
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 118

The Eyemouth Harbour Revision Order 2021

PART 2

Constitution of Trustees

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

3.—(1) Sections 2, 3 and 60 of the Commissioners Clauses Act 1847 (so far as applicable and not inconsistent with the Eyemouth Harbour Orders 1882 to 2021) 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 to 46, 51, 55 to 58 and 63 to 65 of the 1847 Act (so far as applicable and not inconsistent with the Eyemouth Harbour Orders 1882 to 2021) shall be incorporated with this Order, subject to the modifications stated in paragraphs (3), (4) and (5). Notwithstanding section 10 of the Harbours Piers and Ferries (Scotland) Act 1937 the other provisions of the 1847 Act shall not apply to the harbour undertaking.

(3) In construing the provisions of the Commissioners Clauses Act 1847 and the 1847 Act as incorporated with this Order—

- (a) “the special Act” means the 1882 Order, the 1920 Order, the 1961 Order and this Order,
- (b) “the undertakers” or “the commissioners” means the Trustees, and
- (c) “vessel” has the meaning given by article 2.

(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 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 continue to be a body corporate with perpetual succession and a common seal and shall consist of not less than 6 persons and not more than 11 persons appointed by the Trustees.

(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) the fishing industry,
- (d) industrial and commercial matters,
- (e) administration,
- (f) the organisation of employees,
- (g) commercial boating activities,
- (h) financial management,
- (i) the laws relating to Scotland,
- (j) safety management,
- (k) environmental matters affecting harbours,
- (l) civil engineering,
- (m) local government and local community interests,
- (n) recreational, sporting and leisure activities, and
- (o) 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, 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.—(1) Subject to paragraphs (2) and (3) below, the first appointments under article 4(1) shall be made on or as soon as reasonably practicable after 31 March 2021.

(2) The Trustees shall appoint the person who is, at the date when they make the first appointments under article 4(1), the chair of the Trustees to be one of the first such appointed trustees and he shall hold office as a Trustee from the new constitution date until 30 April 2024, and on and after the new constitution date shall be the chair of the Trustees.

(3) The Trustees shall appoint the person who is, at the date when they make the first appointments under article 4(1), the vice-chair of the Trustees to be one of the first such appointed trustees and he shall hold office as a trustee from the new constitution date until 30 April 2022; and on and after the new constitution date shall be the vice-chair of the Trustees.

(4) Of the remaining first members appointed by the Trustees—

- (a) not less than one nor more than three shall hold office from the new constitution date until 30 April 2022,
- (b) not less than two nor more than four shall hold office from the new constitution date until 30 April 2023, and
- (c) not less than one nor more than four shall hold office from the new constitution date until 30 April 2024,

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, subject to the provisions of this Order, hold office for a period of three years from 1 May 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 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

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 who is replaced was appointed.

Disqualification of Trustees

9. If the Trustees are satisfied that a Trustee—

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

(i) for a period when three such meetings have been held, or

(ii) for a period of three consecutive months,

whichever of those periods 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 provisions of Schedule 2 to this Order shall have effect with respect to the Trustees.