



Maritime &
Coastguard
Agency

Port Marine Safety Code: Health Check Report

Torbay

Date conducted: 3 July 2024

Report date: 9 July 2024

Issued by: Bill Bennett and Danny Hawkins



Introduction and background

The Port Marine Safety Code (“the Code”) sets out a national standard for every aspect of port marine safety.

Its aim is to enhance safety for everyone who uses or works in the UK port marine environment. It is endorsed by the UK Government, the devolved administrations, and representatives from across the maritime sector and, while the Code is not mandatory, these bodies have a strong expectation that all harbour authorities will comply.

The Code is intended to be flexible enough that any size or type of harbour or marine facility will be able to apply its principles in a way that is appropriate and proportionate to local requirements.

Who is the code for?

The Code is applicable both to SHA’s and to other marine facilities which may not have statutory powers and duties.

These are collectively referred to throughout the Code as ‘organisations’ and may include, but are not limited to, the following:

- competent harbour authorities (authorities with statutory pilotage duties)
- municipal port or harbour authorities
- trust port or harbour authorities
- private port or harbour authorities
- marine berths, terminals or jetties

Many of the organisations to which this Code applies will have important legal duties relating to the safety of people who work at, or use, their harbours or facilities, and to the wellbeing of the port marine environment and community.

The responsibility for maintaining port marine safety is governed not only by marine legislation, such as the Pilotage Act 1987 and Merchant Shipping Act 1995 referred to in the Code, but also by general legislation, such as the Health and Safety at Work Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.

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

Maritime and Coastguard Agency's responsibility

The Maritime and Coastguard Agency (MCA) is generally responsible for supporting DfT in developing and implementing the Government's maritime safety and environmental protection strategy.

The MCA is responsible to the Secretary of State for Transport in advising on the composition and application of this Code to all ports in the UK. This includes but is not limited to:

- the conducting of health checks (see below)
- monitoring the compliance of harbour authorities against the Code
- the facilitation of regular meetings between port authorities, related to maritime industries operating within ports and government within the context of this Code in order to exchange opinions and developments which may have a bearing on the content of the Code and the way in which it is applied
- the production of an annual report highlighting emerging trends identified during health checks
- other technical assistance which may be required by the DfT

Health check visits

Health check visits are intelligence led and may be triggered for a variety of reasons ranging from reports, which suggests a failure in a port's Marine Safety Management System (MSMS) to a Marine Accident Investigation Branch (MAIB) recommendation.

Ports may also wish to volunteer for a health check.

The main objective of a health check is to measure the ports compliance with the Code and, where appropriate, identify ways in which compliance can be enhanced.

It will also aim to identify and share any best practice.

Visits are managed by authorised MCA personnel.

Health check report

This report is based on the finding of the health check visit.

The report is broken down into the 10 areas of the Code that are required to meet full compliance.

It is important to note that some of these areas will not be required for non-statutory port and marine facilities.

This will be reflected in the health check report on a case-by-case bases; and a notation will be made in the report to reflect this.

Observations and non-compliance will be noted in the comments sections and an indication of status on compliance will be marked in the status box.

Non-conformity

- Corrective action required

Observation

- Requires review

No non-conformities

- No non-conformities/observations found during health check

This report covers what was observed within the scope and time available of the health check visit only.

It remains the responsibility of the Duty Holder to ensure full and ongoing compliance with the Port Marine Safety Code.

Report categories

The following is a list of the elements of this report. Each area will reflect the sub-category as outlined in the Code.

1. Duty Holder

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

2. Designated Person

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

3. Legislation

The DH must review and be aware of their existing powers based on local and national legislation, seeking additional powers if required to promote safe navigation.

4. Duties and powers

Comply with the duties and powers under existing legislation, as appropriate.

5. Risk assessment

Ensure that marine risks are formally assessed and are eliminated or reduced to the lowest possible level, so far as is reasonably practicable, in accordance with good practice.

6. Marine Safety Management System (MSMS)

Operate an effective MSMS which has been developed after consultation, is based on formal risk assessment, and refers to an appropriate approach to incident investigation.

7. Review and audit

Monitor, review and audit the risk assessment and MSMS on a regular basis – the DP has a key role in providing assurance for the duty holder.

8. Competence

Use competent, trained, qualified and experienced people in positions or responsibility for managing marine and navigation safety.

9. Plan

Publish a safety plan showing how the standards in the Code will be met and produce a report assessing performance against that plan at least every 3 years.

10. Aids to navigation

Comply with directions from the GLA's and supply information and returns as required.

Report

Present at health check

Name	Organisation	Position
Bill Bennett	MCA	Principal Surveyor
Danny Hawkins	MCA	Nautical Surveyor
Rob Parsons	Torbay Harbour	Harbour Master & Divisional Director
Andrew Strang	Torbay Council	Chairman of Torbay Harbour Committee and Duty Holder

Port facility information

Torbay Harbour includes all of the area contained within a line half a mile seaward of a line from Sharkam Point to a position approximately 2.5 miles north of Hope's Nose. Within this large area are the harbour facilities at Brixham, Paignton and Torquay. Brixham is the most significant of the three as a major fishing port in the South West of England with busy ferry services to and from Dartmouth and to the other ports of Torbay. In addition all three provide facilities for inshore fishing and code vessels. Torbay is also a destination for visiting cruise liners which anchor in the bay and land their passengers by tender at Torquay.

Torquay and Brixham have large marinas which are independently managed by MDL and are separately PMSC compliant. They are not included in this health check although, because of their close proximity, the associated marine traffic is considered.

Torbay Council are the established CHA under the terms of the Torbay Harbour Act 1970, The Torbay Harbour Bye-Laws were constituted under sections 45 and 48.

1. Duty holder

The DH is responsible for ensuring that the organisation complies with the code.

To effectively undertake this role, they should:

- be aware of the organisation's powers and duties related to marine safety
- ensure that a suitable MSMS, which follows formal safety techniques, is in place
- appoint a suitable DP to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety
- employ competent people to manage marine safety
- ensure that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set
- report compliance with code to the MCA every 3 years

MCA comments:

- The overall responsibility for the port lies with Torbay Council however the DH responsibility has been delegated to the Torbay Harbour Committee. The MCA Team were very grateful for the attendance of the Committee Chairman, Councillor Strang, during the health check. Councillor Strang and his Committee are fully committed to the implementation of the PMSC.
- The ability for the HM to report directly and routinely to the DH on port safety matters is crucial to compliance with the PMSC. The Harbour Committee meets quarterly, however there is no specific PMSC item on their agenda.
- A recent fire on a large pleasure craft berthed in Torquay led to a multi-agency response and was declared a 'major incident' by the Emergency Services. This incident demonstrates the potential for a serious accident within the Port's jurisdiction. It is important the DH has the confidence that there are sufficient qualified personnel across all three ports to deal with these situations. Although there was a follow up by the MAIB this incident would be worthy of an independent investigation by the DP.

Compliance status:

Non-conformity

- Corrective action required

2. Designated Person

Each organisation must appointment an individual as the DP to provide independent assurance directly to the duty holder that the MSMS (for which the duty holder is responsible for) is working effectively.

Their main responsibility is to determine, through assessment and audit, the effectiveness of the MSMS in ensuring compliance with the code.

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.

This role does not obscure the accountability of the organisation's DH.

MCA comment

- The responsibility for appointing the DP lies with the DH. The HM of the nearby Harbour of Teignmouth was appointed DP on a reciprocal arrangement with the HM of Torbay. Due to changes in key personnel this arrangement has broken down and there is currently no active DP involvement. It is important a DP is appointed asap.
- Please see comment at item 1. The ability of the DP to provide an independent report to the DH on serious incidents is key to PMSC compliance.

Compliance status:

Non-conformity

- Corrective action required

3. Legislation

The DH must review and be aware of the organisation's powers based on local and national legislation, seeking additional powers if required in order to promote safe navigation.

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

MCA comments:

- The Torbay Harbour Act 1970 applies and has been regularly reviewed.

Compliance status:

No non-conformities

- No non-conformities/observations found during health check

4. Duties and powers

General duty and powers: for the purpose of the code, the DH should ensure that the harbour authority or the organisation discharges its responsibilities for:

- safe and efficient port marine operations
- open port duty
- conservancy duty
- revising duties and powers
- environmental duty
- civil contingencies duty
- harbour authority powers
- power of direction – powers to direct vessels are available and should be used where appropriate to support safe navigation
- regulation of dangerous vessels and substances – dangerous vessels and dangerous substances (including pollution) must be effectively managed
- pilotage – a pilotage service must be provided if required in the interest of safety as determined by risk assessment

MCA comments:

- Torbay is a CHA providing a compulsory pilotage service for vessels over 80m in length. There are approximately only 4 acts of pilotage annually. This is not sufficient to support an independent validation process. The pilotage service is provided through Brixham Shipping Agency relying on 3 qualified pilots made available from adjacent ports. It is important that the Torbay HM has oversight of their validation process.
- There are numerous domestic passenger vessels operating in Torbay. In Brixham there is one landing stage for small passenger vessels. The berthing schedule is at the discretion of the Boatmasters involved. It is important the HM has confidence that this operation is managed safely. At a previous HC it was suggested that one option was to introduce a PEC requirement for these Boatmasters as a way of improving the safety of the operation. This recommendation still stands.

Compliance status:

Observation

- Requires review

5. Risk assessment

The risks associated with marine operations need to be assessed and a means of controlling them needs to be deployed. The aim of this process is to eliminate the risk or, failing that, to reduce risks as low as reasonably practicable. Formal risk assessments should be used to:

- identify hazards and analyse risks
- assess those risks against an appropriate standard of acceptability
- where appropriate consider a cost benefit assessment of risk reduction measures

MCA comments:

- Regularly reviewed RAs are available. It is important the Marine RAs are separately identified from other risks found within the port.

Compliance status:

No non-conformities

- No non-conformities/observations found during health check

6. Marine Safety Management System (MSMS)

The MSMS should incorporate safety policies and procedures to:

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

The MSMS should also:

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

MCA comments:

- There currently 3 large marinas managed by MDL. These facilities have separately declared compliance with the PMSC, however it is important that the Torbay HM, with the overall SHA responsibility, is confident that the MSMS of each marina is compatible with that of the SHA. This exercise has yet to be undertaken.
- The port has a significant number of small commercial vessels from FVs, DPVs to Code Vessels. It is recommended that a record of these vessels is maintained to give the HM the confidence that all vessels based in the port are operating legally.
- The MSMS does not contain any weather criteria for operation. Each facility is conflicted by weather conditions differently depending mostly on the wind direction. It may be worthwhile considering introducing weather related operating protocols particularly in relation to the domestic passenger vessels. The assessment of visibility would be an important risk factor.

Compliance status:

Non-conformity

- Corrective action required

7. Review and audit

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

The DH must also publish an assessment of the organisation's performance against the plan.

Information gathered from the monitoring and auditing of the MSMS should be used to support the analysis and conclusions.

Under the code, all persons involved in the management and execution of marine services should be qualified and trained to the appropriate national standard.

Organisations must assess the fitness and competence of all persons appointed to positions with responsibility and navigation safety. A policy on revalidation or maintenance of qualifications should also be considered.

Achieving port marine safety is a team operation and people in these roles must be competent and adequately trained, qualified and experienced.

MCA comments:

- The HM has recently completed a review of the MSMS followed by a comprehensive report.

Compliance status:

No non-conformities

- No non-conformities/observations found during health check

8. Competence

Use competent, trained, qualified, and experienced people in positions of responsibility for managing marine and navigation safety.

MCA comments:

- The HM has completed the Lloyds HM Diploma and has aspirations to complete the UKHMA Certificate. There is currently a Deputy HM and two assistants who may benefit from a similar opportunity.

Compliance status:

No non-conformities

- No non-conformities/observations found during health check

9. Plan

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

The plan should illustrate how the policies and procedures will be developed to satisfy the requirements under the code. It should commit the organisation to undertake and regulate marine operations in a way that safeguards the harbour/facility, its users, the public and the environment.

It should refer to its commercial activities, the efficient provision of specified services and the effective regulation of vessels including near miss reporting.

It should explain how commercial pressures would be managed without undermining the safe provision of services and the efficient discharge of its duties.

The DH must also publish an assessment of the organisation's performance against the plan.

Information gathered from the monitoring and auditing of the MSMS should be used to support the analysis and conclusions.

The DH must report compliance with the code to the MCA every three years.

MCA comments:

- The elements of a Marine Safety Plan lie within a general Council document. It is recommended that a 3 yearly Marine Safety Plan, specific to the harbour operations, is produced for the review and comment of DP.

Compliance status:

Non-conformity

- Corrective action required

10. Aids to Navigation

All aids to navigation must be maintained by the harbour authorities and any other existing local lighthouse authorities must be maintained in accordance with the availability criteria laid down by the GLA's and must be subject to periodic review.

The characteristics of these aids to navigation must comply with the 'International Association of Lighthouse Authorities Guidelines and Recommendations'

Information and periodic returns must be supplied, when required, to the appropriate GLA's.

MCA comments:

- A to N are regularly serviced. The GLA has completed an inspection within the past 12 months.

Compliance status:

No non-conformities

- No non-conformities/observations found during health check

Summary of findings and recommendations

No.	Category	Compliance status
1	Duty Holder	
2	Designated Person	
3	Legislation	
4	Duties and powers	
5	Risk assessment	
6	Marine Safety Management System	
7	Review and audit	
8	Competence	
9	Plan	
10	Aids to Navigation	

Glossary

ALARP	As Low As Reasonably Practical
CHA	Competent Harbour Authority
CPD	Continuing professional development
DfT	Department for Transport
DH	Duty Holder
DP	Designated Person
HM	Harbour Master
GLA	General Lighthouse Authority
GTGP	Guide to Good Practice
KPI	Key Performance Indicator
MAIB	Marine Accident Investigation Branch
MCA	Maritime & Coastguard Agency
MPX	Master/Pilot exchange
PMSC	Port Marine Safety Code
PEC	Pilot Exemption Certificate
MAIB	Marine Accident and Investigation Branch
MSMS	Marine Safety Management System
NRA	Navigational Risk Assessment
OPRC	International Convention on Oil Pollution Preparedness, Response and Co-operation
(F) RA	(Formal) Risk Assessment
SHA	Statutory Harbour Authority
VTS	Vessel Traffic Service
LPS	Local Port Services

Further information

Maritime and Coastguard Agency

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