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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 114**

**The Mallaig Harbour Revision (Constitution) Order 2012**

*CONSTITUTION*

**Constitution of Authority**

3.—(1) From the new constitution date the Authority shall consist of nine members and these shall be—

- (a) eight members appointed by the Authority; and
- (b) the Port Manager or Senior Executive of the Authority as long as he or she remains in the employment of the Authority.

(2) Each member appointed under paragraph (1)(a) shall be a person who appears to have a special knowledge, experience or ability appropriate to the efficient and economic discharge by the Authority of its function 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) the fishing industry;
- (d) safety or personnel management;
- (e) industrial marketing or information technology;
- (f) civil engineering and environmental matters affecting harbours;
- (g) the law of Scotland;
- (h) water related leisure activities and;
- (i) any other skills and abilities considered from time to time by the Members to be relevant to the discharge by them of their functions,

and the Authority shall secure, so far as reasonable practicable, that the Members appointed 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 the Authority of its functions.

(3) In making any appointment under paragraph (1)(a) above the Authority shall act in accordance with the existing guidance endorsed by the Scottish Ministers with respect to the exercise of such functions<sup>(1)</sup>.

**Rights of Major Stakeholders regarding appointments**

4. Notwithstanding the provisions of Article 3 major stakeholders shall be invited to have considered for appointment a candidate who shall conform to the requirements of Article 3(2) and Article 3(3) above.

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(1) Guidance is issued in the publication “Modernising Trust Ports - Guide to Good Governance” published January 2000 by the Department of the Environment, Transport and the Regions.

### **Appointment and terms of office of First Members**

5.—(1) The first appointments under Article 3(1)(a) above shall be made before the new constitution date and of the Members so appointed—

- (a) two shall hold office from the new constitution date until 1st April 2013;
- (b) three shall hold office from the new constitution date until 1st April 2014;
- (c) three shall hold office from the new constitution date until 1st April 2015,

as the Authority shall specify when the appointments are made.

(2) Provided that such person satisfies the requirements set out in Article 3(2), the Authority shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above the chair of the Authority to be one of the first such appointed members and he or she shall hold office as a member from the new constitution date until 1st April 2015 and on or after the new constitution date shall be the Chair of the Authority.

(3) Provided that such person satisfies the requirements set out in Article 3(2), the Authority shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above the Vice-Chair of the Authority to be one of the first such appointed members and he or she shall hold office as a member from the new constitution date until 1st April 2014 and on or after the new constitution date shall be the Vice-Chair of the Authority.

### **Terms of office of Subsequent Members**

6. A member appointed under Article 3(1)(a) (other than a member appointed under Article 5 above) shall unless appointed to fill a casual vacancy and subject to provisions of this Order, hold office for the period of three years from 1st April next following that Member's appointment.

### **Declaration to be made by Members**

7. No person shall be capable of acting as a member until having made the declaration set out in Schedule 1 to this Order, and a person shall cease to be a member who fails to make that declaration within three months of the date of their 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 in accordance with article 3 above.

(2) A member appointed to fill a casual vacancy under this Article shall hold office (unless he or she 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 is 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 four such meeting have been held; or
  - (ii) for a period of four consecutive months;whichever of these periods is the longer; or
- (b) has had an award of sequestration made against their estate; 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.

### **Indemnity Insurance For Members**

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

### **Incidental provisions relating to the Authority**

**11.** From 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 in addition to those provisions of the Mallaig Harbour Authority Acts and Orders 1968 to 2006 which are in force at the date when this Order comes into force and are not repealed by this Order.

### **Borrowing Powers**

**12.—(1)** The Authority may from time to time borrow upon the security of its assets for the time being or of its revenues or both its assets and revenues, by any methods it sees fit such sums of money as it thinks necessary.

(2) Moneys borrowed by the Authority under this article shall be applied only to purposes to which capital money is properly applicable.

(3) For the purposes of paragraph (2) above, but without prejudice to the generality of that paragraph, purposes to which capital money is properly applicable shall include—

- (a) the payment of any interest, falling due within five years immediately following the date of borrowing, on any sum of money borrowed by the Authority under this article; and
- (b) the repayment, within twelve months from the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

### **Audit and Publication of Annual Statement of Accounts**

**13.** The Authority shall have its accounts audited by a firm of registered auditors who shall present audited accounts to the Authority within six months of the end of the financial year and as soon as reasonably practicable after their annual statement of accounts is audited the Authority shall make available a copy of the statement for a period of twelve months 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**

**14.** On the new constitution date the Order mentioned in the first and second columns of Schedule 3 to this Order shall be repealed to the extent specified in the third column of that Schedule.