

2003 No. 491

HARBOURS, DOCKS, PIERS AND FERRIES

**The Cromarty Firth Port Authority (Constitution) Revision
Order 2003**

Made - - - - - *30th September 2003*

Coming into force - - - - - *1st October 2003*

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Whereas the Cromarty Firth Port Authority have applied for a harbour revision order under section 14 of the Harbours Act 1964(a):

(a) 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; and by the Transport and Works Act 1992 (c.42), section 63 and Schedule 3, paragraphs 1 and 10.

And whereas objections to the application made pursuant to paragraph 10(2)(f) of Schedule 3 to the said Act have been withdrawn:

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

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Cromarty Firth Port Authority (Constitution) Revision Order 2003 and shall come into force on 1st October 2003.

(2) The Cromarty Firth Port Authority Orders 1973 to 1997(b) and this Order may be cited together as the Cromarty Firth Port Authority Orders 1973 to 2003.

Incorporation of section 60 of Commissioners Clauses Act 1847

2. Section 60 of the Commissioners Clauses Act 1847(c) shall be incorporated with this Order.

Interpretation

3. In this Order–

“the Authority” means the Cromarty Firth Port Authority;

“the new constitution date” means 1st January 2004.

Constitution

Constitution of Authority

4.—(1) On and after the new constitution date, the Authority shall consist of–

- (a) seven members appointed by the Authority;
- (b) the port manager for the time being of the Authority; and
- (c) if they so decide, a person co-opted by the members referred to in sub-paragraphs (a) and (b) above to serve as a member during such period not exceeding one year as may be specified by those members at the time of co-option.

(2) Each member appointed under paragraph (1)(a) above or co-opted under paragraph (1)(c) above shall be a person who appears to have special knowledge, experience or ability appropriate to the efficient and economic discharge by the Authority of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge, experience or ability in one or more of the following matters–

- (a) management of harbours;
- (b) shipping or other forms of transport;
- (c) usage of port facilities;
- (d) industrial, commercial and financial matters including, in particular, but without prejudice to the foregoing, matters relating to the oil industry;
- (e) administration;
- (f) the organisation of employees;

(a) Section 14(7) contains a definition of “the appropriate Minister” relevant to the exercise of the powers under which this Order is made. 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).

(b) See 1973 c.xiv, S.I. 1996/1419 and S.I. 1997/1953.

(c) 1847 c.16.

- (g) community involvement;
- (h) financial management;
- (i) the laws relating to Scotland;
- (j) safety management;
- (k) commercial marketing;
- (l) information technology;
- (m) environmental matters affecting harbours;
- (n) civil engineering; and
- (o) any other skills and abilities considered from time to time by the Authority to be relevant to the discharge by them of their functions;

and the Authority shall secure, so far as reasonably practicable, that the members appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient and economic discharge by them of their functions.

(3) In making an appointment under paragraph (1)(a) above or article 8 below, or a co-option under paragraph (1)(c) above the Authority shall act in accordance with any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

Appointment and terms of office of first members

5.—(1) The first appointments under article 4(1)(a) above shall be made before 1st December 2003.

(2) The Authority shall appoint the persons who are, at the date when they make the first appointments under paragraph (1) above, the continuing members to be three of the first of such appointed members and they shall hold office as members from the new constitution date until 31st December 2004; and in this paragraph “continuing members” means the persons who were appointed before the new constitution date to serve as members of the Authority for three years from 1st January 2002.

(3) Of the remaining first such appointed members—

- (a) two shall hold office from the new constitution date until 31st December 2005;
- (b) two shall hold office from the new constitution date until 31st December 2006;

as the Authority shall specify when they make each of those appointments.

Terms of office of subsequent members

6. A member appointed under article 4(1)(a) above (other than a member appointed under article 5 above) shall, unless appointed to fill a casual vacancy and subject to the provisions of this Order, hold office for the period of three years from 1st January next following his appointment.

Declaration to be made by members

7. No person shall be capable of acting as a member until he has made the declaration set out in Schedule 1 to this Order; and a person shall cease to be a member if he fails to make that declaration within three months of the date of his appointment.

Casual vacancies

8.—(1) A casual vacancy arising in the office of a member appointed by the Authority shall, where reasonably practicable, be filled by the appointment of a member by the Authority in accordance with article 4(3) above.

(2) A member appointed to fill a casual vacancy under this article shall hold office (unless he previously dies or otherwise ceases to be a member) during the remainder of the term for which the member whom he replaces was appointed.

Disqualification of members

9. If the Authority are satisfied that a member—
- (a) has without the permission of the Authority been absent from meetings of the Authority—
 - (i) for a period during which three such meetings have been held; or
 - (ii) for a period of three consecutive months,whichever of these periods is the longer; or
 - (b) has had an award of sequestration made against his estate or has become bankrupt or made an arrangement with his creditors; or
 - (c) is incapacitated by physical or mental illness from discharging the functions of a member; or
 - (d) is otherwise unable, unwilling or unfit to discharge the functions of a member;

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

Indemnity insurance for members

10. The Authority 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 his or their duty or, concerning which, he or they were reckless as to whether it was such a breach.

Incidental provisions relating to Authority

11. On and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the administrative arrangements and proceedings of the Authority.

Borrowing powers

12. The Authority may from time to time borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions; and where moneys are borrowed by the Authority under this article, the Authority may, if they see fit, borrow those moneys upon the security of their assets for the time being or of their revenues or of both their assets and their revenues.

Repeals and revocations

13. On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in the third column of that Schedule.

NICOL STEPHEN
A member of the Scottish Executive

St Andrew's House,
Edinburgh
30th September 2003

SCHEDULES

SCHEDULE 1

Article 7

FORM OF DECLARATION BY MEMBERS

CROMARTY FIRTH PORT AUTHORITY

CROMARTY FIRTH PORT AUTHORITY ORDERS 1973 TO 2003

DECLARATION

I, [FULL NAME] do solemnly declare

- (1) that I will faithfully and impartially, according to the best of my skill and judgement, execute all the powers and authorities vested in me as a member of the Cromarty Firth Port Authority by virtue of the Cromarty Firth Port Authority Orders 1973 to 2003;
- (2) that I have read and understood the notes entitled “Note for Guidance of Members on the Disclosure of Financial and Other Interests” and “Duties of Members” and that I will comply with the requirements as to the disclosure of such interests, laid down by paragraph 15 of Schedule 2 to the Cromarty Firth Port Authority (Constitution) Revision Order 2003, and in particular that:
 - (a) I have disclosed to the port manager details of every financial or other interest such as is mentioned in those notes;
 - (b) I will in future notify the port manager of any alteration in those interests, of any new interest, such as is mentioned in those notes, which I may acquire.

Made and signed in Invergordon, on the)
 day of)
 (signature)

Witnessed by the)
 port manager)
 as a member of the Cromarty Firth) (signature)
 Port Authority

Note:—Where the declaration is to be made by the port manager, the Form shall be amended so that, for references to “the port manager”, there are substituted references to “the chair”.

INCIDENTAL PROVISIONS RELATING TO AUTHORITY

Appointment of chair and vice-chair of Authority

1. There shall be a chair of the Authority who shall be appointed by the Authority from among their number.

2. The first chair holding office after the new constitution date shall be appointed at the first meeting of the Authority referred to in paragraph 9 below and, subject to paragraph 7 below, shall, unless he resigns his office as chair or ceases to be a member, hold that office for a period of one year.

3. Subject to paragraph 7 below, every chair subsequently appointed under paragraph 1 above shall, unless he resigns his office as chair or ceases to be a member, hold that office for a period of one year.

4. There shall be a vice-chair of the Authority who shall be appointed by the Authority from among their number.

5. The first vice-chair holding office after the new constitution date shall be appointed as soon as practicable after that date and, subject to paragraph 7 below, shall, unless he resigns his office as vice-chair or ceases to be a member, hold that office for a period of one year.

6. Subject to paragraph 7 below, every vice-chair subsequently appointed under paragraph 4 above shall, unless he resigns his office as vice-chair or ceases to be a member, hold that office for a period of one year.

7. If the Authority are satisfied that the chair or vice-chair should cease to hold his office as such, they may terminate his office as such and appoint another member to be the chair or vice-chair during the remainder of the term for which the former chair or vice-chair was appointed.

8.—(1) On a casual vacancy occurring in the office of chair or vice-chair of the Authority, the vacancy shall be filled by the Authority at a meeting held as soon as practicable after the vacancy occurs.

(2) A member appointed under this paragraph to fill a casual vacancy in the office of chair or vice-chair shall, unless he resigns that office or ceases to be a member, hold that office during the remainder of the term for which the chair or vice-chair whom he replaces was appointed.

Meetings of Authority

9.—(1) The first meeting of the Authority after the new constitution date shall be convened as soon as practicable by the port manager for such date as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to each of the other members.

(2) The Authority shall meet at least six times in every year.

Vacation of office by members

10. A member (other than the port manager) may resign his office at any time by notice in writing given to the chair of the Authority or, if that member is the chair, the vice-chair.

Reappointment of members

11.—(1) Subject to the provisions of this Schedule, a vacating member shall be eligible for reappointment as a member unless he has been disqualified from office under article 9 above.

(2) A vacating appointed member shall not be eligible for reappointment as a member where, immediately before the date in question, he has held office for three consecutive terms unless he is the chair of the Authority.

(3) A chair of the Authority who is an appointed member shall not be eligible for reappointment as a member where, immediately before the date in question, he has held office as a member for four consecutive terms.

(4) For the purposes of this paragraph, “term” means term of office as a member but does not include:—

- (a) the term referred to in article 5(2) or (3) above;
- (b) the remainder of a term during which the member was appointed to fill a casual vacancy under article 8 above; or
- (c) any term served by the member prior to the new constitution date.

(5) In this paragraph “appointed member” means a member appointed under article 4(1)(a) above.

Reappointment of chair

12.—(1) A chair of the Authority shall not be eligible for reappointment as the chair where, immediately before the date in question, he has served as a chair for three consecutive terms.

(2) For the purposes of this paragraph, “term” means term of office as a member but does not include—

- (a) the term referred to in article 5(2) or (3) above;
- (b) the remainder of a term during which the member was appointed to fill a casual vacancy in the office of chair under paragraph 8 above; or
- (c) any term served by the member as a chair prior to the new constitution date.

Committees

13. The Authority may, consistently with their duties and subject to such conditions as they think fit, delegate any of their functions to a committee of the Authority.

Proceedings of Authority and committees

14. The acts and proceedings of the Authority, or of any committee of the Authority, shall not be invalidated by any vacancy in their number or by any defect in the appointment, or the qualification for appointment, of any person as a member, or as chair or vice-chair, of the Authority or committee.

15. If a member is in any way directly or indirectly interested—

- (a) in any contract or proposed contract to which the Authority are, or would be, a party; or
- (b) in any other matter with which the Authority are concerned;

and is present at a meeting of the Authority or of any committee of the Authority at which that contract or other matter is the subject of consideration, he shall as soon as practicable after the commencement of the meeting disclose that fact at the meeting and shall not take part in any deliberation or decision of the Authority or committee with respect to that contract or that other matter.

16. The person for the time being holding office as vice-chair shall have and may exercise in the absence or incapacity of the chair all the powers of the chair.

17. If at any meeting of the Authority neither the chair nor the vice-chair are present the members present at the meeting shall choose one of their number to be the chair of the meeting.

18.—(1) Every question at a meeting of the Authority or of a committee of the Authority shall be decided by a majority vote of the members present and voting.

(2) If at any meeting of the Authority or of a committee of the Authority there is an equality of votes on any question the chair of the meeting shall have a second or casting vote which he may exercise for or against the status quo.

Authentication of seal and other documents

19.—(1) The application of the seal of the Authority shall be authenticated by the signature of the chair of the Authority or some other member authorised by the Authority to authenticate the application of the seal, and of the port manager or some person authorised by the Authority to act in his place in that behalf.

(2) The Authority may authorise a person to act instead of the port manager under this paragraph whether or not the port manager is absent or incapable of acting.

20. Any document given or issued by the Authority shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the port manager or a duly authorised officer of the Authority.

Remuneration of members

21. The Authority may pay to the chair and other members such salary, allowances and expenses as the Authority from time to time determine.

Local or private legislation

22. The Authority may promote or oppose any local or private legislation.

Quorum and procedure

23. Subject to the provisions of this Schedule, the quorum, procedure and business of the Authority and of any committee of the Authority shall be regulated in such manner as the Authority may from time to time determine.

SCHEDULE 3

Article 13

REPEALS AND REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent of repeal or revocation</i>
1973 c.xvi	The Cromarty Firth Port Authority Order 1973	In section 3(1) the definition of “the council”. Section 6. In section 8, the words “chief executive, secretary”. Sections 60 and 61. Schedule 2.
S.I. 1996/1419	The Cromarty Firth Port Authority Harbour Revision Order 1996	In article 3, paragraphs (d) to (g) and (i). Article 6.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Cromarty Firth Port Authority. It provides for the appointment of members of the Authority with experience in relevant matters, makes other provision with respect to the Authority and amends the borrowing powers of the Authority.

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