

Port Marine Safety Code

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's web site in accordance with the W3C's Web Accessibility Initiative's criteria. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard, please contact the Department.

Department for Transport
Great Minster House
76 Marsham Street
London SW1P 4DR
Telephone 020 7944 8300
Web site www.dft.gov.uk

© Crown copyright, 2009.

Copyright in the typographical arrangement rests with the Crown. This publication, excluding logos, may be reproduced free of charge in any format or medium for non-commercial research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

For any other use of this material please apply for a Core Click-Use Licence at www.opsi.gov.uk/click-use/index.htm, or by writing to the Licensing Division, Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU, or e-mail: licensing@opsi.gov.uk

To order further copies of this publication contact:

DfT Publications
Tel: 0870 1226 236
Fax: 0870 1226 237
Textphone: 0870 1207 405
E-mail: dftinf@capita.co.uk

This document is also available on the DfT website: www.dft.gov.uk

Published by the Department for Transport

Printed in Great Britain October 2009

ISBN: 978-1-84864-035-1

100% recycled
When you have finished with
this item please recycle it

Contents

Preface	4
Introduction	5
A Summary of the Port Marine Safety Code	8
The Port Marine Safety Code	11
1. Background	12
2. Accountability for Marine Safety	14
3. Key measures needed for compliance	18
4. General Duties and Powers	23
5. Specific Duties and Powers	27
End notes	34

Preface



The government is committed to improving safety wherever it can and especially for those who use or work in ports.

Our ports and harbours generally have a good safety record and serious incidents are rare. Marine operations are hazardous, but they can be conducted safely if the hazards and risks have been properly assessed and appropriate systems are in place. We want to see the widest possible adoption of good practice; to encourage industry to learn from past incidents and to guard against complacency. The new versions of this Code and Guide will provide the ports industry with a clear reference source for matters relating to port marine safety.

The documents were prepared with industry, and provide a good example of what we can achieve when government and industry work together to address common aims. The Government will continue to work with industry to implement this Code.

Our common goal is to make the prevailing standards higher and ports even safer.

A handwritten signature in black ink, which appears to read "Paul Clark". The signature is written in a cursive style and is positioned above a horizontal line.

Paul Clark MP
Parliamentary Under Secretary of State for Transport

Introduction

The Port Marine Safety Code (the Code) applies to all harbour authorities in the UK that have statutory powers and duties. It has been developed with help from a wide range of interested parties in the ports and shipping industries.

The Code is primarily intended for the “duty holder” – for most harbour authorities this means members of the harbour board, both individually and collectively - who are directly accountable for marine safety in harbour waters. All board members are therefore, urged to familiarise themselves with the updated Code and review its implications on local port operations.

These authorities have serious legal duties relating to the safety of people who use our harbours and their property, and to the well being of the port environment and community. The responsibility for maintaining safety in our ports is governed not only by marine legislation, such as the Pilotage Act 1987 and Merchant Shipping Act 1995 that are referred to in the Code, but also under general legislation, such as the Health and Safety at Work Act and the Dock Regulations.

This Code establishes the principle of a national standard for every aspect of port marine safety and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment. It applies to port marine operations the well-established principles of risk assessment and safety management systems. It provides a measure by which harbour authorities can be accountable for the legal powers and duties which they have to run their harbours safely and help to discharge their obligations effectively.

The supporting “Guide to Good Practice on Port Marine Operations” (the Guide) complements the Code and provides harbour authorities with generic advice and examples about how they might meet the requirements under the Code.

Updating the Code and the Guidance

At the end of 2008, it was clear that both documents needed to be updated to take account of the new developments over the last few years. A working group was established which included representatives from the Department for Transport (DfT), the Maritime and Coastguard Agency (MCA) and industry.

Because of the duplication between the two documents, it was decided that the Code – which was originally in two parts – should be condensed and simplified into a single document of five chapters. Key elements of Part 2 (measures) of the Code can now be found under chapter three of this document, or under the relevant sections of the Guide.

The most significant revisions to the Code include:

- a reference to relevant national legislation that has come into force since its original publication in 2000;
- a two-page summary of the main points of the Code; and
- clarification of key elements, including the role of the “duty holder”.

There have also been several changes to the Guide. The new version of the Guide includes:

- a revised section 4 covering risk assessment and the marine safety management system;
- active links to useful websites, such as relevant MAIB publications and reports;
- details about MCA’s verification visits and compliance exercises; and
- a new section on incident investigation (section 12).

It is the Government’s intention to review and update the Code at least once every three years. The Guide, which was always envisaged to be a living document for marine practitioners, will now be maintained by the ports industry and reviewed on an annual basis.

Status of the Code

The Code refers to some of the existing legal duties and powers that affect harbour authorities in relation to marine safety, but it does not – in itself - create any new legal duties for harbour authorities. There are however several additional measures which, although not mandatory under legislation, are key to its successful implementation. In order to comply with the Code therefore, harbour authorities must:

- be aware of their existing powers and duties;
- appoint someone as an independent ‘designated person’ with direct access to the board;
- develop an effective marine safety management system, which employs formal risk assessment techniques;
- employ people who are competent and qualified for the positions they hold; and
- publish a comprehensive safety plan, along with a regular assessment showing the authority’s performance against the plan.

Harbour authorities would be well advised to secure powers of general direction, to support the effective management of vessels in their harbour waters.

Devolution

Under the devolution settlements, marine safety is a reserved matter. However, there are a few areas that are referred to – such as some aspects of pilotage and some responsibilities in Welsh fishing ports – which are devolved matters. As far as possible, any alternative procedures that are followed in Scotland, Wales and Northern Ireland are referred under the end notes section.

Implementation

The Government, other regulatory authorities and the industry associations have a very strong expectation that all harbour authorities will comply with the Code. Authorities should note that:

- The Code does not contain new legal obligations, but includes – amongst other things - references to the main legal duties which already exist;
- As such, failure to comply is not an offence in itself. However, the Code represents good practice as recognised by a wide range of industry stakeholders and a failure to adhere to good practice may be relevant to whether the harbour authority is in breach of certain legal duties. Moreover, the authority may suffer reputational damage if it has publicly committed to the Code's standards and then fails to meet them.
- Periodically and /or following an incident, the regulatory authorities will seek assurance that all ports are complying with the Code. The Government will monitor levels of compliance to assess its effectiveness in delivering improved safety.

Enquiries

Enquiries about this Code should be made to:

The Department for Transport
Ports Division
Zone 2/34
Great Minster House
76 Marsham Street
London SW1P 4DR
ports@dft.gsi.gov.uk
Tel 020 7944 4446 or 5097

A Summary of the Port Marine Safety Code

The Port Marine Safety Code (the Code) applies to all harbour authorities. The Code is primarily intended for “the duty holder” who is directly accountable for the safety of marine operations in their waters and approaches. In most authorities, the harbour board is the duty holder, so board members should regard themselves as individually and collectively responsible for meeting the Code’s standards.

The Code has been developed to improve safety in UK ports and to enable harbour authorities to manage their marine operations to nationally agreed standards. It provides the standard against which the policies, procedures and the performance of harbour authorities can be measured. It also describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. As well as complying with these duties and powers, the authority must develop an effective marine safety management system based on formal risk assessment. When fully implemented, the Code should reduce the risk of incidents occurring in harbour waters and provide some protection for the duty holder if an incident does occur.

In order to comply with the Code, the duty holder on behalf of the harbour authority must:

1. **Review and be aware** of their existing powers based on local and national legislation;
2. **’Comply** with the duties and powers under existing legislation, as appropriate;
3. **Ensure all risks are formally assessed** and as low as reasonably practicable in accordance with good practice;
4. **Operate an effective marine safety management system (SMS)** which has been developed after consultation and uses formal risk assessment;
5. **Use competent people** (i.e. trained, qualified and experienced) in positions of responsibility for safety of navigation;

6. **Monitor, review and audit** the marine SMS on a regular basis – an independent **designated person** has a key role in providing assurance for the duty holder;
7. **Publish a safety plan** showing how the standard in the Code will be met and a report assessing the performance against the plan;
8. **Comply with directions** from the General Lighthouse Authorities and supply information & returns as required.

In addition, harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation.

It is strongly advised that the duty holder and all officers involved in marine safety consider the guidance provided on how to comply with this Code and review the lessons learnt from incidents which have occurred in harbours. Guidance can be found in “*A Guide to Good Practice on Port Marine Safety Operations*”; recommendations and the common lessons that can be learnt from major incidents can be found on the **Marine Accidents Investigation Branch** website.

The Code is divided into four main sections:

1. Accountability for marine safety: This part identifies who is accountable for marine safety in the harbour waters and the approaches. It is based on these general principles:-

- A. The duty holder, on behalf of the harbour authority is accountable for managing operations within the port safely and efficiently.
- B. Harbour authorities should make a clear published commitment to comply with the standards laid down in this Code.
- C. Executive and operational responsibilities for marine safety in harbour authorities must be clearly assigned, and those entrusted with these responsibilities must be answerable for their performance.
- D. A ‘designated person’ must be appointed to provide independent assurance about the operation of its marine safety management system. The designated person must have direct access to the board.

2. Key measures needed for compliance.

- E. Powers, policies, plans and procedures should be based on a formal assessment of hazards and risks, and harbour authorities should have a formal marine safety management system.
- F. The marine safety management system should be in place to ensure that all risks are controlled – the more severe ones must either be eliminated or kept “as low as reasonably practicable” (ALARP).
- G. All parties involved in the management and safety of navigation must be competent and qualified up to a minimum national standard.

- H. Harbour authorities should monitor, review and audit the marine safety management system on a regular basis.
- I. Harbour authorities should publish plans and an assessment of their performance in meeting their obligations under the Code, at least once every three years.

3. General duties and powers: For the purposes of this Code, the duty holder should ensure that the harbour authority discharges its responsibilities to:

- J. Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property.
- K. Conserve and promote the safe use of the harbour; and to prevent loss or injury caused by the authority's negligence.
- L. Have regard to the efficiency, economy and safety of operation as respects the services and facilities provided.
- M. Take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of the harbour.
- N. Ensure that enough resources are available to discharge their marine safety obligations and set the level of dues accordingly.

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

- O. Powers to direct vessels are available and should be used to support safe navigation.
- P. Dangerous vessels and dangerous substances (including pollution) must be effectively managed.
- Q. A pilotage service must be provided if required in the interests of safety.
- R. Harbour authorities have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks, obstructions or changes in the navigable waterway effectively managed.

The Port Marine Safety Code

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

1. Background

- 1.1. The Code includes a brief general summary of the main duties and powers that are common to many harbour authorities in relation to marine operations. It also contains guidance as to how some of these duties and powers should be exercised consistent with good practice.

There are several general principles -

- A harbour authority has statutory and non-statutory duties.
- These duties include an obligation to conserve and facilitate the safe use of the harbour; and a duty of care against loss caused by the authority's negligence.
- Duties to ensure the safety of marine operations are matched with general and specific powers to enable the authority to discharge these duties.

There are procedures for these to be changed where necessary.

- 1.2. Some duties, and each harbour authority's powers, are contained in local Acts and Orders, and, although they have much in common, the detail varies from port to port. Most are established by the incorporation or transposition into local Acts and Orders of model provisions in the Harbours, Docks and Piers Clauses Act 1847. Other duties and powers are in general legislation - for example, the Harbours Act 1964, the Dangerous Vessels Act 1985, the Pilotage Act 1987 and the Merchant Shipping Act 1995. This Code is designed to provide general guidance and so while it describes typical powers and duties, it is not practicable for it to cover the specific legal position for each port, and it should not be relied upon for that purpose. Authorities should check their local Acts and Orders if there is doubt (for example) as to whether they have all of the common duties and powers described in this Code.

Harbour authorities subject to the Code

- 1.3. The Code applies to every harbour authority with statutory powers and duties, including competent harbour authorities¹, which have specific powers and duties for marine pilotage. It is written to apply to ports of all

sizes, irrespective of resources, cargoes handled or levels of traffic. Any harbour authority with statutory powers in relation to shipping and safety of navigation will be affected to some degree.

Functions to which the Code applies

- 1.4. The Code is concerned with harbour authority responsibilities for port marine safety but does not purport to cover all the duties and responsibilities of harbour authorities, or even all their safety responsibilities. The Code does not, for example, relate to duties and responsibilities deriving from health and safety legislation,² and (with some exceptions) those relating to the safety of vessels under the Merchant Shipping Acts. However, it has been designed so that compliance with the good practice guidance in the Code should be fully compatible with compliance with harbour authorities' other duties and responsibilities.

2. Accountability for Marine Safety

2.1. This chapter identifies who is accountable for maritime safety in harbour waters and their approaches. It is based on these general principles:-

- The duty holder, on behalf of the harbour authority is accountable for managing operations within the port safely and efficiently.
- Harbour authorities should make a clear published commitment to comply with the standards laid down in this Code.
- This Code represents the national standard against which the policies, procedures and performance of harbour authorities may be measured.
- Executive and operational responsibilities for marine safety must be clearly assigned, and those entrusted with these responsibilities must be answerable for their performance.
- A 'designated person' must be appointed to provide independent assurance about the operation of its marine safety management system. The designated person must have direct access to the board.

2.2. The key to effective discharge of the functions described in this Code is the development and operation of a marine safety management system for marine operations. That in turn depends upon a clear assignment of relevant executive and operational responsibilities to the authority's officers.

The duty holder

2.3. Each harbour authority must have a "duty holder" who is accountable for its compliance with the Code and its performance in ensuring safe marine operations in the harbour and its approaches. For most harbour authorities, the role of duty holder is undertaken by members of the harbour board who are (both collectively and individually) accountable for marine safety under the Code.

- 2.4. If however, the harbour board is not directly accountable for marine safety, or has limited decision-making powers in this respect, it is acceptable for the role of duty holder to reside elsewhere. This might be the position in some municipal ports for example, where accountability for marine safety is overseen by a local authority committee. If the duty holder is not the harbour board, the harbour authority must publish and confirm who the duty holder is.
- 2.5. The role of the duty holder includes:
- maintaining strategic oversight and direction of all aspects of the harbour operation, including marine safety;
 - responsibility for the development of policies, plans, systems and procedures for safe navigation;
 - ensuring that assessments and reviews are undertaken as required, to maintain and improve marine safety; and
 - ensuring that the harbour authority seeks and adopts appropriate powers for the effective enforcement of their regulations, and for setting dues at a level which adequately funds the discharge of all their duties.
- 2.6. Harbour authorities have powers to appoint a harbour master, to authorise pilots and may properly entrust the operation of the harbour to such professional people; but the duty holder cannot assign or delegate its accountability for compliance with the Code.
- 2.7. All board members should take time to gain an appropriate insight and understanding of the port's marine activities, marine safety management system and supporting systems. This can be accommodated through briefings and operational visits. Serious consideration should be given to appointing a member to the board who has relevant maritime experience, who can act as the initial point of contact for the designated person.

The designated person

- 2.8. Each harbour authority must appoint an individual as the **designated person** to provide independent assurance directly to the duty holder that the marine safety management system, for which the duty holder is responsible, is working effectively. Their main responsibility is to determine, through assessment and audit, the effectiveness of the marine safety management system in ensuring compliance with the Code.
- 2.9. In order to fulfil this function the designated person must have a thorough knowledge and understanding of the requirements of this Code (and supporting Guide to Good Practice) and associated port and marine legislation. Their role does not obscure the accountability of the authority and its board members.

Chief executive

2.10. The Chief Executive is accountable for the operational and financial control of the authority. They advise the authority on all matters related to its duties and powers, with appropriate advice from the harbour master and other officers. He or she will:

- a) oversee the implementation of its policies and decisions;
- b) have overall executive responsibility for the safety of operations and staff; and
- c) will oversee the recruitment and training of staff.

Harbour master

2.11. The harbour master has day-to-day responsibility for the safe operation of navigation and other marine activities in the harbour and its approaches. The post holder must be competent and a suitably qualified person, with sufficient experience for the role. They must also be competent to undertake other relevant duties, in relation to Health & Safety at Work and Merchant Shipping legislation.

2.12. The harbour master:

- a) has powers of direction to regulate the time and manner of ships' entry to, departure from and movement within the harbour waters, and related marine safety purposes.
- b) ensures the co-ordination and regulation of all vessels within the harbour and its approaches. He may also be responsible for developing and implementing emergency plans and procedures, for regulating dangerous goods in transit on ships and for counter-pollution and waste disposal plans.

2.13. In relation to the authority's conservancy duties, the harbour master would normally have overall responsibility for the provision and maintenance of any aids to navigation.

The authority's officers

2.14. The appointment of officers is a matter for the authority. Delegations must be clear, formal and must not obscure the accountability of the authority and its board members. It is important that:

- a) executive and operational responsibilities are appropriately assigned to properly trained people;
- b) if some of the functions are combined, a proper separation of safety and commercial activities needs to be maintained; and
- c) all employees must have training that is appropriate for their level of responsibility.

- 2.15. Delegations are no substitute for the authority (the duty holder) being directly involved in safety management. Therefore, at least one principal officer, holding delegated responsibilities for safety, should attend board meetings.

3. Key measures needed for compliance

- 3.1. In addition to carrying out duties and applying the powers outlined in chapters four and five of this Code, harbour authorities must also develop and maintain an effective marine safety management system. Plans and reports should also be published as a means of improving the transparency and accountability of harbour authorities, as well as providing reassurance to the users of port facilities. Harbour authorities may find it useful to consider past events and incidents; to recognise potential dangers and the means of avoiding them.
- Powers, policies, plans and procedures should be based on a formal assessment of hazards and risks, and harbour authorities should have a formal marine safety management system.
 - The marine safety management system should be in place to ensure that all risks are controlled – the more severe ones must either be eliminated or kept “as low as reasonably practicable” (ALARP).
 - All parties involved in the safety of navigation must be competent and qualified up to a minimum national standard.
 - Harbour authorities should monitor, review and audit the marine safety management system on a regular basis.
 - Harbour authorities should publish plans and an assessment of their performance in meeting their obligations at least once every three years.
- 3.2. In order to comply with the Code, harbour authorities need to follow these steps below.

Review existing powers

- 3.3. Existing powers should be reviewed on a periodic basis by harbour authorities, to avoid a failure in discharging its duties or risk exceeding its powers. A summary of the main duties and powers for harbour authorities are included under chapters four & five of this Code; not all of these are relevant to every harbour authority.

- 3.4. Harbour authorities must understand their local legislation - harbour acts, harbour orders and byelaws - as well as the procedures and systems that are in place. Additional powers should be sought by the harbour authority, if a risk assessment concludes that this would be the best means of meeting its safety obligations. Harbour authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not have them already.

Use formal risk assessment

- 3.5. The risks associated with marine operations need to be assessed and a means of controlling them needs to be deployed. The aim of this process is to eliminate the risk or, failing that, to reduce risks to as low as reasonably practicable. Formal risk assessments should be used to:
- identify hazards and analyse risks;
 - assess those risks against an appropriate standard of acceptability; and
 - where appropriate, consider a cost-benefit assessment of risk reducing measures.
- 3.6. Risk assessments should be undertaken by people who are qualified or appropriately skilled to do so, especially when deciding which techniques to use and when interpreting the results. Risks should be judged against objective criteria, without being influenced by the financial position of the authority, to ensure they are kept as low as reasonably practicable (ALARP). The greater the risk, the more likely it is that it is reasonable to go to the expense, trouble and invention to reduce it. There is a preferred hierarchy of risk control principles -
- eliminate risks - by avoiding a hazardous procedure, or substituting a less dangerous one;
 - combat risks - by taking protective measures to prevent risk;
 - minimise risk - by suitable systems of working.
- 3.7. The process of assessment is continuous, so that new hazards to navigation and marine operations and changed risks are properly identified and addressed. Where appropriate, harbour authorities should consider publishing relevant details of their risk assessments.

Implement a marine safety management system

- 3.8. A safety management system - which manages the hazards and risks along with any preparations for emergencies – must be developed, implemented and maintained. This should be operated effectively and revised periodically.

- 3.9. This system should incorporate safety policies and procedures to:-
- ensure there is proper control of ship movements by regulating the safe arrival, departure and movement within the harbour of all vessels;
 - protect the general public from dangers arising from marine activities within the harbour;
 - carry out all its functions with special regard to the possible environmental impact;
 - prevent acts or omissions that may cause personal injury to employees or others.

It should also:

- confirm the roles and responsibilities of key personnel at the harbour authority;
 - outline present procedures for marine safety within the harbour (including the port approaches);
 - measure performance against targets (harbour authorities must have a database or system to record incidents, including near misses);
 - refer to emergency plans that would need to be exercised; and
 - be audited (internally) on an annual basis.
- 3.10. A statement about the standard of the port's performance should be included in the authorities' annual report.
- 3.11. Where appropriate, the marine safety management system should assign responsibility for associated matters - such as the safety of berths; for maintaining channels; hydrographic surveys; environmental monitoring; and the provision of appropriate engineering and environmental advice.

Consultation

- 3.12. Harbour authorities should consult, as appropriate, those likely to be involved in or affected by the marine safety management system they adopt. This opportunity should be taken to develop a consensus about safe navigation in the harbour.

Competence standards

- 3.13. Under the Code, all persons involved in the management and execution of marine services should be qualified and trained to the appropriate national standard³. Harbour authorities must assess the fitness and competence of all persons appointed to positions with responsibility for safe navigation. Achieving marine port safety is a team operation and people in these roles must be competent and adequately trained.

Incident investigation:

3.14. However effective the safety management regime is, marine incidents do occur in harbours. Such incidents may involve death, serious injury, pollution and other undesirable outcomes and they may involve breaches of national or local laws.

Investigations by the harbour master of marine incidents have two essential purposes:

- a) to determine the cause of the incident, with a view to preventing a recurrence of that incident (or similar); and
- b) to determine if an offence has been committed: if so, there may be the need on the part of a harbour authority to initiate enforcement action that may lead to prosecution in their own right or through an agency of another authority such as the Police or the MCA.

3.15. It is, therefore, essential that the marine safety management system addresses the potential for incidents to occur and to provide instruction and guidance on any investigations and enforcement action that may be required as a result. By ensuring that a robust, rigorous, independent investigation has been carried out, the board and the duty holder can be assured that their obligations for compliance have been addressed.

Statutory reporting requirements:

3.16. Harbour authorities should report any accident which meets the criteria established by the MAIB, to the chief inspector and any other appropriate authorities, by the quickest means available.⁴

Monitoring performance and auditing

3.17. The marine safety management system must have a regular and systematic review of its performance. This should be based on information from monitoring the system itself and from independent audits of the whole system. Performance of the system should be assessed against internal performance indicators and where appropriate, by benchmarking against other ports that have adopted good practice.

Enforcement

3.18. Harbour authorities must demonstrate that all policies and procedures are properly and effectively enforced, and that adequate resources are available for this purpose.

Publication of plans and reports

3.19. To demonstrate the authority's commitment to maritime safety and ensure the involvement of harbour users, a safety plan for marine operations should be published at least once every three years. The plan

should illustrate how the policies and procedures will be developed to satisfy the requirements under the Code. It should commit the authority to undertake and regulate marine operations in a way that safeguards the harbour, its users, the public and the environment. It should refer to commercial activities in the harbour; the efficient provision of specified services and the effective regulation of shipping. It should also explain how commercial pressures would be managed without undermining the safe provision of services and the efficient discharge of its duties.

- 3.20. The duty holder must also publish an assessment of the harbour authority's performance against the plan. Information gathered from the monitoring and auditing of the marine safety management system, should be used to support the analysis and conclusions.
- 3.21. The form of each authority's plan and report will be for it to determine, so long as it covers properly the requirements of the Code. As a minimum, plans and reports should be published once every three years.

Monitoring compliance:

- 3.22. Once every three years, the MCA will ask the duty holder to confirm in writing if their harbour authority is complying with the Code.
- 3.23. Where necessary the MCA may undertake a verification visit. These verification visits are usually arranged following an MAIB investigation into an incident, but could also be triggered by other indicators of non-compliance. The aim of the visit is encourage compliance, rather than to take formal action.

4. General Duties and Powers

- 4.1. For the purposes of this Code, the duty holder should ensure that the harbour authority discharges its responsibilities to:
- Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property.
 - Conserve and promote the safe use of the harbour; and prevent loss or injury caused by the authority's negligence.
 - Have regard to efficiency, economy and safety of operation as respects the services and facilities provided.
 - Take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of the harbour.

In addition, the duty holder must ensure that enough resources are available to discharge their marine safety obligations and set the level of dues accordingly.⁵

Such actions will in some cases - for example the erection of works or the placing of aids to navigation - be subject to consents or other authorisations.

'Open port duty'

- 4.2. Almost every harbour authority's statutory powers are subject to what is called the 'open port duty'. This means that the harbour, dock, or pier must be open to anyone for the shipping and unshipping of goods and the embarking and landing of passengers, on payment of the rates and other conditions set by the local legislation for that port⁶.

Conservancy duty

- 4.3. A harbour authority has a duty to conserve the harbour so that it is fit for use as a port, and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to utilise it safely. They should provide users with

adequate information about conditions in the harbour. This duty covers several specific requirements:

- a) to survey as regularly as necessary and find the best navigable channels;
- b) to place and maintain navigation marks in the optimum positions, which are suitable for all conditions;
- c) to keep a 'vigilant watch' for any changes in the sea or river bed affecting the channel or channels and move or renew navigation marks as appropriate;
- d) to keep proper hydrographic and hydrological records;
- e) to ensure that hydrographic information is published in a timely manner; and
- f) to provide regular returns and other information about the authorities' local aids to navigation as the General Lighthouse Authority may require.⁷

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

Environmental duty

- 4.5. Harbour authorities have a general duty to exercise their functions with regard to nature conservation and other related environmental considerations⁸. They may now seek additional powers for these purposes. They also have an obligation, where a Special Protection Area for Birds or a Special Area of Conservation has been designated under the Wild Birds or Habitats Directives, to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.⁹ Harbour authorities also have to comply with The Natural Environment and Rural Communities Act 2006 which strengthened the requirement for public bodies, including statutory undertakers¹⁰, to have regard for bio-diversity in undertaking their activities.¹¹

Civil contingencies duty

- 4.6. The Civil Contingencies Act 2004 provides a framework for civil protection in the event of an emergency that threatens serious damage to human welfare, the environment or security. Harbour authorities are classified as category 2 "cooperating bodies". They will be involved in

the associated planning work, and heavily involved in incidents that affect their sector. They are responsible for co-operating and sharing relevant information with category 1 (emergency services and local authorities) and other category 2 responders.¹²

Harbour authority powers

- 4.7. Every authority has the power to make the use of services and facilities provided by them at a harbour subject to the terms and conditions as they think fit¹³.
- 4.8. Each harbour authority should keep their powers, and the extent of their jurisdiction, under review.

Revising duties and powers

- 4.9. A harbour revision order can be used to amend statutory powers in an authority's local legislation. It can be used to achieve various outcomes,¹⁴ one of which is to impose or confer additional duties or powers on a harbour authority (including powers to make byelaws). It can also be used in the context of the Code to substitute or amend existing duties and powers. It could be used for the purpose of (but not limited to):
 - a) improving, maintaining or managing the harbour (including harbour reorganisation schemes);
 - b) marking or lighting the harbour, raising wrecks or otherwise making navigation safer;
 - c) regulating the activities of other individuals and groups in connection with the harbour and the marine/shoreside interface; or
 - d) extending controls into the approaches of a harbour (for example, to extend compulsory pilotage beyond the harbour¹⁵).
- 4.10. Harbour orders are made by the Secretary of State or the relevant devolved authority. Before making an order, the appropriate Minister will need to be satisfied that the order would:
 - a) secure the improvement, maintenance or management of the harbour in an efficient and economical manner; or
 - b) facilitate the efficient and economic transport of goods by sea; or
 - c) be in the interests of sea-going leisure vessels.

There are similar provisions for varying or abolishing such powers.

Byelaws

- 4.11. Byelaws can be made by any authority that has the powers to do so, as laid down in its local Acts and Orders¹⁶. The procedure for making and

confirming byelaws is modelled on the one used for local authority byelaws¹⁷.

- 4.12. Byelaws empower harbour authorities to regulate activities for specific purposes, reflecting the local circumstances and enabling business to be conducted efficiently and safely. They are generally available to regulate rather than prohibit: therefore, an activity cannot be banned from the entire harbour unless the appropriate byelaw-making power so specifies. This power goes beyond simple management to include a power to create and prosecute in the Courts for offences in which fines may be levied¹⁸.
- 4.13. Harbour authorities need to consult users, before advertising sealed byelaws and seek approval from the relevant Minister.

Collecting dues

- 4.14. Harbour authorities have powers to collect dues from users and should raise enough to provide resources to enable them to pay for the discharge of their statutory functions. The level of dues should be properly accounted for and brought to the notice of those persons likely to be interested.¹⁹
- 4.15. Members of the harbour board are responsible for ensuring that adequate resources are provided to its officers to enable them to operate the policies, procedures and systems effectively. This includes adequate resource for training. There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user.
- 4.16. Pilotage authorities may make reasonable charges in respect of any vessel subject to its pilotage directions. Such charges apply to vessels with an authorised pilot aboard, or to vessels where the master or first mate hold a pilotage exemption certificate in respect of the area and vessel in question²⁰.
- 4.17. The harbour authority's power to levy dues and pilotage charges²¹ is subject to a statutory right of objection to the relevant Minister²².

5. Specific Duties and Powers

- 5.1. The duty holder should also be aware of other specific duties and powers which are relevant to port safety, including the following:
- Powers to direct vessels are available and should be used to support safe navigation.
 - Dangerous vessels and dangerous substances (including pollution) must be effectively managed.
 - A pilotage service must be provided if required in the interests of safety.
 - Harbour authorities have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks or obstructions effectively managed.

These and other points are discussed in this chapter of the Code.

Appointment of harbour master

- 5.2. A harbour authority has the power to appoint a harbour master.²³ The authority's byelaws may include provisions for regulating the powers and duties of the harbour master²⁴. The harbour master is accountable to the authority for the safety of marine operations in the harbour. The harbour master should familiarise himself with the extent of his legal powers, including those set out in general and local legislation, byelaws and general directions.

Directions (usually referred to as special directions)

- 5.3. The harbour master duly appointed by a harbour authority has powers of direction to regulate the time and manner of ships' entry to, departure from and movement within the harbour waters, and related purposes²⁵. These powers are given for the purpose of giving specific directions to specific vessels for specific movements, unless the powers have been extended for other purposes. Harbour master's directions may be referred to as 'special directions' to distinguish them from 'general

directions' given by the authority itself. Special directions are not for setting general rules but relate to specific vessels – or in an emergency, to a class of vessels - on particular occasions.

- 5.4. The powers of direction are also exercisable by a harbour master's assistant - or any other person designated for the purpose in accordance with the authority's statutory powers. It is an offence not to comply with directions²⁶ but the master - or pilot - of a vessel is not obliged to obey directions if he believes that compliance would endanger the vessel. It is the duty of a harbour master in exercising these powers to consider the interests of all shipping in the harbour. Directions may include the use of tugs and other forms of assistance.

General directions

- 5.5. Some harbour authorities (but not all) have powers, through their local enabling legislation, to give 'general directions' to regulate the movement and berthing of ships. These are in addition to the powers of a harbour master to give 'special directions'; although some authorities have a combined power to give special and general directions. The power is exercisable by the authority itself, although they are for the harbour master to enforce, and to continue to regulate the movement of vessels. General directions may only be made after users have been consulted - this is not a requirement for the harbour master's 'special directions', which are more appropriate for emergencies or short-term use.

Directions and passage plans

- 5.6. The development of a port passage plan and the continuous monitoring of the vessel's progress during the execution of the plan are essential for safe navigation and protection of the marine environment.²⁷ Harbour authorities' and harbour masters' powers to regulate the time and manner of ships entry to, departure from and movement within their waters serve to complement port passage planning. Passage plans should therefore, be operated and enforced using the powers of direction.

Incidents threatening pollution and safety

- 5.7. The Secretary of State has power²⁸ to give directions to a harbour authority, a harbour master, and certain other persons where an accident has occurred to or in a ship and, in his opinion, there is a risk to safety or that there is a risk of pollution by a hazardous substance. The Secretary of State's Representative (SOSREP) has been appointed to exercise these functions. The person directed may be required to take, or to refrain from taking, such action as may be specified. Among other things, the direction may require that the ship is moved, or not moved to or from a specified area, locality or place, that any oil or cargo should or should not be discharged, or that specified salvage measures should be taken. The

Secretary of State also has wide powers to take action or authorise others to do so where it is considered that issuing directions would not be sufficient.

- 5.8. Directions may or may not be given in writing (though if not given in writing they will be confirmed in writing as soon as is reasonably practicable). Persons to whom a direction is given must try to comply with the direction in a manner which avoids risk to human life. A person who does not comply with the direction or intentionally obstructs anyone acting on behalf of the Secretary of State is subject, on summary conviction, to a fine of up to £50,000 on summary conviction (there is no limit to the fine following a conviction on indictment).²⁹

Dangerous vessels

- 5.9. A harbour master may give directions³⁰ prohibiting the entry into, or requiring the removal from, the harbour of any vessel if, in his opinion, the condition of that vessel, or the nature or condition of anything it contains, is such that its presence in the harbour might involve a grave and imminent danger to the safety of persons or property or risk that the vessel may, by sinking or foundering in the harbour, prevent or seriously prejudice the use of the harbour by other vessels. He must have regard to all the circumstances and to the safety of any person or vessel. Such directions may be over-ridden by SOSREP who may issue contrary directions to the harbour master³¹.

Dangerous substances

- 5.10. A harbour master also has powers to prohibit the entry into a harbour of any vessel carrying dangerous goods, if the condition of those goods, or their packaging, or the vessel carrying them is such as to create a risk to health and safety, and to control similarly the entry on to dock estates of dangerous substances brought from inland³². The harbour master also has powers to regulate the movement of vessels carrying dangerous goods. Prior notice must be given to bring dangerous substances into a harbour area from sea or inland. The period of notice is normally 24 hours, although the harbour master has some powers of discretion on both the period and form of the notice. Harbour authorities have a duty to prepare emergency plans for dealing with dangerous substances.

Prevention of pollution

- 5.11. A harbour master may detain a vessel if he has reason to believe that it has committed an offence by discharging oil, or a mixture containing oil, into the waters of a harbour³³. Notice must be given to a harbour master before oil is transferred at night to or from a ship in any harbour³⁴. This requirement may be supplemented by harbour byelaws regulating transfers at any time. Byelaws may also regulate the offloading of oily

water and oil waste residues. All oil spills into harbour waters must be reported to the harbour authority.³⁵ Harbour masters have powers to board ships to investigate possible offences³⁶.

- 5.12. Harbour authorities' powers are considered to be wide enough to empower them to clear oil spills from their harbour. They have a duty to prepare plans to deal with such spills for approval on behalf of the Secretary of State³⁷.

Vessel traffic monitoring reporting requirements

- 5.13. The owner or master of a ship which is subject to these requirements must provide information about the vessel, cargo and its passage to the harbour authority as required. The port is required to forward this information to the MCA by the quickest possible means.³⁸

Drink and drugs

- 5.14. Under the provisions of the Railways and Transport Safety Act 2003, the harbour master has the power to detain a vessel, if he suspects that a mariner (master, pilot, seaman) has committed a drink or drugs related offence when on duty.³⁹ The power can be exercised only if the harbour master summons a police officer before, or immediately after the vessel is detained. The power of detention lapses after the police officer has decided whether to administer a preliminary test and has notified the harbour master of that decision.

Vessel traffic services

- 5.15. Harbour Authorities have the power to establish Vessel Traffic Services (VTS) to mitigate risk, enhance vessel safety and to protect the environment. To be recognised as a VTS, the service must conform to IMO and national standards and operated by personnel trained to the appropriate standard. The VTS must be designated as such by the MCA in its capacity as the National Competent Authority for VTS.
- 5.16. Vessels that enter a harbour authority's VTS area (operated in accordance with the IMO guidelines) must comply with the rules of that service.⁴⁰

Pilotage

- 5.17. Competent harbour authorities have specific powers under the Pilotage Act to enable them to discharge the duties imposed under that Act.⁴¹
- 5.18. Authorities should determine, through risk assessment -
- a) whether any and, if so, what pilotage services need to be provided to secure the safety of ships (including those carrying dangerous goods

or harmful substances) navigating in or in the approaches to its harbour; and

- b) whether in the interests of safety, pilotage should be compulsory for ships navigating in any part of that harbour or its approaches and, if so, for which ships and in which circumstances and what pilotage services need to be provided for those ships.

5.19. Each competent harbour authority should provide such pilotage services as is necessary ⁴².

Pilotage directions

5.20. A competent harbour authority has specific powers and duties for marine pilotage and must issue pilotage directions if it decides, based on its assessment of the risks, that pilotage should be made compulsory. The directions must specify how and to which vessels they apply.⁴³ Ship owners and any other interested parties who use the port on a regular basis, must be consulted before the directions are implemented.

5.21. The master of a vessel not subject to pilotage directions has a right to request a pilot. In these circumstances, the authority must decide in the interests of safe navigation, whether pilotage services are applicable.

Pilotage exemption certificates

5.22. Authorities must grant a *bona fide* master or first mate of any vessel a 'pilotage exemption certificate', if they demonstrate they have sufficient skill, experience and local knowledge to pilot the vessel within the harbour. The requirements for granting an exemption must not exceed or be more onerous than those needed for an authorised pilot.⁴⁴

Authorisation of pilots

5.23. Each competent harbour authority may authorise suitably qualified pilots in its area⁴⁵. Authorisations may relate to ships of a particular description and to particular parts of the harbour. The authority determines the qualifications for authorisation in respect of medical fitness standards, time of service, local knowledge, skill, character and otherwise. It may also - after giving notice and allowing a reasonable opportunity to make representations - suspend or revoke an authorisation if it appears to the authority that the authorised person is guilty of any incompetence or misconduct affecting his capability as a pilot, or has ceased to have the required qualifications - or failed to provide evidence that he still has them. An authorisation may also be suspended or revoked, on reasonable notice, if any contract or other arrangement under which the services of pilots are provided is terminated.

Ship towage

- 5.24. While any contract for the use of tugs is formally for the master of a vessel, the use of harbour tugs is one of the principal and most direct means open to a harbour authority to control risk. Authorities should determine, through risk assessment, appropriate guidance on the use of tugs in harbour areas. Recommendations should include the type of tugs and method of tow (where applicable) in addition to the number of tugs also where appropriate. Interested parties, including towage providers, users and pilots should be consulted in the preparation of such guidance.
- 5.25. The guidance should be reflected in directions. There should be procedures for special directions to be used, if necessary, where a master or pilot proposes that the guidelines should not be applied in some respect.

The General Lighthouse Authorities

- 5.26. The General Lighthouse Authorities are responsible for the superintendence and management of all lighthouses, buoys or beacons within their respective areas⁴⁶. They have a duty to inspect all lighthouses, buoys, beacons and other navigational aids belonging to, or under the management of a local lighthouse authority. They may also give directions concerning the provision and positioning of aids to navigation.

Local lighthouse authority duties

- 5.27. Each harbour authority is a local lighthouse authority for their area⁴⁷. They have the power to carry out and maintain the marking or lighting of any part of the harbour within the authority's area⁴⁸.
- 5.28. A local lighthouse authority shall not, without the General Lighthouse Authority's consent, erect, remove or vary the character of any lighthouse, buoy or beacon⁴⁹.
- 5.29. All aids to navigation maintained by harbour authorities and any other existing local lighthouse authorities must be maintained in accordance with the availability criteria laid down by the General Lighthouse Authorities, and must be subject to periodic review. The characteristics of these aids to navigation must comply with the 'International Association of Lighthouse Authorities (IALA) Guidelines and Recommendations'. Information and periodic returns must be supplied, when required, to the appropriate General Lighthouse Authority⁵⁰.

Wrecks

- 5.30. Where there is a wreck in or near the approaches to, a harbour, which is or is likely to become a danger to navigation, the harbour authority may take possession of, remove or destroy it. They may also light or buoy it until it is raised, removed or destroyed⁵¹.

- 5.31. Harbour authorities must exercise their wreck marking and removal powers where, in their opinion, a wreck is - or is likely to become - an obstruction or danger to navigation. They have a duty to have regard to the environment in the exercise of this and all other duties and powers.

End notes

Please note: the hyperlinks to legislation below are provided for convenience and may not show the version of the legislation currently in force.

- 1 Section 1 of the Pilotage Act 1987 defines a competent harbour authority
- 2 Further information and guidance can be found on the HSE website at <http://www.hse.gov.uk/business/getting-started.htm>
- 3 National Occupational Standards are available on the Port Skills & Safety website: http://www.portskillsandsafety.co.uk/skills_and_standards/standards_and_qualifications
- 4 Marine Guidance Note MGN 289 [M+F] “Accident Reporting and Investigation” is addressed to Harbour Authorities, amongst others and explains the reporting requirements of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005. A copy of MAIB’s incident report form is annexed to the Guide.
- 5 Section 26 of the Harbours Act 1964
- 6 Section 33 of the Harbours, Docks and Piers Clauses Act 1847
- 7 Section 198 to the Merchant Shipping Act 1995
- 8 Section 48A of the Harbours Act 1964
- 9 Regulation 3(4) of the Conservation (Natural Habitats &c) Regulations 1994 (SI 1994 No 2716)
- 10 Section 262 of the Town and Country Planning Act 1990
- 11 Section 40 of the Natural Environment and Rural Communities Act 2006.
- 12 Further details can be found in the Act, the Civil Contingency Act 2004 (Contingency Planning) Regulations 2005 (SI 2005/2042) and the guidance document *Emergency Preparedness* which can be found at <http://www.cabinetoffice.gov.uk/ukresilience/preparedness/ccact/eppdfs.aspx>
- 13 Section 40 of the Harbours Act 1964
- 14 Schedule 2 of the Harbours Act 1964
- 15 Section 7(5) of the Pilotage Act 1987
- 16 This is often achieved by incorporating with or without amendments section 83 of the Harbours, Docks and Piers Clauses Act 1847
- 17 Section 236 of the Local Government Act 1972
- 18 currently a maximum of £2500 (Level 4 on the standard scale)
- 19 Sections 30 & 42 of the Harbours Act 1964 and Sections 10(5) & 14 of the Pilotage Act 1987
- 20 Section 10(3) of the Pilotage Act 1987

- 21 Section 10(6) of the Pilotage Act1987
- 22 Section 31 of the Harbours Act 1964. Relevant Minister means the Secretary of State for Transport (England /Wales), the Scottish Ministers or the Northern Ireland Ministers
- 23 Section 51 of the Harbours, Docks and Piers Clauses Act1847
- 24 Section 83 of the Harbours, Docks and Piers Clauses Act1847
- 25 Section 52 of the Harbours, Docks and Piers Clauses Act1847
- 26 Section 53 of the Harbours, Docks and Piers Clauses Act1847
- 27 “Guidelines for voyage planning” IMO Resolution A.893(21) adopted on 25 November 1999
- 28 Schedule 3A of the Merchant Shipping Act 1995 as inserted by the Marine Safety Act2003
- 29 Paragraph 8 of Schedule 3A to the Merchant Shipping Act1995
- 30 Section 1 of the Dangerous Vessels Act1985
- 31 Section 3 of the Dangerous Vessels Act1985
- 32 The Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987 No 37)
- 33 Section 144 of the Merchant Shipping Act1995
- 34 Section 135 of the Merchant Shipping Act1995
- 35 Section 136 of the Merchant Shipping Act1995
- 36 Section 259(6) of the Merchant Shipping Act1995
- 37 The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations (SI 1998/1056)
- 38 The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (SI 2004 No 2110)
- 39 Section 84 of the Railways and Transport Safety Act2003
- 40 Regulation 6 of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (SI 2004 No. 2110)
- 41 Sections 2(1) & (2) of the Pilotage Act1987
- 42 Section 2(3) of the Pilotage Act1987
- 43 Section 7 of the Pilotage Act1987
- 44 PEC requirements are outlined in Sections 8 and 15 of the Pilotage Act1987
- 45 Section 3 of the Pilotage Act1987
- 46 Section 195 of the Merchant Shipping Act1995
- 47 Section 193 of the Merchant Shipping Act1995
- 48 Section 201 of the Merchant Shipping Act1995
- 49 Sections 198 and 199 of the Merchant Shipping Act1995
- 50 Section 198 of the Merchant Shipping Act1995
- 51 Section 252 of the Merchant Shipping Act 1995