

# Port Marine Safety Code: Introduction

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## Introduction

1. This Code has been drawn up with a wide variety of contributions from those associated with the ports industry following a review of the Pilotage Act 1987, published in July 1998<sup>1</sup>. The main proposal resulting from this review was that this Code should be developed.
2. The Code includes a summary of the legal duties and powers of harbour authorities relating to marine safety. It does not create new legal duties for harbour authorities. Such duties and powers are only properly discharged if appropriate standards are fully met. This one has been agreed nationally with representatives of all parties, to apply to all harbour authorities. The Code is not optional - harbour authorities are expected to work to achieve the agreed standard by implementing its requirements.
3. The Code also aims to promote best practice. The Code serves as a framework for the preparation of published policies and plans by harbour authorities in consultation with local users and other interests.
4. The Code is to be read with the Guide to Good Practice for Port Marine Operations when it is available. Competence standards for port marine personnel are also being developed in support of the Code.

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<sup>1</sup> *Review of the Pilotage Act 1987* - published by the Stationery Office July 1998 (ISBN 0 11 753471 4)

## **The Code's two main parts**

5. The Code is in two main parts. The first summarises the general duties and powers resting upon harbour undertakings in relation to marine operations in their waters, including the procedures for revising their powers to make them fully fit for purpose. The second part outlines the measures which harbour undertakings must adopt to fulfil their duties in accordance with the agreed national standard.

## **Duties and powers**

6. The duties of a harbour authority are of three kinds. Some are statutory duties, imposed either in the local legislation for that authority or in general legislation. There are in addition general common-law and fiduciary duties. These 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.

## **Marine operations**

7. For the purposes of this Code, marine operations are those which facilitate the safe use of a harbour by vessels. They include the direction of shipping and the regulation of safety of navigation in a harbour, and the maintenance of aids to navigation within the jurisdiction of a harbour undertaking.
8. The Code is not intended to replace or duplicate any other legal or administrative requirements. It does not therefore apply to the extent that a matter is covered for example by the Docks Regulations 1988<sup>2</sup>, or the Dangerous Substances in Harbour Areas Regulations 1987<sup>3</sup>. More generally, unless otherwise clearly indicated, it does not deal with matters which are regulated by the Health & Safety Executive, or with the oversight by the Maritime and Coastguard Agency of the safety of ships.
9. It is clearly necessary for the safety of any undertaking to be managed as a whole and to similar standards. The requirements of this Code will need to be discharged by systems which also meet the requirements of other legal or administrative requirements.

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<sup>2</sup> SI 1988 No 1655

<sup>3</sup> SI 1987 No 37 (as amended)

## **Who is the Code for?**

10. The Code is written for those upon whom any or all of the requirements fall which are described in the following chapters. It is particularly directed at harbour authorities; and to the directors, commissioners or trustees who are members of the boards of such harbour authorities. These authorities have serious legal duties relating to the safety of people who use our harbours and their property, and to the wellbeing of the port environment and community.
11. The Code is not intended to be optional. It is written to apply to ports of all sizes, irrespective of resources or levels of traffic. Its requirements apply to every harbour undertaking, to the extent that it has the duties and statutory powers described. It bears principally upon any harbour authority with statutory powers in relation to the regulation of shipping movements and the safety of navigation within its harbour. It also applies to other undertakings which are local lighthouse authorities in relation to those duties.
12. The Code does not apply directly to the regulation of Dockyard Ports by Queen's Harbour Masters, since their powers are different from those it describes. However, it does apply to the harbour authorities which also exercise powers in harbours which have Dockyard Ports. These must work with the Queen's Harbour Master concerned when implementing the Code.

## **The aim of the Code**

13. The Code aims to help those who have these duties to understand and discharge them, and to be seen to achieve and maintain nationally agreed standards for safe marine operations within their waters. It sets down a standard to which in future they should hold themselves accountable publicly.
14. The Code relies upon the principle that duties and powers in relation to marine operations in ports should be discharged in accordance with a safety management system. That system should be informed by and based upon a formal risk assessment. The aim is to establish a system covering all marine operations in ports which ensures that risks are both tolerable and as low as reasonably practicable.
15. To demonstrate compliance with the standard described, and in the interests of transparency, each harbour authority will need to produce a periodic statement setting out the policy it has adopted for discharging its duty to ensure that marine operations in the harbour and its approaches are properly regulated; and reporting on the effectiveness of that policy and associated systems and procedures.

## **The public interest**

16. Harbour authorities have been created by statute to serve a public interest. Where a harbour authority has been established, there is a public right to use the harbour for the shipping and unshipping of goods and passengers. As a general rule, there is also a public right of navigation in harbour waters. The public interest is wider than that of harbour users, however, including the local community and environment; and there are duties to ensure that these too are protected in the management of the harbour undertaking.
17. 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. The function of a harbour authority is to regulate and facilitate the exercise of these rights.

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18. Every harbour authority is given general and specific statutory powers to enable it to discharge the duties imposed upon it. These include powers to raise dues for the discharge of a harbour authority's statutory obligations. People use ports on the condition that they pay dues. Safety systems must be properly funded. The exercise of any these powers is ineffective unless it fulfils its purpose. The Code therefore concentrates on the standard to which powers are to be undertaken.
19. The specific statutory duties outlined in this part of the Code imply a general obligation to keep under formal and active consideration the overall safety of the harbour, and to apply all available statutory powers as appropriate to secure the safe use of the harbour by ships and other craft.

## Accountability

20. Harbour authorities have duties to ensure the safety of waters within their jurisdiction. Harbour authorities should hold themselves publicly accountable for the duties they have to the public interest. They must treat these duties as primary. Their boards are accountable for the standards they set, the resources they allocate to safety - and for the effectiveness of systems they choose to adopt. Board members' approach to safety will be judged by the decisions they make. Management at all levels taking safety seriously give an essential lead to staff, users and other interests. They will also notice if the requirements of the Code are not taken seriously or properly resourced. Harbour authorities are accountable not only to users but in respect of their local communities and natural environment as legitimate elements of the public interest. Authorities need to adopt an open approach, promoting consultation with a range of interests including users. These interests must recognise in turn that they share a general duty to ensure the safety of the harbour, but not the formal legal duties and powers of the authority.

## Who is accountable?

21. Duties and powers rest upon harbour authorities corporately. Board members are collectively accountable and individually responsible for the proper exercise of their authority's statutory functions. Harbour authorities have powers to appoint a harbour master, and to authorise pilots, and properly entrust the operation of the harbour to such professional people; but the authority cannot assign its accountability. Board members may not abdicate their duties on the grounds that they do not have particular skills. The authority retains strategic oversight and direction of all aspects of the harbour operation. The authority is accountable for ensuring that powers are discharged but not exceeded.
22. This Code is not written as a technical document. It is to be used by board members to satisfy themselves that technical operations undertaken in the authority's name represent a full and proper discharge of duties.
23. A system of accountability should have these elements -
- a clear national framework setting a high overall standard;
  - an account of the policies and procedures adopted locally to achieve that standard;
  - periodic local - and national - reports demonstrating compliance and progress to higher standards;
  - performance indicators testing compliance and progress;
  - a monitoring and enforcement element.

These are all covered in the Code.

24. Hazardous operations ought not to be undertaken unless measures are taken to reduce the risks to acceptable levels. The use of properly trained and qualified people is one means to this end. Putting untrained people where they may place themselves and others at risk is worse than irresponsible. Harbour authorities need properly qualified people to manage safety.
25. Nationally agreed competence standards for all port marine personnel have therefore been developed to support the Code. These will also serve to recognise these specialist skills more adequately. It is equally important that authorities make proper use of the professional expertise at their disposal. Port marine professionals must have proper access to their boards.

## **Consultation**

26. Harbour authorities holding themselves accountable to the local community will aim to work closely with local interests in developing policies and procedures for the discharge of their duties and powers. The Code aims to express these, and the measures required of harbour authorities, in terms that are accessible to such interests. It serves in the same way to inform the shareholders of company-owned harbour authorities.
27. Harbour authorities must involve all those who work in and use the port and those who represent them. The safety of the port depends upon them all - not just observing and enforcing the regulations but contributing to the assessments on which they are based.
28. Safety in harbours is not just a matter for the harbour authority, its officers and its authorised pilots. Users are also responsible to minimise risk to themselves and others. It is paramount that ports operate as a regulated environment; their rules - and their commitment to safety - must be accepted and observed by users. Users on the other hand must be fully involved in the preparation of safety policies and procedures, and their commitment secured to the standards adopted. This commitment should be seen as a collorary to standards set for their professions.
29. Users have a specific right to be consulted where they are made subject to general and pilotage directions. Much more consultation is needed to ensure an effective safety management system. Harbour authorities should therefore consult as widely as possible among those likely to be involved in the use of the port. This opportunity should be taken to develop a consensus about safe navigation in the harbour.
30. Parties to be consulted include the authority's authorised pilots; the harbour master and his staff - including port control; terminal operators; tug masters, lock keepers; berthing parties; masters and ship's officers with pilotage exemption certificates, and other users as far as possible.
31. Ship owners or operators are pivotal. They decide which port to use, with a free choice in this country. They hand a ship to the master but remain responsible for crew levels, competence and training. A port safety management system cannot assume that no visiting ships will have deficiencies. The harbour authority's risk assessment should identify deficiencies that are likely to be encountered and develop ways of managing the resulting risks. There should be procedures for ensuring that port marine personnel, as well as masters, report deficiencies to an appropriate manager. Effective enforcement procedures are needed. These will include arrangements for deficiencies to be reported if appropriate to the Maritime and Coastguard Agency.

## **Role of Government**

32. The Code fulfils the Government's role to ensure that an agreed overall standard is applied; and to safeguard the public interest. The Government has therefore undertaken not only to promote an agreed standard but also good practice. This will include advice on appropriate powers, and accessible procedures for authorities to adopt them.
33. The Government represents the flag state and the port state, with responsibility for enforcing internationally agreed standards for ships' seaworthiness and operation. It aims to work with port authorities in discharging this function, to ensure that their operations fully and properly discharge their duties, and to support them in implementing them.

## **Implementation**

34. The Government looks to all harbour authorities with functions to which the standards in this Code relate to implement the requirements of the Code by the end of 2001. The steps required to be taken by that date to meet the standard set by the Code are described in Part 2. The first step is a considered assessment of risks and the means of reducing them. This may require to include a review of the authority's powers to regulate marine operations. The assessment should be used to develop a safety management system. The system will incorporate the policies and procedures adopted by the authority, which should then be reflected in a published plan. Measures should be taken in parallel to ensure that those engaged in port marine operations are trained and qualified in accordance with the competence standards developed along with the Code.
35. Harbour authorities will not be required to submit their plans for formal approval before putting them into operation. These plans will relate to their local duties and powers for which they are accountable. Harbour authorities will, however, be asked to supply to the Department of the Environment, Transport and the Regions copies of the policies and plans required by this Code to be published. The Department is committed to working closely with the industry to implement the Code, and to monitor its effect. Regular meetings with representative bodies will be held for this purpose: meetings may be sought by and with individual authorities as appropriate. The Department aims to assess progress with initial implementation at six-monthly intervals and will invite harbour authorities to assist with surveys for this purpose.

## **Enquiries**

36. Enquiries about this Code should be made to -

Department for Transport  
Ports Division  
Zone 2/29  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

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