
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 136

HARBOURS, DOCKS, PIERS AND FERRIES

The Lerwick Harbour Revision (Constitution) Order 2019

Made - - - - *11th April 2019*

Coming into force - - *12th April 2019*

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964⁽¹⁾ and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act⁽²⁾.

In accordance with section 14(2) of the Act—

- (a) this Order is made following a written application to Ministers by Lerwick Port Authority being the authority engaged in improving, maintaining or managing the harbour, and
- (b) except in so far this Order is made for achieving objects mentioned in section 14(2A) of the Act, Ministers are satisfied that the making of this order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

Notice has been published by the applicant in accordance with the requirements of paragraph 10 of Schedule 3 of that Act⁽³⁾. No objections to the application have been made.

In accordance with paragraph 19(2) of that Schedule⁽⁴⁾, Ministers have decided to make this Order in the form of the draft submitted to them.

(1) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), schedule 6, paragraphs 2, 3, 4(1) and 14 and schedule 12 and the Transport and Works Act 1992 (c.42), schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(3) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c).

(4) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Lerwick Harbour Revision (Constitution) Order 2019 and comes into force on the day after the day on which it was made.

(2) This Order and the Lerwick Harbour Acts and Orders 1877 to 2015 (as hereinafter defined) may be cited together as the Lerwick Harbour Acts and Orders 1877 to 2019 (hereinafter referred to as “the Lerwick Harbour Acts and Orders”).

Incorporation of section 60 of the Commissioners Clauses Act 1847

2. Section 60 of the Commissioners Clauses Act 1847(5) shall be incorporated with this Order.

Interpretation

3. In this Order—

“the 1877 Act” means the Lerwick Harbour Improvements Act 1877(6),

“the 1999 Order” means the Lerwick Harbour Revision Order 1999(7),

“the 2003 Order” means the Lerwick Harbour Revision (Constitution) Order 2003(8),

“the 2015 Order” means the Lerwick Harbour Revision Order 2015(9),

“the application date” means the last Friday of May in each year,

“the appointment date” means the second Tuesday in July of each year,

“the Authority” means Lerwick Port Authority,

“the Board” means the Board of Lerwick Port Authority,

“Existing Member” means a Member of the Board holding office under the 2003 Order,

“harbour” means the Port and Harbour of Lerwick as defined by the Lerwick Harbour Acts and Orders,

“the Lerwick Harbour Acts and Orders 1877 to 2015” means the 1877 Act, the Lerwick Harbour Improvements Act 1877 Amendment Order Confirmation Act 1903(10), the Lerwick Harbour Order Confirmation Act 1911(11), Lerwick Harbour Order Confirmation Act 1927(12), the Lerwick Harbour Order Confirmation Act 1952(13), the Lerwick Harbour Order Confirmation Act 1971(14), the Lerwick Harbour Order Confirmation Act 1973(15), the Lerwick Harbour Order Confirmation Act 1974(16), the Lerwick Harbour (Miscellaneous Provisions) Order Confirmation Act 1975(17), the Lerwick Harbour Order Confirmation Act

(5) 1847 c.16.
(6) 1877 c.cxciv.
(7) S.I. 1999 No. 1170.
(8) S.S.I. 2003 No. 211.
(9) S.S.I. 2015 No. 4.
(10) 1903 c.cccxxvii.
(11) 1911 c.clxxxiii.
(12) 1927 c.cxiii.
(13) 1952 c.liii.
(14) 1971 c.xxxix.
(15) 1973 c.vii.
(16) 1974 c.xx.
(17) 1975 c.xxv.

1976(18), the Lerwick Harbour Order Confirmation Act 1979(19), the Lerwick Harbour Order Confirmation Act 1982(20), the Lerwick Harbour Revision Order 1982(21), the Lerwick Harbour Order Confirmation Act 1985(22), the Lerwick Harbour Order Confirmation Act 1987(23), the Lerwick Harbour Revision Order 1989(24), the Lerwick Harbour Revision Order 1993(25), the Lerwick Harbour Order Confirmation Act 1994(26), the Lerwick Harbour Revision Order 1994(27), the Lerwick Harbour Revision Order 1997(28), the 1999 Order, the Lerwick Harbour Revision Order 2001(29), the 2003 Order, the Lerwick Harbour Revision Order 2007(30), the Lerwick Harbour Revision Order 2010(31) and the 2015 Order, and

“Member” means a Member of the Board holding office either under the 2003 Order or this Order as the case may require.

PART 2

CONSTITUTION

Membership of the Board

4.—(1) On and after the date on which this Order comes into force, in accordance with the provisions of this article 4, the Members of the Board shall be—

- (a) such persons holding office as Members under the 2003 Order, whose terms of appointment are yet to expire,
- (b) such persons appointed by the appointing body on or after the date on which this Order comes into force, in accordance with articles 5 and 6 of this Order,
- (c) the Chief Executive of the Authority,
- (d) one other senior officer of the Authority as may, from time to time, be specified by the Members holding office under subparagraphs (a) and (b) above, and
- (e) the persons holding office in terms of subparagraphs (a) and (b) shall together never number more than nine in total.

(2) Any Members appointed under articles 4(1)(b), 5 and 6 shall, unless appointed to fill a casual vacancy and subject to articles 7, 8 and 9 of this Order, hold office for the period of three years from the relevant appointment date.

(3) After the date on which this Order comes into force, Members, with the exception of those members holding office under articles 4(1)(c) and (d), shall be appointed in accordance with the procedure set down in articles 5 and 6 of this Order.

(18) 1976 c.xii.
(19) 1979 c.xii.
(20) 1982 c.xxvi.
(21) 1983 No. 125.
(22) 1985 c.iv.
(23) 1987 c.xxvi.
(24) 1989 No. 1055.
(25) 1993 No. 2087.
(26) 1994 c.x.
(27) 1994 No. 1778.
(28) 1997 No. 1472.
(29) 2001 No. 232.
(30) 2007 No. 284.
(31) 2010 No. 471.

Applications to the Board

5.—(1) All persons seeking appointment under article 4(1)(b) shall submit an application form to the Board by the application date in the year of the appointment date.

(2) The Board shall cause the application date and application procedure set out in paragraph (3) below and article 6 to be advertised in at least one newspaper published or circulating in the Shetland Islands not later than the second Friday of May.

(3) The application form shall contain the following information—

- (a) the name and address of the applicant,
- (b) a declaration of interests in such form as may be prescribed by the Board 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,
- (c) such other information as the Board may see fit to require, and
- (d) such biographical information as the applicant sees fit to supply.

Interviews and selection

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

- (a) the Chair unless the Chair has made an application under article 5, in which case another Member nominated by the Board,
- (b) a person who is not a Member who shall be nominated by the Board and is considered by them to be representative of persons with an interest in the Harbour, and
- (c) the Convener of Shetland Islands Council or the nominee of Shetland Islands Council.

(2) The appointing body shall meet as soon as practicable after the application date to consider the applications made under article 5 and in any event by the first Friday of July.

(3) The appointing body may interview such of the applicants as it sees fit.

(4) The appointing body shall decide which persons who have applied under article 5 shall be appointed as Members.

(5) The appointing body shall have particular regard to the following considerations when making decisions under paragraphs (3) and (4)—

- (a) the special knowledge, experience or ability of applicants to contribute to the efficient, effective and economic discharge by the Board of their functions, and
- (b) the special knowledge, experience or ability of applicants in one or more of the following matters—
 - (i) management of harbours,
 - (ii) usage of port facilities,
 - (iii) commercial boating activities,
 - (iv) industrial, commercial and financial matters,
 - (v) administration,
 - (vi) the organisation of employees,
 - (vii) the fishing industry,
 - (viii) financial management,

- (ix) the laws relating to Scotland,
 - (x) safety management,
 - (xi) commercial marketing,
 - (xii) environmental matters affecting harbours,
 - (xiii) civil engineering,
 - (xiv) local government and local community interests,
 - (xv) recreational, sporting and leisure activities including without prejudice to the generality, recreational and competitive boating activities, and
 - (xvi) any other skills and matters considered from time to time by the Board to be relevant to the discharge of its functions.
- (c) the appointing body shall secure, so far as reasonably practicable, that the persons 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 the Board of its functions, and
- (d) any guidance issued by the Scottish Ministers from time to time with respect to the discharge of such functions.

Limitations

7.—(1) The appointing body shall not appoint as a Member a person who, immediately before appointment, has served three consecutive terms of office unless that person is the Chair or Deputy Chair or falls subject to the terms of article 7(3) below.

(2) A Chair or Deputy Chair shall not be eligible for reappointment as a Member where, immediately before appointment, that person has held office as a Member for four consecutive terms.

(3) Where a person is an Existing Member, that person shall not be eligible for reappointment as a Member where, immediately before appointment, that person has held office as a Member for four consecutive terms.

(4) No employee of the Board shall be eligible for appointment as a Member except under articles 4(1)(c) and (d).

(5) No person shall be capable of acting as a Member without having signed and delivered to the Chief Executive a declaration in the terms set out in Schedule 3 to this Order.

Resignation of Members

8. A Member may resign his/her membership at any time by giving notice in writing to the Chair.

Disqualification of Members

9.—(1) If the Board is satisfied that a Member appointed under this Order—

- (a) has been absent from meetings of the Board for three consecutive months without the permission of the Board, or
- (b) has his/her estate sequestrated, becomes bankrupt or makes a trust deed for his/her creditors or otherwise compounds with his/her creditors, or
- (c) is incapacitated by physical or mental illness from discharging the functions of a Member, or
- (d) is otherwise unable or unfit to discharge the functions of a Member,

the Board may declare his/her office as a Member to be vacant and thereupon his/her office as Member shall become vacant.

(2) In the event that a Member appointed under this Order—

(a) within the period of two months from the date of the first meeting of the Board following his/her appointment as a Member, neglects to sign the declaration required in terms of article 7(4), or

(b) is absent from all meetings of the Board for six consecutive months,

such Member shall cease to be a Member and thereupon his/her office as Member shall become vacant.

Failure of Appointment

10. In the case of the failure or partial failure at any time of appointment to fill any vacancy under the terms of this Order, the Board may fill up such a vacancy in accordance with article 11.

Casual Vacancies

11. If a Member fails or 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 Board the resulting vacancy shall be filled in the manner following—

(a) the Board shall fill the vacancy by co-opting as a Member any qualified person in terms of articles 6(5) and 7, 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, and

(b) at the end of such period the co-opted Member shall go out of office but shall be eligible for re-appointment, if qualified.

Incidental provisions relating to the Board

12. On and after the appointment date in the year 2019 the provisions of schedule 2 of this Order shall have effect with respect to proceedings of the Board.

PART 3

MISCELLANEOUS

Authentication of Documents

13.—(1) Deeds and other documents to which the Authority is a party shall be executed in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995.

(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 duly authorised officer of the Authority.

Publication of Authority's annual statement of accounts

14. As soon as reasonably practicable after their annual statement of accounts is prepared, the Authority shall make a copy of it available, for a period of three months from the date of the preparation, 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.

Indemnity insurance

15. 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 duty or, concerning which, was or were reckless as to whether it was such a breach.

Repeals and Revocations

16. The 1999 and 2003 Orders shall be repealed or revoked to the extent and at the times specified in the third column of Schedule 1 to this order.

Amendment of 2015 Order

17. Article 1(2) of the 2015 Order is amended by deleting “2014” and substituting “2015”.

St Andrew’s House,
Edinburgh
11th April 2019

CHRIS WILCOCK
A member of the staff of the Scottish Ministers

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SCHEDULE 1

Article 16

REPEALS AND REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent and time of repeal or revocation</i>
S.I. 1999/1170	Lerwick Harbour Revision Order 1999	Articles 10 to 17 and 19 to 23, on the appointment date in 2019
S.I. 2003/211	Lerwick Harbour Revision (Constitution) Order 2003	Articles 3 to 10 and 12 to 16, on the date on which this Order comes into force Article 11 on the appointment date in 2019

SCHEDULE 2

Article 12

BOARD PROCEEDINGS

Chair and Deputy Chair

1.—(1) At the first meeting of the Board after the appointment date in the year 2019 the members shall appoint one of their number to be Chair, and another to be Deputy Chair.

(2) The Chair shall hold office for a period of three years unless he/she resigns as Chair or a Member, or is disqualified from being a Member in terms of article 9.

(3) The Deputy Chair shall hold office for a term of three years unless he/she resigns as Deputy Chair or a Member, or is disqualified from being a Member in terms of article 9.

(4) The Chair and Deputy Chair may hold office for a maximum of three consecutive terms.

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

(6) On a casual vacancy occurring in the office of Chair or Deputy Chair prior to the expiry of their respective terms of office, the Board shall at the first meeting of the Board following the occurrence of the vacancy appoint one of their number to fill the vacancy.

(7) A Member appointed to fill a casual vacancy in terms of paragraph 1(6) shall, unless he/she resigns that office or ceases to be a Member, hold that office during the remainder of the term for which the Chair or Deputy Chair whom he/she replaces was appointed.

(8) If the Chair and Deputy Chair are ever both absent from any meeting of the Board, one of the other Members shall be chosen to be Chair of the meeting for the purposes of that meeting only.

(9) At all meetings, the presiding Chair shall, in the case of equality of votes, have a deliberative as well as a casting vote.

Quorum

2. At all meetings of the Board five Members shall be a quorum.

Time and place of meetings

3.—(1) The first meeting of the Board shall be convened within one month after the appointment date in the year 2019.

(2) The Board shall otherwise meet from time to time at such time and at such place as it thinks fit, under the proviso that it shall meet at least four times in every year (excluding special meetings).

Special meetings

4.—(1) A special meeting of the Board shall be called by the Chief Executive upon receiving a written request signed by three or more Members which states the object of the proposed meeting.

(2) The Chief Executive shall give Members at least three days written notice of the meeting and its object unless the Board in meeting resolve that the time shall be more or less than three days.

(3) No business shall be discussed or transacted at any special meeting except the business specified in the written notice.

(4) In the event that a situation arises which in the opinion of the Chair or, in his/her absence, the Deputy Chair, or of the Chief Executive requires an emergency meeting of the Board to be held he/she shall be entitled to call such a meeting on such notice as he/she deems fit.

Committees

5.—(1) The Board may from time to time appoint committees from its Members for such purposes as it may define and may delegate powers to any such committee.

(2) The Board shall fix the quorum of any such committee, name the Chair of the committee and may continue, alter or discontinue such committee.

(3) Every committee so appointed may meet from time to time and may adjourn from place to place as they think proper for carrying into effect the objects of this appointment.

(4) At all meetings of the committee the Chair of the committee, or in his/her absence one of the Members present to be appointed by that meeting, shall preside.

(5) All questions shall be determined by the majority of the votes of the Members present and in the case of equality of votes the Chair of the committee shall have a deliberative as well as a casting vote.

Declaration of interests

6. 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.

General

7.—(1) No act or proceedings of the Board, or of any committee of their number, shall be invalid or illegal in consequence only of there being any vacancy in the number of Members at the time of such act or proceeding.

(2) All acts and proceedings of the Board, or of any committee of their number, or of any person acting as a Member, even if it is later found that there was some defect in the appointment of such Member or persons acting as Members, or that they or any of them had become disqualified, shall be as valid as if every such person had been duly appointed and was qualified to be a Member.

(3) The Board may require all Members to furnish particulars of all sources of income, business interests, securities held, interest in any land in the vicinity of the Harbour or any other matter which may reasonably be conceived as having the potential to lead to a conflict of interest with the duties of

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a Member. Knowledge of any such information provided shall be confined to the Chair, or in his/her absence the Deputy Chair, and to the Chief Executive subject to the proviso that, where in the opinion of the Chair or Deputy Chair after consultation with the Chief Executive there exists an actual or potential conflict of interest, they shall, after consultation with the Member or Members concerned, be entitled to divulge to the Board such information in relation to said Member or Members as they may consider relevant to said conflict of interest.

(4) The Board may pay to each Member such reasonable remuneration, allowances and expenses as the Board may from time to time determine.

(5) Subject to the provisions of this Order the Board shall have power to regulate its own procedure.

SCHEDULE 3

Article 7(5)

FORM OF DECLARATION BY MEMBERS

LERWICK PORT AUTHORITY

THE LERWICK HARBOUR ACTS AND ORDERS 1877 TO 2019

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 reposed in me as a Member of the Board of Lerwick Port Authority by virtue of the Lerwick Harbour Acts and Orders.
- (2) That I have read and understood such guidance in relation to the disclosure of financial interests and the duties of trustees as may be issued by the Lerwick Port Authority from time to time and that I will comply with the requirements as to the disclosure of such interests, laid down by paragraphs 6 and 7(3) of schedule 2 of the Lerwick Harbour Revision Order 2019 and in particular that—
 - (a) I have disclosed to the Chief Executive details of every financial or other interest such as is mentioned in the Lerwick Harbour Revision Order 2019 and relevant guidance as issued by the Lerwick Port Authority from time to time, and
 - (b) I will in future notify the Chief Executive forthwith of any alteration in those interests, and of any new interest, such as is mentioned in the Lerwick Harbour Revision Order 2019 and relevant guidance as issued by the Lerwick Port Authority from time to time, which I may acquire.”

Made and signed in Stornoway on the.....day of

(Signature).....

Witnessed by the Chief Executive.....

As a member of the Board of Lerwick Port Authority

(Signature).....

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Lerwick Port Authority in line with the recommendations contained within “Modern Trust Ports for Scotland: Guidance for good governance”, as published by Transport Scotland in 2012. It provides for the Board to consist of a body of eleven members with experience in relevant matters. Nine persons will be appointed by the Authority. The Chief Executive and one other senior officer of the Authority will also hold office as members. Under the terms of the Order the appointed members will retire in rotation.

The Order also includes other provisions with respect to the Board’s constitution including requirements as to publication of its annual statement of accounts, and repeals, revokes or amends certain statutory provisions. It also consolidates certain provisions contained within the 1999 and 2003 Orders.