
STATUTORY INSTRUMENTS

1991 No. 1745

HARBOURS, DOCKS, PIERS AND FERRIES

The Montrose Harbour Revision Order 1991

<i>Made</i>	- - - -	<i>4th June 1991</i>
<i>Laid before Parliament</i>		<i>12th June 1991</i>
<i>Coming into force</i>	- -	<i>23rd July 1991</i>

The Secretary of State for Transport (being the appropriate Minister for the purposes of section 14(7) of the Harbours Act 1964(1)), in exercise of the powers conferred by section 14 of that Act and now vested in him(2) and of all other powers enabling him in that behalf, and on the application of the Trustees of the Harbour of Montrose, hereby makes the following Order:

PART I
PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Montrose Harbour Revision Order 1991 and this Order and the Montrose Harbour Acts and Orders 1837 to 1978 may be cited together as the Montrose Harbour Acts and Orders 1837 to 1991.

(2) This Order shall come into force on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(3).

Interpretation

2. In this Order, unless the context otherwise requires—

“Authority” means the Montrose Port Authority being the Trustees of the Harbour of Montrose renamed as provided in article 3 of this Order;

“chief executive officer” means the chief executive officer for the time being of the Authority;

“Community Council” means The Montrose Community Council;

(1) 1964 c. 40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4, 12 and 14.
(2) See section 57(1) of the Harbours Act 1964 and S.I.1981/238.
(3) 1945 c. 18 (9 & 10 Geo. 6); 1965 c. 43.

- “District Council” means the Council of the Angus District of the Tayside Region;
- “dredging licence” means a licence under article 12 of this Order;
- “Harbour” means the Harbour of Montrose as described in article 19 of the Order of 1974 and includes the land, buildings, works, plant, property and conveniences connected therewith or any part thereof as the case may be;
- “harbour estate” means the docks, piers, wharves, quays, berths, roads, bridges, sheds and other works and conveniences and the lands, buildings and property of every description and of whatever nature, which are for the time being vested in or occupied by the Authority for the purposes of the Harbour;
- “level of high water” means the level of mean high-water springs;
- “new constitution date” means the first day of the third month after the expiry of the month current at the commencement of this Order;
- “operator” and “telecommunications code system” have the same meaning as in the Telecommunications Act 1984(4);
- “Order of 1974” means the Montrose Harbour Revision Order 1974(5);
- “Order of 1978” means the Montrose Harbour (Constitution) Revision Order 1978(6);
- “Regional Council” means the Council of the Tayside Region;
- “statutory undertaker” means—
- (a) any person who is a statutory undertaker within the meaning of section 275(1) of the Town and Country Planning (Scotland) Act 1972(7);
 - (b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(8); and
 - (c) any operator of a telecommunication code system;
- “Trustees of the Harbour of Montrose” means the Trustees of the Harbour of Montrose incorporated by the Montrose Harbour Act 1837(9);
- “works licence” means a licence under article 11 of this Order.

PART II

NAME AND CONSTITUTION

Change of name

3.—(1) The name of the Trustees of the Harbour of Montrose is hereby changed to the Montrose Port Authority.

(2) The change of name effected by paragraph (1) of this article shall not affect the rights or obligations of any person or render defective any legal proceedings; and any reference in—

- (a) any enactment, or
- (b) any agreement, deed, lease, licence or other instrument in force immediately before the commencement of this Order,

(4) 1984 c. 12.
(5) S.I. 1975/348.
(6) S.I. 1978/919.
(7) 1972 c. 52.
(8) 1949 c. 74.
(9) 1837 c.xcix.

trustees or a trustee of that Harbour shall be read as a reference to the Montrose Port Authority or, as the case may require, to a member of that Authority.

The new constitution

4.—(1) On and after the new constitution date the Authority shall consist of a chairman and not fewer than seven and not more than nine other members.

(2) The chairman and three other members of the Authority shall be appointed by the Secretary of State.

(3) The Regional Council, the District Council and the Community Council shall each appoint one member of the Authority.

(4) The chief executive officer shall be a member of the Authority.

(5) The Authority may appoint up to two members of the Authority. A member appointed under this paragraph shall hold office for such period not exceeding one year as may be specified by the Authority at the time of his appointment (and may be reappointed by the Authority in accordance with this paragraph at the expiry of such period).

(6) In selecting persons for appointment as members of the Authority the Secretary of State, the Regional Council, the District Council, the Community Council and, in respect of any person to be appointed under paragraph (5) above, the Authority, shall each select persons who appear to him or to them, as the case may be, to have wide experience of, and to have shown capacity in, one or more of the matters mentioned in paragraph (7) below or to have in some other respect special knowledge or experience that would be of value to the Authority in the performance of their functions and the Secretary of State shall have regard to the desirability of appointing members who are familiar with the special requirements and circumstances of the area served by the undertaking of the Authority.

(7) The matters referred to in paragraph (6) above are—

- (a) the management of harbours;
- (b) shipping or other forms of transport;
- (c) commercial, financial or industrial matters;
- (d) administration;
- (e) the organisation of workers; and
- (f) environmental matters affecting the area in the vicinity of the Harbour.

(8) No person shall be appointed as a member of the Authority under paragraph (2), (3) or (5) above if he is a member or officer of another harbour authority (as defined in section 57(1) of the Harbours Act 1964) and if a member of the Authority becomes such a member or officer the Authority may declare his office as a member of the Authority to be vacant and thereupon the office shall become vacant. The foregoing provisions of this paragraph shall not apply in relation to a person who is a member or officer of a local authority which is such a harbour authority as aforesaid unless he is a member of the committee of the authority which is responsible for the administration of the harbour in question and participates in the decisions of that committee as respects that harbour. In this paragraph “local authority” means, in relation to Scotland, an islands, regional or district council and, in relation to England or Wales, a district council.

Appointments and terms of office of members appointed by the Secretary of State, the Regional Council, the District Council and the Community Council

5.—(1) The Secretary of State, the Regional Council, the District Council and the Community Council shall each appoint the first member or members of the Authority to be appointed respectively by him or them under article 4 of this Order before the new constitution date and the members so appointed shall come into office on that date and, subject to the provisions of the Schedule to this

Order, shall continue in office for the period of three years beginning on the new constitution date. The members of the Authority holding office immediately before the new constitution date shall go out of office on that date.

(2) Every vacancy, other than a casual vacancy, among the members of the Authority appointed as aforesaid shall be filled by a person appointed by the Secretary of State, the Regional Council, the District Council or the Community Council, as the case may be, on or before the date on which the vacancy will occur (or where a casual vacancy has occurred four months or less before the end of the vacating member's normal term of office and, in accordance with proviso (a) to paragraph (3) below, has been left unfilled, on or before the date on which the vacancy would normally have occurred) in accordance with the provisions of article 4 of this Order and every member so appointed shall come into office on the date when the vacancy occurs or would have occurred (as the case may be) and, subject to the provisions of the Schedule to this Order, shall continue in office for the period of three years beginning on that date:

Provided that if for any reason a member is not appointed on or before the date on which the vacancy occurs (or, where a casual vacancy has occurred four months or less before the end of the vacating member's normal term of office and, in accordance with proviso (a) to paragraph (3) below, has been left unfilled, on or before the date on which the vacancy would normally have occurred) he shall be appointed as soon as practicable thereafter and shall come into office upon his appointment and, subject as aforesaid, shall continue in office for the remainder of the said term.

(3) Any casual vacancy among the members of the Authority appointed as aforesaid shall be filled as soon as practicable by the appointment by the Secretary of State, the Regional Council, the District Council or the Community Council, as the case may be, in accordance with the provisions of article 4 of this Order, of a new member and the member so appointed shall come into office upon his appointment or, where the appointment is made in advance to fill a casual vacancy which is known to be about to occur, upon that vacancy occurring, and, subject to the provisions of the Schedule to this Order, shall hold office during the remainder of the term of the member in whose place he has been appointed:

Provided that—

- (a) a casual vacancy (other than in the office of chairman) occurring four months or less before the end of the vacating member's normal term of office may, at the discretion of the Secretary of State, the Regional Council, the District Council or the Community Council, as the case may be, be left unfilled, and
- (b) the Secretary of State may, if he sees fit, fill a casual vacancy in the office of chairman by appointing as chairman a person who is already a member of the Authority and if he does so that appointment shall be deemed to create a casual vacancy in the office of the member who is appointed as chairman.

Administrative arrangements and proceedings of the Authority

6. On and after the new constitution date the provisions contained in the Schedule to this Order shall, subject to the provisions of this Order, have effect with regard to the administrative arrangements and proceedings of the Authority in addition to those provisions of the Montrose Harbour Acts and Orders 1837 to 1974 which are in force at the commencement of, and are not repealed by, this Order.

PART III

ACCOUNTS

Audit of accounts

7.—(1) The accounts of the Authority shall be audited annually by an auditor or firm of accountants who shall be appointed by the Authority in respect of each financial year of the Authority and a person or firm shall not be qualified to be so appointed unless he is a member, or in the case of a firm all the partners are members, of one or more of the following bodies—

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Chartered Association of Certified Accountants;
- (d) the Institute of Chartered Accountants in Ireland.

(2) The report of the auditor on the accounts of the Authority for each financial year shall be submitted to a meeting of the Authority as soon as reasonably practicable following the year of account.

(3) A copy of the latest accounts of the Authority and of the auditor's report thereon shall be kept at the Authority's office and shall be open there during reasonable hours for inspection without charge; and a copy of such accounts and the auditor's report shall be sent to each of the Regional Council, the District Council and the Community Council.

Financial year

8. The Authority may adopt as their financial year such period of twelve consecutive months as they think fit or such other period, whether shorter or longer than a year, as may be necessary solely for changing the financial year.

PART IV

CONTROL OF WORKS AND DREDGING IN THE HARBOUR

Restriction of works and dredging

9.—(1) Subject to paragraph (3) below, no person other than the Authority shall—

- (a) alter or renew any works, or
- (b) dredge,

on, under or over tidal waters or tidal land below the level of high water in the Harbour unless he is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 11 or, as the case may require, article 12 of this Order.

(2) The Authority may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if he fails to comply with the notice the Authority may carry out the works so required and may recover the cost of so doing from that person.

(3) Nothing in this article shall apply to—

- (a) any operations or works specifically authorised by any enactment; or
- (b) any operations or works of a statutory undertaker.

(4) Any person who without reasonable excuse contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Control of certain operations and works of statutory undertakers

10.—(1) This article applies to any operation or works in the Harbour of a statutory undertaker on, under or over tidal waters or tidal land below the level of high water in the Harbour, not being operations or works which are specifically authorised by any enactment.

(2) Subject to paragraph (3) below, a statutory undertaker shall not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the Authority and has supplied the Authority with such particulars as they may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2) above, the statutory undertaker concerned shall inform the Authority of the operations or works as soon as reasonably practicable.

(4) Any operation or works to which this article applies shall be carried out subject to any directions which may from time to time be given by the Authority to the statutory undertaker concerned, being directions for the avoidance of danger and the prevention, so far as possible, of interference with navigation in the carrying out of such operations or works.

(5) Any person who, without reasonable excuse, contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing of works

11.—(1) The Authority may upon such terms and conditions as they think fit grant to any person a licence to alter or renew any works in the Harbour on, under or over tidal waters or tidal land below the level of high water, notwithstanding any interference with public rights of navigation or other public rights by such works as altered or renewed.

(2) Application for a works licence shall be made in writing to the Authority and shall—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable him to enjoy the benefits of the licence and, if not, the action taken to enable him to obtain such rights if the licence is granted; and, in granting a licence, the Authority may require modifications in the plans, sections and particulars so submitted.

(3) The Authority may require an applicant for a works licence, on making his application, to pay a reasonable fee in respect of the administrative expenses of dealing with the application; and different fees may be specified in relation to different cases or different classes of cases.

(4) Where the Authority refuse to grant a works licence which has been applied for they shall give reasons in writing for their refusal.

(5) Where the Authority grant a works licence upon terms or conditions or require any modification in the plans and particulars, they shall give reasons in writing for the terms and conditions imposed or the modifications required.

(6) If within three months from the receipt of the application under paragraph (2) above the Authority do not grant a works licence they shall be deemed to have refused the application.

(7) Articles 10 to 14 of the Order of 1974 (which contain certain requirements with respect to works) shall apply in relation to the holder of a works licence as respects the works which are

authorised by the licence as they do in relation to the Authority as respects works constructed by the Authority.

(8) In the carrying out of operations in pursuance of a works licence, the holder of the licence shall not—

- (a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker; or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus;

without the consent of the statutory undertaker concerned.

Licence to dredge

12.—(1) The Authority may upon such terms and conditions as they think fit grant to any person a licence to dredge in any part of the Harbour.

(2) Application for a dredging licence shall be made in writing to the Authority and shall be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations to be carried out in the exercise of the powers granted by the licence, and in granting any such licence the Authority may require modifications in the plans, sections and particulars so submitted.

(3) Paragraphs (3), (4), (5) and (6) of article 11 of this Order shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) Any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894⁽¹⁰⁾) taken up or collected by means of dredging in pursuance of a dredging licence shall be the property of the holder of the licence and he may use, sell or otherwise dispose of or remove or deposit the materials as he thinks fit:

Provided that—

- (i) no such material shall be laid down or deposited in any place below the level of high water except in such positions as may be approved by the Authority and subject to such conditions as may be imposed by the Authority;
- (ii) if it appears to the holder of the dredging licence that the Authority has unreasonably withheld their approval under paragraph (i) of this proviso or that any condition imposed by the Authority under that paragraph is unreasonable, he may appeal to the Secretary of State whose decision shall be binding upon the parties.

(5) The grant of a dredging licence shall not confer statutory authority for the carrying out of the operations covered by the licence.

(6) Paragraph (8) of article 11 of this Order shall apply in relation to the carrying out of operations in pursuance of a dredging licence as it applies in relation to the carrying out of operations in pursuance of a works licence.

Appeals in respect of works or dredging licence

13.—(1) An applicant for a works licence or a dredging licence who is aggrieved by—

- (a) a refusal of the Authority to grant a licence, or
- (b) any terms or conditions subject to which the licence is granted, or
- (c) any modifications required by the Authority in the plans, sections and particulars submitted by the applicant,

⁽¹⁰⁾ 1894 c. 60.

may, within 28 days from the date on which the Authority notify the applicant of their decision or the date on which the Authority are, under article 11(6) or 12(3) of this Order, deemed to have refused the application, appeal to the Secretary of State.

(2) An appeal under paragraph (1) above shall be made by notice in writing stating the grounds of the appeal.

(3) A person who appeals under paragraph (1) above shall give to the Authority notice of his appeal accompanied by a copy of his statement of appeal; and the Authority shall, within 28 days of the receipt of the notice, be entitled to furnish to the Secretary of State their observations on the appeal.

(4) On an appeal under this article the Secretary of State may—

(a) dismiss the appeal; or

(b) require the Authority to grant the licence or, as the case may be, to give their approval upon such terms or conditions and with such modifications (if any) of plans, sections and particulars as the Secretary of State may specify.

(5) The Authority shall give effect to any decision or requirement given or made by the Secretary of State under paragraph (4) above.

Provision of vessels and towage services

14. The Authority may construct, purchase, contract for or hire, and may maintain and use, vessels required by the Authority for carrying out their functions, including tugs for the use and accommodation of vessels, and may sell or dispose of any such vessels.

Power to acquire and dispose of business or shares

15.—(1) The Authority may—

(a) acquire by agreement—

(i) any business or undertaking which consists wholly or mainly of the carrying out of harbour operations or so much of any business or undertaking as consists of the carrying out of such operations; or

(ii) any business or undertaking which is wholly or mainly engaged in or which it is proposed should become wholly or mainly engaged in providing services or facilities which the Authority themselves are authorised to provide;

(b) subscribe for or acquire any shares, stock, debentures, debenture stock or any other security of a like nature of a body corporate which is wholly or mainly engaged, or which it is proposed should become wholly or mainly engaged, in the provision, maintenance or operation of a harbour or in providing services or facilities which the Authority themselves are authorised to provide;

(c) form and promote, or join with any other person in forming and promoting, a company for carrying on any function of the Authority;

(d) dispose of or discontinue the whole or any part of their undertaking acquired under this article and held for the purposes of the Harbour but subject to all liabilities and obligations in respect thereof to which the Authority are subject; and

(e) dispose of any share or other securities subscribed for or acquired under this article.

(2) Nothing in this article shall authorise a company formed under sub-paragraph (c) of paragraph (1) above to exercise any of the powers of the Authority under—

- (a) the Harbours, Docks and Piers Clauses Act 1847⁽¹¹⁾ ;
- (b) the Harbours Act 1964⁽¹²⁾ ; and
- (c) article 22 (Byelaws respecting harbour) of the Order of 1974.

Liability for safety of goods

16. The Authority shall not be responsible for the safety of goods deposited in any part of the harbour estate not specifically set apart by the Authority for the purpose of warehousing.

Application of certain provisions of Order of 1974

17. The provisions of articles 9 to 14 of the Order of 1974 (which contain certain requirements with respect to works) shall (so far as applicable) apply, as well as to tidal works as defined in that Order, to so much of any work which the Authority have constructed under any other statutory provision of local application as is on, under or over tidal waters or tidal land below the level of high water.

Repeals

18.—(1) Sections XXII, XXIII, XXIV and XXV of the Montrose Harbour Act 1850⁽¹³⁾ , sections 19 to 22 of the Montrose Harbour Act 1866⁽¹⁴⁾ and sections 12 to 14 and 20 of the Montrose Harbour Order 1878⁽¹⁵⁾ are hereby repealed.

(2) On the new constitution date, section XI of the Montrose Harbour Act 1850 shall be repealed and the Order of 1978 shall be revoked.

Signed by authority of the Secretary of State for Transport

4th June 1991

Patrick McLoughlin
Parliamentary Under Secretary of State,
Department of Transport

⁽¹¹⁾ 1847 c. 27.

⁽¹²⁾ 1964 c. 40.

⁽¹³⁾ 1850 c.xliiii.

⁽¹⁴⁾ 1866 c.cii.

⁽¹⁵⁾ Confirmed by 1878 c. cxv.

SCHEDULE

Article 6

ADMINISTRATIVE ARRANGEMENTS AND PROCEEDINGS OF THE AUTHORITY

1. The first meeting of the Authority after the new constitution date shall be convened by the chairman of the Authority for such date and at such place as he may fix and the chairman shall make arrangements for notice of that meeting to be sent by post to each of the other members of the Authority.

2. The Authority shall at their first meeting after the new constitution date, and subsequently at each annual meeting of the Authority, appoint one of their number (being a member appointed by the Secretary of State) to be deputy chairman and the deputy chairman shall, unless he resigns his office or ceases to be a member of the Authority, continue in office until the next annual meeting of the Authority.

3. The Authority shall meet at least once in every calendar month.

4. A member of the Authority other than the chief executive officer of the Authority may resign his membership by a notice in writing to the chief executive officer of the Authority and, in the case of a member appointed under article 4(2) or (3) of this Order, to the person who appointed him.

5. If the Authority are satisfied that a member of the Authority—

- (a) has been absent from meetings of the Authority for three consecutive months or more without the permission of the Authority; or
- (b) has had his estate sequestrated or has made a trust deed for his creditors or a composition contract; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a member; or
- (d) is otherwise unable or unfit to discharge the functions of a member,

the Authority may declare his office as a member of the Authority to be vacant and thereupon the office shall become vacant.

6. On a casual vacancy occurring in the office of deputy chairman of the Authority, the vacancy shall be filled by the appointment by the Authority of one of their number (being a member appointed by the Secretary of State) at a meeting held as soon as practicable after the vacancy occurs; and the person so appointed shall hold office until the next annual meeting of the Authority.

7. At meetings of the Authority the quorum shall be five.

8. Any person who has held office as a member of the Authority and is qualified to hold such office shall be eligible for re-appointment.

9. If a member of the Authority—

- (a) has any pecuniary interest, direct or indirect—
 - (i) in any contract or proposed contract to which the Authority are or would be a party, or
 - (ii) in any other matter with which the Authority are concerned, or
- (b) is a director of a company or body with which a contract or proposed contract such as is mentioned in head (i) above is made or proposed to be made,

and is present at a meeting of the Authority or of any committee of the Authority at which that contract, proposed contract or matter is considered, he shall, so soon as practicable after the commencement of that meeting, disclose his interest and withdraw from the meeting.

10. Subject to the provisions of this Schedule, the Authority shall have power to regulate their own procedure.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order—

- (a) changes the name of the Trustees of the Harbour of Montrose to “the Montrose Port Authority”;
- (b) reconstitutes the Montrose Port Authority so as to consist of—
 - (i) a chairman and three other members appointed by the Secretary of State;
 - (ii) one member appointed by Tayside Regional Council;
 - (iii) one member appointed by Angus District Council;
 - (iv) one member appointed by Montrose Community Council;
 - (v) the chief executive officer of the Authority; and
 - (vi) at the discretion of the Authority up to two other members appointed by the Authority;
- (c) empowers the Authority to adopt as their financial year such period of twelve consecutive months as they think fit and provides for the annual appointment, and qualifications of the Authority’s auditors;
- (d) contains provisions for licensing by the Authority of works below high water mark and dredging in the Harbour;
- (e) empowers the Authority to provide vessels and towage services and to acquire or dispose of certain businesses or shares and provides that the Authority shall not be responsible for the safety of goods deposited in any part of the harbour estate not specifically set apart by the Authority for the purpose of warehousing.