SCHEDULE Article 3

THE SCOTTISH BORDERS TOURIST BOARD SCHEME

ARRANGEMENT OF SCHEME

PART I

GENERAL

1. Title of scheme
2. Interpretation

PART II:

THE CONSTITUTION OF THE BOARD

3. The Board
4. Membership of the Board
5. Membership of controlling body
6. Proceedings of the Board
7. Duty to keep accounting records

PART III:

FUNCTIONS AND POWERS OF THE BOARD

8. Additional functions and powers
9. Membership, formation and acquisition of companies
10. Staff

PART IV:

REVOCATION AND TRANSITIONAL PROVISIONS

11. Revocation of existing schemes etc.
12. Transfer of staff
13. Transfer of property, rights and liabilities
Signature
Explanatory Note

PART I—

GENERAL

Title of scheme

1. This scheme may be cited as the Scottish Borders Tourist Board Scheme 1995.

Interpretation

2. In this scheme—

"the 1994 Act" means the Local Government etc. (Scotland) Act 1994;

"the area of the Board" means the local government area for which the Board is established under paragraph 3(1);

"the Board" means the Scottish Borders Tourist Board;

"local government area" shall be construed in accordance with section 1(2) of the 1994 Act;

"subscribing member" shall be construed in accordance with section 172(7) of the 1994 Act,

and any reference in this scheme to a numbered paragraph is a reference to the paragraph in the scheme bearing that number.

PART II:

THE CONSTITUTION OF THE BOARD

The Board

3.—(1) There shall be established a body to be known as the Scottish Borders Tourist Board for the local government area of The Borders.

(2) The Board shall be a body corporate with a common seal.

Membership of the Board

4.—(1) The Secretary of State shall appoint the first members of the Board whose appointment by the Secretary of State shall terminate 28 days after the date of the first general meeting of the Board.

(2) Subject to sub-paragraph (1), the Board shall appoint members of the Board.

(3) The only persons who may be appointed to be members of the Board are—

(a) the Scottish Tourist Board;

(b) the council for the local government area of The Borders;

(c) any person with whom Scottish Enterprise have entered into an arrangement under section 19 of the Enterprise and New Towns (Scotland) Act 1990(**1**) for the discharge of functions within the area of the Board;

(d) any person who is, or will upon appointment be, a subscribing member of the Board; and

(e) any other person who has a connection with or interest in activities relating to tourism in the area of the Board.

Membership of controlling body

5.—(1) The Secretary of State shall appoint the first members of the controlling body of the Board from among the first members of the Board whom he has appointed under paragraph 4(1).

(2) Subject to sub-paragraph (1), the members of the controlling body shall be appointed by the Board from among the members of the Board.

Proceedings of the Board

6.—(1) The Board may—

(a) subject to the provisions of this scheme, regulate its own procedure;

(**1**) 1990 c. 35.

(b) appoint committees including committees composed of persons who are not members of the Board;

(c) delegate any of its duties to any of its members who or committees which are authorised (generally or specifically) for the purpose;

(d) pay such allowances in respect of expenses as the Board may determine to any of its members or any person appointed to a committee of the Board.

(2) A committee shall act in accordance with such directions as the Board may from time to time give, and the Board may provide for anything done by a committee to have effect as if it had been done by the Board.

(3) The validity of any proceedings of the Board, the controlling body or of any committee appointed by the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

Duty to keep accounting records

7.—(1) The Board shall keep accounting records which are sufficient to show and explain the transactions of the Board and are such as to disclose with reasonable accuracy, at any time, the financial position of the Board at that time.

(2) The accounting records of the Board shall at all times be open to inspection by the Secretary of State.

(3) Accounting records which the Board is required by sub-paragraph (1) to keep shall be preserved by it for three years from the date on which they are made.

PART III:

FUNCTIONS AND POWERS OF THE BOARD

Additional functions and powers

8.—(1) For the purposes of enabling the Board to carry out its principal function which is specified in section 172(2) of the 1994 Act, but subject to sub-paragraph (3), the Board shall have the additional functions and powers conferred upon it by this scheme.

(2) Without prejudice to the generality of sub-paragraph (1), the Board shall have power—

(a) to hold property, subject to paragraph 9;

(b) to provide finance, whether by way of grant or loan, to any person in relation to activities relating to tourism; and

(c) to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its principal function.

(3) The Board shall not, without the express or general consent given in writing of the Secretary of State (or of such body as he may direct the Board to consult) carry on activities relating to the promotion of tourism outside the United Kingdom.

Membership, formation and acquisition of companies

9.—(1) The Board may, subject to the conditions specified in this paragraph, form, or join with any other person in forming, acquire or become a member of a company within the meaning of the Companies Act 1985(**2**).

(**2**) 1985 c. 6.

(2) Subject to sub-paragraph (5), the Board shall itself or together with any other area tourist board established or, as the case may be, approved under section 172, 173 and 174 of the 1994 Act hold a majority of the voting rights in any company in which it holds an interest.

(3) The memorandum of any company formed or acquired by the Board shall—

(a) enable the company to carry on only activities relating to tourism or such activities as are reasonably incidental to the principal function of the Board; and

(b) provide that the company shall not, without the express or general consent given in writing of the Secretary of State (or such body as he may direct the Board to consult) carry on activities relating to the promotion of tourism outside the United Kingdom.

(4) In the event that any company formed or acquired by the Board or of which the Board is a member or has an interest of whatsoever nature at any time ceases to comply with the provisions of sub-paragraph (3), the Board shall immediately—

(a) take all steps necessary to ensure that the provisions of that sub-paragraph are complied with; or

(b) resign from or otherwise terminate its membership of the company, sell or otherwise dispose (other than by way of gift) of any interest which it may have in such company.

(5) Sub-paragraph (2) shall not apply in relation to any interest in a company—

(a) transferred to the Board by virtue of paragraph 13; or

(b) limited by guarantee and established for charitable purposes only.

(6) Sub-paragraphs (3) and (4) shall apply in relation to an interest in a company transferred to the Board by virtue of paragraph 13 only where such interest carries the majority of voting rights in the company.

Staff

10.—(1) The Board may appoint, on such terms and conditions as to remuneration or otherwise as it may determine, such employees as it thinks fit.

(2) The Board may, in the case of such of its employees or former employees as it may determine—

(a) pay such pensions, allowances or gratuities to or in respect of those employees;

(b) make such payments towards provision of such pensions, allowances or gratuities; or

(c) provide and maintain such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities,

as it may determine.

PART IV:

REVOCATION AND TRANSITIONAL PROVISIONS

Revocation of existing schemes etc.

11.—(1) Any scheme made under section 90A of the Local Government (Scotland) Act 1973(**3**) by a district council whose area lies within the area of the Board shall be revoked with effect from 1st April 1996.

(**3**) 1973 c. 65. Section 90A was inserted by the Local Government and Planning (Scotland) Act 1982 (c. 43), section 11(2).

(2) Any area tourist organisation (whether a body corporate or not) formed by or for the purposes of any such scheme shall be wound up and dissolved with effect from that date.

Transfer of staff

12.—(1) The Board shall not later than 1st April 1996 make an offer of employment with the Board to each person employed by any area tourist organisation wound up and dissolved in accordance with paragraph 11(2).

(2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

(3) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

(4) Where a person becomes an employee of the Board on acceptance of an offer made under this paragraph, then, for the purposes of the Employment Protection (Consolidation) Act 1978(**4**), his period of employment with such area tourist organisation shall count as a period of employment by the Board, and the change of employment shall not break the continuity of the period of employment.

(5) Where an offer is made under this paragraph to any person, none of the agreed redundancy procedures applicable to employees of such area tourist organisation shall apply to him.

(6) Part VI of the Employment Protection (Consolidation) Act 1978 shall not apply to a person employed by such area tourist organisation who ceases to be so employed—

(a) on becoming a member of the staff of the Board on accepting an offer under this paragraph, or

(b) having unreasonably refused such an offer.

(7) Where a person to whom an offer under this paragraph has been made continues in employment in the organisation after having not unreasonably refused that offer he shall be treated for all purposes as if no offer under this paragraph had been made to him.

(8) Any dispute as to whether an offer purporting to be made under this paragraph complies with this paragraph shall be referred to and be determined by an industrial tribunal.

(9) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (8) unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

(10) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from the decision of, or in proceedings before, an industrial tribunal under this paragraph.

(11) Except as mentioned in sub-paragraph (10), no appeal shall lie from the decision of an industrial tribunal under this paragraph.

Transfer of property, rights and liabilities

13. On 1st April 1996 all property, rights and liabilities of any area tourist organisation wound up and dissolved in accordance with paragraph 11(2) shall transfer to and vest in the Board.

(**4**) 1978 c. 44.