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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 396**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Gardenstown Harbour Revision Order 2016**

*Made* - - - - 25th November 2016

*Coming into force* - - 26th November 2016

The Scottish 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 them 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 of that Act<sup>(2)</sup>.

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

- (a) this Order is made following a written application to the Scottish Ministers by the Gardenstown Harbour Trustees (“the applicant”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) (except in so far as this Order is made for achieving objects mentioned in section 14(2A) of that Act) the Scottish 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 or passengers by sea.

In accordance with section 14(2A) of that Act, the objects to be achieved by this Order include the repealing of superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.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 schedule 3 of that Act<sup>(3)</sup>.

In accordance with paragraph 19(1) of that schedule<sup>(4)</sup>, the Scottish Ministers have considered:

- (a) any objections made and not withdrawn; and
- (b) written representations submitted to the Scottish Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection.

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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).

(4) Paragraph 19 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8) section 15(5)(i).

In accordance with paragraph 19(2) of that schedule, the Scottish Ministers have decided to make this Order with modifications which do not appear to the Scottish Ministers substantially to affect the character of the Order.

### **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(5);

“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 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

SCHEDULE 1

Article 7

FORM OF DECLARATION BY TRUSTEES

**Gardenstown Harbour Trust**

**The Gardenstown Harbour Orders 1911 – 2016**

**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 Gardenstown Harbour Trust by virtue of The Gardenstown Harbour Orders 1911 – 2016.

(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 1 of the Gardenstown Harbour Revision Order 2016 and in particular that:

- (a) I have disclosed to the Secretary to the Trustees details of every financial or other interest such as is mentioned in those notes;
- (b) I will in future notify the Secretary 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 Gardenstown on the [ ] day of [ ]

.....  
(signature)

Witnessed by

[ ] .....  
(signature)

Secretary to the Gardenstown Harbour Trust



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 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 their 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 Secretary to the Trustees on such date as the Secretary may fix. The Secretary 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 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 Secretary.

*Reappointment of Trustees*

8.—(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.

(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(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*

**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 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 reasonable professional remuneration.

#### *Proceedings of Trustees and Committees*

**11.—(1)** Notwithstanding the generality of paragraph 10 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 as determined when it was established.

(2) The Trustees shall make arrangements for any 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 that consultation group has been consulted by the Trustees on the matter, recommendation or representation so referred or so made.

(4) Appointments to consultation groups established under this paragraph shall be made by the Trustees and thereafter any properly constituted organisation that can demonstrate they represent a relevant 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) A 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 a 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 a consultation group may hold office for a maximum period of three years from the date of 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 a consultation group may resign 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 five.

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.

#### *Execution of documents*

17.—(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.

18.—(1) 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 Secretary or by a Trustee appointed for that purpose by the Trustees.

#### *Remuneration of Trustees*

19. 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*

20. 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.

### SCHEDULE 3

Article 17

#### REPEALS

<i>Number</i>	<i>Short Title</i>	<i>Extent of repeal</i>
Ch.clvii.	The Pier and Harbour Orders Confirmation (No. 1) Act 1911	In the Gardenstown Harbour Order 1911:

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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<i>Number</i>	<i>Short Title</i>	<i>Extent of repeal</i>
		In section 2, omit the definitions “The proprietor” and the “ratepayers”.
		In section 9, omit “not exceeding ten in number to be constituted as by this Order provided”, “and a common seal” and “take on feu”.
		Sections 10 to 19 and 33 to 57 of and the schedule of the Order.

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### **EXPLANATORY NOTE**

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

This Order reconstitutes the Gardenstown Harbour Trust as from the date it comes into force. It provides for there to be 9 Trustees with relevant experience.

The Order also updates provisions on powers of the Trustees, charges, creation of byelaws and borrowing powers and insurance, as well as repealing obsolete provisions in earlier Orders.