

Aviation, Maritime, Freight & Canals

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Monica Peto
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Date:
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Dear Monica

1. I refer to the application submitted by Eversheds Sutherland on behalf of your client, the Eyemouth Harbour Trustees (the Trustees), for the making of the Eyemouth Harbour Revision Order 2021 (the Order) under section 14 of the Harbours Act 1964 (the 1964 Act). This letter conveys the Ministers' decision following their consideration of the application.

Purpose of the Order

2. This Order allows for the reconstitution of the Eyemouth Harbour Trustees. It provides for there to be not less than 6 nor more than 11 Trustees with relevant experience.
3. The Order also 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.

Application process

4. Public notices were placed in the Berwickshire News on 10 December, the Edinburgh Gazette on 11 December and the Berwick Advertiser on 17 December 2020.

Objections

5. The 42 day notice period ended on 21 January 2021 with the Northern Lighthouse Board (NLB) requesting that they be included as a named consultee within Section 24-1 (General directions to vessels).
6. In addition, an objection was received from the Royal Yachting Association (RYA). The objection contains the RYA's general opposition to power to appropriate parts of harbour, Power to regulate pleasure craft, byelaws and general directions to vessels.

Objections handling

7. The trustees responded in writing to the RYA, who agreed to a number of changes to the Order. The RYA withdrew their objection on that basis.

Summary of modifications

8. The NLB has been named as a consultee within Section 24-1 (General directions to vessels) and, following consultation with the RYA, the following changes were agreed:

- Article 21 (Power to regulate pleasure craft) includes a new provision – 5(b) – which states that “a pleasure boat or pleasure vessel which is licensed under section 94 of the Public Health Acts Amendment Act 1907”.
- Item 3 of article 22 (Bylaws) has been amended to read “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”.
- Item 1 of Article 24 (General directions to vessels) has been amended to read “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”.

9. The modifications made are not considered to substantially affect the character of the Order.

Scottish Ministers' consideration

10. Section 14(2)(b) of the 1964 Act requires that an Order shall not be made in relation to a harbour unless the appropriate Minister is satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

11. Our assessment is that the proposed Order is conducive to improving the management of the harbour in an efficient and economical manner.

12. Based on the arguments in respect of the objection and the issues previously agreed between the trustees and objector, Ministers agreed that the Order be made with the proposed modifications.

Right to challenge decision

13. Any person who desires to question its making on the grounds that there was no power to make it or that a requirement of the 1964 Act was not complied with in relation to it may, within six weeks from the date the order comes into force, make an application for this purpose to the Court of Session.

14. Any person thinking of challenging the decision to make the order is advised to seek legal advice before taking any action.

Availability of decision

15. Once the order is made, the applicant must:

- Publish notice of the making of the order in the Edinburgh Gazette and one local paper.
- Send copies of the notice to the people/organisations notified of the original application.
- Copy the notice to Transport Scotland.

16. A copy of this letter will be sent to all those who were consulted on the order and will be published on the Transport Scotland website.

Yours sincerely



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Aviation, Maritime, Freights and Canals