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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 396**

**The Gardenstown Harbour Revision Order 2016**

**Citation and commencement**

1.—(1) This Order may be cited as the Gardenstown Harbour Revision Order 2016 and shall come into force on the day after the day on which it is made.

(2) The Gardenstown Harbour Order 1911 and this Order may be cited together as the Gardenstown Harbour Orders 1911 to 2016.

**Interpretation**

2.—(1) In this Order—

“1911 Order” means the Gardenstown Harbour Order 1911 as confirmed by the Pier and Harbour Orders Confirmation (No. 1) Act 1911<sup>(1)</sup>;

“the existing Trustees” means the Trustees holding office, in accordance with the terms of the 1911 Order, on the day immediately before this Order comes into force;

“the first Trustees” means the persons appointed as Trustees by the existing Trustees under article 4 (as read with article 17) and “a first Trustee” means any of those persons;

“the harbour” has the same meaning as in the 1911 Order;

“the new constitution date” means the 30th day after the day on which this Order comes into force; and

“the Trustees” means the Gardenstown Harbour Trustees incorporated under the 1911 Order.

**Incorporation of sections of the Commissioners Clauses Act 1847 and of the Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) Sections 2, 3, 60 and 65 of the Commissioners Clauses Act 1847 (so far as applicable and not inconsistent with the Gardenstown Harbour Orders 1911 to 2016) shall be incorporated with this Order subject to the modifications stated in paragraph (3).

(2) Sections 1 to 4, 33 to 35, 37 to 39, 42, 51, 52, 54 to 58 and 63 to 65 of the Harbours, Docks, and Piers Clauses Act 1847 (so far as applicable and not inconsistent with the Gardenstown Harbour Orders 1911 to 2016) shall be incorporated with this Order, subject to the modifications stated in paragraphs (3), (4) and (5).

(3) In construing the provisions of the Commissioners Clauses Act 1847 and the Harbours, Docks, and Piers Clauses Act 1847 as incorporated with this Order, the expression “the special Act” means the 1911 Order and this Order and in the latter Act, the expression “the undertakers” means the Trustees.

(4) Section 63 of the Harbours, Docks, and Piers Clauses Act 1847 (penalty on vessels lying near the entrance of harbour or dock without permission) shall have effect subject to the modification that for the words from “be liable to” to the end of the section there are substituted the words “be

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(1) 1911 c.clvii (1 & 2 Geo. 5.).

guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(5) Section 65 of the Harbours, Docks, and Piers Clauses Act 1847 (harbour master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

### **Constitution of the Trustees**

4.—(1) On and after the new constitution date, the Trustees shall consist of nine persons appointed by the Trustees who are in post at the time any appointment is made.

(2) Each Trustee appointed shall be a person who appears to the Trustees to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Trustees of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge, experience or ability in one or more of the following matters:—

- (a) management of harbours;
- (b) usage of port facilities;
- (c) commercial boating activities;
- (d) industrial, commercial and financial matters;
- (e) administration;
- (f) the organisation of employees;
- (g) the fishing industry;
- (h) financial management;
- (i) the laws relating to Scotland;
- (j) safety management;
- (k) commercial marketing;
- (l) environmental matters affecting harbours;
- (m) civil engineering;
- (n) local government and local community interests;
- (o) recreational, sporting and leisure activities including without prejudice to the generality, recreational and competitive boating activities; and
- (p) any other skills and matters considered from time to time by the Trustees to be relevant to the discharge of them of their functions,

and the Trustees shall secure, so far as reasonably practicable, that the persons appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of their functions.

(3) In making an appointment under paragraph (1) or article 8 below, the Trustees shall take account of any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

### **Appointment and terms of office of the first Trustees**

5. The first Trustees shall hold office as follows:—

- (a) three shall hold office from the new constitution date until 31st December 2017;
- (b) three shall hold office from the new constitution date until 31st December 2018; and
- (c) three shall hold office from the new constitution date until 31st December 2019,

as the Trustees shall specify when making each of those appointments.

### **Terms of office of subsequent Trustees**

6. A Trustee appointed under article 4(1) (other than any of the first Trustees) shall, unless appointed to fill a casual vacancy and subject to the provisions of this Order, hold office for a period of three years from 1st January next following their appointment.

### **Declaration to be made by Trustees**

7. No person shall be capable of acting as a Trustee until the declaration set out in schedule 1 of this Order has been made and a person shall cease to be a Trustee if that declaration has not been made within three months of the date of appointment.

### **Casual Vacancies**

8.—(1) A casual vacancy shall arise in the event of the death, disqualification of a Trustee, or vacation of office by a Trustee, before the end of that Trustee's term of office as specified in accordance with article 6 (or as the case may be article 5), or the failure of a Trustee to make a declaration under article 7.

(2) A casual vacancy arising in the office of a Trustee shall be filled by the appointment of a Trustee by the other Trustees.

(3) A Trustee appointed to fill a casual vacancy under this article shall hold office (unless that person previously dies or otherwise ceases to be a Trustee) during the remainder of the term for which the Trustee in whose place that person was appointed, would, in ordinary course, have continued in office.

### **Disqualification of Trustees**

9.—(1) If the Trustees are satisfied that a Trustee—

(a) has without the permission of the Trustees been absent from meetings of the Trustees during a period—

(i) when three such meetings have been held; or

(ii) of three consecutive months,

whichever is the longer;

(b) has become bankrupt or made an arrangement with creditors;

(c) is incapacitated by physical or mental illness from discharging the functions of a Trustee; or

(d) is otherwise unable, unwilling or unfit to discharge the functions of a Trustee,

the Trustees may declare the office of such a person as a Trustee to be vacant and thereupon the office shall become vacant.

### **Indemnity insurance for Trustees**

10. The Trustees may enter into, and pay premiums for, a contract of insurance to indemnify the Trustees jointly or severally against personal liability arising from any act or omission of the Trustees collectively or individually not being an act or omission which the Trustee or Trustees in question knew to be a breach of duty or, concerning which, the Trustee or Trustees was or were reckless as to whether it was such a breach.

### **Incidental provisions relating to Trustees**

11. On and after the new constitution date the provision of schedule 2 of this Order shall have effect with respect to the Trustees.

### **General Powers of Trustees**

12.—(1) The Trustees may take such steps from time to time as they consider necessary or expedient for the improvement, maintenance and management of the harbour and the accommodation and facilities afforded in or connected with the harbour.

(2) For those purposes, and without prejudice to the generality of paragraph (1), the Trustees may—

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities in the harbour (including facilities for the supply by the Trustees of fuel for vessels);
- (b) subscribe for or acquire shares or securities of any body corporate;
- (c) maintain such reserve funds as they think fit;
- (d) invest any sums not immediately required for the purposes of the harbour;
- (e) turn their resources to account so far as not required for those purposes; and
- (f) do all other things which in their opinion are necessary or expedient to facilitate the proper carrying on or development of the harbour.

(3) This article is without prejudice to any powers of the Trustees under or by virtue of any other enactment.

### **Harbour Charges**

13. On and after the new constitution date the Trustees may, subject to the provisions of the Gardenstown Harbour Orders 1911 to 2016 demand, recover and receive such reasonable sums, other than ship, passenger and goods dues, for services and facilities provided by the Trustees within the harbour as the Trustees may from time to time determine.

### **General Byelaws**

14.—(1) The Trustees may from time to time make byelaws for the efficient management, regulation and conservation of the harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

- (a) regulating the use, operation and superintendence of the harbour and the berths, quays, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the harbour;
- (b) regulating the admission to, and the movement within, and the departure of vessels from, the harbour, or the removal of vessels;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;
- (d) regulating the berthing and mooring of vessels within the harbour;
- (e) preventing damage or injury to any goods, vehicle, plant, machinery, property or person within the harbour;
- (f) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown whilst in the execution of their duties;

- (g) regulating the placing and maintenance of moorings within the harbour;
  - (h) preventing and removing obstructions or impediments within the harbour;
  - (i) regulating the use of ferries within the harbour;
  - (j) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
  - (k) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (j);
  - (l) regulating the launching of vessels within the harbour;
  - (m) prohibiting persons in or entering the harbour, or any part of the harbour, from smoking in open spaces in the harbour;
  - (n) regulating the movement and parking of vehicles within the harbour;
  - (o) regulating the exercise of the powers vested in the harbour master;
  - (p) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction; and
  - (q) the conservation of the fauna and flora in the harbour.
- (3) Byelaws made under this article may:—
- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;
  - (b) relate to the whole of the harbour or to any part of the harbour;
  - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles.

### **Confirmation of Byelaws**

**15.**—(1) Byelaws made by the Trustees under this Order shall not come into operation until they have been confirmed by the Scottish Ministers.

(2) At least one month before an application for confirmation of byelaws is made by the Trustees to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows:—

- (a) once in the Edinburgh Gazette; and
- (b) once in each of two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) Not later than the first date on which the notice under paragraph (2) is published, the Trustees shall send a copy of the notice to the Chief Executive Officer of the Aberdeenshire Council and to the Scottish Ministers.

(4) The Trustees shall supply a copy of the byelaws or of part of the byelaws to any person who shall apply for it free of charge.

(5) During the period of one month after the date of first publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

(6) Subject to paragraph (7), the Scottish Ministers may confirm the byelaws in the form submitted to them or with such modifications as they think fit or may refuse to confirm them.

(7) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaw they shall inform the Trustees and require them to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not make a decision under paragraph (6) until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Trustees and by other persons who have been informed of it.

(8) In making a decision under paragraph (6) the Scottish Ministers shall have regard to any comments that may have been received under paragraph (7).

(9) The Trustees shall provide a copy of any confirmed byelaws, on application, to any person free of charge.

### **Borrowing powers**

**16.** The Trustees may from time to time borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions; and where monies are borrowed by the Trustees under this article, the Trustees may, if they see fit, borrow those monies upon the security of their assets for the time being or of their revenues or of both their assets and their revenues.

### **Repeals, savings and transitional provisions**

**17.—**(1) The enactment mentioned in the first and second columns of schedule 3 shall be repealed to the extent specified in the third column of that schedule.

(2) Despite the repeal of the articles of the 1911 Order specified in schedule 3, the existing Trustees shall, until the new constitution date, continue to hold office as Trustees and may continue to exercise all the powers and duties conferred on them as Trustees under the 1911 Order, and be subject to all such liabilities, as existed by virtue of that Order immediately prior to its repeal by this Order.

(3) The existing Trustees shall appoint the first Trustees under article 4(1).

(4) The appointments of the first Trustees shall take effect on the new constitution date.

(5) Each of the existing Trustees is eligible for appointment as a first Trustee.

St Andrew's House,  
Edinburgh  
25th November 2016

*JOHN NICHOLLS*  
A member of the staff of the Scottish Ministers