

HARBOURS (SCOTLAND) ACT 2015

EXPLANATORY NOTES

OVERVIEW

3. Trust ports are independent statutory bodies governed by their own local legislation and run by independent boards who manage the assets of the trust for the benefit of stakeholders. They are generally creatures of statute and operate only within the powers and duties conferred on them by statute.
4. The Act repeals section 10 of the Ports Act 1991, removing the Scottish Ministers' powers to require certain trust ports (that is, those currently with a minimum annual turnover of around £9 million) to prepare privatisation proposals.
5. The Act also removes the requirement for six copies of a draft harbour revision or empowerment order (and any map to be annexed to such an order) to be submitted along with the application for the order. In addition, it removes the requirement to submit six copies of a harbour reorganisation scheme (and any map to be annexed to the scheme) to the Scottish Ministers.
6. The Act has two principal sections:

Section 1 – Modification of Ports Act 1991

7. Part 1 of the Ports Act 1991 makes provision regarding the formation of companies by certain harbour authorities (which are generally trust ports) and the transfer of the property, rights, liabilities and functions of those authorities to those companies.
8. [Section 1\(2\)](#) of the Act provides for the repeal of sections 10 to 12 of the Ports Act 1991 in relation to Scotland.
9. Section 10 of the Ports Act 1991 allows the Scottish Ministers to issue a direction requiring a harbour authority with an annual turnover over a specified level to form a company and prepare a scheme to transfer the authority's property, rights, liabilities and functions to the company.
10. Section 11 of the Ports Act 1991 defines the annual turnover requirement for purposes of section 10. Section 12 confers power on the Scottish Ministers to make a scheme to transfer a harbour authority's property, rights, liabilities and functions to a successor company formed under section 1(1) where the scheme submitted by the harbour authority under section 10 does not accord with advice given by the Ministers in relation to the preparation of the scheme and the Ministers cannot modify the scheme to accord with their advice.
11. [Section 1\(3\)](#) and [\(4\)](#) of the Act makes the following modifications of other sections of the Ports Act 1991 in consequence of the repeal of sections 10 to 12 of that Act:
 - subsection (3)(a) repeals the reference to a notice under section 12(3) of the 1991 Act in the definition of "the Gazette" in section 20(1) (meaning the Edinburgh Gazette for the purposes of Part 1 of the 1991 Act in relation to a harbour in Scotland);

*These notes relate to the Harbours (Scotland) Act 2015
(asp 13) which received Royal Assent on 2 December 2015*

- subsection (3)(b) repeals the references to a notice under section 12(3) of the 1991 Act in:
 - section 20(3)(a) (which relates to the meaning of the publication of a notice in the Gazette and local advertisement for the purposes of Part 1 of the 1991 Act); and
 - section 20(6) (which provides that a notice in relation to a transfer scheme affects any harbour for which the port authority that is the subject of the scheme is the harbour authority); and
- subsection (4) repeals section 37(4)(a) and (b). (Paragraph (a) of subsection (4) of section 37 of the 1991 Act provides that any order under section 9(7) of that Act, as it applies to a scheme under section 10 (by virtue of section 10(5)), is subject to the affirmative procedure. Paragraph (b) of that subsection applies the affirmative procedure to an order under section 12(8) of the 1991 Act.)

Section 2 – orders and schemes relating to harbours

12. This section amends paragraph 7 of Schedule 3, and paragraph 1 of Schedule 4, to the Harbours Act 1964 in relation to Scotland.
13. Subsection (2) provides for the amendment of paragraph 7 of Schedule 3 to the Harbours Act 1964. It removes the requirement to provide six copies of a draft harbour revision or draft harbour empowerment order (and any map to be annexed to the order if made) with the application for a harbour revision order or a harbour empowerment order. The effect of the amendment is that an application for a harbour revision order or a harbour empowerment order must be accompanied by a draft of the proposed order and any map to be annexed to the order (if the order is made in the form of the draft proposed order). (While paragraph 7 of Schedule 3 to the 1964 Act makes express reference only to harbour revision orders, by virtue of paragraph 32 of that Schedule, paragraph 7 of the Schedule also applies to harbour empowerment orders.)
14. Subsection (3) provides for the amendment of paragraph 1 of Schedule 4 to the Harbours Act 1964. It replaces the requirement to provide six copies of a harbour reorganisation scheme (and any map to be annexed to the scheme if confirmed) to the Scottish Ministers under section 18 of that Act with a requirement to provide a copy of the scheme (and a copy of any map).