

2008 No. 422

HARBOURS, DOCKS, PIERS AND FERRIES

The Stornoway Harbour Revision (Constitution) Order 2008

Made - - - - *17th December 2008*

Coming into force - - *18th December 2008*

CONTENTS

1. Citation and commencement
2. Interpretation
3. Constitution of Authority
4. Appointment and terms of office of first members
5. Terms of office of subsequent members
6. Power to co-opt additional members
7. Declaration to be made by members
8. Casual vacancies
9. Disqualification of members
10. Incidental provisions relating to Authority
11. Repeals and revocations

SCHEDULE 1 — FORM OF DECLARATION BY MEMBERS

SCHEDULE 2 — INCIDENTAL PROVISIONS RELATING TO AUTHORITY

SCHEDULE 3 — REPEALS AND REVOCATIONS

The Stornoway Port Authority has applied for a harbour revision order under section 14 of the Harbours Act 1964^(a):

Notices have been published by the Authority in accordance with paragraph 10 of Schedule 3 to that Act;

The Scottish Ministers have considered the objection made and not withdrawn and the written representations submitted by the Authority and the objector in elaboration of the application or objection and are satisfied as mentioned in section 14(2)(b) of that Act;

^(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, paragraphs 1 and 10.

The Scottish Ministers in exercise of the powers conferred by that section and now vested in them^(a), hereby make the following Order:–

Citation and commencement

1.—(1) This Order may be cited as the Stornoway Harbour Revision (Constitution) Order 2008 and shall come into force on the day after the day on which it is made.

(2) The Stornoway Harbour Act and Orders 1976 to 2003 and this Order may be cited together as the Stornoway Harbour Act and Orders 1976 to 2008.

Interpretation

2. In this Order–

“the Authority” means the Stornoway Port Authority; and

“the new constitution date” means 1st May 2009.

Constitution of Authority

3.—(1) On and after the new constitution date, the Authority shall, subject to article 6, consist of–

- (a) nine members appointed by the Authority; and
- (b) the Chief Executive of the Authority.

(2) Each member appointed under paragraph (1) 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 its 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 onshore and offshore energy sectors;
- (e) local government;
- (f) administration;
- (g) the organisation of employees;
- (h) the fishing industry;
- (i) financial management;
- (j) the laws relating to Scotland;
- (k) safety management systems and auditing protocol;
- (l) commercial marketing;
- (m) information technology;
- (n) environmental matters affecting harbours;
- (o) civil engineering;
- (p) harbour and marine related leisure activities; and
- (q) any other skills and abilities considered from time to time by the Authority to be relevant to the discharge by them of its functions;

(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).

and the Authority shall ensure, so far as reasonably practicable, that the members appointed by it 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 its functions.

(3) A person who is employed by the Authority shall not be eligible for appointment as a member of the Authority under paragraph (1)(a) or articles 6 or 8(1) while he or she is so employed.

Appointment and terms of office of first members

4.—(1) The first appointments under article 3(1)(a) shall be made on, or as soon as reasonably practicable after, 1st February 2009.

(2) The members shall appoint the person who is, at the date when they make the first appointments under paragraph (1), the chair of the Authority to be one of the first of such appointed members and he or she shall hold office as a member from the new constitution date until 30th April 2012; and on and from the new constitution date shall be the chair of the Authority.

(3) Of the remaining first such appointed members—

- (a) three shall hold office on and from the new constitution date until 30th April 2010;
- (b) three shall hold office on and from the new constitution date until 30th April 2011;
- (c) two shall hold office on and from the new constitution date until 30th April 2012.

Terms of office of subsequent members

5. Subject to article 4, a member appointed under article 3(1)(a) shall, unless appointed to fill a casual vacancy and subject to articles 7 and 9, and paragraph 12 of Schedule 2, hold office for the period of three years on and from 1st May next following his or her appointment.

Power to co-opt additional members

6. The members referred to in article 3(1) and article 8 may at any time co-opt not more than two persons to serve as members for such period not exceeding twelve months as the co-opting members may specify at the time of co-option.

Declaration to be made by members

7. No person shall act as a member until he or she has made the declaration set out in Schedule 1 (or a declaration to that effect); and a person shall cease to be a member if he or she fails to make that declaration within three months of the date of his or her appointment.

Casual vacancies

8.—(1) A casual vacancy arising in the office of a member appointed by the Authority shall, unless it is not reasonably practicable to do so, be filled by the appointment of a member by the Authority in accordance with article 3(2).

(2) A member appointed to fill a casual vacancy under this article shall, subject to articles 7 and 9, and paragraph 12 of Schedule 2, hold office during the remainder of the term for which the member whom he or she replaces was appointed.

Disqualification of members

9. If the Authority is satisfied that a member—

- (a) has without the permission of the Authority been absent from the 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;

- (b) has become bankrupt or made an arrangement with his or her 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 or her office as a member to be vacant and thereupon his or her office shall become vacant.

Incidental provisions relating to Authority

10. On and from the new constitution date the provisions of Schedule 2 shall have effect with respect to the Authority.

Repeals and revocations

11. On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 shall be repealed or revoked to the extent specified in the third column of that Schedule.

St Andrew's House,
Edinburgh
17th December 2008

ALASTAIR WILSON
A member of staff of the Scottish Executive

SCHEDULE 1

Article 7

FORM OF DECLARATION BY MEMBERS

STORNOWAY PORT AUTHORITY

STORNOWAY HARBOUR ACT AND ORDERS 1976 TO 2008

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 Stornoway Port Authority by virtue of the Stornoway Harbour Act and Orders 1976 to 2008:
- (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 18 of Schedule 2 to the Stornoway Harbour Revision (Constitution) Order 2008, 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 notes;
 - (b) I will in future notify the Chief Executive of any alteration in those interests, or any new interest, such as is mentioned in those notes, which I may acquire.

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

Witnessed by the Chief Executive)
)
 as a member of the Stornoway 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 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 members who are appointed under article 3(1)(a) or 8 from among their number.
2. The first chair appointed under article 4(2) shall, subject to paragraph 7, and unless he or she resigns his or her office as chair or ceases to be a member, continue in office as chair until his or her initial term of office as a member after the new constitution date has expired.
3. Subject to paragraph 7, every chair subsequently appointed under paragraph 1 shall, unless he or she resigns his or her office as chair or ceases to be a member, hold office for a period of three years.
4. There shall be a vice-chair of the Authority who shall be appointed by those of the members who are appointed under article 3(1)(a) or 8 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, shall, unless he or she resigns his or her office as vice-chair or ceases to be a member, continue in office as vice-chair until his or her first term of office as a member after the new constitution date has expired.
6. Subject to paragraph 7, every vice-chair subsequently appointed under paragraph 4 shall, unless he or she resigns his or her office as vice-chair or ceases to be a member, hold office for a period of three years.
7. If those members who are appointed under article 3(1)(a) or 8 are satisfied that the chair or vice-chair should cease to hold his or her office as such, they may terminate his or her 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 those members who are appointed under article 3(1)(a) or 8 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 or she 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 or she 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 Chief Executive for such date as he or she may fix; and he or she shall make arrangements for notice of that meeting to be sent by post to each of the other members.
(2) Subject to subparagraph (1), the Authority shall meet at least six times in every year and may hold such further meetings or as the Authority thinks fit on such day and at such hour as it shall from time to time by resolution appoint.
10. The Authority may hold special meetings and the chair and the Chief Executive, or any three members, of the Authority may require the Chief Executive to call a special meeting, but a special meeting shall not be held unless one day's notice thereof is given.
11. Any order made and any resolution adopted by the Authority at any of its meetings shall not be altered or revoked unless at some meeting called for that special purpose or unless notice of the intention to propose such alteration or revocation be—

- (a) given by a member of the Authority at some previous meeting; or
- (b) received by the Chief Executive from a member of the Authority in writing not less than seven days before the day on which the meeting is held;

and be intimated in the card, letter or circular calling the meeting at which it is intended to propose such alteration or revocation.

Vacation of office by members

12. A member (other than the Chief Executive) may resign his or her 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

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

(2) A vacating appointed member shall not be eligible for reappointment as a member where, immediately before the date in question, he or she has held office for three consecutive terms unless he or she 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 or she 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 4(3)(a) or (b);
- (b) the remainder of a term during which the member was appointed to fill a casual vacancy under article 8; 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 3(1)(a).

Reappointment of chair

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

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

- (a) a term served by the member as chair under paragraph 2 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 chair under paragraph 8; or
- (c) any term served by the member as chair prior to the new constitution date.

Committees

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

Proceedings of Authority and committees

16. The acts and proceedings of the Authority, or of any committee of the Authority, shall not be invalidated by any vacancy in its 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.

17. The quorum required for a meeting of the Authority shall be three.

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

(a) 1964 c.40.

- (a) in any contract or proposed contract to which the Authority is 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 is concerned,

he or she 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 or she has an interest is to be considered he or she shall—

- (a) as soon as is practicable after the commencement of that meeting disclose his or her 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 of the Authority present by resolution require him or her 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 harbour dues;
- (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general;
- (c) which a member has as an employee of a public utility undertaking or as a shareholder, not being a director of a company, unless he or she possesses more than five per cent of the issued share capital of that company; or
- (d) which the members of the Authority present at the meeting by resolution declare to be too remote.

19. 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 functions of the chair.

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

21.—(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 or she may exercise for or against the status quo.

Authentication of seal and other documents

22.—(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 Chief Executive of the Authority or some person authorised by the Authority to act in his or her 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 of the Authority or a duly authorised officer of the Authority.

Remuneration of members

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

General

24. Subject to the provisions of this Schedule, the 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.

25. The Authority shall appoint a Chief Executive and such other persons as from time to time it thinks necessary or desirable for and incidental to the performance of its functions and pay to them such remuneration as the Authority thinks fit.

SCHEDULE 3

Article 11

REPEALS AND REVOCATIONS

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal or revocation</i>
1976 c.xxi	Stornoway Harbour Order Confirmation Act 1976	Sections 25, 26 and 29.
S.I. 2003/435	The Stornoway Harbour Revision (Constitution) Order 2003	Articles 4 to 11, 13 and Schedules 1 and 2.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Stornoway Port Authority as from 1st May 2009. It provides for the Authority to consist of a body of ten members with experience in relevant matters. Nine persons will be appointed by the Authority and those members will retire in rotation. The Chief Executive will also hold office as a member.

The Order also includes other provisions with respect to the Authority's constitution including provisions for the co-option of up to two additional members.

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