

**2003 No. 211**

**HARBOUR, DOCKS, PIERS AND FERRIES**

**The Lerwick Harbour Revision (Constitution) Order 2003**

*Made*

*19th March 2003*

*Coming into force*

*20th March 2003*

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Whereas the Lerwick Port Authority has applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

And whereas the making of this order is not opposed;

Now, therefore, the Scottish Ministers(b) in exercise of the powers conferred by the said section 14 and of all other powers enabling them in that behalf, hereby make the following Order:—

PART 1  
PRELIMINARY

**Citation and commencement**

1.—(1) This Order may be cited as the Lerwick Harbour Revision (Constitution) Order 2003 and shall come into force on 20th March 2003.

(2) The Lerwick Harbour Acts and Orders 1877 to 2001 and this Order may be cited together as the Lerwick Harbour Acts and Orders 1877 to 2003 (hereinafter referred to as the Lerwick Harbour Acts and Orders).

**Interpretation**

2. In this Order—

“the Authority” means Lerwick Port Authority;

“Seal” means the corporate seal of the Authority;

“the Board” means the Members of the Authority or a quorum thereof acting collectively;

“the 1999 Order” means the Lerwick Harbour Revision Order 1999(c);

“application date” means the last Friday of May 2003 and annually thereafter;

“appointing body” has the meaning given by article 5(1);

“approved candidates” means applicants for election whom the appointing body decide should go forward for election under article 5(4);

“Member” means a Member of Lerwick Port Authority holding office either under the 1999 Order or this Order as the case may require;

“election date” means a Tuesday in July;

“the revised constitution date” means the election date in the year 2003;

“authorised signatories” means the Chief Executive or the Deputy Chief Executive of the Authority from time to time;

“Harbour” means the Port and Harbour of Lerwick as described in the Harbour Acts and Orders and includes the land, buildings, works, plant, property and conveniences connected therewith or any part thereof as the case may be;

“Harbour dues” means dues recovered by the Authority in terms of S.26(2) of the Harbours Act 1964(a) and any statutory amendment or re-enactment thereof;

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(a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4 and 14, and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1.

(b) The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(c) S.I. 1999/1170.

“register of British ships” means the list of vessels shown on the register which is presently maintained by the Registrar General of Shipping and Seamen as registrar in terms of The Merchant Shipping Act 1995(a);

“Shetland Islands Council” and “the Council” means the local authority for the Shetland Islands as constituted by the Local Government etc. (Scotland) Act 1994(b);

“works licence” means a works licence granted under section 10 of the Lerwick Harbour Order Confirmation Act 1974(c).

## PART II CONSTITUTION

### Membership of the Authority

3.—(1) On and after the revised constitution date, the Members of the Authority shall be:—

- (a) three persons nominated and elected by shipowners, qualified as hereinafter provided;
- (b) three persons nominated and elected by business ratepayers, qualified as hereinafter provided;
- (c) three persons having been nominated by Shetland Islands Council qualified as hereinafter provided;
- (d) the Chief Executive and Deputy Chief Executive of the Authority from time to time acting *ex officio*;

and application, appointment or election under sub-paragraphs (a) - (c) of this paragraph shall mean application, appointment or election for the post of Members described in those sub-paragraphs.

(2) The arrangements for application, appointment or election of Members after the revised constitution date shall be as follows:—

- (i) All Members shall have their main place of residence in the Shetland Islands.
- (ii) (a) on the election date in the year 2003
  - (i) three Members shall be elected in accordance with sub-paragraph (1)(a) above
  - (ii) three Members shall be elected in accordance with sub-paragraph (1)(b) above
  - (iii) three Members shall be appointed in accordance with sub-paragraph (1)(c) above
  - (iv) two Members shall serve in accordance with sub-paragraph (1)(d) above
- (b) the initial terms to be served by the Members elected or appointed in accordance herewith shall be as follows:—
  - (i) the three Members appointed in accordance with sub-paragraph (1)(c) above shall serve an initial term of one year
  - (ii) the Members elected in terms of sub-paragraph (1)(b) above shall serve an initial term of two years
  - (iii) the three Members elected in terms of sub-paragraph (1)(a) above shall serve an initial term of three years
- (c) on the election date in the year 2004 the arrangements for election and appointment of Members shall be as follows:—
  - (i) the three Members appointed in terms of sub-paragraph (1)(c) above shall demit office and shall be entitled to be nominated and appointed as hereinafter provided
  - (ii) the remaining Members elected or appointed in terms of sub-paragraphs (1)(a) and (b) above will remain in office
- (d) on the election date in the year 2005 the arrangements for election and appointment of Members shall be as follows:—
  - (i) the three Members elected in terms of sub-paragraph (1)(b) above shall demit office and shall be entitled to be elected and appointed as hereinafter provided

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(a) 1995 c.21.  
(b) 1994 c.39.  
(c) 1974 c.XX.

- (ii) the remaining Members elected or appointed in terms of sub-paragraphs (1)(a) and (c) above will remain in office
- (e) on the election date in the year 2006 the arrangements for election and appointment of Members shall be as follows:–
  - (i) the three Members elected in terms of sub-paragraph (1)(a) above shall demit office and shall be entitled to be elected and appointed as hereinafter provided
  - (ii) the remaining Members elected or appointed in terms of sub-paragraphs 1(b) and (c) above shall remain in office.

(3) after the expiry of the respective initial terms of office of the Members (other than Members *ex officio*) the term of office of Members shall be three years commencing with the date of the expiry of the initial term of office of the category of Member concerned.

### **Application procedure**

4.—(1) All persons seeking election or appointment under article 3(1) (a)-(c) shall submit an application form to the Authority by the application date in the year of the election date.

(2) The Members shall cause the said application date and application procedure set out in paragraphs (3) to (5) below to be advertised in at least one newspaper published or circulating in the Shetland Islands not later than the second Friday of May in 2003 and on each anniversary thereafter as shall occur in any year in which an election occurs of shipowners or ratepayers as the case may be.

(3) The application form shall contain the following information:–

- (a) the name and address of the applicant;
- (b) a statement as to under which sub-paragraph of article 3(1) the application is made;
- (c) for applications made under article 3(1)(a), a statement that the applicant appears on the list of shipowners qualified as hereinafter provided;
- (d) for applications made under article 3(1)(b), a statement that the applicant appears on the list of business ratepayers qualified as hereinafter provided;
- (e) for applications under article 3(1)(c) a declaration of interests in such form as may be prescribed by the Authority from time to time containing particulars of all sources of income, business interests, securities held interest in any land in the vicinity of the Harbour and any other matter which might reasonably be conceived as having the potential to lead to a conflict of interest with the duties of a Member of the Authority.
- (f) such biographical information as the applicant sees fit to supply;

(4) Applications made under articles 3(1)(a) and (b) shall be accompanied by nomination papers as follows:–

- (a) applications made under article 3(1)(a) shall be accompanied by no fewer than two nomination papers from persons whose names appear on the list of shipowners maintained in accordance with article 6;
- (b) applications made under article 3(1)(b) shall be accompanied by no fewer than two nomination papers from persons whose names appear on the list of business ratepayers maintained in accordance with article 7;

(5) Nomination papers shall contain a statement that the nominating person nominates the person seeking election and shall be signed by the nominating person.

### **Interviews and selection**

5.—(1) There shall be an appointing body consisting of the following three persons, none of whom shall have made an application under article 4:–

- (a) the Chairman of the Authority unless the Chairman has made an application under article 4, in which case another Member nominated by the Members;
- (b) a person who is not a Member who shall be nominated by the Members and considered to represent the interests of one or more groups of persons interested in the Harbour, and
- (c) the Convener of Shetland Islands Council or the nominee of the Convener;

(2) The appointing body shall meet as soon as practicable after the application date to consider the applications made under article 4 and in any event by the first Friday of June 2003 and annually thereafter.

- (3) The appointing body may interview such of the applicants as it sees fit.
- (4) The appointing body shall decide whether those persons who have applied under articles 3(1)(a) and (b) shall be candidates in the election of Members.
- (5) The appointing body shall decide which persons who have applied under article 3(1)(c) shall be appointed as Members.
- (6) The appointing body shall have particular regard to the following considerations when making decisions under paragraphs (4) and (5):–
  - (a) the special knowledge, experience or ability of applicants to contribute to the efficient and economic discharge by the Members of their functions;
  - (b) the special knowledge, experience or ability of applicants in one or more of the following matters–
    - (i) management of harbours;
    - (ii) shipping or other forms of transport;
    - (iii) the fishing industry;
    - (iv) sailing and other water-related leisure activities;
    - (v) navigation;
    - (vi) industrial, commercial or financial matters;
    - (vii) administration;
    - (viii) the oil industry;
    - (ix) safety;
    - (x) personnel management;
    - (xi) environmental matters affecting harbours;
    - (xii) local community interests;
    - (xiii) any other skills and matters considered relevant from time to time by the Members to the discharge by them of their functions;
  - (c) any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

## **Shipowners**

- 6.—(1) The Authority shall cause a list of shipowners to be made up.
- (2) A shipowner is a person:–
  - (a) whose name appears in the register of British ships on the last Friday of February in any year of election of shipowner Members to the Authority as the owner or part owner to the extent of at least 10 tonnes gross in any vessel or vessels whose port of choice is shown as Lerwick in said register or
  - (b) who satisfies the Authority that he is the owner or part owner to the extent of at least 10 tonnes gross in a vessel which has in the year preceding the last Friday of February in any year of election of shipowner Members to the Authority made not less than 20 entries into the Harbour in respect of which harbour dues have been paid to the Authority.
- (3) Where a shipowner is an incorporated company, such company may by the last Friday of February 2003 and on each anniversary thereafter as shall occur in a year in which there is an election to the Authority of shipowner Members, intimate in writing to the Authority the name of one of their members or employees whom they desire to be an elector and such member or employee so named shall qualify to be an elector and, subject to the provisions of articles 4 and 5, Member. In the event of such incorporated company being registered as the shipowner of any vessel or vessels to the extent of 20 tonnes gross or more then the company may intimate the names of two of their members or employees to qualify as electors and, subject to the provisions of articles 4 and 5, Members.
- (4) Subject to the provisions of articles 4 and 5 hereof a shipowner, other than an incorporated company, is qualified to be an elector and Member.
- (5) The Authority, its officials and employees shall not qualify as shipowners.

- (6) The following persons shall not qualify as shipowners:–
- (a) The Council;
  - (b) Any company or body wholly owned or controlled by the Council.

### **Business ratepayers**

- 7.—(1) (i) The Authority shall cause a list of business ratepayers to be made up.
- (ii) A business ratepayer (hereinafter referred to as a ratepayer) is a person:–
- (a) whose name appears on the Valuation Roll for the Shetland Islands as prepared by the Orkney & Shetland Valuation Joint Board as at 1st April in the year prior to that in which there is an election to the Authority of ratepayer Members (or in the event of the unavailability of such Roll, the most recent available Roll) as being the occupying owner or tenant responsible for paying business rates on a property or properties in Lerwick with an aggregate annual rateable value of at least £2,000, and
  - (b) who is not a statutory undertaking or an organisation having Charitable status or a club or unincorporated association or any other body, however constituted, whose main source of income or funding derives other than directly from trading or commerce.

(2) Where a ratepayer is an incorporated company or a firm, such company or firm may by the last Friday of February 2003 and on each anniversary thereafter as shall occur in a year in which there is an election of ratepayer Members to the Authority, intimate in writing to the Authority the name of one of their members or partners or one of their employees whom they desire to be an elector and such member or partner or employee so named shall qualify to be an elector and, subject to the provisions of articles 4 and 5, Member. In the event of any incorporated company or firm appearing in said Valuation Roll as the occupying owner or tenant of a property or properties with an aggregate annual rateable value of £5,000 or more then the company or firm may intimate the names of two members or partners or two of their employees to qualify as electors and, subject to the provisions of articles 4 and 5, Members.

(3) At each revaluation of the rateable value of the business properties the sums of £2,000 and £5,000 mentioned in this article may at the option of the Board be re-assessed, retained, increased or decreased in accordance with any changes in the Retail Price Index, as published by the Office of National Statistics, which have occurred in said Index from the position in which it stood as at the date of the immediately preceding revaluation and in such event the Authority shall arrange for the resultant figures to be published in a newspaper circulating in the Shetland Islands.

(4) A ratepayer, other than an incorporated company or firm, is qualified to be an elector and, subject to the provisions of articles 4 and 5, Member.

- (5) The Authority, its officials and employees shall not qualify as ratepayers.
- (6) The following persons shall not qualify as ratepayers:–
- (a) The Council;
  - (b) Any company or body wholly owned or controlled by the Council.

### **Nomination, election and appointment of Members**

8.—(1) By the last Friday in March in 2003 and on each anniversary thereafter as shall occur in any year in which an election occurs of shipowners or ratepayers or both as the case may be, the Chief Executive or Deputy Chief Executive shall have prepared a list/lists of the names of all shipowners and/or ratepayers eligible to vote for or to be nominated and, subject to the provisions of articles 4 and 5, elected as Members of the Authority.

(2) By the first Friday in April in 2003 and on each anniversary thereafter as shall occur in any year in which an election occurs of shipowners or ratepayers or both as the case may be the Chief Executive or Deputy Chief Executive shall have caused notice to be published in a newspaper circulating in the Shetland Islands that the list or lists is/are available for public inspection at the principal office of the Authority during normal business hours for a specified period of not less than 10 days.

(3) Any person who has cause for complaint that the list or lists is/are inaccurate, whether by commission or omission, shall be entitled, only during the period for public inspection, to make

representations in writing to the Authority who shall without delay acknowledge in writing receipt of such representations.

(4) The Authority shall within 14 days of the expiry of the period for complaint give written notification of its decision to those persons having made representations. The Authority's decision shall be final and not subject to appeal.

(5) By the second Friday of May in 2003 and on each anniversary thereafter as shall occur in any year of election of shipowner or ratepayer Members to the Authority the Chairman shall have appointed a returning officer who may be an official of the Authority. The returning officer shall give at least 10 days notice in a newspaper circulating in the Shetland Islands of an election to be held on a specified Tuesday in July at a specified time and venue in Lerwick for the purpose of election of Members who are shipowners or ratepayers or both whose names have been intimated in writing to the Authority in accordance with articles 6 and 7 and who have been approved as candidates in the election as provided for in article 5.

(6) Any application by a candidate may be withdrawn by notice of withdrawal to the returning officer and such notice of withdrawal shall be signed by the person who made the application.

(7) If there are more approved candidates for any of the classes than the number to be elected the returning officer shall order a poll which shall take place on the day at the place fixed for the election and shall be by secret ballot.

(8) The poll shall be taken by ballot including but not limited to postal ballot in the manner of a Parliamentary election or in such manner as may be determined by the returning officer.

(9) No returning officer or polling officer appointed by him and officiating at any election shall vote at that election.

(10) At the close of polling the returning officer shall count the votes. In the event of an equality in the number of votes at an election the returning officer shall, if necessary to prevent an excess in the number of elected Members, determine by lot which of the persons having such equality of votes shall be the Member or Members.

(11) The returning officer shall then announce the names of the successful candidates who shall, subject to the provisions of article 3(2)(i) hereof, be declared duly elected Members of the Authority.

## **General**

9.—(1) No name shall appear on more than one list of electors, nor appear more than once on such list.

(2) Where a person is qualified to have his name appear on both the list of shipowners and the list of ratepayers his name shall be entered in the list containing the lesser number of names and in the event of each list containing an equal number of names the Chief Executive or Deputy Chief Executive will select the list in which the name shall be entered.

(3) No shipowner or ratepayer or person whose name has been intimated in writing to the Authority in accordance with articles 6(3) and 7(2) shall be qualified to vote for or nominate or be elected a Member of the Authority nor to continue to serve as such Member whilst being a member of the Council.

(4) No person shall be qualified to be nominated as a Member of the Authority if that person shall have attained their 70th birthday before the application date.

(5) Members shall be eligible for re-appointment and re-election provided they otherwise continue to be eligible in accordance with the provisions of this Order.

(6) No person shall be capable of acting as a Member of the Authority without having made and signed before the Chief Executive or one of the Members a declaration to the following effect:—

“I, AB [designation] do solemnly declare that I will faithfully and impartially, according to the best of my skill and judgement, execute all the powers and authorities reposed in me as a Member of Lerwick Port Authority by virtue of the Lerwick Harbour Acts and Orders and also that I am qualified to act as a Member of the Authority being a [here state the basis of qualification required by the Lerwick Harbour Acts and Orders]”.

### **Transitional provisions**

**10.** All Members elected, nominated, appointed and acting in accordance with the 1999 Order shall remain in office until the first meeting of the Board of the Authority occurring after the revised Constitution date.

### **Declaration of interests**

**11.** No Member shall take part in any debate or vote on any matter in which that Member has a personal, financial or other significant involvement; and at the start of any proceedings on such a matter, such a Member shall declare the interest and withdraw from the debate or vote.

### **Indemnity insurance**

**12.** The Members may enter into, and pay premiums for, a contract of insurance to indemnify the Members jointly or severally against personal liability arising from any act or omission of the Members or of any of them not being an act or omission which the Member or Members in question knew to be a breach of duty or, concerning which, was or were reckless as to whether it was such a breach.

## **PART III**

### **BOARD PROCEEDINGS**

#### **Chairman of Members etc.**

**13.—(1)** At the first meeting of the Board of the Authority after the revised constitution date the Members shall appoint one of their number to be Chairman and another to be Deputy Chairman whose periods of office shall subsist for one year from their respective appointments.

(2) On the expiry of the respective periods of office of the Chairman and Deputy Chairman, the Board of the Authority shall at the first meeting of the Board following the expiry of said respective periods of office appoint one or two of their number to be Chairman and/or Deputy Chairman as the case may be and he or they shall remain in office as hereinbefore provided.

(3) If the Chairman and Deputy Chairman are ever both absent from any meeting, one of the other Members shall be chosen to be chairman of the meeting. At all meetings the presiding chairman shall, in the case of equality of votes, have a deliberative as well as a casting vote.

#### **Failure of election or nomination**

**14.—(1)** In the case of the failure or partial failure at any time of election or nomination by the Council to fill any vacancy under the terms of this Order, the Members may fill up such a vacancy.

(2) For the avoidance of doubt, if fewer candidates are approved to take part in the election or fewer nominees are nominated by the Council and approved by the appointing body than the number of vacancies in any category, then the election or nomination for the remaining number shall be deemed to have failed.

#### **Casual Vacancies**

**15.—(1)** If a Member, not being a Member nominated by the Council, refuses to accept office, or dies, or resigns, or becomes disqualified or ceases for any reason to be a Member then at the discretion of the Members the resulting vacancy shall either be left vacant or shall be filled in the manner following:—

- (a) The Members shall fill the vacancy by co-opting as a Member any person and the Member so substituted shall continue in office for the period that the person in whose place the co-opted Member is appointed would in the ordinary course have continued in office;
- (b) At the end of such period the co-opted Member shall go out of office but shall be eligible for re-election, if qualified.

(2) If a Member, being a Member nominated by the Council, refuses to accept office, or dies, or resigns, or becomes disqualified or ceases for any reason to be a Member then at the discretion

of the Council the resulting vacancy shall either be left vacant or shall be filled in the manner following:—

- (a) The Council shall nominate a person to fill the vacancy;
- (b) The person so nominated shall submit an application form containing the information specified in Article 4(3) hereof to the Authority;
- (c) Said application shall be considered by the appointing body who shall decide whether or not the applicant shall be appointed as a Member having regard to the considerations set out in Article 5(6) hereof.
- (d) In the event of the applicant being appointed as a Member, the Member substituted shall continue in office for the period that the person in whose place the substituted Member is appointed would in the ordinary course have continued in office.
- (e) At the end of such period the substituted Member shall go out of office but shall be eligible for re-appointment if qualified.

#### PART IV

#### MISCELLANEOUS

##### **Authentication of Seal**

**16.—**(1) The application of the Seal of the Authority shall be authenticated by the signature of the Chief Executive or the Deputy Chief Executive of the Authority and two Members of the Authority.

(2) Any notice, licence, or other document given or issued by the Authority shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the Chief Executive or Deputy Chief Executive of the Authority.

##### **Works licences**

**17.—**(1) The Authority may upon such terms and conditions as they think fit, consent to the assignation or transfer to any person of a works licence granted by the Authority.

(2) Application for assignation or transfer of a works licence shall be made in writing to the Authority and shall comply with the requirements contained in section 10 of the Lerwick Harbour Confirmation Act 1974, save that:—

- (i) the applicant shall not require to lodge plans, sections and particulars of the works to which the application relates.
- (ii) the period for lodging written objections shall be fourteen days from the date of the newspaper advertisement of the application.

(3) The Authority shall take into consideration any objection in writing made to them by any person in so far as relating to the identity, suitability, expertise and/or financial standing of the applicant for the assignation or transfer of any such works licence.

##### **Amendments**

**18.** The 1999 Order is amended in the following manner, that is to say:—

- (a) Article 15. by deleting of the words “the Chairman of”.
- (b) Article 16.(c) by deleting “5(2) or” and by the inserting after “6(3)” of “or 7(2)”.
- (c) Article 17 by deleting the word “nomination”.

## **Repeals and Revocations**

**19.** On the revised constitution date the 1999 Order shall be repealed or revoked to the extent specified in the third column of that schedule.

Victoria Quay,  
Edinburgh  
19th March 2003

A member of the staff of the Scottish Ministers

SCHEDULE 1  
REPEALS AND REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent of repeal or revocation</i>
S.I. 1999/1170	Lerwick Harbour Revision Order 1999	Articles 4 to 9 and Article 18

## EXPLANATORY NOTE

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

This Order reconstitutes the Lerwick Port Authority in line with the recommendations of the Trust Ports Review, published by the Department of Environment Transport and the Regions in January 2000 and endorsed by the Scottish Executive.

The Order also includes other provisions with respect to the Authority's constitution including provisions for the protection of the Members from personal liability in the discharge of their functions, authentication of the Seal of the Authority and provisions regarding the assignation or transfer to any person of a works licence granted by the Authority.

£2.50

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