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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 403**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The St. Andrews Harbour Revision (Constitution) Order 2010**

*Made* - - - - 17th November 2010

*Coming into force* - - 18th November 2010

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964<sup>(1)</sup> and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act<sup>(2)</sup>.

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to Ministers by the St. Andrews Harbour Trustees (“the applicant”) being the authority engaged in improving, maintaining or managing the harbour and
- (b) Ministers are satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance, or management of the harbour in an efficient and economical manner.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

Notice has been published by the applicant in accordance with the requirements of paragraph 10 of that Schedule<sup>(3)</sup>.

In accordance with paragraph 14 of that Schedule Scottish Ministers have required the applicant to serve Fife Council, The Royal Yachting Association, the Chamber of Shipping and the Northern Lighthouse Board with copies of the draft order and newspaper notice being the documents required to be served under paragraph 13.

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(1) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(3) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c). [Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).]

The provisions of paragraph 17 of that Schedule<sup>(4)</sup> have been satisfied. No objections to the application have been made. In accordance with paragraph 19(2) of that Schedule<sup>(5)</sup>, Ministers have decided to make this Order in the form of the draft submitted to them.

### **Citation and commencement**

1.—(1) This Order may be cited as the St. Andrews Harbour Revision (Constitution) Order 2010 and shall come into force on the day after the day on which it is made.

(2) The St. Andrews Harbour Order 1897 and this Order may be cited together as the St. Andrews Harbour Orders 1897 to 2010.

### **Interpretation**

2. In this Order—

“the 1847 Act” means the Commissioners Clauses Act 1847;

“the Trustees” means the St. Andrews Harbour Trustees;

“the Council” means Fife Council or any statutory successor thereto;

“the new constitution date” means 1st December 2010 or the date on which this Order comes into force whichever is the later.

### **Incorporation of sections of the Commissioners Clauses Act 1847**

3.—(1) Sections 2, 53, 56, 58 to 60 and 65 of the Commissioners Clauses Act 1847 (so far as applicable and not inconsistent with the St. Andrews Harbour Orders 1897 to 2010) shall be incorporated with this Order.

(2) In construing the provisions of the 1847 Act as incorporated with this order the expression “the special Act” means this Order and the expression “the undertakers” means the Trustees.

### **Constitution of the Trustees**

4.—(1) On and after the new constitution date the Trustees shall consist of—

(a) ten persons appointed by the Trustees of whom at least one shall be a person involved in the operation or management of the St. Andrews Harbour; and

(b) two persons appointed by the Council.

(2) The current Trustees shall resign office on the new constitution date but shall all be eligible for reappointment with effect from that date; provided always that no current Trustee who has served as such for three periods of three years (or in the case of the chair for four periods of three years) prior to the new constitution date shall be eligible for reappointment.

(3) The ten persons to be appointed by the Trustees shall be selected by a panel of three persons to be appointed by the Trustees comprising the chair of the Trustees and two other stakeholders, namely a person appointed by the Council and a harbour user representative.

(4) The two persons to be appointed as Trustees by the Council shall be selected by a panel of three persons chaired by a representative of the Council consisting of said representative, a Trustee who is independent of the Council and a harbour user representative.

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(4) Paragraph 17 of Schedule 3 was substituted by [S.I. 1999/3445](#) and is amended by the [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), section 25(5)(g).

(5) Paragraph 19(2) of Schedule 3 was substituted by [S.I. 1999/3445](#).

(5) Each Trustee appointed shall be a person who appears to the Trustees and the Council 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 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 and the Council to be relevant to the discharge by them of their functions, and the Trustees and the Council 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.

(6) No person shall be excluded from appointment as a Trustee by reason of gender, ethnic origin or religious affiliation.

(7) In making an appointment under paragraph (1) or article 9, the Trustees and the Council 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 first Trustees**

5. The first Trustees appointed under article 4(1) shall hold office as follows:—

- (a) four shall hold office from the new constitution date until 30th November 2011;
- (b) four shall hold office from the new constitution date until 30th November 2012;
- (c) four shall hold office from the new constitution date until 30th November 2013,

as the panels constituted under article 4(1)(c) and (d) shall specify when they make those appointments.

### **Transitional co-opted Trustees**

6. To ensure that the Trustees have sufficient experience for the efficient exercise of their functions from and after the new constitution date, the Trustees shall (if not already appointed under

article 4(1)) co-opt the former chair and four other former Trustees to serve as co-opted Trustees for a period of twelve months beginning on the new constitution date.

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

7. A Trustee appointed under article 4(1) (other than a Trustee appointed under article 5 or co-opted under article 6 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 December next following that appointment.

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

8. No person shall be capable of acting as a Trustee until the declaration set out in Schedule 1 to 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**

9.—(1) A casual vacancy arising in the office of a Trustee shall be filled by the appointment of a Trustee by the other Trustees in accordance with the provisions of article 4(1) with regard to the respective numbers of Council and non-Council Trustees.

(2) 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**

10. If the Trustees are satisfied that a Trustee has without the permission of the Trustees been absent from meetings of the Trustees—

(a) during a period—

- (i) when three such meetings have been held; or
- (ii) of three consecutive months;

whichever is the longer; or

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

(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**

11. 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**

**12.** On and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the Trustees.

### **Harbour Charges**

**13.** On and after the new constitution date the Trustees may, subject to the provisions of the St. Andrews Harbour Orders 1897 to 2010 demand, recover and receive for the use of the Harbour, such sums, other than ship, passenger and goods dues, as the Trustees may from time to time determine.

### **Publication of Trustees' annual statement of accounts**

**14.** The Trustees shall prepare an annual statement of accounts as at the end of each financial year and shall appoint a suitably qualified person to examine and audit such statement of accounts; and as soon as reasonably practicable after the said annual statement of accounts has been prepared and audited the Trustees shall make available a copy of the statement for a period of three months at the offices of the Clerk to the Trustees for inspection free of charge by members of the public and shall, subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests to be supplied with a copy.

### **Borrowing powers**

**15.** 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 and revocations**

**16.** On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in the third column of that Schedule.

St Andrew's House,  
Edinburgh  
17th November 2010

*ALASTAIR WILSON*  
A member of the staff of the Scottish Ministers

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## SCHEDULE 1

Article 8

### FORM OF DECLARATION BY TRUSTEES

#### ST. ANDREWS HARBOUR TRUST

#### ST. ANDREWS HARBOUR ORDERS 1897 TO 2010

#### DECLARATION

I, [FULL NAME] do solemnly declare

(1) that I will faithfully and impartially, according to the best of my skill and judgement, execute all the powers and authorities vested in me as a Trustee of the St. Andrews Harbour Trust by virtue of the St. Andrews Harbour Orders 1897 to 2010;

(2) that I have read and understood the notes entitled "Note for Guidance of Trustees on the Disclosure of Financial and Other Interests" and "Duties of Trustees" and that I will comply with the requirements as to the disclosure of such interests, laid down by paragraph 14 of Schedule 2 to the St. Andrews Harbour Revision (Constitution) Order 2010, and in particular that:

- (a) I have disclosed to the Clerk to the Trustees details of every financial or other interest such as is mentioned in those notes;
- (b) I will in future notify the Clerk to the Trustees forthwith of any alteration in those interests, and of any new interest, such as is mentioned in those notes, which I may acquire.

Made and signed in St. Andrews, on the

[                      ] day of [                      ]

.....  
(signature)

Witnessed by

Douglas Nelson Kinnear .....

Clerk to the St. Andrews Harbour Trust      (signature)

## SCHEDULE 2

Article 12

### INCIDENTAL PROVISIONS RELATING TO TRUSTEES

#### *Appointment of Chair of Trustees*

1. There shall be a chair of the Trustees who shall be appointed by the Trustees from among their number.

2. The first chair taking office after the new constitution date shall be appointed at the first meeting of the Trustees referred to in paragraph 6 and, subject to paragraph 7, shall, unless that person resigns as chair or ceases to be a Trustee, continue in office as chair until the initial term of office as a Trustee has expired.

3. Subject to paragraph 4, every chair subsequently appointed under paragraph 1 shall, unless that person resigns office as chair or ceases to be a Trustee, hold office for a period of three years.

4. If the Trustees are satisfied that the chair should cease to hold office as such, they may terminate that appointment and appoint another member to be chair during the remainder of the term for which the former chair was appointed.

5.—(1) On a casual vacancy occurring in the office of chair of the Trustees the vacancy shall be filled by the Trustees at a meeting held as soon as practicable after the vacancy occurs.

(2) A Trustee appointed under this paragraph to fill a casual vacancy in the office of chair shall, unless that person resigns office or ceases to be a Trustee, hold that office during the remainder of the term for which the chair whom that person replaces was appointed.

#### *Meetings of Trustees*

6.—(1) The first meeting of the Trustees after the new constitution date shall be convened as soon as practicable by the Clerk to the Trustees for such date as the Clerk may fix. The Clerk shall make arrangements for notice of that meeting to be sent by post to each of the Trustees.

(2) The Trustees shall meet at least four times in every year.

#### *Vacation of office by Trustees*

7. A Trustee may resign office at any time by notice in writing given to the chair of the Trustees or, if that Trustee is the chair, the Clerk.

#### *Reappointment of Trustees*

8.—(1) Subject to the provisions of this Schedule, a vacating appointed Trustee shall be eligible for reappointment as a Trustee unless that person has been disqualified from the office under article 10.

(2) A vacating appointed Trustee shall not be eligible for reappointment as a Trustee where, immediately before appointment, that person has held office for three consecutive terms unless he is the chair of the Trustees.

(3) A chair of the Trustees who is an appointed Trustee shall not be eligible for reappointment as a Trustee where, immediately before appointment, that person has held office as a Trustee for four consecutive terms.

(4) For the purposes of this paragraph, “term” does not include:—

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- (a) a term referred to in article 5(a) or (b); or
  - (b) the remainder of a term during which the Trustee was appointed to fill a casual vacancy under article 9.
- (5) In this paragraph “appointed Trustee” means a Trustee appointed under article 4(1).

### ***Reappointment of chair***

**9.—**(1) A chair of the Trustees shall not be eligible for reappointment as the chair where, immediately before appointment, that person has served as a chair for three consecutive terms.

(2) For the purposes of this paragraph “term” does not include:—

- (a) a term served by the Trustee as a chair under paragraph 2 where that term is less than three years; or
- (b) the remainder of a term during which the Trustee was appointed to fill a casual vacancy in the office of chair under paragraph 5.

### ***Committees and Co-optees***

**10.** The Trustees may, consistently with their duties and subject to such conditions as they think fit, delegate any of their functions to a committee of the Trustees and may from time to time co-opt a person or persons to assist them in the fulfilment of their duties as Trustees and, if appropriate, pay to that person the usual professional remuneration.

### ***Proceedings of Trustees and Committees***

**11.—**(1) Notwithstanding the generality of paragraph 10 of this Schedule 2 the Trustees may establish Short or Fixed Term consultation groups, which, if established, the Trustees shall consult on matters affecting the remit of the group on its conception.

(2) The Trustees shall make arrangements for such consultation group to meet not less than twice a year.

(3) The Trustees shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by the consultation group whether or not the consultation group has been consulted by the Trustees on the matter, recommendation or representation so referred or made.

(4) Appointments to the consultation groups established under this article shall be made by the Trustees and thereafter any properly constituted organisation that can demonstrate they represent a grouping of stakeholders or other material stakeholder interest in the harbour not already represented may apply to the consultation group for membership. Membership will not unreasonably be refused to such an organisation.

(5) The consultation group may determine its own quorum and procedure and shall appoint a chair to progress the remit of the group.

(6) An individual member of such consultation group, may on giving notice in writing to the chair of the consultation group, send a substitute to any meeting of the body.

(7) A member of the consultation group may hold office for a period of three years from the date of his appointment and at the end of that period shall be eligible for re-appointment, up to a maximum of three terms should the remit of the consultation group extend to that period of time.

(8) A member of the consultation group may resign his office at any time by notice in writing to the chair of the Trustees.



**12.** The acts and proceedings of the Trustees or of any committee of the Trustees, shall not be invalidated by any vacancy in their number or by any defect in the appointment, or the qualification for appointment, of any person as a Trustee or as chair of the Trustees or committee.

**13.** The quorum required for a meeting of the Trustees shall be seven.

**14.** If a Trustee is in any way directly or indirectly interested in any contract or proposed contract to which the Trustees are, or would be, a party and is present at a meeting of the Trustees or of any committee of the Trustees at which that contract is the subject of consideration, that person shall as soon as practicable after the commencement of the meeting disclose that fact at the meeting and shall not take part in any deliberation or decision of the Trustees or committee with respect to that contract.

**15.** If at any meeting of the Trustees the chair is not present the Trustees shall choose one of their number to be the chair of the meeting.

**16.—(1)** Every question at a meeting of the Trustees or of a committee of the Trustees shall be decided by a majority vote of the Trustees present and voting.

**(2)** If at any meeting of the Trustees or of a committee of the Trustees there is an equality of votes on any question the chair of the meeting shall have a second or casting vote which that person may exercise for or against the status quo.

#### ***Authentication of seal and other documents***

**17.** The application of the seal of the Trustees shall be authenticated by the signature of the chair of the Trustees or some other Trustee authorised by the Trustees to authenticate the application of the seal, and of the Clerk or some person authorised by the Trustees to act in that behalf.

**18.** The Trustees may authorise a person to act instead of the Clerk under this paragraph whether or not the Clerk is absent or incapable of acting.

**19.** Any notice, licence or other document given or issued by the Trustees shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the Clerk or a Trustee appointed for that purpose by the Trustees.

#### ***Remuneration of Trustees***

**20.** The Trustees may pay to the chair and other Trustees such salary, allowances and expenses as the Trustees from time to time determine.

#### ***General***

**21.** Subject to the provisions of this Schedule, the procedure and business of the Trustees and of any committee of the Trustees shall be regulated in such manner as the Trustees may from time to time determine.

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## SCHEDULE 3

Article 16

## REPEALS AND REVOCATIONS

Number	Short title	Extent of repeal or revocation
60 & 61 Vict. c.78	The Pier and Harbour Orders Confirmation (No. 1) Act 1897	In the Schedule of Orders in relation to the St. Andrews Harbour Order 1897:  in section 2 omit “to be qualified, appointed and elected as in this Order provided”
		Sections 4 to 11 (excluding subsection 11(8))
		in section 23 omit “not exceeding in the whole five acres”
		Section 28
		in section 48 omit “not exceeding in the whole the sum of three thousand pounds” each place these words appear
		Section 49(2) and (3)
		in section 52 omit “not exceeding the sum of two thousand pounds”
		Sections 54
		Sections 62 to 65
		The Schedule

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order reconstitutes the St. Andrews Harbour Trust from 1st December 2010. It provides for there to be 12 Trustees with relevant experience. Ten persons are to be appointed by the Trustees and two persons by Fife Council.

The Order also updates provisions on charges, borrowing powers, insurance and publication of accounts.