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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 118**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Eyemouth Harbour Revision Order 2021**

*Made* - - - - - *3rd March 2021*

*Coming into force* - - - - - *4th March 2021*

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (3) of the Harbours Act 1964(1) 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(2).

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

- (a) this Order is made following a written application to Ministers by the Eyemouth Harbour Trustees (“the applicant”) being the authority engaged in improving, maintaining or managing the harbour, and
- (b) the 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 and facilitating the efficient and economic transport of goods and passengers by sea.

In accordance with section 14(2A) of that Act(3), the objects for achieving which this Order is made include repealing superseded, obsolete, or otherwise unnecessary statutory provisions of local application affecting the harbour.

The provisions of paragraph 17 of Schedule 3 of that Act (4) have been satisfied. All objections to the application have been withdrawn.

In accordance with paragraph 19(6) of that Schedule(5), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

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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 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, Schedule 3, paragraph 9.

(3) Section 14(2A) was inserted by the Transport Act 1981, Schedule 6, paragraph 2.

(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 of Schedule 3 was substituted by S.I. 2017/1070.

## PART 1

### Preliminary

#### Citation and commencement

1.—(1) This Order may be cited as the Eyemouth Harbour Revision Order 2021 and comes into force on the day after the day on which it is made.

(2) The Eyemouth Harbour Orders, 1882 to 1961 and this Order may be cited together as the Eyemouth Harbour Orders 1882 to 2021.

#### Interpretation

2. In this Order, except where the context otherwise requires—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(6),

“the 1882 Order” means the Eyemouth Harbour Order 1882(7),

“the 1920 Order” means the Eyemouth Harbour Order 1920(8),

“the 1961 Order” means the Eyemouth Harbour Order 1961(9),

“the 1964 Act” means the Harbours Act 1964(10),

“the 1995 Act” means the Merchant Shipping Act 1995(11),

“the Commissioners of Northern Lighthouses” means the general lighthouse authority for Scotland, a body corporate constituted by section 193 of, and Schedule 8 to, the Merchant Shipping Act 1995(12),

“general direction” means a direction given under article 24,

“harbour” means the harbour at Eyemouth as comprised within the harbour limits,

“harbour limits” means the limits of the harbour as defined in article 12,

“harbour limits plan” means the plan signed in duplicate with reference to this Order and marked “The Eyemouth Harbour Revision Order 2021 Harbour Limits Plan” which is deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ and at the offices of the Trustees at Harbour Office, Gunsgreen Basin, Eyemouth TD14 5SD,

“harbour master” means any person appointed as such by the Trustees and includes that person’s deputies and assistants and any person for the time being authorised by the Trustees to act, either generally or for a specific purpose, in the capacity of harbour master,

“level of high water” means the level of mean high water springs,

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel,

“the new constitution date” means [30 April 2021],

“special direction” means a direction given under article 26,

“the Trustees” means the Eyemouth Harbour Trustees,

“undertaking” means the harbour undertaking for the time being of the Trustees, and

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(6) 1847 c.27.

(7) Confirmed by Pier and Harbour Orders Confirmation (No. 2) Act 1882 c.lviii.

(8) Confirmed by Pier and Harbour Orders Confirmation (No. 2) Act 1920 c.cxxi.

(9) Confirmed by the Eyemouth Harbour Order Confirmation Act 1961 c.xxxii.

(10) 1964 c.40.

(11) 1995 c.21.

(12) 1995 c.21. Schedule 8 was amended by section 55 of the Scotland Act 2016 c.11.

“vessel” means a ship, boat, raft or watercraft of any description however propelled or moved and includes any thing constructed, adapted for or used to carry persons or goods by water or for floating on or being submerged in water (whether permanently or temporarily) and shall include but not be limited to a displacement craft, a personal water craft, a sea plane on the surface of the water, a hydrofoil vessel, a hovercraft, a vehicle used for jet skiing or any other amphibious vehicle.

## 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.

## PART 3

### Duties and Powers of Trustees

#### Limits of Harbour

**12.**—(1) The limits of the Harbour within which the Trustees exercise jurisdiction as the harbour authority and within which the powers of the harbour master are exercisable are—

- (a) the seaward limits being the area shown shaded blue on the harbour limits plan enclosed by a red line, and
- (b) the harbour land (together with existing or future works) for the time being vested in or administered by the Trustees as part of the harbour and currently being the area shown shaded green on the harbour limits plan.

(2) Section 19 of the 1882 Order (which previously defined the limits of jurisdiction) is repealed.

(3) The harbour land referred to in paragraph (1)(b) shall be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997<sup>(13)</sup>.

(4) The limits within which the provisions of the Eyemouth Harbour Orders, 1882 to 1961 are to apply shall comprise the limits of the harbour defined in paragraph (1); and accordingly any reference to the harbour limits contained in those Orders or in any byelaws, order or regulations made under them shall be construed as a reference to those limits.

#### General Powers of Trustees

**13.**—(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 affecting 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) construct, reconstruct, extend, enlarge, alter, replace, relay or demolish structures and works in the harbour,
- (c) subscribe for or acquire shares or securities of any body corporate,
- (d) maintain such reserve funds as they think fit,
- (e) invest any sums not immediately required for the purposes of the harbour,
- (f) turn their resources to account so far as not required for those purposes, and
- (g) 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 does not affect any powers of the Trustees under or by virtue of any other enactment (including this Order).

#### Power to appropriate parts of harbour, etc.

**14.**—(1) Notwithstanding anything in this or any other statutory provision of local application, the Trustees may from time to time set apart or appropriate any part of the harbour, or any lands, works, buildings, machinery, equipment or other property of the Trustees in the harbour, for the

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(13) 1997 c.8; “operational land” is defined in section 215 to which there are amendments not relevant to this Order, which section is subject to section 216.

exclusive, partial or preferential use or accommodation for any particular trade, activity, person, vessel or class of vessels or goods, subject to the payment of such reasonable charges (other than ship, passenger and goods dues), and to such terms and conditions, as the Trustees thinks fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the harbour, or any lands, works, buildings, machinery, equipment or other property, so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Trustees.

(3) The harbour master or, as the case may be, any such authorised officer may order any person or vessel contravening paragraph (2) to leave or be removed from the site of the contravention.

(4) Section 58 of the 1847 Act shall extend and apply with appropriate modifications to any vessel moored or otherwise positioned in contravention of paragraph (2) above.

(5) In exercising its powers to appropriate or set apart any part of the harbour under paragraph (1), the Trustees shall have regard to the facilitation of—

- (a) the public right of navigation in the harbour, and
- (b) any public rights of way affecting the harbour,

such that the Trustees shall not restrict such rights more than is necessary for the purpose for which the part of the harbour is appropriated or set apart.

#### **Power to lease, etc.**

15. The Trustees may at any time lease or grant the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour for such period or periods and on such terms and conditions as may be agreed between the Trustees and the persons taking the same.

#### **Powers with respect to land, buildings, harbour facilities etc.**

16.—(1) The Trustees may for the purposes of the undertaking acquire land, whether by way of purchase, exchange, lease or otherwise.

(2) Without affecting article 15, the Trustees may for such price and upon such terms and conditions and subject to such restrictions and for such period as they think fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to them which is no longer required by the Trustees for the purposes of the undertaking.

(3) The Trustees may for the purposes of the undertaking manage, use or develop land belonging to them as they think fit.

#### **Power to dredge**

17.—(1) The Trustees or any person authorised by them may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the harbour and the seaward approaches thereto.

(2) The Trustees may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the 1995 Act) from time to time dredged or removed by them from the harbour.

(3) No dredged materials shall be deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste, or
- (b) in any place below the level of mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

### **Power to enter into arrangements to provide supplies**

18. The Trustees may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plant, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

### **Parking places**

19. The Trustees may provide facilities within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences.

### **Moorings**

20.—(1) The Trustees may provide, place, lay down, maintain, renew, use or remove such moorings, pontoons, buoys and similar apparatus within the harbour as it considers necessary or desirable for the convenience of vessels.

(2) The Trustees may from time to time, on such terms and conditions as they think appropriate, give consent to any person to place, lay down, maintain, renew and use moorings, pontoons, buoys and similar apparatus for vessels in the harbour.

(3) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, pontoon, buoy or similar apparatus for vessels within the harbour except under and in accordance with the terms and conditions of a consent given under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any consent given under paragraph (2) shall be valid for such period of time commencing with the date on which it takes effect as the Trustees may decide.

(5) The Trustees may charge a reasonable fee for the giving of a consent under this article.

(6) Consent given by the Trustees under this article does not affect any requirement to obtain the consent of the owner of the sea bed; nor does any consent by the owner of the sea bed affect the requirement to obtain the Trustees' consent under this article.

### **Power to regulate pleasure craft**

21.—(1) A person shall not within the harbour—

- (a) let for hire to the public a pleasure craft except with the written approval of the Trustees in accordance with this article, or
- (b) carry, or permit to be carried, passengers for hire in a pleasure craft unless the craft, and the boatmen in charge of the craft and the navigator, are approved in writing by the Trustees.

(2) Any such approval may be given for such period as the Trustees may think fit, and may be suspended or revoked by the Trustees whenever it shall deem such suspension or revocation to be necessary or desirable in the interests of public safety.

(3) The existence of the power to suspend or revoke the approval shall be stated plainly in the approval itself.

(4) A person taking on hire a pleasure craft for purposes other than for profit does not require to be approved as a boatman.

(5) Approval under this article shall not be required for—



- (a) any craft which has a relevant certificate issued by the Maritime and Coastguard Agency and valid for the voyage intended or, in the case of hovercraft within the meaning of the Hovercraft Act 1968(14), a certificate of safety valid for the voyage intended; or
- (b) a pleasure boat or pleasure vessel which is licensed under section 94 of the Public Health Acts Amendment Act 1907.

(6) A person shall not carry or permit to be carried in any pleasure craft within the harbour a greater number of passengers for hire than are specified in the approval applying to such craft, and every owner of any such craft shall before permitting the same to be used for carrying passengers for hire within the harbour, permanently display in letters and figures not less than three centimetres in height and one half centimetre in breadth, on a conspicuous part of the craft, their own name and also the number of persons which it is approved to carry, in the form “Approved to carry [ ] persons”.

(7) Any person who acts in contravention of paragraph (1) or (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Any person aggrieved by the withholding, suspension or revocation of any approval or by any term or condition subject to which an approval has been given under this article may appeal to the sheriff.

(9) In this article “pleasure craft” means any vessel of not more than 100 tonnes gross used wholly or mainly for recreation or for the carriage of passengers for reward.

## PART 4

### Harbour Regulation

#### Byelaws

**22.—**(1) The Trustees may from time to time make byelaws for the efficient management and regulation 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 shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour,
- (c) preventing damage or injury to any vessel, goods, property or persons within the harbour,
- (d) 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,
- (e) preventing and removing obstructions or impediments within the harbour,
- (f) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the harbour (other than from any vessel within the meaning of section 255 of the 1995 Act),
- (g) prohibiting persons from smoking within such parts of the harbour as the Trustees may from time to time designate,
- (h) regulating the activities in the harbour of divers, surfers, water skiers, kite surfers, swimmers and other persons engaged in similar recreational pursuits,

- (i) regulating the use of fires, lights and pyrotechnics within the harbour (other than on any vessel within the meaning of section 255 of the 1995 Act),
- (j) regulating the type of vehicles which may enter or be within the harbour and the movement, parking, use, loading or unloading of vehicles within the harbour, and giving powers to officers or employees of the Trustees in relation to such regulation,
- (k) regulating the holding of regattas and other public events in the harbour,
- (l) regulating fishing within the harbour,
- (m) prohibiting or regulating the sale of articles or the provision of services within the harbour,
- (n) making the carrying out of specified activities, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and
- (o) the conservation of the fauna and flora in the harbour.

(3) Where byelaws under this section make the carrying out of specified activities, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master as mentioned in paragraph (2)(n), the harbour master may take such action as may be reasonably required in default of compliance with any such approval, condition, control or direction.

(4) Byelaws made under this article may—

- (a) provide for fines on summary conviction not exceeding level 3 on the standard scale for breach of any approval, condition, direction or requirement imposed under the byelaws,
- (b) relate to the whole of the harbour or to any part of it, and
- (c) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles or different specified activities.

(5) Before making byelaws under this section the Trustees shall consult with such persons as the Trustees consider are representative of users of the harbour.

### **Confirmation of byelaws**

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

(2) Not later than one month before an application for confirmation of byelaws is made by the Trustees to the Ministers, notice of the intention to apply for confirmation and details of the Trustees' website where the byelaws can be viewed or, as the case may be, the place at which and time 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 of the Scottish Borders Council and to the Ministers.

(4) For a period of at least one month before application is made for confirmation of byelaws, the Trustees shall either keep a copy of the byelaws on their website or keep a copy of them open to public inspection, without payment, at its principal office at all reasonable hours.

(5) The Trustees shall supply a copy of the byelaws or of part of the byelaws to a person on request.

(6) During the period of one month beginning with the last date of publication of any notice required by paragraph (2), any person may make, in writing to the Ministers, any objection to or representation about the byelaws to which the notice relates.

(7) The Ministers may confirm the byelaws (with or without modifications) or may refuse to confirm them.

(8) Where the Ministers propose to make a modification that appears to them to substantially affect the character of the byelaws, they shall inform the Trustees and require them to take any steps the Ministers consider necessary for informing persons likely to be concerned with the modification.

(9) For the purposes of paragraph (8), the Ministers shall give the Trustees and any person who is to be informed of a proposed modification the opportunity to make representations in writing about that proposed modification during a period determined by the Ministers and the Ministers shall take such representations into account before making a decision under paragraph (7).

(10) The Trustees shall—

- (a) either keep a copy of the confirmed byelaws on their website or keep a copy of them open to public inspection at all reasonable hours, without payment, at the Trustees' principal office (and at the office of the harbour master), and
- (b) provide a copy of the byelaws to a person on request.

### **General directions to vessels**

**24.—(1)** The Trustees may, after consultation with the UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland and such other persons as the Trustees consider are representative of users of the harbour and in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons, give directions for any of the following purposes:—

- (a) designating areas, routes or fairways in the harbour which vessels are to use, or refrain from using for movement, mooring or anchorage,
- (b) securing that vessels move only at certain times or during certain periods,
- (c) securing that vessels make use of descriptions of aids to navigation specified in the direction,
- (d) prohibiting entry into or navigation within any of the main fairways during any temporary obstruction thereof,
- (e) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master,
- (f) prohibiting entry into or movement in the harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no such direction shall prevent the entry into the harbour or the approaches of any vessel seeking refuge from stress of weather,
- (g) regulating the speed of vessels within the harbour.

(2) A general direction under this article may apply—

- (a) to all vessels or to a class of vessels designated, or for which the designation is provided for, in the direction,
- (b) to the whole of the harbour or to a part designated, or for which the designation is provided for, in the direction, or
- (c) at all times or at times designated, or for which the designation is provided for, in the direction,

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) The Trustees may, after consultation with the UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland and such other persons as the Trustees consider are representative of users of the harbour, revoke or amend any general direction.

### **Publication of general directions**

**25.**—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Trustees as soon as practicable, once in one or more newspapers circulating in the locality in which the harbour is situated.

(2) The Trustees shall also make the notice available for inspection on a web-site maintained by the Trustees together with, if the notice relates to the giving or amendment of a general direction, a copy of the direction or the direction as amended.

(3) If the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies may be obtained and particulars of the web-site where a copy of the direction or the direction as amended may be viewed.

(4) In an emergency, notice of the giving of a general direction or of any amendment or revocation of a general direction may be given in any manner the Trustees considers appropriate.

### **Special directions to vessels**

**26.**—(1) The harbour master may give a special direction—

- (a) requiring a vessel anywhere within the harbour limits to comply with a requirement made in or under a general direction,
- (b) for regulating the time at which and the manner in which a vessel shall enter into, go out of, or lie in or at the harbour,
- (c) for securing that a vessel moves in the harbour only at certain times or during certain periods,
- (d) prohibiting the mooring of a vessel in any particular part or parts of the harbour,
- (e) regulating or requiring the movement, berthing, mooring or unmooring of a vessel in the harbour, and
- (f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship) passengers, cargo, fuel, water, ship's stores or ballast in the harbour.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

### **Master's responsibility to be unaffected**

**27.** The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his or her vessel, persons on board, its cargo or any other person or property.

### **Failure to comply with directions**

**28.**—(1) A person who fails without reasonable excuse to comply with a special direction is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) A person who fails without reasonable excuse to comply with a general direction, or who breaches an approval, condition or requirement of a general direction, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Enforcement of special directions**

**29.**—(1) Without affecting any other remedy available to the Trustees, if a special direction is not complied with within a reasonable time, the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but he shall not do so unless, after reasonable inquiry has been made, the master cannot be found.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Trustees from the owner of the vessel as if they were a charge of the Trustees in respect of the vessel.

### **Boarding of vessels**

**30.** Any duly authorised officer of the Trustees may enter and inspect a vessel in the harbour, subject to producing his or her authority where requested—

- (a) for the purposes of any enactment relating to the Trustees, byelaw of the Trustees or general direction of the Trustees including its enforcement, or
- (b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without prior written notice first having been given to the owner or the person appearing to have charge of the vessel, at least 24 hours in advance; and the notice shall have annexed to it a copy of this article.

### **Vessels adrift**

**31.**—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) to prove that the vessel did not become adrift as the result of any neglect or default on his or her part.

## **PART 5**

### **Financial Provisions**

#### **Charges other than ship, passenger and goods dues**

**32.**—(1) The Trustees may make such reasonable charges for services and facilities provided by them or on their behalf in relation to the harbour as they may from time to time determine.

(2) In paragraph (1) “charges” does not include ship, passenger and goods dues as defined by section 57 of the 1964 Act.

#### **Liability for charges**

**33.**—(1) Charges payable to the Trustees on or in respect of—

- (a) a vessel shall be payable by the owner, charterer or master of the vessel,
  - (b) goods shall be payable by the owner, consignee or shipper of the goods.
- (2) Where a charge payable to the Trustees may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

#### **Power to grant exemptions, rebates, etc., in respect of charges**

**34.**—(1) The Trustees may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the 1964 Act shall require the Trustees to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

#### **Borrowing powers**

**35.** The Trustees may from time to time borrow, by any methods and on such terms as they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their statutory powers, duties and functions; and where moneys are borrowed by the Trustees under this article, the Trustees may, if they see fit, borrow those moneys upon the security of some or all of their assets or of some or all of their revenues or of some or all of both their assets and revenues; and the Trustees may effect such arrangements as they see fit to mitigate against any financial risk incurred for the purposes of meeting such obligations.

## **PART 6**

### **Miscellaneous**

#### **Saving for Commissioners of Northern Lighthouses**

**36.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

#### **Crown rights**

**37.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Trustees or any licensee to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners,
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land or (as the case may be) the relevant person, or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

(3) In this article—

(4) “government department” includes any part of, or any member of the staff of, the Scottish Administration (which shall have the same meaning as in section 126(6) of the Scotland Act 1998<sup>(15)</sup>), and

(5) “relevant person”, in relation to any property, rights or interests to which section 90B of that Act applies, means the person who manages that property or those rights or interests.

### **Repeals and revocations**

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

St Andrew’s House,  
Edinburgh  
3rd March 2021

*KARL ZACZEK*  
A member of the staff of the Scottish Ministers





## SCHEDULE 2

Article 11

### 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 appointed under article 5(2) shall, subject to paragraph 7 and unless that person resigns as chair or ceases to be a Trustee, continue in office as chair until their initial term of office as a Trustee has expired.

3. Subject to paragraph 7, 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. There shall be a vice-chair of the Trustees who shall be appointed by the Trustees from among their number.

5. The first vice-chair appointed under article 5(3) shall, subject to paragraph 7 and unless that person resigns as vice-chair or ceases to be a Trustee, continue in office as vice-chair until their initial term of office as a Trustee has expired.

6. Subject to paragraph 7, every vice-chair subsequently appointed under paragraph 4 shall, unless that person resigns office as vice-chair or ceases to be a Trustee, hold office for a period of one year.

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

8.—(1) On a casual vacancy occurring in the office of chair or vice-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 or vice-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 or vice-chair whom that person replaces was appointed.

#### *Meetings of Trustees*

9.—(1) The first meeting of the Trustees after the new constitution date shall be convened as soon as practicable by the Chief Executive of the Trustees on such date as the Chief Executive may fix; and that meeting may be on the new constitution date. The Chief Executive shall make arrangements for notice of that meeting and subsequent meetings to be sent by post or by email to each of the Trustees.

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

(3) Any two or more of the Trustees may require the Chief Executive to call a special meeting at any time.

#### *Vacation of office by Trustees*

10. A Trustee (other than the Chief Executive) 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 vice-chair.

#### *Reappointment of Trustees*

11.—(1) Subject to the provisions of this Schedule, a vacating Trustee shall be eligible for reappointment as a Trustee unless that person has been disqualified from office under article 9.

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

(3) A chair of the Trustees 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—

- (a) a term referred to in article 5(3) or (4)(a) or (b),
- (b) the remainder of a term during which the Trustee was appointed to fill a casual vacancy under article 8, or
- (c) any term served before the new constitution date.

#### *Reappointment of chair*

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

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

- (a) a term served by the Trustee as chair before the new constitution date, 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 8.

#### *Committees and Co-optees*

**13.**—(1) Subject to subparagraph (3), 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 reasonable professional remuneration.

(2) The chair shall be an ex-officio member of any committee of the Trustees unless the chair expressly requests to be excluded.

(3) There shall be excluded from the delegation to any committee of the Trustees the following—

- (a) the functions set out in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the 1964 Act,
- (b) the appointment or dismissal of the Chief Executive of the Trustees,
- (c) the appointment or dismissal of a solicitor to the Trustees.

#### *Proceedings of Trustees and Committees*

**14.** 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 or vice-chair of the Trustees or committee.

**15.** The quorum required for a meeting of the Trustees shall be three.

**16.**—(1) If a Trustee has any interest, direct or indirect—

- (a) in any contract or proposed contract to which the Trustees are or would be a party or is a director of a company or body with which the contract or proposed contract is made or proposed to be made, or
- (b) in any other matter with which the Trustees are concerned,

the Trustee shall declare that interest.

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- (2) If a Trustee is present at a meeting of the Trustees or of any committee of the Trustees at which a contact or other matter in which the Trustee has an interest is to be considered the Trustee shall—
- (a) as soon as is practicable after the commencement of that meeting disclose that interest,
  - (b) not vote on any question with respect to that contract or matter, and
  - (c) withdraw from the meeting during the consideration and decision on the matter unless Trustees present require the Trustee not to do so.
- (3) This paragraph shall not apply to any interest—
- (a) which a Trustee has in respect of the payment to the Trustees of harbour dues,
  - (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general,
  - (c) which a Trustee has as an employee of a public utility undertaking or as a shareholder, not being a director of a company, unless the Trustee possesses more than five per cent of the issued share capacity of that company, or
  - (d) which the Trustees present at the meeting by resolution declare to be too remote.

**17.** The person for the time being holding office as vice-chair shall have and may exercise in the absence or incapacity of the chair all the functions of the chair.

**18.** If at any meeting of the Trustees neither the chair or vice-chair is present the Trustees shall choose one of their number to be the chair of the meeting.

**19.—(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.

#### *Execution of documents*

**20.—(1)** Deeds and other documents to which the Trustees are parties shall be executed in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995.

(2) Any notice, licence or other document given or issued by the Trustees shall, unless the contrary intention is expressed, be sufficiently evidenced if signed by the Chief Executive of the Trustees or by a Trustee, or other officer of the Trustees, authorised for that purpose by the Trustees.

#### *Remuneration of Trustees*

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

#### *General*

**22.—(1)** 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.

(2) The Trustees shall appoint a Chief Executive and may appoint a secretary and such other persons as from time to time they think necessary or desirable for or incidental to the performance of their functions and pay to them such remuneration as they think fit.

(3) The Business Manager of the Trustees shall after the coming into force of this Order be known as the Chief Executive of the Trustees and any reference to the Clerk, secretary or the business manager of the Trustees in any local enactment or in any document applicable to the Trustees shall be construed accordingly.

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## SCHEDULE 3

Article 38

## REPEALS

**Table 1**

<i>Number</i>	<i>Short Title</i>	<i>Extent of repeal</i>
c. lviii.	The Eyemouth Harbour Order 1882, confirmed by the Pier and Harbour Orders Confirmation (No. 2) Act 1882	Section 4. Sections 7 to 10. Section 11. Sections 12 to 14. Section 16. Section 19. Sections 36 and 37. Sections 42 to 49. Section 57.
c. cxxi.	The Eyemouth Harbour Order 1920, confirmed by the Pier and Harbour Orders Confirmation (No. 2) Act 1920	Sections 7 to 14. The Schedule.
c. xxxii	The Eyemouth Harbour Order 1961, confirmed by the Eyemouth Harbour Order Confirmation Act 1961	Section 4. Sections 30 to 37.

**EXPLANATORY NOTE**

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

This Order reconstitutes the Eyemouth Harbour Trustees. It provides for there to be not less than 6 nor more than 11 Trustees with relevant experience.

The Order defines the harbour limits and confers updated powers on the Trustees, including powers to lease and powers as regards the making of byelaws and issuing of general and special directions.