
STATUTORY INSTRUMENTS

1989 No. 900

The Birmingham Assay Office Order 1989

Citation and commencement

1.—(1) This Order may be cited as the Birmingham Assay Office Order 1989 and shall come into force on 1st July 1989.

(2) The Birmingham Assay Office Acts 1824⁽¹⁾ and 1902⁽²⁾ and this Order may be cited together as the Birmingham Assay Office Acts and Order 1824 to 1989.

Interpretation

2. In this Order, unless the context otherwise requires—

“annual meeting” means an annual meeting of the Company;

“the appointed day” means the day of the next general meeting of the Company which occurs after the expiry of the period of three months commencing with the date on which this Order comes into force;

“the Company” means the Guardians of the Standard of Wrought Plate in Birmingham;

“the guardians” means the guardians constituting the Company and “guardian” means any one of the guardians;

“the Office” means the undertaking of the Company as for the time being authorised by any enactment or Order made under any enactment, including this Order;

“the wardens” has the meaning given by paragraph (1)(a) of article 6 (“Wardens' Committee”) of this Order, and “warden” shall be construed accordingly.

Alteration of constitution

3.—(1) As from the appointed day the Company shall consist of thirty-six guardians, being persons appearing to have a concern with the continuance of any Assay Office operated by the Company; and in their appointment regard shall be had to the need for securing that the guardians shall include persons who are suitably experienced and qualified as follows:—

- (a) six or more persons (but not more than nine), by virtue of their engagement wholly or mainly in trading in, or manufacture of, articles of precious metal;
- (b) two or more persons, by virtue of their knowledge of, and experience in, organisations established, or activities carried on, for the protection of consumers;
- (c) two or more persons, by virtue of their knowledge of, and experience in, the enforcement of consumer protection legislation;
- (d) one or more persons, by virtue of their employment full time in the management of the Office;

(1) 1824 c.lii.
(2) 1902 c.xxvii.

- (e) one or more persons, by virtue of their full time employment by the Company, but not being employed full time in the management of the Office.
- (2) Before making appointments in accordance with paragraph (1) of this article, the guardians shall undertake such consultations as are appropriate.
- (3) The guardians holding office immediately before the appointed day—
 - (a) shall, after consultation with the British Hallmarking Council, which shall be given at least one month's written notice of the guardians' proposals, appoint persons as guardians (who may include persons from their own number who are suitably qualified and experienced) pursuant to paragraph (1) of this article who are to hold office as from that day; and
 - (b) shall retire from the office they held before the appointed day at the end of the general meeting of the Company held on that day.
- (4) The guardians first appointed under paragraph (3) of this article shall be appointed as respects—
 - (a) nine, until the end of the annual meeting of the Company held in 1990;
 - (b) nine, until the end of the annual meeting held in 1991;
 - (c) nine, until the end of the annual meeting held in 1992; and
 - (d) nine, until the end of the annual meeting held in 1993.
- (5) Subject as regards the appointment of the guardians first appointed, to paragraphs (3) and (4) of this article, appointments of persons as guardians shall be made at a general meeting by the guardians holding office for the time being; and, subject to the provisions of this Order, any guardian so appointed shall, unless he shall previously die or resign or be removed from office, hold office until the end of the fourth annual meeting following the meeting at which he is appointed.
- (6) Before taking up his appointment every guardian shall sign an undertaking in a form from time to time approved by the Company that he will diligently fulfil the duties of his office and not disclose, otherwise than as may be necessary in the course of his office or with the consent in writing of the person having a right so to disclose, information respecting either any trade secret or procedure used in carrying on a particular undertaking (whether of the Company or otherwise) or any pattern, design or invention of or relating to any article brought to be assayed, being information given to him or obtained by him by virtue of his office. Failure to sign the said undertaking shall disqualify the guardian from office as guardian.

Resignations, vacancies, etc

- 4.—(1) A guardian may at any time by notice in writing to the Company resign his office.
- (2) A casual vacancy arising in the office of a guardian may be filled by the guardians and a person appointed to fill a casual vacancy shall, unless he shall previously die or resign or be removed from office, hold office from the date of his appointment until the expiry of the term of office for which the person he replaces was appointed.
- (3) A person retiring from the office of a guardian shall, unless otherwise disqualified, be eligible for re-appointment.
- (4) No person shall be capable of being appointed a guardian if at the time of his appointment he has attained the age of seventy. A guardian shall retire at the end of the annual meeting next following his attaining the age of seventy (or, if he attains that age on the day of an annual meeting, then at the end of that meeting) and, unless the guardian would otherwise have retired at the end of that meeting, the vacancy arising shall be deemed to be a casual vacancy. No person shall be eligible for appointment as a guardian until he has attained the age of twenty-five.
- (5) A guardian shall forthwith cease to hold office upon the passing of a resolution at a meeting of the guardians of the Company for the time being by a majority of at least two-thirds of all the guardians attending the meeting that he is unfit to continue in that office. Twenty-eight days

notice shall be required of a resolution to remove a guardian under this paragraph. The guardian concerned may make with respect thereto representations in writing to the Company (not exceeding a reasonable length) and, unless the representations are received by it too late for it to do so, the Company shall send a copy thereof to every guardian.

Quorum and proceedings

5.—(1) The quorum required for a meeting of the guardians shall be one-third of their number or, if the number of guardians for the time being be not divisible by three, then one-third of the next highest number which is so divisible.

(2) The proceedings of the guardians shall not be invalidated by any vacancy in their number or by any defect in the appointment or qualification of any person as a guardian.

(a) (3) (a) It shall be the duty of a guardian who is in any way, whether directly or indirectly, interested in a contract, transaction or arrangement or proposed contract, transaction or arrangement with the Company to declare the nature of his interest at a meeting of the guardians when the subject matter of such meeting includes, or may include, matters relating to such contract, transaction or arrangement.

(b) A guardian shall not vote in respect of any contract, transaction or arrangement in which he is so interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting.

(4) At any meeting of the guardians, the guardians shall elect one of their number to take the chair for that meeting and the person so elected shall, in the case of an equality of votes, have a second or casting vote.

(5) Subject to the provisions of this Order and to any other provisions of the Birmingham Assay Office Acts and Order 1824 to 1989, and the Hallmarking Act 1973, the procedure and business of the guardians shall be regulated in such manner as they may from time to time determine.

Wardens' Committee

(a) 6. (1) (a) On the appointed day the guardians shall appoint from their number as wardens to the committee of the Company known as “the wardens” not less than six nor more than nine persons suitably experienced and qualified. At each subsequent annual meeting the guardians may appoint further wardens so that however there shall be not less than six nor more than nine wardens: Provided that not less than two nor more than one-third of the wardens shall be persons engaged wholly or mainly in trading in, or manufacture of, articles of precious metals.

(b) If for any reason a warden shall cease to be a guardian, his office as warden shall automatically determine.

(c) Subject to the provisions of paragraph (1)(a) above, the wardens may fill any casual vacancy in their membership and (subject to any direction by the guardians in general meeting) may make additions thereto, and any warden so appointed shall hold office only until the end of the next following annual meeting and shall then be eligible for re-election but shall not be taken into account in determining the wardens who are to retire by rotation at such meeting.

(2) Unless he shall previously die or resign or be removed from office, and subject to the provisions of this Order and to the resolution under which he is appointed, a person appointed a warden shall hold office until he retires under paragraph (4) hereof.

(3) The quorum required for a meeting of the wardens shall be three: Provided that a quorum shall not be present unless of those present at least a majority in number are persons who are not engaged wholly or mainly in trading in, or manufacture of, articles of precious metals.

(4) At the end of each annual meeting one-third of the whole number of wardens shall retire from office or, if their number be not divisible by three, then such number proximate to one-third of the whole shall retire, as the wardens may determine; and those retiring shall be the wardens for the time being who have served the longest periods since their respective last appointments to office as wardens; and, in the case of wardens who have served an equal period, any determination of which of them should retire shall (unless the wardens otherwise determine) be by lot.

(5) At the first meeting of the wardens held following each annual meeting the wardens shall, from their number and in accordance with any conditions of election which the guardians may for the time being by resolution impose, elect a chairman and a chairman so elected unless he shall previously die or resign or be removed from office, or cease to be a guardian, shall hold office as chairman until the commencement of the first meeting of the wardens following the next annual meeting; and no guardian appointed in accordance with article 3(1)(a), (d) or (e) shall be eligible for election as chairman of the wardens.

(6) The provisions of article 4 (Resignations, vacancies, etc) and paragraphs (2) and (3) of article 5 (Quorum and proceedings) of this Order shall with necessary modifications apply to the wardens and the offices of those members as those provisions apply to the guardians and their offices. At any meeting of the wardens, the chairman shall, in the case of an equality of votes, have a second or casting vote.

(7) Subject to the direction of the guardians and to any limitations imposed in any terms of reference given by the guardians to the wardens, the wardens shall be responsible for the general management of the business of the Office, including (but without prejudice to the generality of the foregoing):—

- (a) the appointment and terms and conditions of employment of the assayer to, and other officers and employees of, the Company;
- (b) the exercise of the powers of article 11 (Power to borrow) of this Order;
- (c) subject to section 12 of the Hallmarking Act 1973, prescribing the charges to be made by the Company; and
- (d) prescribing, altering and revoking (as occasion may require) rules and regulations for the management and government of the Office including fixing the time and manner for receiving in and delivering out of articles of precious metal brought to be assayed, and any such rules and regulations may repeal, alter or revoke (in whole or in part) any byelaws, rules, orders or regulations of the Company made under section 7 (Power to make byelaws) of the Birmingham Assay Office Act 1824 or otherwise.

(8) The wardens may appoint one or more sub-committees for any purpose specified by them, and may include therein persons who are not wardens: Provided that all members of such sub-committees shall be guardians.

(9) The wardens may be paid for their services such sum or sums, on a basis related to the duties they perform, including their attendance at meetings of the wardens and at meetings of any sub-committees established by the wardens, as may from time to time be authorised by resolution of the guardians, and may also be repaid their reasonable out of pocket expenses incurred in their capacity as wardens; and payments to such wardens in respect of their services shall be identified in the accounts of the Company presented to each annual meeting in accordance with article 10 of this Order.

(10) If a manufacturer or other person sending articles for assay and hallmarking to the Company disputes the reasonableness of any byelaw, rule or regulation prescribed by the Company, he shall have the right to refer the dispute to, and for it to be settled by, a single arbitrator to be agreed between the parties or (if the parties shall fail to appoint an arbitrator within one calendar month of either party serving on the other party a written notice to concur in the appointment of an arbitrator)

a person to be appointed on the application of either party, after written notice to the other, by the Chairman of the British Hallmarking Council.

Appointment of officers and employees

7. It shall be a term of the employment of every officer and employee that he shall not disclose, otherwise than as may be necessary in the course of his employment or with the consent in writing of a person having a right so to disclose, information respecting either any trade secret or procedure used in carrying on a particular undertaking (whether of the Company or otherwise) or any pattern, design or invention of or relating to any article brought to be assayed, being information given to him or obtained by him by virtue of his employment.

Acquisition and disposal of land

8.—(1) The Company may acquire by agreement any land for the purposes of any of its functions, and notwithstanding that the land is not immediately required for any such purpose.

(2) The Company may dispose of any land held by it in any manner it wishes.

(3) In this article “land” includes any interest in land and any easement or right in, to or over land.

Annual and other meetings

9.—(1) An annual meeting shall be held in each year and not more than fifteen months shall elapse between the date of one annual meeting and that of the next.

(2) In every year there shall be at least one meeting of the Company in addition to the annual meeting and, subject to any directions of the guardians, such other meetings as the wardens may see fit to convene.

(3) Subject to the provisions of this article and to any directions of the guardians, the wardens shall be responsible for convening meetings of the Company and for determining the place, day and hour for any such meeting.

(4) Not less than twenty-one days' notice shall be given for calling any meeting of the Company either personally to each of the guardians or by sending it by post to him at his last known address in the United Kingdom; and, where sent by first class post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and at the expiration of twenty-four hours after the letter containing the same has been posted: Provided that no such notice shall be required of an adjourned meeting in any case where a meeting is adjourned for less than thirty days.

(a) (5) (a) The wardens shall forthwith proceed to convene a meeting of the Company upon a requisition by not less than three guardians which states the objects of the meeting, is signed by all the requisitionists and is deposited at the main place of business of the Company.

(b) If the wardens do not within twenty-one days from the date of the deposit of the requisition convene a meeting, the requisitionists may themselves convene a meeting in the same manner, as nearly as possible, to that in which meetings are to be convened by the wardens; and the Company shall repay to the requisitionists any reasonable expenses incurred by them by reason of the failure of the wardens to convene a meeting.

Accounts, financial year and audit

10.—(1) The wardens shall cause to be prepared for presentation to each annual meeting accounts of the Company for the last financial year then ended and showing the income received in respect thereof and the expenditure thereout and a balance sheet showing the assets and liabilities of the

Office, and such accounts and balance sheet shall have been duly audited by the auditor of the Company and his report thereon shall be annexed or appended to those accounts and balance sheet.

(2) The financial year of the Company shall end on 30th June or on such other date as the guardians may from time to time determine.

(3) The auditor of the Company shall be appointed by the guardians and no person shall be qualified to be appointed auditor under this article unless he is a member or in the case of a firm all the partners therein are members of one or more of the following bodies:—

the Institute of Chartered Accountants in England and Wales;

the Institute of Chartered Accountants of Scotland;

the Chartered Association of Certified Accountants;

the Institute of Chartered Accountants in Ireland;

any body of accountants established in the United Kingdom which is for the time being recognised for the purposes of section 389(1)(a) of the Companies Act 1985(3) by the Secretary of State.

(4) The auditor or, in the case of a firm being the auditors, any partner therein, shall not be capable of being a guardian or warden nor shall a guardian, warden, or employee of the Company, or any firm or partner in a firm of which he is a partner, be capable of being the auditor.

(5) As soon as the accounts of the Company have been approved by the Company, they shall cause a copy of the accounts to be sent to the British Hallmarking Council; and a copy of the accounts shall be kept at the office of the Company and any person interested shall be entitled, free of charge, to inspect and to take copies of, or extracts from the copy of, the accounts.

(6) Any person, on application to the Company, shall be entitled to be furnished at his option with copies of the accounts or statements summarising the accounts of the Company, on payment of such reasonable sums as the Company may determine.

(7) The Company shall cause such proper books of account to be kept as are necessary to give a true and fair view of the affairs and transactions of the Company; and such books shall be open at all reasonable times to the inspection of the wardens and of the guardians.

(8) There shall, in a note to the accounts of the Company prepared under the provisions of this article:

(a) if one person has served as chairman of the wardens throughout the financial year, be shown his emoluments and otherwise be shown, with respect to each person who has served as chairman of the wardens during the financial year, his emoluments so far as they may be attributable to the period of such financial year during which he was chairman; and

(b) with respect to all the wardens be shown the number (if any) who had no emoluments or whose several emoluments amounted to not more than £1,000 and, by reference to each pair of adjacent points on a scale whereon the lowest point is £1,000 and the succeeding ones are successive integral multiples of £1,000 the number (if any) whose several emoluments exceeded the lower point but did not exceed the higher.

Power to borrow

11. The Company may and shall be deemed always to have had power to borrow or raise or accept money on deposit in such manner and upon such terms and conditions as the Company may deem expedient including (but without prejudice to the generality of the foregoing) borrowing from bankers on overdraft or opening any acceptance credit with any bank or accepting house, and may secure the repayment of any money borrowed, raised or owing, or the discharge or performance

(3) 1985 c. 6.

of any obligation or liability undertaken or incurred by the Company or any other person or body corporate, by any mortgage or charge (whether of a fixed or floating or any other nature) on or over all or any part of the property and assets (both real and personal) for the time being of the Company or in any other manner.

Power of investment

12.—(1) Any moneys for the time being in the hands of the Company which are not immediately required, including moneys which form part of any reserve fund, pension fund, insurance fund or other fund administered by the Company, may be invested in the purchase of any investments or property of any description either real or personal and wheresoever situate and whether or not being investments or property otherwise authorised by law for the investment of trust funds, or upon loan upon the security of any property of any description or without security.

(2) Moneys not immediately required by the Company for any other purpose may be deposited at any bank, building society or other appropriate body.

(3) The Company may from time to time at its discretion transpose or vary its investments for or into any others for the time being authorised.

(4) In relation to land whether freehold or leasehold acquired as an investment, the Company may exercise all the powers of management, improvement or development which could be exercised by an absolute owner holding the land beneficially.

Pensions, employees' clubs, etc

13.—(1) The Company has established a pension scheme and may continue to maintain or procure the establishment and maintenance of contributory or non-contributory pension or superannuation funds or schemes for the benefit of, and may give or procure the giving of donations, gratuities, pensions, allowances or emoluments to, or for the benefit of, any persons who are or have been employed by the Company and their wives, widows, families and dependants and may make payments for or towards the insurance of or for any such persons as aforesaid.

(2) The Company may continue, amend, repeal or revoke any such fund or scheme (and all instruments relative thereto) as is mentioned in the last foregoing paragraph, and whether established before or after the passing of this Order: Provided that, subject to anything to the contrary contained in any legislation or rules affecting such fund or scheme, no such action shall operate so as to affect in any way prejudicially either any pension already being paid under the rules of such fund or scheme at the date such action is taken or has effect or any rights or interests accrued to any beneficiary under such fund or scheme at the date such action is taken or has effect.

(3) The Company may procure or assist in the establishment and support of, and may subscribe or otherwise contribute to the revenues of any institution, association, club or fund having objects or purposes appearing to offer facilities for the recreation or benefit of persons who are or have been employed by the Company or their wives, widows, families or dependants, or otherwise appearing to be in the interests of the Company.

(4) Retirement pensions first paid by the Company on an ex gratia basis before the entry into force of this Order shall continue to be paid during the lifetime of the pensioners concerned.

(5) All pensions and annuities paid by or on behalf of the Company shall be reviewed each year by the wardens and the wardens shall report the outcome of their review to the guardians at each annual meeting; and, if in the light of this review pensions paid in accordance with paragraph (1) above are increased, all other pensions and annuities paid by or on behalf of the Company before the entry into force of this Order in terms of paragraph (4) above shall also be increased, at the same time and at the same rate.

(6) The accounts of the Company presented to each annual meeting of the guardians shall include information on the total amount paid in pensions in the last financial year by or on behalf of the Company and on the number of pensioners concerned.

Gift of historical etc articles

14.—(1) Without prejudice to the Company’s power of sale, the Company may, subject to the provisions of this article, give to any person any article vested in it which appears to be of historical, local, scientific or artistic interest.

(2) No such article shall be given to any person unless such gift has been approved by a resolution of not less than three-fourths of the guardians of the Company attending a meeting of the Company to discuss the gift.

(3) Where any article referred to in paragraph (1) of this article has become vested in the Company by virtue of a gift or bequest—

- (a) the Company shall, if reasonably practicable, consult with the donor or with the personal representatives or trustees of the donor before exercising the powers of this article; and
- (b) the powers conferred by this article shall not be exercisable as respects that article in any manner inconsistent with any express condition attached to the gift or bequest, except with the consent of the donor or the personal representatives or trustees of the donor.

(4) In the case of any gift of any article made to the Company after the coming into force of this Order, the Company shall at or before the acceptance of the gift give to the person making it written notice of the effect of paragraphs (1), (2) and (3) of this article.

Power to provide offices elsewhere than in Birmingham

15. As from the coming into force of this Order the business of the Company may, if so authorised by the British Hallmarking Council, be carried on elsewhere than in Birmingham and accordingly, notwithstanding anything in the Birmingham Assay Office Act 1824, the Company may provide and open one or more offices and provide other premises for the carrying on of its business in such places as it thinks fit, and may from time to time alter the places, offices and premises at which their business is so carried on: Provided that any decision to establish its principal place of business other than in Birmingham shall be taken only by a two-thirds majority of the guardians voting in general meeting.

Protection of guardians, wardens and officers from personal liability

16. No matter or thing done and no contract entered into by the Company, and no matter or thing done by any guardian, warden, officer or employee of the Company acting under the direction of the guardians or the wardens, shall, if the matter or thing were done or the contract were entered into bona fide for the purpose of discharging the functions of the Company, subject them or any of them personally to any action, liability, claim or demand whatsoever; and any expense incurred by any such guardian, warden, officer or employee acting as last aforesaid shall be borne and repaid out of the funds of the Company.

Miscellaneous amendments of Birmingham Assay Office Acts 1824 and 1902

17.—(1) Section 14 (Purpose of Assay Office, etc) of the Birmingham Assay Office Act 1824 is hereby amended by the substitution for the words following “brought to be assayed in pursuance of this Act” of the words “and other articles of precious metal within the meaning of the Hallmarking Act 1973; and the said Company may turn their resources to account so far as not required for the purposes aforesaid”.

- (2) The Birmingham Assay Office Act 1902 is hereby amended—
- (a) in section 3 (Application of income of Company)—
- (i) by the substitution for the first head of the section beginning with the words “To the Making” of the words “To payments for the purposes mentioned in article 13 (Pensions, employees' clubs, etc) of the Birmingham Assay Office Order 1989”;
- (ii) by the substitution for the third and fourth such heads of the following:—
- “To the purchase of books, papers, letters, pictures, objects of art or manufacture and other things relating to jewellery or articles of precious metal;
- To making grants, donations or subscriptions (including donations of such books, papers, letters, pictures, objects of art or manufacture and other things aforesaid) for philanthropic, charitable, educational or other purposes;”
- (b) in section 4 (Provisions as to surplus income)—
- (i) by the substitution for subsection (1) of the following subsection:—
- “(1) After meeting or providing for all expenditure authorised by the Birmingham Assay Office Acts and Order 1824 to 1989 the remaining surplus income (if any) shall be applied as follows:—
- Such amount of such surplus income as the guardians consider appropriate shall be carried to and invested as a reserve fund or funds and (unless and until the said Company by a three-fourths majority of the guardians present in general meeting specially summoned for the purpose otherwise resolve) the remainder of such surplus shall be applied in the provision of facilities or services or improved facilities or services for customers of the Company and/or in the reduction of charges for assaying and hallmarking subject to the provisions of section 12 of the Hallmarking Act 1973”;
- (ii) by the omission of subsection (3).
- (c) in section 6 (Application of reserve fund) by the omission of the words in parentheses.

Repeals

18. The enactments specified in the Schedule to this Order are hereby repealed to the extent specified in the fourth column of that Schedule.

Costs of Order

19. Any costs, charges and expenses of and incidental to the preparation and making of this Order incurred by the Company may in whole or in part be defrayed out of revenue.

25th May 1989

Eric Forth
Parliamentary Under-Secretary of State,
Department of Trade and Industry