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SCOTTISH STATUTORY INSTRUMENTS

2005 No. 491

HARBOURS, DOCKS, PIERS AND FERRIES

**The Peterhead Port Authority Harbour
(Constitution) Revision Order 2005**

Made - - - - 4th October 2005

Coming into force - - 5th October 2005

Whereas the Peterhead Harbours Trustees and the Peterhead Bay Authority have together applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas no objections to the application have been made pursuant to paragraph 10(2)(f) of Schedule 3(2) to the said Act;

Now, therefore, the Scottish Ministers, in exercise of the powers conferred by the said section 14(3) and 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 Peterhead Port Authority Harbour (Constitution) Revision Order 2005 and shall come into force on 5th October 2005.

(2) The Peterhead Harbours Orders 1985 to 2002(4) and the Peterhead Bay Authority Orders 1983 and 2002(5) and this Order may be cited together as the Peterhead Port Authority Orders 1983 to 2005.

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- (1) 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.
- (2) Schedule 3 was substituted by S.I. 1999/3445 as amended by S.I. 2000/2391.
- (3) 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).
- (4) 1986 c.v, 1992 c.xii, S.I. 1996/2755 (s.212), S.I. 1998/1215 (s.63) and S.S.I 2002/504.
- (5) S.I. 1983/316 (s.26) and S.S.I. 2002/294.

Incorporation of section 60 of the Commissioners Clauses Act 1847

2. Section 60 of the Commissioners Clauses Act 1847(6) shall be incorporated with this Order.

Interpretation

3. In this Order—

“Authority” means the Peterhead Port Authority; or, in respect of any period prior to the beginning of the constitution date, the Trustees;

“Bay Authority” means the Peterhead Bay Authority;

“constitution date” means 1st January 2006;

“harbours of Peterhead” has the meaning given by sections 2 and 32 of the Peterhead Harbours Order Confirmation Act 1992(7);

“Panel” has the meaning given by article 5 below;

“Peterhead Bay Harbour” has the meaning given by article 2 of and Schedule 2 to the Peterhead Bay Harbour Trust and Transfer Order 1983(8) as amended by article 13 of the Peterhead Bay Harbour (Constitution) Revision Order 2002(9);

“transfer date” means 31st December 2005; and

“Trustees” means the Peterhead Harbours Trustees.

Constitution of Authority

4.—(1) On and after the beginning of the constitution date, the Peterhead Harbours Trustees shall be known as the Peterhead Port Authority and subject to article 6 below, shall consist of—

- (a) ten persons appointed by the Authority; and
- (b) the Chief Executive of the Authority by virtue of his office.

(2) Each member appointed under paragraph (1)(a) above shall be a person who appears to the Authority to have special knowledge, experience or ability appropriate to the efficient, effective 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 matters relating to the fishing, oil and gas, agricultural and manufacturing industries;
- (e) administration;
- (f) the organisation of employees;
- (g) sailing and other water-related activities;
- (h) maritime expertise;
- (i) financial management;
- (j) the laws relating to Scotland;

(6) 1847 c. 16.

(7) 1992 c.xii.

(8) S.I. 1983/316 (s.26).

(9) S.S.I 2002/294.

- (k) safety management;
- (l) commercial marketing;
- (m) information technology;
- (n) environmental matters affecting harbours;
- (o) civil engineering;
- (p) local government and local community interests;
- (q) any other skills and matters 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, effective and economic discharge by them of their functions.

(3) In making an appointment under paragraph (1) above or article 9(1) below, 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.

(4) A person who is employed by the Authority shall not be eligible for appointment as a member of the Authority under paragraph (1)(a) above or article 9(1) below while he is so employed.

Initial Authority Appointment Panel

5.—(1) The convenor of the Trustees and the convener of the Bay Authority, acting jointly with the advice of the respective Chief Executives of the Trustees and of the Bay Authority shall appoint three persons, not being Trustees or members of the Bay Authority, to act as the Initial Authority Appointment Panel (in this Order referred to as “the Panel”); and the members of the Panel to be so appointed shall consist of—

- (a) an independent assessor nominated by the Scottish Executive;
- (b) the chief executive of Scottish Enterprise Grampian or such other senior officer of the Company as that chief executive may nominate; and
- (c) the chief executive of Aberdeenshire Council or such other senior officer of the Council as that chief executive may nominate.

Appointment and terms of office of first members of Authority

6.—(1) The first members of the Authority to hold office under article 4(1)(a) above shall be appointed as soon as reasonably practicable by the Panel from among persons who are Trustees or members of the Bay Authority and who apply in writing not later than 1st November 2005 to the Panel to be so appointed.

(2) In making appointments under paragraph (1) above, the Panel shall, having first consulted with the convenor and Chief Executive of the Trustees and with the convener and Chief Executive of the Bay Authority, appoint five persons who are Trustees and five persons who are members of the Bay Authority.

(3) Of the members appointed by the Panel—

- (a) three shall hold office from the beginning of the constitution date until 1st January 2007;
- (b) three shall hold office from the beginning of the constitution date until 1st January 2008; and
- (c) four shall hold office from the beginning of the constitution date until 1st January 2009;

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

Terms of office of subsequent members

7. A member appointed under article 4(1)(a) above (other than a member appointed under article 6 above) shall, unless appointed to fill a casual vacancy and, subject to articles 8 and 10 of, and paragraph 11 of, Schedule 2 to, this Order, hold office for the period of three years from 1st January next following his appointment.

Declaration to be made by members

8. No person shall act as a member of the Authority until he has made the declaration set out in Schedule 1 to this Order (or a declaration to that effect); 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

9.—(1) A casual vacancy arising in the office of a member appointed by the Authority shall, in the discretion of the Authority, either be left vacant or be filled by the appointment of a member by the Authority in accordance with article 4(2) to (4) above.

(2) A member appointed to fill a casual vacancy under this article shall, subject to articles 8 and 10 of, and paragraph 11 of Schedule 2 to, this Order, hold office during the remainder of the term for which the member whom he replaces was appointed.

Disqualification of members

10. 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 those periods is the longer; or
- (b) has had an award of sequestration made against his estate or has made a trust deed for behoof of his creditors or a composition arrangement; 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.

Incidental provisions relating to Authority

11. On and after the end of the transfer date the provisions of Schedule 2 to this Order shall have effect with respect to the Authority.

PART 2

TRANSFER OF PETERHEAD BAY AUTHORITY'S FUNCTIONS, ETC.

Trustees to be harbour authority for Peterhead Bay Harbour

12. On and from the end of the transfer date—

- (a) all the trade (including the assets and liabilities) of the Bay Authority shall be transferred to, and become an integral part of the consequently enlarged trade of, the Trustees;
- (b) the Trustees shall become the harbour authority for Peterhead Bay Harbour within the meaning of the Harbours Act 1964; and
- (c) the harbours of Peterhead and the Peterhead Bay Harbour shall be known collectively as the “Port of Peterhead”.

Bay Authority to cease to be separate body corporate

13. At the beginning of the constitution date the Bay Authority shall cease to be a separate body corporate and shall have the same corporate identity and common seal as the Authority.

Duties and powers of Authority in respect of Peterhead Bay Harbour

14.—(1) On and from the end of the transfer date the Authority shall have in respect of Peterhead Bay Harbour all the duties and powers imposed or conferred on the Bay Authority by any provision of the Peterhead Bay Authority Orders 1983 and 2002 in force immediately before that end.

(2) In consequence of paragraph (1) above, on and from the end of the transfer date any statutory provision of local application or document whatsoever (other than a document referred to in article 16 of this Order) shall, so far as it relates to Peterhead Bay Harbour, have effect (except where the context otherwise requires and subject to any necessary modifications) as if, for any reference however worded and whether express or implied—

- (a) to the Bay Authority, there were substituted a reference to the Authority; and
- (b) to any officer or employee of the Bay Authority, there were substituted a reference to the officer or employee of the Authority who corresponds as nearly as may be to the first mentioned officer or employee.

Byelaws etc.

15. On and from the end of the transfer date any byelaw, regulation, licence or consent made, issued or granted by the Bay Authority in relation to Peterhead Bay Harbour and in force immediately before that end shall, notwithstanding the making of this Order, continue in force and be deemed to have been made, issued or granted by the Authority.

Saving of agreements etc.

16. All sales, conveyances, leases, grants, assurances, deeds, contracts, bonds, agreements, notices and demands affecting the undertaking of the Bay Authority and in force immediately before the end of the transfer date shall (in so far as they relate to that undertaking) on and from that end be as binding and of as full force and effect as respects anything occurring or falling to be done on and after the end of the transfer date and may be enforced as fully and effectively against or in favour of the Authority as if the Authority had been a party thereto or bound thereby or entitled to the benefit thereof in their own right.

Continuance of proceedings

17. Nothing in this Order shall release, discharge or suspend any action, arbitration or other proceeding, or any cause of action, arbitration or other proceeding, pending or existing immediately before the constitution date by or in favour of or against the Bay Authority, in relation to the undertaking of the Bay Authority and any such action, arbitration or proceeding or cause of action, arbitration or proceeding (other than an action, arbitration or proceeding which is or may be an issue between the Bay Authority and the Trustees) may be maintained, prosecuted or continued by or in

favour of or against the Authority and may be amended in such manner as may be necessary for that purpose.

PART 3

MISCELLANEOUS

Indemnity insurance for Authority

18. 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.

Borrowing powers

19. 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.

Statements of accounts of Authority

20. As soon as reasonably practicable after their annual statement of accounts is prepared, the Authority shall make available a copy of the statement for a period of three months from the date of approval of the accounts by the Authority, at the offices of the Authority for inspection free of charge by members of the public and shall, subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests to be supplied with a copy.

Revocations

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

Victoria Quay, Edinburgh
4th October 2005

DAVID M HART
A member of the staff of the Scottish Ministers

SCHEDULE 1

Article 8

FORM OF DECLARATION BY MEMBERS

PETERHEAD PORT AUTHORITY

PETERHEAD PORT AUTHORITY ORDERS 1983 TO 2005

DECLARATION

I, [FULL NAME] do solemnly declare:-

(1) that I will faithfully and impartially, according to the best of my skill and judgement, execute and perform all the powers, authorities and duties vested in me as a member of the Peterhead Port Authority by virtue of the Peterhead Port Authority Orders 1983 to 2005:

(2) that I have read and understood, and will comply with the requirements of the documents entitled "Note for Guidance of Members on the Disclosure of Financial and Other Interests" and "Note on Duties of Members" and that I will comply with the requirements as to the disclosure of such interests, laid down by paragraph 16 of Schedule 2 to the Peterhead Port Authority Harbour (Constitution) Revision Order 2005, and in particular that:

- (a) I have disclosed to the Chief Executive details of every financial or other interest such as is mentioned in those documents;
- (b) I will in future notify the Chief Executive of any alteration in those interests, of any new interest or of the cessation of any interest, such as is mentioned in those documents, which may occur;
- (c) I will read and comply with any standing orders which may be made by the Authority.

Made and signed in Peterhead, on the day of

 (signature)

Witnessed by the Chief Executive as a member of the Peterhead Port Authority
 (signature)

Note:- Where the declaration is to be made by the Chief Executive, the Form shall be amended so that, for references to "the Chief Executive", there are substituted references to "the Convenor"

SCHEDULE 2

Article 11

INCIDENTAL PROVISIONS RELATING TO AUTHORITY

Appointment of convenor and deputy convenor of Authority

1. There shall be a convenor of the Authority who shall be appointed by the members of the Authority from among their number appointed under article 4(1)(a) above.
2. The first convenor taking office after the constitution date shall be appointed at the first meeting of the Authority referred to in paragraph 10 below and shall, subject to paragraph 4 below, and unless

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he resigns his office as convenor or ceases to be a member, continue in office as convenor until his initial term of office as a member has expired.

3. Subject to paragraph 4 below, every convenor subsequently appointed under paragraph 1 above shall, unless he resigns his office as convenor or ceases to be a member, hold office for a period of three years.

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

5. There shall be a deputy convenor of the Authority who shall be appointed annually by the members of the Authority from among their number appointed under article 4(1)(a) above.

6. The first deputy convenor holding office after the constitution date shall be appointed as soon as practicable after that date and shall, subject to paragraph 8 below, and unless he resigns his office as deputy convenor or ceases to be a member, continue in office as deputy convenor until the first anniversary of the constitution date.

7. Subject to paragraph 8 below, every deputy convenor subsequently appointed under paragraph 5 above shall, unless he resigns his office as deputy convenor or ceases to be a member, hold office for a period of one year.

8. If the Authority are satisfied that the deputy convenor should cease to hold that office, they may terminate his appointment as such and appoint another member to be deputy convenor during the remainder of the term for which the deputy convenor was appointed.

9.—(1) On a casual vacancy occurring in the office of convenor or deputy convenor 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 convenor or deputy convenor shall, subject to either paragraph 4 or 8 above, and unless he resigns that office or ceases to be a member, hold that office during the remainder of the term for which the convenor or deputy convenor whom he replaces was appointed or until the expiration of his appointment as a member, whichever is the sooner.

Meetings of Authority

10.—(1) The first meeting of the Authority after the constitution date shall be convened as soon as practicable by the Chief Executive 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 of the Authority.

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

Vacation of office by members

11. A member (other than the Chief Executive) may resign his office at any time by notice in writing given to the Chief Executive of the Authority.

Reappointment of members

12.—(1) Subject to the provisions of this Schedule, a vacating appointed member shall be eligible for reappointment as a member unless he has been disqualified from office under article 10 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 convenor of the Authority.

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

(4) For the purposes of this paragraph, “term” does not include—

- (a) a term referred to in article 6(3)(a) or (b) above;
- (b) the remainder of a term during which the member was appointed to fill a casual vacancy under article 9 above; or
- (c) any term served by the member prior to the constitution date.

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

Reappointment of convenor

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

(2) For the purposes of this paragraph, “term” does not include—

- (a) a term served by the member as a convenor under paragraph 2 above where that term is less than 3 years;
- (b) the remainder of a term during which the member was appointed to fill a casual vacancy in the office of convenor under paragraph 9 above; or
- (c) any term served by the member as a convenor prior to the constitution date.

Committees

14. The Authority may, consistently with their duties and subject to such conditions as they think fit, delegate any of their functions (other than the functions set out in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964⁽¹⁰⁾) to a committee of the Authority.

Proceedings of Authority and committees

15. 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 convenor or deputy convenor, of the Authority or committee.

16.—(1) If a member has any interest, direct or indirect—

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

he shall declare that interest.

(2) If a member is present at a meeting of the Authority or of any committee of the Authority at which a contract or other matter in which he has an interest is to be considered he shall—

⁽¹⁰⁾ Paragraph 9B was inserted by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9.

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- (a) as soon as is practicable disclose his interest;
- (b) not vote on any question with respect to that contract or matter; and
- (c) withdraw from the meeting—
 - (i) at any time if the members present by resolution require him so to do; and
 - (ii) while a decision on that contract or matter is being made.
- (3) This paragraph shall not apply to any interest—
 - (a) which a member has in respect of the payment to the Authority of standard harbour dues;
 - (b) which arises in respect of the provision of harbour services or facilities affecting the trading and leisure communities in general;
 - (c) which a member has as an employee of a public utility undertaking;
 - (d) as a shareholder of a company, not being a director of that company, unless he possesses more than five per cent of the issued share capital of that company; or
 - (e) which the members present at the meeting by resolution declare to be too remote.

17. The person for the time being holding office as deputy convenor shall have and may exercise in the absence or incapacity of the convenor all the functions of the convenor.

18. If at any meeting of the Authority neither the convenor nor the deputy convenor are present the members present at the meeting shall choose one of their number to be the convenor of the meeting.

19.—(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 convenor of the meeting shall have a second or casting vote which he may exercise for or against the status quo.

Authentication of seal

20.—(1) The application of the seal of the Authority shall be authenticated by the signature of the convenor of the Authority or some other member authorised by the Authority to authenticate the application of the seal, and of the Chief Executive of the Authority 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 Chief Executive under this paragraph whether or not the Chief Executive is absent or incapable of acting.

(3) 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 a duly authorised officer of the Authority.

Remuneration of members

21. The Authority may—

- (a) pay to a member of the Authority such salary, fee, allowance and expenses as the Authority may determine; and
- (b) make provision for, or pay to or in respect of a person who is or has been a member of the Authority such pension, grant or life benefit as the Authority may determine.

General

22. 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 21

REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent of revocation</i>
S.I.1983/316 (s.26)	The Peterhead Bay Harbour Trust and Transfer Order 1983	Articles 3, 4, 6 and 7(3).
S.S.I. 2002/294	The Peterhead Bay Authority (Constitution) Revision Order 2002	The whole Order except article 13.
S.S.I. 2002/504	The Peterhead Harbours Revision (Constitution) Order 2002	The whole Order.

EXPLANATORY NOTE

(This note is not part of the Order)

On 1st January 2006, this Order renames and constitutes the Peterhead Harbours Trustees (“the PHT”) as the Peterhead Port Authority (“the PPA”) and provides for the trade assets and liabilities of the Peterhead Bay Authority (“the PBA”) to be transferred on the previous day to the PHT (so as to become an integral part of the trade of the PHT) and for the cessation of the separate corporate identity of the PBA.

The Order contains provision for matters such as byelaws and contracts made or entered into by the PBA to continue in force and for legal proceedings and other proceedings to be carried on by or in relation to the PPA.

The Order also includes consequential revocations of legislation relating to the PHT and the PBA. The applicants for the Order are the PHT and the PBA.