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# Port marine safety code: Part one - harbour authorities duties and powers

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## Part One - Harbour Authorities' Duties and Powers

### 1.1 Background

1.1.1 This Part of the Code describes the duties and powers of harbour authorities in relation to marine operations. There are several general principles -

**A. A harbour authority has duties of three kinds - some are statutory duties; but there are in addition general common-law and fiduciary duties.**

**B. 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.**

**C. 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.

1.1.2. 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 Acts. This part

of the Code describes these, and other equally important common-law and fiduciary duties, which govern harbour authorities' oversight of marine operations in waters within their jurisdiction.

## Functions to which the Code applies

1.1.3. The Code is directed at harbour authorities empowered to regulate of shipping movements and the safety of navigation within their harbours. Most of these are a "competent harbour authority" under the Pilotage Act 1987 <sup>1</sup>, although some harbour authorities were not so designated because they were not in a former active pilotage district. Every "competent harbour authority" may assume that the Code applies in their case, whether it actually provides a pilotage service or not. There are a much larger number of undertakings that are local lighthouse authorities for the purposes of the Merchant Shipping Acts. The Code applies to the duties and powers conferred on these in that capacity.

## Other regulations

1.1.4. The Code does not apply to duties and powers other than those relating to marine operations. The other main bodies of regulations are those made under the Health and Safety at Work Act and related powers of the Health and Safety Executive; and (with some exceptions specifically dealt with in this Code) those relating to the safety of vessels under the Merchant Shipping Acts, administered by the Maritime and Coastguard Agency. It is clearly necessary for the safety of any undertaking to be managed as a whole and to similar standards. It is likely therefore that the requirements of this Code will be discharged by systems which also meet the requirements of other regulations.

## Agents and joint arrangements

1.1.5. The Pilotage Act provides for a competent harbour authority to use an agent for pilotage services, and for formal joint arrangements between competent harbour authorities for the discharge of pilotage functions <sup>2</sup>. There are important limitations to the power to make such arrangements, and key functions must be retained by each competent harbour authority. In these and other cases where harbour authorities have functions relating to the safety of any harbour - for example because they have jurisdictions in different parts of an estuary, they should collaborate as necessary on all aspects of this Code, and not just on pilotage. It is especially important to have a robust agreement about the resourcing of any operations conducted jointly or through another undertaking.

<sup>1</sup> see Section 1(1) of the Pilotage Act 1987

<sup>2</sup> Section 11 of the Pilotage Act 1987

## 1.2. General Duties and Powers

1.2.1. These are the relevant general duties of harbour authorities -

**A. Harbour authorities have a duty to take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate it may do so without danger to their lives or property.**

**B. This includes 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.**

**C. Each harbour authority has an obligation to have regard to efficiency, economy and safety of operation as respects the services and facilities provided.**

**D. Harbour authorities typically have an express duty to take such action as the harbour authority consider necessary or desirable for or incidental to the maintenance, operation, improvement or conservancy of their harbour.**

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'**

1.2.2. Almost every harbour authority's statutory powers are subject to what is called the 'open port duty'. Upon payment of the rates made payable by the local legislation for that port, and subject to the other provisions thereof, the harbour, dock, or pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers <sup>3</sup> .

1.2.3. This provision is fundamental to the statutory powers of harbour authorities. The provision of harbour facilities is of the nature of a monopoly created by Parliament and undertakers benefiting from the powers conferred are obliged to serve the public interest in certain specified ways. The shipper of goods has a right to bring them on to the dock premises and through these premises to the ship on which they are shipped. The dock company can reasonably regulate the order and place of shipping so long as they do not destroy or unreasonably limit the shipper's right to ship.

## **Conservancy**

1.2.4. A harbour authority has a duty to conserve the harbour so that it is reasonably 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 resort to it. The conservancy duty covers several specific requirements -

- a) to survey (and resurvey as regularly as necessary) and find the best navigable channel or channels;
- b) to place and maintain navigation marks where they will be of the best advantage to navigation (marked appropriately by day and night);
- 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 publish as conspicuously as possible such further information as will supplement the guidance given by navigation marks.

1.2.5. Where a harbour authority holds out 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.

## **Health & safety at work**

1.2.6. Harbour authorities, like all employers, have a duty to conduct their undertaking in such a way as to ensure, so far as reasonably practicable, that persons not in their employment who may be affected thereby are not exposed to risks to their health and safety. <sup>4</sup> A person having control of premises, or of plant or substance in such premises has a duty to take measures to ensure, as far as is reasonably practicable, that the premises, all means of access and egress, any plant or substance in the premises or provided for use there, is or are safe and without risks to health. <sup>5</sup> Every employer shall make a suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work; and the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking. <sup>6</sup>

## **Environmental duty**

1.2.7. Harbour authorities have a general duty to exercise their functions with regard to nature conservation and other related environmental considerations <sup>7</sup>. They may now seek additional powers for these purposes. They also have an obligation, where a Special Protection Area for Birds or a Special Area of Conservation has been designated under the Wild Birds or Habitats Directives, to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions <sup>8</sup>.

## **Harbour authority powers**

1.2.8. Every harbour authority has power to make the use of services and facilities provided by them at a harbour which, in the exercise and performance of statutory powers and duties they are engaged in improving, maintaining or managing, subject to such terms and conditions as they think fit <sup>9</sup>.

1.2.9. Not every duty imposed upon harbour authorities is matched by a specific power, since in some cases the duty itself is sufficient to imply the powers required to carry it out. There are specific powers, however, in relation to the making of byelaws and directions, and to pilotage, lights and wrecks.

1.2.10. It is for each harbour authority to keep under review whether their powers - and the extent of their jurisdiction - are appropriate for maintaining the overall safety of the harbour, and to promote changes where necessary. Chapter 1.4 below explains how a harbour authority's powers may be revised.

## **Byelaws**

1.2.11. Harbour authorities are empowered to make byelaws. Byelaws empower harbour authorities to regulate activities for specific purposes. This power goes beyond simple management to include a power to create and prosecute in the Courts offences for which fines may be levied at different levels up to a substantial amount <sup>10</sup>. Byelaws are a means of reflecting the local needs and circumstances of individual harbour authorities and are intended to allow them to conduct their business efficiently and safely. Harbour byelaws vary widely to suit local powers and needs. Byelaws are generally available to regulate

rather than prohibit. Therefore activities cannot be banned from the entire harbour unless the appropriate byelaw-making power so specifies.

<sup>3</sup> Section 33 of the Harbours, Docks and Piers Clauses Act 1847

<sup>4</sup> Section 3 of the Health and Safety at Work Act 1974

<sup>5</sup> Section 4 of the Health and Safety at Work Act 1974

<sup>6</sup> The Management of Health and Safety at Work Regulations 1999 (SI 1999 No 3242)

<sup>7</sup> Section 48A of the Harbours Act 1964 (inserted by the Transport & Works Act 1992)

<sup>8</sup> Regulation 3(4) of the Conservation (Natural Habitats &c) Regulations 1994 (SI 1994 No 2716)

<sup>9</sup> Section 40 of the Harbours Act 1964

<sup>10</sup> currently a maximum of £2500

## 1.3. Specific Duties and Powers

1.3.1. In addition to these general duties, there are a number of specific duties, with powers to enable them to be discharged.

**A. A harbour master must have his powers determined in byelaws.**

**B. Powers to direct vessels are available - and should be used - to ensure safety of navigation.**

**C. Dangerous vessels and substances, and pollution, must be effectively managed.**

**D. A pilotage service must be provided if required in the interests of safety.**

**E. Properly maintained aids to navigation must be provided, and any danger to navigation from wrecks or obstructions effectively managed.**

Some of these have separate chapters in this part of the Code.

### Appointment of harbour master

1.3.2. A harbour authority has the power to appoint a harbour master <sup>11</sup> The authority's byelaws may include provisions for regulating the powers and duties of the harbour master <sup>12</sup> . The harbour master is accountable to the authority for the safety of operations in the harbour.

### Directions

1.3.3. 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 purposes <sup>13</sup> . 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 on particular occasions.

1.3.4. The powers of direction are 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 directions <sup>14</sup> 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**

1.3.5. Some harbour authorities now have powers to give 'general directions' to regulate the movement and berthing of ships - these are additional to the powers of a harbour master to give 'special 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 particular 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.

## **Incidents threatening pollution**

1.3.6. The Secretary of State has power <sup>15</sup> to give directions to a harbour authority, a harbour master, master of a vessel, pilot, or salvor or owner of a vessel, where an accident has occurred to or in a ship and, in his opinion, oil from the ship will or may cause pollution on a large scale. The power may be used if in his opinion this is urgently needed. The person directed may be required to take, or to refrain from taking, any action whatsoever. 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, or persons authorised by him, may take any action he may direct to be taken. A representative of the Secretary of State (SOSREP) has been appointed to exercise these functions.

## **Dangerous vessels**

1.3.7. A harbour master may give directions <sup>16</sup> 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 given by the harbour master may be over-ridden by the Secretary of State <sup>17</sup> .

## **Dangerous substances**

1.3.8. 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 inland <sup>18</sup>. 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. <sup>19</sup> Harbour authorities have a duty to prepare emergency plans for dealing with dangerous substances.

## **Prevention of pollution**

1.3.9. 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 harbour <sup>20</sup>. The transfer of oil between ships outside harbours will shortly be strictly controlled <sup>21</sup>. Notice must be given to a harbour master before oil is transferred at night to or from a ship in any harbour <sup>22</sup>. 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 are to be reported. Harbour masters have powers to board ships to investigate possible offences <sup>23</sup>.

1.3.10. 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 State <sup>24</sup>.

## **Pilotage**

1.3.11. Competent harbour authorities have specific powers under the Pilotage Act to enable them to discharge the pilotage duties imposed under that Act.

1.3.12. Competent harbour authorities have a duty <sup>25</sup> to keep under consideration -

- a) whether any and, if so, what pilotage services need to be provided to secure the safety of ships 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.

Without prejudice to the generality of this duty, each competent harbour authority shall in performing it have regard in particular to the hazards involved in the carriage of dangerous goods or harmful substances by ship.

1.3.13. Each competent harbour authority should provide such pilotage services as it considers to be needed having considered the requirement as described above <sup>26</sup>. Authorities must ensure that any vessel which they own or operate and use in the exercise of their functions otherwise than for pilotage is subject to the same pilotage obligations as any other vessel <sup>27</sup>.

## **Pilotage directions**

1.3.14. If a competent harbour authority decides in the interests of safety that pilotage should be compulsory in the harbour or any part thereof, it must issue pilotage directions. The directions must specify how and to which vessels they apply <sup>28</sup> . An authority must consult first with owners of ships customarily using the area where directions would apply and any other person carrying on marine operations within the harbour. HM ships are not subject to pilotage directions.

1.3.15 In some ports, local legislation provides for licensed watermen and related categories. The pilotage directions may then exclude the vessels on which they work.

1.3.16 An authority is not necessarily obliged to issue directions covering all the circumstances for which it is considered that a pilotage service should be provided. There may be other circumstances in which it remains appropriate for the master of a vessel - rather than the authority - to decide whether or not a pilot should be taken. The master of a vessel not subject to pilotage directions has a right to request a pilot, and the authority must decide whether it is obliged to provide such a service having regard only to the interests of safety.

## **Authorisation of pilots**

1.3.17. Each competent harbour authority may authorise suitably qualified pilots in its area <sup>29</sup> . 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 age, 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 so continues. 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.

1.3.18. An authority may make such arrangements as it considers appropriate for the provision of the services of authorised pilots (whether under a contract of employment or a contract for services) <sup>30</sup> . It must offer to employ under a contract of employment any person it authorises unless a majority of the relevant authorised pilots have agreed that it need not do so. An authority may refuse to authorise any person who will not accept the arrangements it has made.

## **Information to be provided to a pilot**

1.3.19. A pilot may require <sup>31</sup> the master of any ship he is piloting to declare its draught, length and beam, and such other information relating to the ship or its cargo as the pilot specifies and is necessary to enable him or her to carry out his pilot duty. The master of a ship must bring to a pilot's attention defects or matters particular to the ship and its machinery and equipment which are known to him or her and likely to affect the navigation of the ship.

## Pilot and the Port State

1.3.20. An authorised pilot engaged in the berthing and unberthing of a vessel in the United Kingdom, or engaged on a vessel bound for a port within an European Union Member State, must immediately inform the harbour authority whenever they learn in the course of their normal duties that there are deficiencies which may prejudice the safe navigation of the vessel, or which may pose a threat of harm to the environment <sup>32</sup> . The harbour authority shall immediately inform the Maritime and Coastguard Agency.

<sup>11</sup> Section 51 of the Harbours, Docks and Piers Clauses Act 1847

<sup>12</sup> Section 83 of the Harbours, Docks and Piers Clauses Act 1847

<sup>13</sup> Section 52 of the Harbours, Docks and Piers Clauses Act 1847

<sup>14</sup> Section 53 of the Harbours, Docks and Piers Clauses Act 1847

<sup>15</sup> Section 137 Merchant Shipping Act 1995 (as amended)

<sup>16</sup> Section 2 of the Dangerous Vessels Act 1985

<sup>17</sup> Section 3 of the Dangerous Vessels Act 1985

<sup>18</sup> The Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987 No 37)

<sup>19</sup> The Dangerous Substances in Harbour Areas Regulations will be revised during 2000

<sup>20</sup> Section 144 of the Merchant Shipping Act 1995

<sup>21</sup> Regulations are in preparation

<sup>22</sup> Section 135 of the Merchant Shipping Act 1995

<sup>23</sup> Section 259(6) of the Merchant Shipping Act 1995

<sup>24</sup> The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 SI 1998 No 1056

<sup>25</sup> Sections 2(1) & (2) of the Pilotage Act 1987

<sup>26</sup> Section 2(3) of the Pilotage Act 1987

<sup>27</sup> Section 9 of the Pilotage Act 1987

<sup>28</sup> Section 7 of the Pilotage Act 1987

<sup>29</sup> Section 3 of the Pilotage Act 1987

<sup>30</sup> Section 4 of the Pilotage Act 1987

<sup>31</sup> Section 18 of the Pilotage Act 1987

<sup>32</sup> The Merchant Shipping (Port State Control) Regulations 1995 (SI 1995 No 3128 (as amended))

## Other statutory pilotage provisions

1.3.21. An authorised pilot has the right to supersede an unauthorised pilot in the harbour to which his authorisation refers. A pilot is not to be taken out of his area without reasonable excuse. The master of a vessel has a duty to facilitate the safe boarding and landing of a pilot <sup>33</sup> .

## Pilot boats

1.3.22. Craft regularly employed in pilotage services provided by or on behalf of any competent harbour authority must be approved or licensed by the authority, the authority having satisfied itself that they are suitable for such use <sup>34</sup> . This statutory requirement is additional to licences required from the Maritime and Coastguard Agency, but the same standards should apply. There are statutory requirements for pilot boats <sup>35</sup> and an associated *Safety of Small Work Boat and Pilot Boat Code of Practice*. These address the safety of operational standards and procedures, including manning requirements, for vessels taken to sea.

## Boarding and landing procedures

1.3.23. Pilots must be transferred to or from any ship within United Kingdom waters in accordance with statutory requirements <sup>36</sup> , and an accompanying Merchant Shipping Notice. <sup>37</sup> There is also a *Boarding and Landing of Pilots by Pilot Boat Code of Practice* <sup>38</sup> .

## Pilotage exemption certificates

1.3.24. An authority which has given a pilotage direction must, on application by any person who is *bona fide* the master or first mate of any ship, grant a 'pilotage exemption certificate' <sup>39</sup> to him or her if it is satisfied that his or her skill, experience and local knowledge, are sufficient for him or her to be capable of piloting the ship of which he or she is master or first mate, or that ship and any other ships specified in the certificate, within its harbour or such part of its harbour as may be so specified. In any case where it appears to an authority to be necessary in the interests of safety, it must be satisfied that knowledge of English is sufficient for that purpose. The requirements for exemption must not be unduly onerous having regard to the difficulties and danger of navigation in the harbour, and must not be more onerous than those required to be met by a person applying for pilot authorisation by the authority. A certificate does not remain in force more than a year but may be renewed annually provided the holder continues to satisfy the requirements.

1.3.25. There is special provision for the Secretary of State to direct that a harbour authority may withhold pilotage exemption certificates where there are unusual hazards <sup>40</sup> . In the nature of this provision, it is for exceptional cases - only two directions are extant <sup>41</sup> : there is no general provision for disallowing properly qualified applications for exemption.

## Tugs

1.3.26. Any contract for the use of tugs is formally for the master of a vessel. However, harbour authorities should, in the interests of safety, lay down appropriate guidance for the use of tugs in port areas, including recommendations on the number of tugs required where appropriate. Interested parties, including users and pilots, should be consulted in the preparation of such guidance. It 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.

## Local lighthouse authority duties

1.3.27. Each harbour authority, and any other existing local lighthouse authority, is the local lighthouse authority as regards their area <sup>42</sup>. Every harbour authority has the power to carry out and maintain the marking or lighting of a harbour or any part of the harbour within the harbour authority's area or on harbour land <sup>43</sup>. The General Lighthouse Authorities have the general superintendence and management of all lighthouses, buoys or beacons within their respective areas <sup>44</sup>. They have a duty to inspect all lighthouses, buoys, beacons and other navigational aids belonging to or under the management of a local lighthouse authority, and may give directions to a local lighthouse authority. A local lighthouse authority shall not, without the General Lighthouse Authority's consent, erect, remove or vary the character of any lighthouse, buoy or beacon <sup>45</sup>.

1.3.28. 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 IALA Guidelines and Recommendations. Local lighthouse authorities and their officers must give to the General Lighthouse Authorities all such returns, explanations or information concerning the lighthouses, buoys and beacons under their management of them as the General Lighthouse Authority may require <sup>46</sup>.

## Wrecks

1.3.29. Where there is a wreck in, or 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 destroyed <sup>47</sup>.

1.3.30. 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.

<sup>33</sup> Sections 17, 19 and 20 of the Pilotage Act 1987

<sup>34</sup> Section 6 of the Pilotage Act 1987

<sup>35</sup> The Merchant Shipping (Small Work Boats) Regulations 1998 (SI 1998 No 1069)

<sup>36</sup> The Merchant Shipping (Pilot Transfer Arrangements) Regulations 1999 (SI 1999 No 17)

<sup>37</sup> Merchant Shipping Notice MSN 1716 (M+F)

<sup>38</sup> Both Codes of Practice are published by the Stationery Office for the Maritime & Coastguard Agency

<sup>39</sup> Section 8 of the Pilotage Act 1987

<sup>40</sup> Section 8(3) of the Pilotage Act 1987

<sup>41</sup> these apply in Sullom Voe and to certain traffic in the Firth of Forth

<sup>42</sup> Section 193 of the Merchant Shipping Act 1995

<sup>43</sup> Section 201 of the Merchant Shipping Act 1995

<sup>44</sup> Section 195 of the Merchant Shipping Act 1995

<sup>45</sup> Sections 198 and 199 of the Merchant Shipping Act 1995

<sup>46</sup> Section 198(5) of the Merchant Shipping Act 1995

<sup>47</sup> Section 252 of the Merchant Shipping Act 1995

## 1.4. Revising duties & powers

1.4.1. There are statutory procedures for revising the duties and powers of a harbour authority (besides general legislation) -

**A. A harbour order may impose, confer, substitute or remove duties or powers, and change the limits within which they apply.**

**B. Byelaws may be made, revised or revoked, subject to the enabling powers, and to confirmation by the appropriate authority.**

### Harbour orders

1.4.2. The statutory powers of a harbour authority, contained in its local legislation, may be revised by means of a harbour revision order, provided the appropriate Minister is satisfied that the making of an order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods by sea or in the interests of the recreational use of sea-going ships <sup>48</sup> .

1.4.3. Harbour revision orders may be made <sup>49</sup> for objects including imposing or conferring duties or powers on a harbour authority (including powers to make byelaws), either in addition to, or in substitution for, existing duties or powers imposed or conferred, being duties or powers imposed or conferred for the purposes of -

- a) improving, maintaining or managing the harbour;
- b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof;  
or
- c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

There are similar provisions for varying or abolishing such powers.

## Limits of jurisdiction

1.4.4. Statutory powers are exercisable within the limits of jurisdiction prescribed in the harbour authority's local legislation, generally geographically. A harbour revision order may also be made settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled. This provision may be used where it is considered necessary to extend controls into the approaches of a harbour.

1.4.5. If a competent harbour authority considers that pilotage should be compulsory for ships navigating in any area outside its harbour, it has a duty to apply for a harbour revision order to be made to extend its limits for the purposes of pilotage to include the area <sup>50</sup> .

## Byelaws

1.4.6. Chapter 1 explains the function of byelaws in relation to the regulation of marine operations. Byelaws are made on the initiative of any authority having the power to do so. Powers to make byelaws are found for each harbour authority in its Acts and Orders. In many cases, these are incorporated or transposed from the 1847 Act <sup>51</sup> , although the procedure for confirmation in that Act is now obsolete and is now modelled upon provisions for confirmation of local authority byelaws <sup>52</sup> . These have in turn been adapted in some cases so that byelaws may be confirmed by the Secretary of State (or the appropriate devolved administration) with modifications.

<sup>48</sup> Section 14 of the Harbours Act 1964 (as amended)

<sup>49</sup> Schedule 2 of the Harbours Act 1964 (as amended)

<sup>50</sup> Section 7(5) of the Pilotage Act 1987

<sup>51</sup> Section 83 of the Harbours, Docks and Piers Clauses Act 1847

<sup>52</sup> Section 236 of the Local Government Act 1972

## 1.5. Accountability for Marine Safety

1.5.1. This chapter is about who is accountable for what aspects of safety of navigation in harbours. It is based on these general principles:-

**A. Each harbour authority is accountable for managing operations within the port safely and efficiently and its board members should hold themselves responsible for ensuring that it does so.**

**B. Each harbour authority should make a clear published commitment to the standard of marine safety required to comply with this Code.**

**C. This Code represents the national standard against which the policies, procedures and performance of harbour authorities may be measured.**

**D. Executive and operational responsibilities for marine safety must be clearly assigned, and those to whom they are entrusted must be held accountable for their performance.**

**E. Harbour authorities must have a 'designated person' to provide independent assurance about the operation of its marine safety management systems, who has direct access to the board.**

1.5.2. The key to effective discharge of the functions described in the previous chapters of this Code is the development and operation by each harbour authority of a safety management system. That in turn depends upon a clear assignment of relevant executive and operational responsibilities to the authority's officers.

## **The duty holder**

1.5.3. The Code requires each harbour authority to hold themselves accountable for the discharge of its duties and powers to the standard laid down. It requires the board members of each authority to accept responsibility for ensuring that the authority discharges its duties and powers to that standard. Duties and powers relating to the safety of marine operations in any harbour have been entrusted to a statutory authority. Board members are collectively and individually responsible for the proper exercise of their authority's legal duties. It follows clearly that it - and they - are severally and collectively the 'duty holder'.

1.5.4. Harbour authorities have powers to appoint a harbour master, and to authorise pilots, and may properly entrust the operation of the harbour to such professional people; but they cannot assign their accountability. **Board members may not abdicate accountability on the grounds that they do not have particular skills.** They retain strategic oversight and direction of all aspects of the harbour operation. They must ensure that powers are discharged but not exceeded.

1.5.5. Board members should regard themselves as under a duty to ensure that their authority discharges its duties; and has in place an effective safety management system for this purpose. This Code sets the standard. The duty embraces development and maintenance of appropriate policies, plans and procedures and ensuring that assessments and reviews are undertaken as required.

1.5.6. Each harbour authority is obliged to seek and adopt 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. Board members are responsible for ensuring that it does so. The authority has specific powers and duties relating to appointments and authorisations, and the provision of certain services and facilities - discussed elsewhere in more detail.

1.5.7. It follows that board members should have an appropriate understanding of the authority's marine safety responsibilities - not to displace the professional people on whom they rely, but to provide proper oversight and direction of their work in relation to the safety of marine operations.

## **The designated person**

1.5.8. It is fundamental to an effective safety management system that each harbour authority should assign the functions of a 'designated person' to provide independent assurance to the 'duty holder' that the safety management system is working effectively, and to audit the authority's compliance with the Code.

1.5.9. The person - or persons - to whom this function is entrusted must have direct access to the highest level of the authority.

## **The authority's officers**

1.5.10. The appointment of officers is a matter for the authority, and will depend both upon the needs and resources of the authority. It is important that executive and operational responsibilities should be assigned appropriately by every authority - and to properly trained people. In some small authorities, functions may be combined. It is also important in all cases that there is a proper separation of safety and commercial functions. This is important for authorities of all sizes.

1.5.11. Delegations must be clear and formal; and must not obscure the accountability of the authority and its board members. All the authority's employees should have training appropriate to the responsibilities for marine operations assigned to them relating to the safety of marine operations. Competence standards being developed alongside this Code serve this purpose.

1.5.12. Delegations are not a substitute for the authority itself being directly involved in safety management. It will normally be appropriate therefore, for an authority's principal officers holding delegated responsibilities for safety to attend board meetings.

## **Chief Executive**

1.5.13. Functions assigned to the Chief Executive or equivalent postholder may be set out in the authority's statutes or articles of association. The Chief Executive is accountable to the authority for the operational and financial control of the authority. The Chief Executive will 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 or she will oversee the implementation of its policies and decisions; will have overall executive responsibility for the safety of operations and staff; and will oversee the recruitment and training of staff. The holder will normally be a board member.

## **Harbour master**

1.5.14. Every harbour authority should exercise the power to appoint a harbour master. The harbour master has principal operational responsibility for the safety of navigation in the harbour, exercising the authority's operational powers with respect to the safety of marine activities in the harbour and its approaches. The postholder must be a suitably qualified person, fit for these purposes. Competence standards are being developed which set a standard for the recruitment and appraisal of harbour masters.

He or she must also be fit for other duties imposed upon the harbour master for example by Health and Safety and Merchant Shipping legislation.

1.5.15. The authority's byelaws may include provisions for regulating the powers and duties of the harbour master, making the authority itself accountable for the post holder's work.

1.5.16. 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 purposes. 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. The powers of direction are exercisable by a harbour master's assistant - or any other person designated for the purpose in accordance with the authority's statutory powers.

1.5.17. The harbour master ensures the co-ordination and regulation of all vessels within the harbour and its approaches. He or she may be made responsible to the authority for developing and implementing emergency plans and procedures, and for regulating dangerous goods in transit on ships. He or she may similarly be made responsible for counter-pollution and waste disposal plans.

1.5.18. In relation to the authority's conservancy duties, the harbour master may be made responsible for the provision and maintenance of buoys, markers, beacons, moorings and other aids to navigation.

## **Pilotage**

1.5.19. The Pilotage Act 1987 requires the competent harbour authority to provide the pilotage service, and all that entails. Delegation of management responsibility to the harbour master or other officer must be on that clear understanding.

1.5.20. Harbour authorities must retain a clear role in the authorisation and discipline of pilots, and on the issuing of exemption certificates. These matters have a high technical content but the authority cannot abdicate accountability for this reason. It is entirely proper, however, for the harbour master (or other qualified executive officer) to have management responsibility for the service provided by the authority and for the pilots it has authorised. It is acceptable for prescribed duties to be carried out by more than one person, provided each person's own duties are clearly defined.

## **Other matters**

1.5.21. A safety management system may also assign responsibility for matters which may be more or less peripheral to marine operations - such as the safety of berths; for maintaining channels; hydrographic surveys; environmental monitoring; and the provision of appropriate engineering and environmental advice.

## **1.6. Dues**

1.6.1. This chapter is about the powers harbour authorities have to raise dues to pay for the discharge of their legal obligations.

**A. The right to use a harbour for the shipping and unshipping of goods, or the embarkation or disembarkation of passengers, is subject to the payment of dues.**

**B. Harbour authority boards must ensure that adequate resources are available to discharge marine safety obligations, and to set dues accordingly.**

**C. It is obligatory for the purposes of meeting the standard in this Code that measures are taken to reduce all risk associated with port marine operations as low as reasonably practicable.**

**D. It is not acceptable for dues to be set - and exceptions, special rates and waivers agreed - which compromise this obligation.**

1.6.2. Harbour authorities have powers to collect dues from users to pay for the discharge of their statutory functions. They may demand, take and recover such "ship, passenger and goods dues as [the authority] think fit" <sup>53</sup> . The public right to use a port for the purpose of shipping and unshipping goods and the embarking and landing of passengers (the 'open port duty') is exercisable expressly upon payment of the rates made payable by the local legislation for that port. There are related obligations to publish dues and to keep accounts <sup>54</sup> .

## **Resources**

1.6.3. The power to levy dues is conferred to ensure that users pay for the discharge of an authority's legal functions. It is obligatory to reduce all risks associated with the harbour undertaking as low as reasonably practicable. What this means in practice is explained in the next chapter. It follows that each harbour authority also has a duty, so far as is reasonably practicable, to raise at least sufficient in dues to provide the resources needed fully to discharge these functions. To meet the standard in this Code, sufficient must be raised in dues to fund adequately the full discharge of these requirements.

1.6.4. The board of each harbour authority is responsible for ensuring that adequate resources are provided to its officers to enable them to operate the policies, procedures and systems effectively, recognising that proper discharge of the authority's duties will otherwise be compromised. This includes adequate resource for training.

## **Pilotage charges**

1.6.5. A competent harbour authority may make reasonable charges in respect of the pilotage services provided by it <sup>55</sup> . Without prejudice to the generality of this power, the charges may include -

- (a) charges for the services of an authorised pilot;
- (b) charges for expenses incurred by the pilot in providing his services;
- (c) penalties for failure to keep an estimated arrival or departure time;
- (d) charges for providing, maintaining and operating a pilot boat;

(e) any other costs in providing and maintaining the authority's pilot organisation.

Pilotage charges must be published in such manner as to bring them to the notice of those persons likely to be interested.

## **Exemption certificate holders' charges**

1.6.6. Pilotage authorities may make reasonable charges in respect of any vessel which is subject to its pilotage directions which is under the pilotage of a master or first mate holding a pilotage exemption certificate in respect of the area and ship in question <sup>56</sup> .

## **Appeals against dues**

1.6.7. The harbour authority's power to levy dues is subject to a statutory right of objection to the Secretary of State (or the appropriate devolved administration as the case may be) <sup>57</sup> . This is to ensure that the right to use the harbour is not prejudiced by the imposition of unreasonable dues. An objector must have a substantial interest and the objection may relate to one of the following -

- (a) that the charge ought not to be imposed at all;
- (b) that the charge ought to be imposed at a lower rate;
- (c) that particular classes ought to be excluded from the scope of a charge.

1.6.8. The statutory right to use a harbour is expressed to be subject to payment of dues. As a general principle, all those who use facilities for the shipping and unshipping of goods or the embarkation and disembarkation of passengers should contribute through dues to the safe operation of the harbour. Exceptional reasons are therefore needed to justify any exemption - whether total or partial.

1.6.9. Where any appeal against dues is made to the Secretary of State (or the devolved administration as the case may be), consideration will be given - among all other relevant considerations - to the need for resources to discharge fully the duties of the harbour authority, and the requirements of this Code and other related regulations.

1.6.10. The right of objection to harbour dues has been extended to pilotage charges <sup>58</sup> .

<sup>53</sup> Section 26(2) of the Harbours Act 1964

<sup>54</sup> Sections 30 & 42 of the Harbours Act 1964 and Sections 10(5) & 14 of the Pilotage Act 1987

<sup>55</sup> Section 10 of the Pilotage Act 1987

<sup>56</sup> Section 10(3) of the Pilotage Act 1987

<sup>57</sup> Section 31 of the Harbours Act 1964

58 Section 10(6) of the Pilotage Act 1987