SPICe Briefing
Harbours (Scotland) Bill

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The Harbours (Scotland) Bill was introduced in the Scottish Parliament by Keith Brown MSP, Cabinet Secretary for Infrastructure, Investment and Cities on 18 March 2015. The Bill would remove Scottish Ministers' power to compel a trust port, with an annual turnover above a certain level, to bring forward privatisation proposals. It also makes minor amendments to the Harbours Act 1964, removing a requirement for harbour authorities to:

1. submit six copies of a draft Harbour Order along with the application for the Order
2. submit six copies of a harbour reorganisation scheme to Scottish Ministers.

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Pàrlamaid na h-Alba

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INTRODUCTION

This briefing outlines what is meant by a "trust port" and describes what the proposals in the Harbours (Scotland) Bill ("the Bill) mean for their management and operation. It then summaries consultation carried out by the Scottish Government on this topic prior to the introduction of the Bill. Finally, it sets out key issues raised by respondents to the Infrastructure and Capital Investment Committee's call for views on the proposals in the Bill.

WHAT IS A TRUST PORT?

Ports in the UK are generally owned and operated by three types of authority: private ports, trust ports and local authority ports. Trust ports are set up by an Act of Parliament and controlled and administered by a self-governing independent statutory body, often known as a Harbour Board or in older cases Harbour Commissioners. The governing body manages the assets of the port for the benefit of its stakeholders, which include port users, employees, local communities and public authorities.

A trust port has no shareholders or owners and any surplus is ploughed back into the port for the benefit of its stakeholders. Trust ports operate in a commercial environment with no direct public funding and compete in the market with private and local authority ports as well as other trust ports. A full list of Scottish trust ports can be found in Annex A, at the end of this briefing.

RATIONALE FOR THE INTRODUCTION OF THE BILL

The policy memorandum which accompanies the Bill states that the "primary purpose of the Bill is to provide an improved legislative framework for trust ports across Scotland and increase the efficiency and effectiveness of existing procedures and processes for stakeholders." And that "The Bill satisfies a commitment by the Minister for Transport and Veterans to the Office for National Statistics (ONS) following their review to reclassify certain trust ports (that is, those currently with a minimum annual turnover of around £9 million) as public corporations".

Classification of a trust port as a public corporation by ONS would mean that any borrowing by a trust port authority would score upon the budgets of the Scottish Government, despite the fact that trust ports are independent of the Scottish Government.

PROPOSALS IN THE HARBOURS (SCOTLAND) BILL

Sections 10 to 12 of the Ports Act 1991, which would be repealed by Section 1 of the Bill, gives Scottish Ministers the following privatisation related powers:

- **Section 10:** To require a trust port authority, which has an annual turnover above a specified amount, to establish a company. The trust port authority must then submit a scheme to Scottish Ministers setting out how it would transfer its property, rights, liabilities and functions to that company.
- **Section 11:** Specifies the annual turnover requirement mentioned in Section 10.
- **Section 12:** Gives Scottish Ministers the power, where a scheme submitted to them by a trust port authority does not meet accord with advice given to that authority, and Ministers cannot modify the scheme to accord with their advice, to make such a scheme themselves.

Section 1 also makes minor amendments to Sections 20 and 37 of the Ports Act 1991 to take account of the repeal of Sections 10 to 12.

Section 2 of the Bill makes minor amendments to Schedules 3 and 4 of the Harbours Act 1964, which apply to all types of harbour authority – not just trust ports. These amendments remove the requirement for a harbour authority, seeking an order to change the legislation governing their operation, to submit six copies of a draft harbour revision or empowerment order (and any map to be annexed to the order) along with the application for the order to Scottish Ministers. Section 2 also removes the requirement to submit six copies of a harbour reorganisation scheme (and any map to be annexed to the scheme) to the Scottish Ministers.

CONSULTATION PRIOR TO THE INTRODUCTION OF THE HARBOURS (SCOTLAND) BILL

The Scottish Government held a [Consultation on proposals for a Harbours (Scotland) Bill](#) (Scottish Government 2014) between 21 August 2014 and 12 November 2014. The consultation proposed the two changes to harbours legislation found in the Harbours (Scotland) Bill. It also proposed the introduction of a mediation step in section 31 of the Harbours Act 1964, which allows harbour users to challenge harbour dues through an appeal to Scottish Ministers.

The Scottish Government (2015) published a [Consultation Report: Harbours (Scotland) Bill](#) in January 2015. A total of ten consultation responses were received. Of these nine were in favour of the proposed removal of Scottish Minister's power to require trust ports to bring forward privatisation proposals and all were in favour of the proposal to remove the requirement for six copies of a draft Harbour Order to be submitted along with the application for the Order (Schedule 3 to the Harbours Act 1964). Only four respondents were in favour of the proposed mediation power, which was not carried forward into the Bill.

VIEWS ON THE HARBOURS (SCOTLAND) BILL

The Infrastructure and Capital Investment Committee (2015) launched a [call for views](#) on the Bill on 25 March 2015, which ran until 16 April 2015. A total of five responses were received, from:

- UK Chamber of Shipping
- Brian MacIver
- British Port Association
- Dunbar Harbour Trust
- Montrose Port Authority

All respondents were supportive of the provisions of the Bill, e.g. the British Ports Association (2015) states that "It very much welcomes the proposals in as much as they will remove uncertainty for those ports above the privatisation threshold. It also confirms support for the Trust Port model as a vital part of the ownership mix in Scotland."

The UK Chamber of Shipping (2015) reiterated support for the introduction of a mediation stage in the dispute resolution process for harbour dues, which was proposed in the Scottish Government's consultation but not carried through into the Bill, stating:

"The entry level to the appeals process is currently set too high, by requiring the SoS[1] to intervene and adjudicate and additionally the Act itself is not clear about the nature or process of conducting an appeal or its exact purpose. The existing arrangements make the process inaccessible to smaller companies and individuals. A mediation stage would allow users commercial interests to be more quickly, cheaply and effectively represented and this would lead to the quicker resolution of disputes."

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[1] SoS – the Ports Act 1991 refers to the Secretary of State (SoS). In practice, this means Scottish Ministers for any Scottish port

SOURCES

British Ports Association (2015) *Harbours (Scotland) Bill: British Ports Association*. London: British Ports Association

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Scottish Government (2014) *A Consultation on proposals for a Harbours (Scotland) Bill*. Edinburgh: Scottish Government. Available at:
http://www.gov.scot/Resource/0045/00458200.pdf

Scottish Government (2015) *Consultation Report: Harbours (Scotland) Bill*. Edinburgh: Scottish Government. Available at: http://www.gov.scot/Resource/0046/00469011.pdf

UK Chamber of Shipping (2015) *Response to Call for Views: Harbours (Scotland) Bill*. London: UK Chamber of Shipping.

ANNEX A: LIST OF SCOTTISH TRUST PORTS

Aberdeen Harbour
Annan Harbour
Auchmithie Harbour
Avoch Harbour
Brownies Taing (Lerwick)
Burnmouth Harbour
Collieston Harbour
Cromarty Firth
Cromarty Harbour
Cruden Bay Harbour
Dunbar Harbour
Eyemouth Harbour
Fraserburgh Harbour
Gardenstown Harbour
Inverness Harbour
Lerwick Harbour
Mallaig Harbour
Montrose Port
North Berwick Harbour
Pennan Harbour
Peterhead Port
Port Seton Harbour
River Nith Navigation
Rosehearty Harbour
Scrabster Harbour
Skerray Harbour
St Abbs Harbour (Coldingham Shore)
St Andrews Harbour
St Margaret's Hope Pier (Sth Ronaldsay)
Stornoway Port
Tarbert (Loch Fyne) Harbour
Ullapool Harbour
Urr Navigation
Whitehills Harbour
Wick Harbour