |

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| send a letter explaining their views on major issues if they cannot attend | read the board papers and ensure that all their decisions are properly informed |
| 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 | be honest in their dealings with no hidden agenda and respect the confidentiality of information obtained as a board member, and of board discussions |
| ensure they have all of the information they need to fulfil their obligations to the trust port | be team players sharing knowledge and views with fellow board members and abiding by the view of the majority |
| participate in the appointment of the executive | place their skills at the disposal of the port and its executive |
| actively participate in board discussions - be testing - be prepared to be challenging and to act independently (in a constructive manner) | declare an interest in any board discussion at the outset but be prepared to contribute factually to the debate |

2.7.3. In general terms, board members should not:

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| represent specific interests when acting as a board member | ignore or unreasonably oppose the views of the majority |
| use information obtained as a board member for personal gain, the gain of any third party, or misuse it in any other way | allow membership of any other organisation, club or society to influence his/her decisions or actions as a board member |
| allow the executive to exercise undue control over the port and board | become complacent or stagnant |
| cast a vote or attempt to influence or persuade the board on any item in which they have an interest | enter into contracts or other arrangements for personal gain with the port (Commissioners Clauses Act 1847) |
| attempt to influence the decisions or direct the activities of the trust port servants without recourse to the board | interfere or participate in operational matters unless specifically requested by the chairperson and executive. |

2.7.4. In addition to his or her role as an active board member, outlined above, in general terms a chairperson should:

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| Provide effective leadership for the port | manage the board process effectively |
| form a strong partnership with the executive to ensure effective governance of the port | act as an ambassador for the port, representing the views of the board to the stakeholders of the trust port and public |

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| 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 | ensure that the board meets at appropriate intervals |
| assess performance of individual board members with the chief executive | discipline (including sacking where permissible) 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 and where compliance is not achieved explain why |
| ensure that the board has the capacity and information required to take a balanced view on every matter | ensure the probity and timely publication of the report, accounts and strategy document, and effective corporate plan |
| ensure that every member of the board maintains a complete grasp of his or her responsibilities to the trust port, statutory duties and legal obligations | ensure that the board maintains an appropriate skills mix through successive appointment rounds |
| ensure the board does not exceed its powers or functions | promote the active participation of all board members in debate |

2.7.5. In general terms a chairperson should not:

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| intervene in operational matters or establish alternative lines of command within the port's hierarchy | set up "chairperson's committees" which transact port business without recourse to the board |
| prevent board members (subject to the provisions of the Data Protection Act) from seeing, on request, any document relating to the business of the port | |

2.7.6. All of the above principles also hold good for the executive management of a port. The executive provides the operational interface between stakeholders and the port or conservancy. The executive is responsible for the effective transaction of the trust port's business. In addition and specifically, the chief executive should:

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| act as custodian and guardian of the basic principles and aims of the trust port (and this guidance) | conduct themselves with integrity, impartiality and honesty in relations with the board and public |
| be accountable to the board (the board to decide on strategy and direction, the executive to implement) in terms of actions | provide the board with clear financial and operational reports, allowing decisions to be based on accurate and balanced |

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| that are within their power... | information |
| ...but able to act independently of the board, in the interests of the trust port, if the board's directions exceed their powers. | forge strong working relationships with the board and act as the link between the board and Scottish ministers |
| be responsible for ensuring that the board and port operate within the statutory framework and procedures | ensure that a port's statutory and legislative framework is fully fit for purpose |
| discharge public and statutory functions reasonably and according to law | provide the board with strategic advice to inform their decision making |
| oversee the appointment and electoral processes of the board | be bound by the same code of standards as applies to the board |

2.7.7. The chief executive should not:

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| allow the port to breach or fail to fulfil its legal obligations | allow vested interest, or any other improper conduct to flourish unchecked among board members |
| allow any board members 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 port both as a port and as a commercial organisation | become complacent and stagnant |

2.7.8. In the case of the board, chairperson and executive, serious and/or continued activities contrary to these basic guidelines should be considered 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 port.

2.8 Performance Management and Board Remuneration

2.8.1. The performance and contribution of the individual board members should be monitored on a regular basis by the chairperson, deputy chairperson and chief executive. As with the general performance of the port, the performance management of board members should constitute a cycle of assessment and appraisal, followed by new target setting, and the subsequent reporting of progress. Board members should expect an annual appraisal of their performance by the chairperson.

2.8.2. The performance of individual board members can obviously be appraised in part through looking at the general performance of the port, and the resultant benefits to stakeholders. The annual appraisal should also seek to evaluate the board member's individual contribution to the life of the port and the working of the board, as well as factors such as attendance. This evaluation should take place against objectives agreed with the board member at the beginning of the year.

- 2.8.3. The board should appraise the performance of the chief executive, the chairperson and deputy chairperson on a similar basis. As a general rule the board should be responsible for appointment of the chairperson and deputy chairperson from amongst its members with regard to previous performance.
- 2.8.4. The administration of remuneration policy should be the preserve of a remuneration committee of the board, where appropriate, which should comprise two or three members and should make available its terms of reference. It should have delegated responsibility to set the remuneration levels of board members and the chairperson. The remuneration committee should also recommend and monitor the remuneration of the senior executives.
- 2.8.5. The remuneration committee should, as part of its duties, consider the compensation commitments that would be entailed in the event of early termination of appointments, and where remuneration consultants are appointed, a statement should be made detailing any links that they may have with the port.
- 2.8.6. It is acknowledged that in many smaller trust ports, board members are not remunerated, due to the financial position of the port or as a matter of board policy.
- 2.8.7. At any stage through the year, but particularly during formal appraisal process, if an assessment is made that a board member is not felt to have made an effective contribution to the trust port, through both regular attendance and input to the work of the trust port, he or she should receive a formal written warning setting out the chairperson's views. Specific further targets to achieve should be set on the understanding that a lack of improvement within an agreed time scale will result in termination of his or her appointment, either through resignation or a vote of no confidence from the board. The chairperson, deputy chairperson and chief executive should be prepared to work with these members to offer encouragement and support.

2.9 Probity and Interests

- 2.9.1. Prudent management requires that every trust port 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 would or does pose a threat to the interest of the whole including all the stakeholders. Suitability is for the board to consider before an appointment is made, and for the chairperson and executive to consider on a continuing basis and certainly before reappointment is recommended.
- 2.9.2. As a general rule, any board member who has previously been dismissed from any trust port board should not be considered for appointment. Neither should any applicant who is bankrupt or has a criminal conviction remaining unspent. An appointee should not be a current or recent member of another trust, company or local authority port board, where the other port might be viewed as a direct or indirect competitor of the appointing body.

- 2.9.3. All candidates short listed for board appointment should be asked to complete a screening questionnaire disclosing their interests and answering other questions about their fitness to serve.
- 2.9.4. 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. Candidates who declare a potential conflict of interest should not be automatically debarred. However, should they be short listed, they should be able to demonstrate an ability to act in an independent manner in the interest of the trust port to the satisfaction of the selection panel. Appropriate questions would need to be asked to determine whether there is a genuine conflict of interest and whether it would hamper an individual's compliance with the requirements of board membership and the national standards.
- 2.9.5. 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. It is the responsibility of the chairperson, chief executive and individual members to ensure that it is kept up to date. In addition all trust ports should, through the chairperson and chief executive 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.
- 2.9.6. 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 ; and
 - hospitality or gifts that could not be considered insignificant accepted by the board member or close family associated with the port and its operations.
- 2.9.7. Key elements of the register should be published in the annual report. Failure to disclose an interest otherwise discovered should be a matter for formal censure by the board, supported by a written warning from the chairperson or chief executive in the first instance. Further lapses (depending on seriousness) should be considered as grounds for termination.
- 2.9.8. In the course of board business it is possible that a member's declared interest may present a conflict with the matter under discussion. In these circumstances, 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 must offer to withdraw. The chairperson, in consultation with the board, should decide whether or not a conflict does arise, and if it does, should ask the member to withdraw from the meeting for the duration of the item, or invite them to stay if they can contribute on a factual basis only. The fact that a member has declared an interest and the way in which this is handled should be recorded in the minutes.
- 2.9.9. The principles relating to conflict of interest should not apply to exclude the members of any consultative or advisory committee created or routinely consulted by the board.

2.9.10. As with declaration in the register, if it is subsequently discovered that a participating member failed to declare a relevant interest in the course of conducting board business, the chairperson should consult the chief executive 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 by the board. Further lapses (depending on seriousness) should be considered as grounds for termination.

2.10 Personal Liability

- 2.10.1. Trust port board members have a duty of care to the trust they are appointed to oversee. Incorporation by a trust port of Section 60 of the Commissioners Clauses Act 1847 into its local legislation means that Board members cannot be sued or prosecuted for lawfully exercising their powers as a member. In addition a member's property shall not be subject to legal process because of a contract entered into as a member or because of any lawful act in exercise of members' powers.
- 2.10.2. Section 60 also provides that members shall be indemnified out of funds held by the board for all payments made or liability incurred, and all losses/costs/damages which they may suffer, in respect of acts done in exercise of members' powers.
- 2.10.3. All boards should adopt the provisions of the Commissioners' Clauses Act into their local Act in the interests of good governance.
- 2.10.4. Boards may wish to consider ensuring that they have appropriate modern wording for the indemnity provisions in their local legislation. The wording used in Section 60 is not ideal as it does not make explicit that the indemnity applied only in respect of acts done lawfully in the exercise of the relevant powers. However if a change is required to the port's local legislation, a Harbour Revision Order would be needed.
- 2.10.5. Boards should have access to professional advice at the port's expense where they judge it necessary to discharge their responsibilities.

2.11 Training

- 2.11.1 In order to achieve the goals set by these 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 Scottish Ministers will seek to facilitate training in co-ordination with port industry bodies where possible.
- 2.11.2 Based on the experience of the years since *Modernising Trust Ports* was first produced Scottish Ministers will consider how the training is best delivered but it may include
- 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; and
 - Facilitated groups on the impact of this revised guidance to deliver clear messages on the conduct of boards and the wider issues of ports policy (set in

the context of transport policy), board members' statutory duties, their responsibilities under this guidance and the Port Marine Safety Code.

2.12 Succession Planning

- 2.12.1 In order to provide reasonable continuity and ensure that a chairperson has an effective grasp of trust port 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 chairperson should serve more than 9 years in that office. Boards should take a considered approach to succession. Boards should avoid a situation where the chairperson and chief executive both change within a comparatively short period. Likewise they should attempt to avoid a concentrated roll-over of key officers in the trust port.
- 2.12.2 The board should clearly identify and groom a successor to the post of chairperson in good time. The chairperson 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 of the board capable of stepping into the chairperson's shoes at short notice. The chairperson should plan ahead to ensure that the balance of skills on the board remains fit for purpose. The chairperson is responsible for ensuring that essential skills are effectively refreshed and replaced through the appointment process. The chairperson 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.

3 Reporting and Compliance

3.1 Annual Reporting Requirements

- 3.1.1 Trust ports exist for the benefit of their stakeholders and reporting to them and the wider community should be a priority of every port board. While there is a requirement within section 42 of the Harbours Act for preparation of annual accounts, copied to Scottish Ministers, we would encourage boards to circulate reports as widely as possible. Boards should consider how this can best be done in respect of their stakeholders and local communities. Ports with websites should also publish their reports and accounts there.
- 3.1.2 The annual report should include a performance and efficiency statement, recording the performance against targets set for the year but these should be proportionate to the size and complexity of the operations being undertaken in each port.
- 3.1.3 Trust ports may also produce an annual 'strategy document'. This is not intended to result in the publication of commercially sensitive information. The document should address issues of interest to stakeholders in general terms. Typically, the document should contain information on the board, issues of accountability and port operation, current performance and future plans. Boards should make clear their targets for the coming period.
- 3.1.4 In the case of large trust ports, the strategy document may take its lead from a Port Master Plan, the production of which is now recommended for all major ports in England and Wales and we are aware that some larger Scottish trust ports have already adopted this approach where they feel it is appropriate for them to do so. A port master plan should be suited to the needs of the operation and while the Department for Transport guidance is available should Scottish ports wish to adopt it, it is not the intention to produce separate guidance on that subject.
- 3.1.5. Where a trust port considers itself too small to produce an annual strategy document, the board should instead consider a simple statement to accompany the accounts suitable to the nature and scale of its activity.

3.2 Accounts and Audit

- 3.2.1 The Harbours Act 1964 requires trust ports to deliver their annual reports and accounts to Scottish Ministers relating to harbour and associated activities.
- 3.2.2 Section 42 of the Harbours Act 1964 provides that, subject to any regulations previously made by the Secretary of State³, the accounts and reports to be delivered must be prepared in accordance with the provisions of the Companies Acts 1948-2006 relating to the form and content of company accounts and

³ The Statutory Harbour Undertakings (Accounts) Regulations 1983 exempted statutory harbour undertakings where turnover was less than £250,000 from the provisions of the Companies Acts referred to in the Harbours Act. It removed the exemptions, in relation to accounts, granted to small and 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.

reports⁴. In particular the trust ports report on matters covered by the accounts must be prepared in accordance with Companies Act requirements applicable to directors' reports. It is essential that all boards ensure that their accountants and auditors are conversant with the special provisions in relation to statutory harbour authorities. Local legislation may oblige an authority to prepare accounts and this will generally meet the requirements of the 1964 Act. Scottish Ministers will continue to take an interest in accounts and other planning documents provided to them by trusts

3.2.3 The purpose of a set of accounts is to provide a true and fair view of the business' financial performance, position and cash flows. To meet this purpose, the Companies Act 2006 permits an entity to prepare its accounts in accordance with either UK or International GAAP (note, however, that the consolidated accounts of listed entities must comply with International GAAP). Boards should ensure that their accounts are properly prepared in accordance with either UK or International GAAP in all material respects, in order to provide a true and fair view.

3.2.4 The accounts may be supplemented by a Business Review, contained in the Chairperson's Report. The Business Review should be forward-looking, comprehensive, neutral and comparable over time. The narrative should explain the main factors underlying the ports' current position and performance and how these will be affected by key trends or factors in the future.

3.2.5 It is also expected that the Business Review would include arrangements to repair or replace business critical plant and machinery when the need arises. Ports will need to be ready to meet the associated costs and should be considering alternative methods of financing these to achieve best value for money. Such methods may include the accumulation of a pool of liquid assets, funded by retained profits, to cover the eventuality that external financing may not be available when it is needed. Failure to make adequate plans to meet such costs may jeopardise the long-term survival of certain Ports and as such may represent a key strategic risk.

3.2.6 The Business Review should therefore discuss the risk of failure of business critical plant and machinery and the strategy adopted to mitigate this risk, including methods of financing replacement costs. Where the Port does not retain profits in the form of liquid assets as part of its financing strategy, the Business Review should note and explain the rationale for this approach.

3.2.7 The following provisions should also be reflected in trust ports' governance and reporting in proportion to the size of the operation:

- Board members should explain in the annual report their responsibility for preparing the accounts;
- Board members should report that the business is a going concern, or provide qualifications as necessary;

⁴ Board members and stakeholders should be aware that the Financial Reporting Review Panel and the Department for Business, Enterprise and Regulatory Reform have procedures for reviewing and investigating complaints regarding the annual accounts of companies in respect of departures from the accounting requirements of the Companies Acts. If persuaded they can apply to the courts for an order for the preparation of revised compliant accounts.

- The board should maintain a sound system of internal control to safeguard the port assets and the future benefits to stakeholders, in particular
 - The board should, at least annually, conduct a review of the effectiveness of the system of internal control,
 - It should include in its annual report that it has reviewed the system of internal control (financial, operational, compliance and risk), and
 - It should satisfy itself that at least one member of the audit committee, if appropriate, has recent and relevant financial experience;
- Any audit committee should have primary responsibility for the appointment, reappointment and removal of external auditors; and
- Where the auditor provides non-audit services, an explanation of how auditor independence is safeguarded should be included in the annual report.

3.3 Compliance

- 3.3.1 This guidance represents a code of good practice. All trust ports should review their governance arrangements against the standards set out here. The board, or, if applicable, its audit committee, should take on responsibility for oversight of implementation and adherence to this guidance and all other codes of practice within their port.
- 3.3.2 Trust ports should do all they can to comply with the guidance. Scottish Ministers acknowledge though, that not all trust ports will be in a position to comply with every provision. In some cases the size and nature of the trust port's operation may mean that a particular stipulation doesn't apply, or that compliance would be excessively burdensome. Trust boards should exercise their own judgement as to the essential elements for their operations and may seek clarification on the guidance as necessary from officials.
- 3.3.3 Annually as part of their report, trust ports may wish to detail their compliance with the guidance, and where they have not been able to comply, explain their reasons. This approach offers stakeholders the opportunity to see how far a trust port is meeting the good practice requirements set out here, and to challenge if not satisfied. In such an instance the port will be expected to respond constructively.
- 3.3.4 Scottish Ministers will monitor compliance with this guidance but interested parties should play their part in bringing to Ministers' attention any examples of unaccountable behaviour in the trust ports sector. If anyone believes that a board, its members or its officials are acting in a manner which:
- is illegal, improper, outside their powers, unethical or otherwise in breach of the principles of the trust port;
 - might involve maladministration, fraud, criminal or unlawful activity or misuse of port assets; or

- is otherwise inconsistent with this guidance or any other professional code

He or she 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 port should provide a written response to a complainant 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 his or her concern, the matter should be reported to Scottish Ministers who may assist in resolving any dispute in their role as “honest broker”.

3.3.5 The previous paragraph is not intended to discourage stakeholders from reporting matters to the police or other authorities, or issuing legal proceedings themselves, in appropriately serious cases.

3.3.6 However, Ministers have no locus in regulating commercial decisions or activities of a trust port. Nor do they become involved in 'good neighbour' disputes as these are matters for the board to resolve. Their interest is in ensuring that the board does not take decisions in an arbitrary unaccountable manner which is inconsistent with the spirit of this guidance.

3.4 Commercial Accountability

3.4.1 Trust port boards should transact port business in the interest of the whole community of stakeholders openly, accountably and with commercial prudence. Trust ports should be run as commercial businesses, seeking to generate a surplus which should be ploughed back into the port, or otherwise directed towards the interests of the port's stakeholders. Scottish Ministers expect trust ports to be operated efficiently and effectively, and to generate a commercially acceptable rate of return, consistent with their size and level of operations.

3.4.2 All trust ports should set themselves a target level of return for existing activities and new projects, determined by the board. The target level of return should reflect the need to provide a contingency and, in addition, make optimism bias adjustments commensurate with the perceived level of risks associated with any particular activity or investment.

3.4.3 In pursuing that target level of return, it is in the interests of all stakeholders that a trust port should set its dues, evaluate its investments, and charge for its services, at commercial and competitive rates, neither exploiting its status as a trust port to undercut the market, nor abusing a dominant position in that market.

3.4.4 Harbour dues must be set at a level that allows for proper maintenance of the trust port's harbour and/or conservancy duties, and geared to attaining the target level of profitability. Harbour Authorities in general have a duty to publish standard dues tariffs.

3.4.5 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. Users are first and foremost customers of the port, and the proceeds from their custom should be utilised prudently to maximise benefit to all stakeholders and in the best and most effective interest of the future of the trust port.

- 3.4.6 Investment policies too should be fair and equitable. A trust port's investment policy should be set out in broad terms in its accounts and strategy, for the benefit of stakeholders. A board should act not only to protect the commercial position of the port, but also to take investment opportunities which offer maximum benefit across the whole stakeholder group. Having regard to such wider stakeholder benefit may legitimately result in longer term investment planning, or other actions which bring additional benefits for stakeholders.
- 3.4.7 Ports of all complexions have the potential to compete with other users to offer services within the port area. As with dues and investment policies, it is essential that this competition be seen as fair and open. While it is legitimate to impose charges relating to services contributing to safety (including pilotage), protection of the environment or general well-being 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 the individual user's needs.
- 3.4.8 Having determined service levels, the board should be able to demonstrate that it has met these without incurring unreasonable cost. Boards should seek to obtain value for their 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 agreeing 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; and
 - considering the 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 good value?).
- 3.4.9 Users should be consulted about the provision of services and those services provided in-house may be the subject of market testing if this is considered to be the best option for the trust port and its stakeholders. The board should be able clearly to demonstrate in its annual efficiency statement that where it is providing in-house services, it does so to a standard that does not incur unnecessary costs for stakeholders, and should, subject to not breaching commercial confidentiality, justify its commercial decisions clearly.

3.5 Performance

- 3.5.1 As trust port boards hold the local monopoly right to exploit an asset (which can deliver public goods as well as private benefits), it is important that trust ports actively demonstrate in a suitable fashion, their levels of efficiency, and strive for improvement where necessary. It should be possible for a trust port's stakeholders to measure the performance of the port in a straightforward manner, to compare it with relevant market competitors, where these exist, and with the port's own historical performance. A great many larger trust ports already do this but for smaller ports it may be a daunting exercise and they may

wish to consider a simpler means of monitoring their performance on a less formal basis which better suits their activities and levels of income.

- 3.5.2 Annex B sets out a variety of performance indicators which, may be used by larger port businesses to provide an accurate picture of their performance year on year. They include indicators of both financial and operational efficiency, and also of wider impacts, which can be calculated relatively easily and aim to demonstrate the overall economic contribution that the port makes to the economy.
- 3.5.3 Reference to its performance should be a key element of any annual report and whether this is a detailed assessment against KPIs or a more straightforward statement is a matter for the board in keeping with the size of the undertaking and should not be seen as an undue burden on the resources of the smaller trust ports

3.6 Good Housekeeping

- 3.6.1 It is essential that the statutory and legal framework underpinning the effective operation of the trust port be maintained. This framework constrains the operation of the port. This means that the chief executive or harbour master 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 and/or harbour master should be tasked with keeping abreast of changes.
- 3.6.2 Port legislation, byelaws and compliance with the Port Marine Safety Code should be the subject of regular and automatic review and Boards should ensure this process is undertaken. 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.

4 The Future

4.1 Looking forward

- 4.1.1 All trust ports are encouraged to analyse their corporate structure and keep it under review, with a view to identifying opportunities to enhance their efficiency and get value from their assets. Ministers continue to recognise the effective mix of ports within the Scottish sector and are not aware of any issues that would require major changes.
- 4.1.2 Although we do not anticipate that those with a modernised constitution (following MTP in 2000) would need to make further revisions to comply with this guide we would encourage all trust ports particularly the smaller harbours to review their local legislation and constitution to ensure that it remains fit for purpose and does not impose outdated limits on port activities, including borrowings and reserves. Trust ports have been around for many years, centuries in some instances and they should continue to update themselves to meet the needs of modern commercial organisations.
- 4.1.3 While changes may be time and resource consuming for small ports, some have unfortunately discovered outdated or limited powers only when they needed to use them and we would encourage a regular review of older legislation so that powers held continue to meet the evolving needs of the port for the future. This should apply across the sector irrespective of size so ensure that, what is already a varied and successful group of ports continues to build on its assets and achievements to meet the challenges to come whatever they may be.
- 4.1.4 Transport Scotland would be happy to meet with any trust port to discuss any plans for review and to offer an informal opinion on any proposals in advance of a formal application. A guide to the Harbour Order process is available on the Transport Scotland website - <http://www.transportscotland.gov.uk/water/ports-harbours/order-guide>.
- 4.1.5 Annex E contains contact details which you may find helpful.

Principles of Appointment and Scrutiny

Adapted from the Code of Practice for Public Appointments in Scotland

Outcome-focused

Decisions and actions taken at each stage of an appointment process will enable the Board to appoint the applicant(s) who best demonstrate their merit in relation to the role and their ability to contribute effectively to the work of the board.

Applicant-focused

Applicants will experience an accessible, open and fair process that ensures confidentiality and provides equality of opportunity. They will receive accurate and constructive feedback that enables them to take appropriate action in relation to future appointment opportunities.

Appropriate

Decisions and actions taken at each stage of an appointment round will be tailored to the role to be filled and will demonstrate effective use of resources. Decisions and actions will be clear, will promote and demonstrate equality, will be accurately recorded and will be open to board scrutiny.

Independence

The Appointment panel must be independent and must not be constrained by special interests in reaching its decisions.

Transparency and Accountability

The process must be transparent with the board clearly accountable for decisions.

Aims of the appointment process

The skills and knowledge needed by the board are clear

Gaps to be filled are identified

An appropriate plan guides appointment activity

A range of able people is attracted to apply

Appropriate methods are used to identify the most able people

The most able people are recommended for appointment

The most able people are appointed and meet the needs of the board

People have confidence in the appointments made

The skills and knowledge needed by the board are maintained

Appointment decisions are communicated

Performance Indicators

Financial

Profitability (Profit (EBITDA^{*})/Turnover)

While not a measure of efficiency and rather a blunt measure of performance that does not take into account port size or asset base, profitability may in some cases be important in assessing a trust's health. Year on year data also allows effective identification of changes in performance.

* ie Earnings before interest, tax, depreciation and amortisation.

Return on Capital Employed (RoCE)

RoCE is a widely used measure of a company's success in generating return against an asset base and it therefore indicates how effectively the ports assets are being utilised. One way of looking at RoCE is the number of pence each pound of useable asset generates. For an individual port in isolation RoCE is not a particularly useful indicator but it can be a very useful comparator. Year on year data can assist in examining longer term changes in performance.

Weighted Average Cost of Capital (WACC)

It is possible to benchmark RoCE against WACC, which is the blended cost of financing a company's operations and represents the average cost of debt and equity funding weighted by the proportion of the company's capital structure that those two components constitute.

Gearing (Total Debt/Total Assets)

This can assist a company in assessing its financing position and it is also a useful comparator across sectors, potentially indicating whether there may be in/efficient financing and investment levels ie if gearing is very different between similar companies. For trust ports low gearing may not indicate inefficiency but may simply be a function of not having to pay a dividend since in the absence of further investment cash would instead be retained within the company.

Operational

Labour productivity (EBITDA/Man hours per annum)

A measure of operational performance can be gained from labour productivity. Undertaking this broad calculation allows a comparison across all ports. Man hours per annum can be obtained by the ports from Health and Safety Reports or other records.

Profitability of Land Holdings (EBITDA/Number of Hectares)

Number of hectares relates to the land the port owns and uses, owns and rents to others, and rents off-site for its own use. This is another indicator of asset utilisation.

Channel Depth Management

Channel depths could be reported alongside strategic justification for planned dredging, deepening and widening activities. In one sense channel depths alone are not a particularly useful indication but the strategic justification will give a transparent explanation as to why a particular approach has been taken. Channel depths are easily available as should be the justification and therefore how well the port is responding to the market.

Berth Utilisation (Time Berth in Use/Time Available)

Information on berth utilisation is recorded by ports that manage berths as this is an important tool in their management. An indicator on berth utilisation would provide a measurement that could reflect various operational performance issues such as under-utilisation, capacity issues etc that a port may be experiencing. It would also raise further issues in terms of, for example, a port which is not open 24/7, but could increase opening times to accommodate capacity requirements rather than invest in a new berth.

Wider Impact

Gross Value Added/Net Value Added

(Gross Value Added = Employee costs + EBITDA/Number of employees)

(Net Value Added = Employee Costs + EBITDA – DA)/Number of Employees).

GVA and NVA can be used as measures of the value added by a company. In effect, both measures the 'retained wealth' created by a company and its employees ie wages plus the profit made from undertaking its activities. This is also a proxy measure of the local economic impact of the port, assuming there is a high level of local employment and procurement. NVA subtracts the costs of depreciation and amortisation which takes into account the costs associated with its assets. These two indicators fit well with the wider stakeholder remit that trust ports have, in that they assess the wider impacts of a port's activity. We accept that that they are also quite crude in that they do not take into account some subtleties that affect a port.

List of Scottish Trust Ports

Aberdeen Harbour
Annan Harbour
Auchmithie Harbour
Avoch Harbour
Brownies Taing (Lerwick)
Burnmouth Harbour
Collieston Harbour
Cromarty Firth
Cromarty Harbour
Cruden Bay Harbour
Dunbar Harbour
Eyemouth Harbour
Fraserburgh Harbour
Gardenstown Harbour
Inverness Harbour
Lerwick Harbour
Mallaig Harbour
Montrose Port
North Berwick Harbour
Pennan Harbour
Peterhead Port
Port Seton Harbour
River Nith Navigation
Rosehearty Harbour
Scrabster Harbour
Skerry Harbour
St Abbs Harbour (Coldingham Shore)
St Andrews Harbour
St Margaret's Hope Pier (Sth Ronaldsay)
Stornoway Port
Tarbert (Loch Fyne) Harbour
Ullapool Harbour
Urr Navigation
Whitehills Harbour
Wick Harbour

Sample documents

| |
|------------------------------|
| Reference (for official use) |
|------------------------------|

APPOINTMENT OF BOARD MEMBERS

APPLICATION FORM

STRICTLY CONFIDENTIAL

Before filling in this form please read the accompanying *Information for Prospective Board Members*, which defines the selection criteria more fully and describes the requirements of the position. Please print clearly, using dark ink.

PERSONAL DETAILS

| | | |
|-------|--------------|---------|
| Title | Forename (s) | Surname |
|-------|--------------|---------|

| | |
|-------------------|--------|
| Permanent Address | |
| Postcode | e-mail |

| |
|---------------------|
| Telephone (daytime) |
|---------------------|

| |
|---|
| Address for Correspondence (if different) |
|---|

PROFESSIONAL QUALIFICATIONS

PRESENT PRINCIPAL OCCUPATION

OTHER APPOINTMENTS

Please provide details of other public appointments or directorships held at present or previously, including those on any other Port Authority.

| Organisation and Position | Appointed by | Time Commitment | Period of Appointment |
|---------------------------|--------------|-----------------|-----------------------|
| | | | |
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EXPERIENCE

To achieve a balance of expertise on the Board, candidates are required to provide evidence of their professional and personal experience in one or more of the following:

- The trade and industry of the North east of Scotland, preferably with knowledge of the freight or maritime transport sector;
- Knowledge and interest in the local and wider community and the economic and social context within which the Port operates.

With reference to your professional and personal circumstances please describe your specific experience in the following areas, including how recently and in what capacity you acquired your knowledge and also how often you apply this.

The trade and industry of the North east of Scotland

Knowledge and interest in the local and wider community and the economic and social context within which the Port operates

Other skills and experience

PERSONAL QUALITIES

To allow the appointing panel to assess how your background and personal qualities would contribute to the Board's work please describe briefly, drawing on your professional and personal life, including any voluntary work, how your own personal qualities meet the following criteria:

The ability to formulate and discuss strategic subjects in a boardroom environment in a coherent and structured way

The ability to contribute effectively and impartially to group discussions involving a wide range of subject matter and people, including specialists and professionals

A depth of management or specialist expertise without personal bias towards any particular sector of activity.

REFERENCES

Please provide contact details for two referees who can provide references as to your suitability for this position. All references will be taken up and should not be enclosed with your application.

| | |
|---------------|---------------|
| Name | Name |
| Address | Address |
| Telephone No. | Telephone No. |

DECLARATION

I have read the information provided about these appointments. In addition to the information requested, I have disclosed any other information that is relevant to my suitability as a public appointee – for example any convictions or bankruptcies or anything such as business interests or personal relationships that might lead to a question of a conflict of interest. I confirm to the best of my knowledge that the information I have provided is accurate and not misleading. I realise that failure to disclose relevant information or the provision of inaccurate or misleading information may result in an appointment being terminated.

Signature.....

Date.....

An Overview of the Port

Trust Port Status

_____ Harbour Board is a trust port authority. There are approximately 100 such port authorities in the UK, autonomous bodies that were created by local Acts of Parliament. Trust ports are not Government-owned and are not treated as part of the public sector.

All trust ports operate on broadly commercial lines, but are limited financially to operating from within their revenue, often supplemented by commercial loans up to borrowing limits set in their constitutions. They cannot raise venture capital, and any profits from their activities are reinvested in the port for the benefit of users.

The powers of the Board and the constitution thereof are laid down in the

Skills and Qualities Sought in Potential Board Members

The objective of the selection process is to ensure that the Board continues to have an appropriate balance of skills, competencies and experience to provide it with leadership and effective strategic direction. The Board should have:

- Specialist knowledge of subjects which are relevant to the port (e.g. financial, legal or operational);
- Interest in the organisation of the port without becoming too identified with it;
- Knowledge of relationships between the port and Central Government departments and the Scottish Government;
- An understanding of the legal and statutory framework within which the port operates and the duties and obligations this places on the Board.

In order to achieve an appropriate balance of expertise on the Board candidates will be required to provide evidence of their professional or personal experience in one or more of the following areas;

- The trade and industry of the North east of Scotland, preferably with knowledge of the freight or maritime transport sector, and/or

- Knowledge and interest in the local and wider community and the economic and social context within which the Port operates.

Candidates will also need to demonstrate the following personal qualities:-

- An ability to formulate and discuss strategic subjects in a boardroom environment in a coherent and structured way;
- The ability to contribute effectively and impartially to group discussions involving a wide range of subject matter and people, including specialists and professionals, and
- A depth of management or specialist expertise without personal bias towards any particular sector of activity.

The Board is committed to incorporating the standards and objectives of the Guide to Good Governance for trust ports, which require the annual performance of Board members to be assessed.

7 How to Apply

To apply, please complete and return the accompanying application form to the Board _____ . Candidates should ensure that their application is received at the correct address by the closing date (**12.00 noon on**). Late applications will not be considered.

Candidates should set out reasons for wishing to be considered for appointment and what they consider are the qualities and skills that they would bring to the Board. Candidates should note that the appointing panel will only accept completed application forms and up to two accompanying information sheets on A4 paper.

Curriculum Vitae or other personal profile documents will not be accepted.

Candidates selected for interview will be asked to provide evidence of qualifications and will be required to provide details of two sources of references, which will be taken up.

Applications may be kept on file for future reference unless specifically requested not to do so.



Aberdeen Harbour is Europe's premier marine support centre for the oil and gas industry and the main commercial port serving North-east Scotland.

The harbour has regular roll on/roll off ferry services to Scandinavia and shipping connections to 35 countries worldwide.

It is also the principal mainland ferry port serving the Northern Isles of Orkney and Shetland and a popular destination for cruise vessels.

The administration and maintenance of the port is the responsibility of Aberdeen Harbour Board, an independent trust authority consisting of nine non-executive and three executive members.

We are seeking applications to fill two non-executive vacancies on the Board from candidates with a keen interest in the activities and business of the Port. Commitment and experience can be as valuable as qualifications. Applicants will be required to work with senior and professional staff and an ability to grasp complex issues quickly is important, as is experience of achieving results in a committee or board environment.

Applicants will also be required to demonstrate ability and a proven track record in their chosen profession or other activities and, to complement the existing range of expertise on the Board, should ideally have professional or personal experience in one or more of the following areas:

- The trade and industry of the North-east of Scotland, preferably with knowledge of the freight or maritime transport sector;
- Knowledge and interest in the local and wider community and the economic and social context within which the Port operates

Aberdeen Harbour Board is committed to equality of opportunity, encouraging a diverse range of applicants, and to the principle of appointments on the basis of merit with openness and transparency of process in accordance with the Guide to Good Governance for Trust Ports. Appointments will be for an initial term of three years, commencing 1 January 2011. Board members are expected to devote up to two days per month to the work of the Board and are remunerated.

For further information and an application form please contact:

Ian Jessiman, Board Secretary
Aberdeen Harbour Board, 16 Regent Quay, Aberdeen AB11 5SS
Tel: 01224 597003 or **e-mail: i-jessiman@aberdeen-harbour.co.uk**
or see **www.aberdeen-harbour.co.uk**

Closing date for applications 12.00 noon on Friday 1 October 2010.

Useful contacts

Ports & Harbours Branch

Chris Wilcock - 0131 244 7488 - Chris.Wilcock@transportscotland.gsi.gov.uk

Pauline McMillan – 0131 244 7273 - Pauline.McMillan@transportscotland.gsi.gov.uk

Val Ferguson – 0131 244 7878 - Val.Ferguson@transportscotland.gsi.gov.uk

Nick Gosling – 0131 244 5022 - Nick.Gosling@transportscotland.gsi.gov.uk

Marine Scotland Licensing team - 01224 295579

<http://www.scotland.gov.uk/Topics/marine/Licensing/marine>

Equality Impact Assessment - Results

| | |
|---|--|
| Title of Policy | Modern Trust Ports for Scotland |
| Summary of aims and desired outcomes of Policy | Refresh of guidance on governance of trust ports. <ul style="list-style-type: none"> • to include more Scotland centric issues of relevance to the sector • provide inclusive guidance suitable for trusts of all sizes and types of operation |
| Directorate: Division: team | Transport Scotland, Aviation Maritime, Freight & Canals Directorate, Ports & Harbours Branch |

Background

Following the issue of revised guidance by Department for Transport in 2009 it was decided that Scotland would produce its own revision of the original 2000 guidance to meet the different issues affecting the sector in Scotland. The guidance is non mandatory and relates to the governance of trusts and not to the operational aspects of port business.

Our aim was to include flexibility for smaller trusts in particular and meet the needs of the wide variety of Scottish trust ports.

The EQIA was considered by ports branch officials with input from equalities specialists.

The Scope of the EQIA

The equality impacts of this guidance were considered to be limited to the protected characteristics of gender as the ports industry is generally male dominated and women are under represented on port boards based on available membership data.

Key Findings

From information available on port websites and annual reports it was noted that only 6 ports (out of more than 30 in the trust sector) could be identified with any women board members.

Recommendations and Conclusion

To address the apparent under representation of women a line encouraging increased participation was included in section 2 of the guidance.

Further copies of this document are available, on request, in audio and large print formats and in community languages (Urdu; Bengali; Gaelic; Hindi; Punjabi; Cantonese; Arabic; Polish).

اس دستاویز کی مزید کاپیاں آڈیو کیسیٹ پر اور بڑے حروف کی چھپائی میں اور کیوئی کی زبانوں میں طلب کیے جانے پر دستیاب ہیں، برائے مہربانی اس پتے پر رابطہ کریں:

এই ডকুমেন্ট-এর (দলিল) অতিরিক্ত কপি, অডিও এবং বড়ো ছাপার অক্ষর আকার এবং সম্প্রদায়ের ভাষায় অনুরোধের মাধ্যমে পাওয়া যাবে, অনুগ্রহ করে যোগাযোগ করুন:

Gheibhear lethbhreacan a bharrachd ann an cruth ris an èistear, ann an clò mòr agus ann an cànan coimhearsnachd. Cuir fios gu:

इस दस्तावेज़/कागजात की और प्रतियाँ, माँगे जाने पर, ऑडियो टैप पर और बड़े अक्षरों में तथा कम्प्यूनिटी भाषाओं में मिल सकती हैं, कृपया संपर्क करें:

ਇਸ ਦਸਤਾਵੇਜ਼/ਕਾਗਜ਼ਾਤ ਦੀਆਂ ਹੋਰ ਕਾਪੀਆਂ, ਮੰਗੇ ਜਾਣ 'ਤੇ, ਔਡੀਓ ਟੇਪ ਉੱਪਰ ਅਤੇ ਵੱਡੇ ਅੱਖਰਾਂ ਵਿਚ ਅਤੇ ਕੰਮਿਊਨਿਟੀ ਭਾਸ਼ਾਵਾਂ ਦੇ ਵਿਚ ਮਿਲ ਸਕਦੀਆਂ ਹਨ, ਕ੍ਰਿਪਾ ਕਰਕੇ ਸੰਪਰਕ ਕਰੋ:

此文件有更多備份，如果需要，語音版本和大字體版本及少數種族語言版本也可提供，請聯絡：

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Aby otrzymać niniejszy dokument w innej wersji językowej, na kasecie lub w wersji z powiększonym drukiem, prosimy o kontakt:

Transport Scotland, Buchanan House,
58 Port Dundas Road, Glasgow, G4 0HF
0141 272 7100

info@transportscotland.gsi.gov.uk
www.transportscotland.gov.uk

ISBN: 978-1-908181-62-6

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Published by Transport Scotland, November 2012
Produced for Transport Scotland by APS Group Scotland

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