

Scottish Trust Ports: The ONS reclassification experience

A Message Matters report for Belfast Harbour

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Belfast Harbour: Scottish Trust Ports ONS reclassification experience

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1. INTRODUCTION

Message Matters was commissioned by Belfast Harbour to compile this report as a supporting document in its submission to the Committee for Infrastructure's Call for Evidence on the Harbours Bill. It provides context to what is being proposed in Northern Ireland with background from the experience of Trust Ports in Scotland, which have already been through the reclassification process with the Office for National Statistics (ONS).

Information has been secured from a variety of sources (including desktop research), supported by direct conversations with officials from Transport Scotland, the British Ports Association, politicians who were serving in the Scottish Government at the time of reclassification and others working within the wider ports sector. We are grateful to them for their time and input.

This is a high-level overview. Statistics quoted are from publicly-available sources.

2. THE SCOTTISH POLITICAL / POLICY VIEW

It is important to be clear from the outset that the ONS reclassification for major Trust Ports was not the subject of heavy political debate in Scotland, or a cause for concern. Indeed, the Harbours (Scotland) Bill is one of the fastest ever passed by the Scottish Parliament at just seven months from introduction to passage.

Ministers and MSPs who were in Parliament at the time recall broad support for its intentions from the outset. They did not consider it to be a major change. Most viewed it a technical issue which required a logical policy intervention, rather than anything more fundamental about the structure, position and operation of Scotland's Trust Ports.

David Stewart, a former Highlands and Islands MSP who sat on the Infrastructure and Capital Investment Committee - which scrutinised the legislation - described the proposals during its Stage 3 debate in October 2015 as "non-controversial, simple and sensible".

While there was little political debate, there was acknowledgement that substantial preparation work had been undertaken by officials at Transport Scotland - working with ONS and HM Treasury - over a period of time prior to the Bill being brought forward.

There was an overarching view that, where required and where the circumstances are right, the reclassification was a tool through which prudent borrowing could be unlocked more efficiently, with wide economic benefits, without any impact on the public purse.

Reclassification also underscored the importance of the Trust Port ownership model in the wider picture of independent commercial port ownership, delivering for communities. The move was supported by Trust Ports themselves.

3. SCOTTISH TRUST PORTS - BACKGROUND

3.1 - What is a Trust Port?

Transport Scotland describes Trust Ports as “independent statutory bodies, governed by their own local legislation and run by independent boards who manage the assets of the trust for the benefit of stakeholders”.

Trust Ports operate in a commercial environment, essentially in the private sector, with no direct public operational funding. Nationally, they compete in a market with private and local authority ports, as well as other trust ports. There are no shareholders or owners. Any profits are reinvested by the port. They have a high degree of accountability to stakeholders which can include port users and communities.

Individual Trust Port boards manage their operations and are expected to reinvest any surpluses efficiently. Their primary aim is not the production of profits for shareholders, but the best use of the assets they manage in order to secure that asset for future use. They will often work with stakeholders to achieve this. Trust Ports are not directed by the Scottish Government.

As a stakeholder – particularly in nationally-significant Trust Ports – Scottish Ministers maintain an overview of performance and may challenge, where they feel it necessary. They do not have any day-to-day involvement, nor do they question the judgement of boards. Transport Scotland officials may, periodically, ask to attend some board meetings as observers on a fact-finding basis, this is relatively informal and occurs around once each year or once every two years per port. Trust Ports typically share their annual reports with Transport Scotland.

3.2 - How many Trust Ports operate in Scotland?

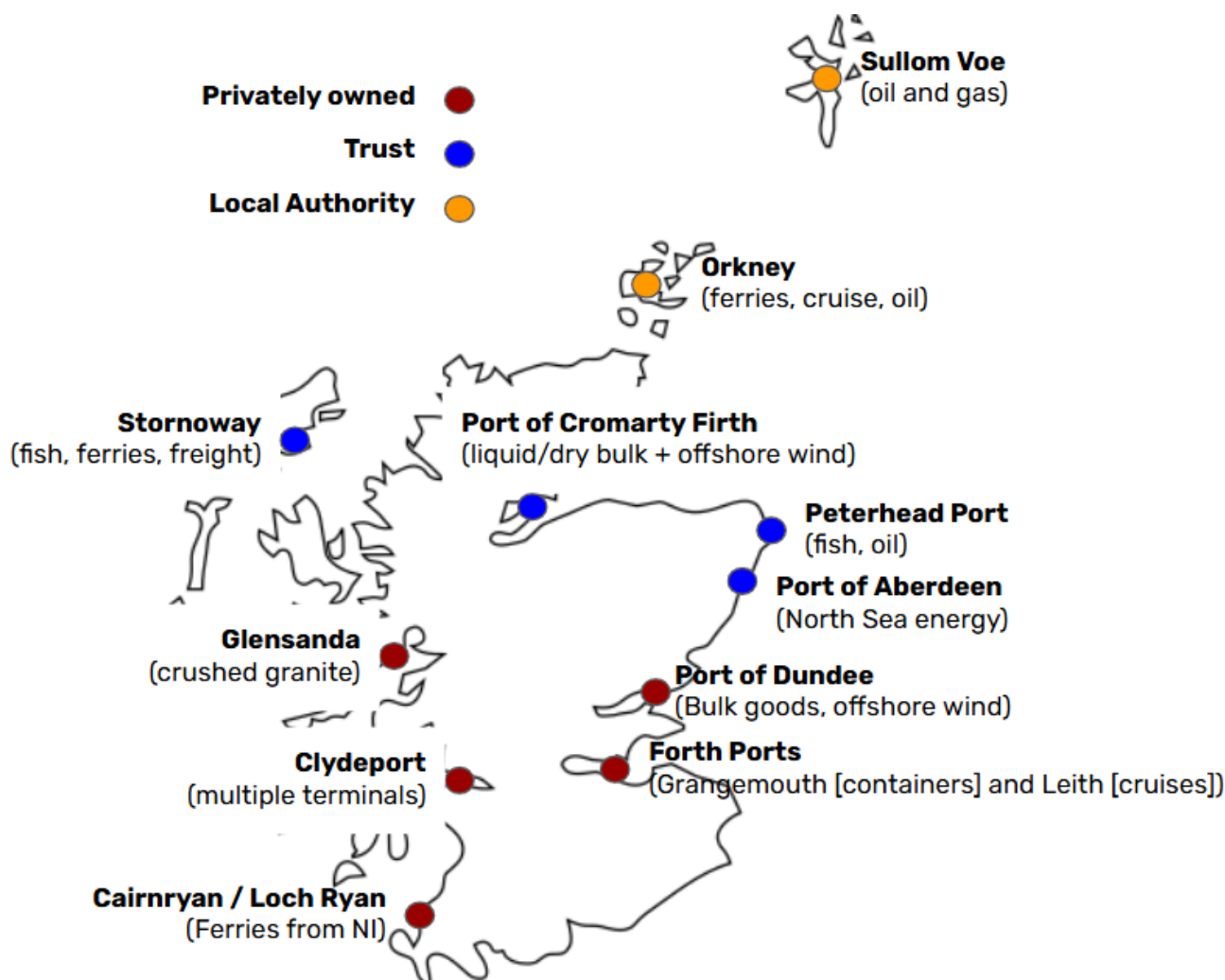
There are 35 Trust Ports across Scotland, varying considerably in size. Some larger ports play nationally significant roles in energy and aquaculture. Others are smaller community harbours with varying interests and uses, from fishing to leisure pursuits.

They are spread across Scotland. Some of the most prominent examples are Aberdeen, Peterhead, Montrose and Lerwick. Others include Tarbert, Fraserburgh, Eyemouth, Stornoway and Ullapool.

In the wider context of Scotland’s entire ports sector, Trust Ports account for a small proportion, with the Scottish Government recording approximately 375 harbours operating nationally.

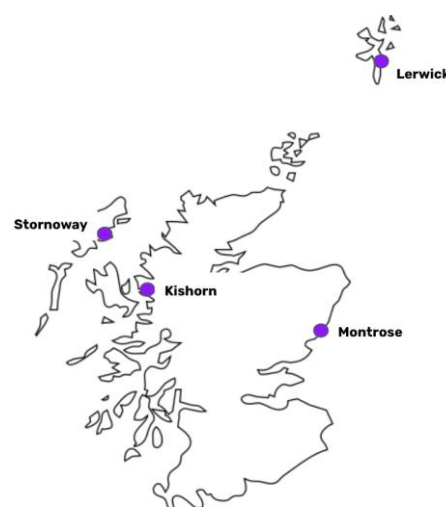
3.3 - The major ports picture in Scotland

Scotland is considered to have 11 major commercial ports, based on a statistical classification of handling more than one million tonnes of cargo per year. They are:



Rapidly-growing ports, owing to either the renewable energy transition, or cruise tourism, or both, include:

- **Kishorn (privately owned)**
 - ◆ Manufacturing and offshore wind foundations
- **Stornoway (Trust)**
 - ◆ New ultra-deep water port aimed at turbine components and large cruise ships
- **Lerwick (Trust)**
 - ◆ Proposed ultra-deep water quay for rig decommissioning; large cruise ships
- **Montrose (Trust)**



◆ North Sea energy maintenance hub

3.4 - Trust Ports and the Scottish economy

While we have been unable to source specific statistics about the contribution that Trust Ports make to the Scottish economy, the entire national ports industry is estimated to contribute £1.9bn to Scotland's Gross Value Added (GVA), directly employing 14,800 people. The ports are vital to cargo, offshore and onshore energy, fishing, tourism, leisure and shipbuilding. An estimated 95% of trade comes through seaports.

Whilst it is challenging to show direct 'cause and effect' as a result of the ONS Trust Ports reclassification in 2015, it is accepted (and supported by data) that Scottish ports drive regional economic growth by acting as crucial hubs for the energy transition, facilitating international trade, and supporting vital local industries such as fishing and aquaculture, as well as attracting international visitors as part of the cruise industry.

Port investment, development and expansion are critical to the growth of at least four key industries and therefore for local, regional and national economic growth throughout the country:

<u>Energy Transition</u> : Operations bases for offshore wind and decommissioning. Ports provide the foundation to create regional industrial powerhouses.	<u>Green Ports</u> : The two clustered coastal zones encourage global trade and inward investment across related industries. Clear acceleration of job creation and streamlined supply chains.
<u>Fishing and aquaculture</u> : Scotland has the largest fishing industry in the UK (Peterhead/Lerwick/ Fraserburgh, all Trust Ports = 50%+ of all UK landings) and farmed salmon is the UK's largest food export. Solid employment in vulnerable communities.	<u>Cruise and tourism</u> : Deep water ports allow for expanding cruise activities - including in the islands - which have generated more regional prosperity from global markets.

4. HOW THE RECLASSIFICATION PROCESS WORKED IN SCOTLAND

4.1 - Why change came about

The ONS reclassification of Scottish Trust Ports essentially resolved a national accounting issue which existed because of the interaction between the legal powers held by the Scottish Government and the ONS' interpretation of "public control" in that context.

The provisions of the Ports Act 1991 gave Scottish Ministers the power to force the sale (sometimes described as 'privatisation') of any trust port, should their turnover reach a certain threshold (about £9m at the time of this process and change being implemented). This would see them become "public corporations".

This power, which would only affect major Trust Ports, had not been used since devolution in 1999 and the Scottish Government's stated position was that it had no intention of doing so. Nonetheless, the ONS regarded the existence of these powers as evidence that the Scottish Government exercised sufficient control over major Trust Ports for them to be grouped as public corporations and with their debt appearing on the public finances.

In practical terms, it was essentially the case that any borrowings of a major Trust Port compelled to become a "public corporation" would score upon the budgets of the Scottish Government in the year of borrowing, despite the fact that the Scottish Government had no control over what would be a private financial transaction.

It was decided that a distinction needed to be drawn that made it clear that, as well as being legally and commercially independent, Scotland's Trust Ports were also independent in terms of national accounting classification, essentially so they have no impact on the public purse.

In terms of wider context, Scottish Ministers' controls over borrowing and the appointment of Trust Port board members had already been removed by the time ONS reclassification began to be reconsidered. This had been through the modernisation of individual Trust Port legislation in line with Transport Scotland's [Modern Trust Ports for Scotland](#) guidance between 2001-2002.

4.2 - How change came about

The level of Ministerial control over the ownership of trust ports led to ONS applying rules set out in the European System of Accounts 1995 (ESA 95) and the accompanying Manual on Government Deficit and Debt (MGDD), to classify major trust ports as "public corporations" – leading to the position where any borrowing would score upon Scottish Government budgets. This classification decision was first taken by the ONS in 2001 and confirmed following a review in 2014 (see [National Accounts Classifications, Forward Workplan, September 2013](#)).

Previous attempts to reclassify trust ports involved a series of local harbour revision orders but

the process of using local legislation to amend national rules was controversial and a number of the privately owned ports objected on the grounds that they wanted to see trust ports sold off to private operators such as themselves.

At the time of reclassification in Scotland, the public corporation classification had particular relevance to Aberdeen Harbour, Lerwick Port Authority and Peterhead Port Authority as those at - or close to - the £9m turnover threshold in place for 'public corporation' classification. In particular, Aberdeen had plans to expand.

Given concerns over the impact that Trust Port borrowing could have on Scottish Government budgeting, Ministers chose to amend the Ports Act 1991 to remove their ability to force the privatisation of a Trust Port. This was achieved through the Bill that became the Harbours (Scotland) Act 2015.

Removal of this privatisation power meant that major Trust Ports were no longer classified as public corporations by the ONS and their borrowing was no longer considered Scottish Government borrowing, closing the issue identified by ONS.

4.3 - A necessary step for ONS reclassification

The provisions made under the Harbours (Scotland) Act did not in themselves lead to the ONS reclassification of Trust Ports in Scotland. They were, however, the necessary legislative lever which allowed ONS to implement the change.

4.4 - The timeline for change

2013: ONS carried out a UK-wide review of the classification of major Trust Ports as Public Corporations. It considered all of the factors that determined the classification. One of its key areas was where there was an element of Government control for these bodies. It focussed on:

1. The appointment of board members.
2. Limits on Borrowing.
3. The power of Ministers to require a Trust Port (over a particular threshold) to bring forward privatisation proposals.

Only point three was relevant in Scotland through the powers granted to Scottish Ministers through Section 10 of the Ports Act 1991 - albeit that this was considered a technical point given the Scottish Government's stated intention of not using that power.

2013-2015: Scottish Ministers indicated that they would be prepared to remove their privatisation power, through legislation if required. This position was founded on:

1. A policy aim to remove Trust Ports from classification as Public Corporations by ONS.
2. To remove a level of uncertainty for those ports affected and thus reaffirm Scottish Ministers' support for the Trust Port model as part of the diverse range of ports ownership structures operating in Scotland.

Transport Scotland carried out public consultation. Ten largely positive responses were received. Feedback led to an additional amendment to remove the requirement for six paper copies of a draft Harbour Order to be submitted along with the application for the Order.

2015: The full Parliamentary procedure took place, overseen by the Minister for Transport and Veterans. The lead committee was Infrastructure and Capital Investment.

The full process in the Scottish Parliament over the course of 2015 was:

- **March 18** - Harbours (Scotland) Bill introduced to Parliament.
- **March 24** - Infrastructure and Capital Investment (ICI) Committee designated as lead committee for Stage 1 scrutiny of the Bill.
- **March 25** - ICI Committee issues call for views, which remained open until April 22. Five responses were received. Given broad support for the Bill, the Committee agreed to move straight to ministerial oral evidence on April 29.
- **June 5** - ICI Committee publishes its Stage 1 Report on the Bill, recommending that Parliament agrees its general principles.
- **June 16** - Stage 1 debate takes place in Parliament and Bill is passed to the next stage.
- **October 27** - The Harbours (Scotland) Act is passed.
- **December 2** - The Harbours (Scotland) Act is enacted.

Late 2016: ONS officially confirms the reclassification of Trust Ports in Scotland.

5. ONS LEVERS OF CONTROL

In determining whether Trust Ports are classified as market entities or public sector bodies, the ONS evaluates a matrix of 14 levers of control.

While Scottish Trust Ports are governed by their own local legislation and operate independently, the table below broadly maps the general Scottish statutory position against them, for reference.

ONS lever	The Scottish position
Determine aspects of how the body delivers its outputs	Ministers have various statutory / regulatory powers concerning harbour operations, navigation, safety and harbour orders under the Harbours Act 1964 and individual harbour legislation. But these are principally regulatory / public-interest powers, not powers to determine the commercial outputs of the Trust Port.
Final say in sale/acquisition of fixed assets	No ministerial power to approve ordinary acquisition/disposal of a trust port's fixed assets. Individual local statutes can contain specific restrictions.
Take a share of proceeds from asset disposals beyond repayment of government capital support	The Scottish Parliament repealed the relevant provisions in 2015.
Close the body	Ministers have powers relating to harbour closure, including under the Harbours Act 1964, but this is not a general power to dissolve the Trust Port as a legal entity. Closure of a harbour is different from closing the body that owns/manages it.
Prevent the body ending its relationship with the public sector	The important historical relationship was the compulsory-privatisation regime, not an obligation to remain within the public sector.
Veto a takeover	None applicable. The historical privatisation regime was different. It enabled government to require a sale, rather than simply veto an independently-proposed takeover.
Change the constitution, or veto changes to it	Trust Port constitutions can be amended through harbour revision orders / local legislation, with ministerial involvement in the statutory process. But that is a regulatory / statutory mechanism and does not amount to control of the body's constitution.
Decide / limit types of financial transaction	There is no ministerial power over the financial transactions of an independently-run Trust Port.
Prevent certain income from other sources	No general power of this kind. Trust Ports operate commercially and receive no direct public funding as part of their ordinary operating model.
Numerous minor controls over how the body is run	There are numerous statutory / regulatory requirements applying to harbour authorities (safety, navigation, harbour orders, reporting, etc). But these are common regulatory controls over ports, rather than evidence that the Scottish Government controls the Trust Port.

Financial control as part of general public-expenditure control.	The Scottish Government does not control Trust Port borrowing, which is a principal factor in the 2015 legislation.
Control dividend policy	A Trust Port has no shareholders and therefore no conventional dividend policy. Surpluses are reinvested in the port.
Set pay rates	No general statutory power for Scottish Ministers to set the remuneration of Trust Port employees or boards.
Approve acquisitions for non-regulatory reasons	No Ministerial power.

6. INDUSTRY'S VIEW OF ONS RECLASSIFICATION IN SCOTLAND

Given the way in which Trust Ports in Scotland operate, the reclassification by ONS had no profound impact on day-to-day operations. Port leaders - like politicians - very much considered the change to be a sensible administrative one, but which had a tangible benefit for all parties, reinforcing their financial independence, but also their community and economic benefit.

Richard Ballantyne, Chief Executive of the British Ports Association, said:

“Trust Ports are strategically and financially independent and operate essentially as private sector businesses. They provide an independent and commercial model of port ownership that does not require the Government to put its hand in its pocket to fund their operations. However, Trust Ports are able to operate for the benefit of their region and their stakeholders, including port users and residents.”

7. CONCLUSION

The Scottish experience of ONS reclassification of Trust Ports was a positive one - a process that policymakers, officials and Trust Ports themselves recognised was needed.

In the context of wider reforms of Scottish Trust Ports, this move was viewed as a largely administrative one, but one which was quietly significant in terms of the way that it could support the process of investment into ports, bringing with it benefits to regional and national economies via additional trade, throughput, jobs and the ripple effects of that.

While the economic impact of Trust Ports in Scotland has not been specifically assessed, it is widely acknowledged that the ONS reclassification has eased the investment process for major Trust Ports in Scotland, while also critically removing any burden of borrowing from Scottish Government budgets. The most prominent example of Trust Port investment in Scotland is at the Port of Aberdeen, where expansion to its South Harbour has substantially increased

berthage and deepwater capacity for the offshore energy sector. Other significant investments include those at Lerwick, Montrose, Peterhead and Stornoway.

These have all been possible without any accounting impact on the public purse which would have been in play – and potentially have been an additional barrier to investment – had major Trust Ports in Scotland been compelled to become “public corporations”.

Crucially, given the way in which Trust Ports in Scotland are managed, this was a move which in no way impacted upon the transparency and accountability of their work.

The legislation passed in the Scottish Parliament which allowed the ONS reclassification is considered by stakeholders as a success in terms of the practical and economic impact it has had in Scotland’s important Trust Port network. Indeed, it is one which many argue has underlined that importance.

The Scottish example highlights the positive impact that the same reclassification could bring for Northern Ireland – supporting investment, benefiting public accounts and enhancing economic potential.

8. APPENDIX

List of Trust Ports in Scotland		Rosehearty Harbour
Aberdeen Harbour	Fraserburgh Harbour	Scrabster Harbour
Annan Harbour	Gardenstown Harbour	Skerry Harbour
Auchmithie Harbour	Inverness Harbour	St Abbs Harbour (Coldingham Store)
Brownies Taing (Lerwick)	Lerwick Harbour	St Andrews Harbour
Burnmouth Harbour	Mallaig Harbour	St Margaret’s Hope Pier (south Ronaldsay)
Collieston Harbour	Montrose Port	Stornoway Port
Cromarty Firth	North Berwick Harbour	Tarbert (Loch Fyne) Harbour
Cromarty Harbour	Pennan Harbour	Ullapool Harbour
Cruden Bay Harbour	Peterhead Port	Urr Navigation
Dunbar Harbour	Port Seton Harbour	Whitehills Harbour
Eyemouth Harbour	River Nith Navigation	Wick Harbour