

1999 No. 1170

HARBOURS, DOCKS, PIERS AND FERRIES

The Lerwick Harbour Revision Order 1999

Made - - - - 12th April 1999

Coming into force 13th April 1999

Whereas the Trustees of the Port and Harbour of Lerwick have applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

And whereas objections to the application made pursuant to paragraph 3(2)(a) of Schedule 3 to the said Act(b) have been withdrawn;

And whereas the Secretary of State for the Environment, Transport and the Regions is satisfied as mentioned in subsection (2)(b) of the said section 14;

Now therefore, the Secretary of State for the Environment, Transport and the Regions (being the appropriate Minister under subsection (7) of the said section 14(c)), in exercise of the powers conferred by that section and now vested in him(d), and of all other powers enabling him in that behalf, hereby makes the following Order:—

PART I

PRELIMINARY

Citation and Commencement

1.—(1) This Order may be cited as the Lerwick Harbour Revision Order 1999 and shall come into force on 13th April 1999.

(2) The Lerwick Harbour Acts and Orders 1877 to 1997 and this Order may be cited together as the Lerwick Harbour Acts and Orders 1877 to 1999 (hereinafter referred to as “the Harbour Acts and Orders”).

Interpretation

2. In this Order, unless the context otherwise requires:

“the Authority” means Lerwick Port Authority;

“the Board” means the Members of the Authority or a quorum thereof acting collectively;

“electoral divisions of the Shetland Islands Area” means the electoral divisions into which the Shetland Islands Area is divided by the Shetland Islands Area (Electoral Arrangements) Order 1992(e);

“General Manager” means the general manager and clerk to the Trustees;

(a) 1964 c. 40: section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.

(b) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) and (7) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10.

(c) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).

(d) S.I. 1981/238.

(e) S.I. 1992/995 (S.95).

“Harbour” means the Port and Harbour of Lerwick as described in the Harbour Acts and Orders and includes the land, buildings, works, plant, property and conveniences connected therewith or any part thereof as the case may be;

“harbour dues” means dues recovered by the Authority in terms of s.26(2) of the Harbours Act 1964 and any statutory amendment or re-enactment thereof;

“marine farm” means an area forming part of the Harbour in, under or on tidal waters in respect of which a works licence is issued for the use of said area for the purpose of the development, breeding and growth of any form of marine animal species;

“Member” means a member of the Authority unless otherwise stated;

“new constitution date” means the day of the first inaugural meeting of Lerwick Port Authority referred to in article 3(2) of this Order;

“register of British ships” means the list of vessels shown on the register which is presently maintained by the Registrar General of Shipping and Seamen as registrar in terms of The Merchant Shipping Act 1995(a);

“revaluation” means revaluation of business premises for rating purposes;

“Shetland Islands Council” and “the Council” means the local authority council for the Shetland Islands as constituted by the Local Government etc. (Scotland) Act 1994(b);

“Trustees” means the Trustees of the Port and Harbour of Lerwick for the time being acting under the Harbour Acts and Orders;

“works licence” means a works licence issued by the Trustees or the Authority in terms of Section 10 of the Lerwick Harbour Order Confirmation Act 1974(c).

PART II

DESIGNATION AND MEMBERSHIP

Change of Name

3.—(1) The Trustees of the Port and Harbour of Lerwick shall continue to exist as a body corporate acting pursuant to and under the Harbour Acts and Orders but on and after the coming into force of this Order shall be known as “Lerwick Port Authority”.

(2) The Trustees and the Chairman of the Trustees in office at the coming into force of this Order shall thereafter be known respectively as “Members” of the Authority and “Chairman” of the Authority and shall remain in office as Members and Chairman of the Authority until the inaugural meeting of the Members of the Authority in 1999 being the first meeting of the Authority following the nomination or election and appointment of Members pursuant to Articles 7 and 8 hereof.

(3) The title “the General Manager and Clerk” shall be changed to “Chief Executive” on the date of the coming into force of this Order.

(4) The change of names effected by paragraphs (1), (2) and (3) of this article shall not affect the rights or obligations of any person or render defective any legal proceedings; and any reference in –

(a) any enactment, or

(b) any agreement, deed, lease, licence or other instrument in force or in existence immediately before the coming into force of this Order,

to the Trustees of the Port and Harbour of Lerwick, a Trustee of that Port and Harbour or to the General Manager and Clerk shall be read as a reference to Lerwick Port Authority or, as the case may require, to a Member or to the Chief Executive of the Authority.

Members

4.—(1) On and after the new constitution date the Authority shall consist of twelve Members as follows:–

(a) 1995 c. 21.

(b) 1994 c. 39.

(c) 1974 c. xx.

- (a) 4 Members to be nominated or elected by shipowners as defined in article 5;
 - (b) 4 Members to be nominated or elected by business ratepayers as defined in article 6; and
 - (c) 4 Members to be appointed by Shetland Islands Council from among its members as specified in article 8.
- (2) All Members shall have their main place of residence in the Shetland Islands.
- (3) All Members shall hold office for three years from the date of the first meeting of the Authority taking place in June following the nomination, appointment or election of Members in terms of articles 7 and 8 except in the case of resignation or disqualification or ceasing to be a Member in terms of articles 16, 17 and 18 of this Order.
- (4) Notwithstanding the terms of the foregoing sub-section the Board may vary the term of office of Members and the year in which Members are nominated, elected and appointed in order that the year of the nomination, election and appointment of Members of the Authority is concurrent with the year of the election of the members of Shetland Islands Council.

Shipowners

5.—(1) A shipowner is a person:

- (a) whose name appears in the register of British ships on 1st March in any year of election of Members to the Authority as the owner or part owner to the extent of at least 20 tonnes gross in any vessel or vessels whose port of choice is shown as Lerwick in said register, or
- (b) who satisfies the Authority that he is the owner or part owner to the extent of at least 20 tonnes gross in a vessel which has in the year preceding 1st March in any year of election of Members to the Authority made not less than 20 entries into the Harbour in respect of which harbour dues have been paid to the Authority.

(2) Where a shipowner is an incorporated company, such company may by 1st April 1999 and on each anniversary thereafter as shall occur in a year in which there is an election to the Authority, intimate in writing to the Authority the name of one of their members or employees whom they desire to be an elector and such member or employee so named shall qualify to be an elector and Member. In the event of such incorporated company being registered as the shipowner of any vessel or vessels to the extent of 40 tonnes gross or more then the company may intimate the names of two of their members or employees to qualify as electors and Members.

(3) Subject to the provisions of Article 9.(3) hereof a shipowner, other than an incorporated company, is qualified to be an elector and Member.

(4) The Authority, its officials and employees shall not qualify as shipowners.

(5) The following persons shall not qualify as shipowners:

- (a) The Council;
- (b) Any company or body wholly owned or controlled by the Council.

Business ratepayers

6.—(1) A business ratepayer (hereinafter referred to as a ratepayer) is a person:—

- (a) whose name appears on the Valuation Roll for the Shetland Islands as prepared by the Orkney & Shetland Valuation Joint Board as at 1st April in the year prior to that in which there is an election to the Authority (or in the event of the unavailability of such Roll, the most recent available Roll) as being the owner or tenant responsible for paying business rates on a property or properties situated in Lerwick with an aggregate annual rateable value of at least £2,500,
- (b) who pays said business rates in full, and
- (c) who is not a statutory undertaking or an organisation having Charitable status or a club or unincorporated association or any other body, however constituted, whose main source of income or funding derives other than directly from trading or commerce.

(2) A ratepayer may also be:—

- (a) the owner or the person leasing an agricultural farm of not less than 50 hectares situated in Lerwick, or
- (b) the holder of a works licence authorising that person to operate a marine farm located within the Harbour.

(3) Where a ratepayer is an incorporated company or a firm, such company or firm may by 1st April 1999 and on each anniversary thereafter as shall occur in a year in which there is an election to the Authority, intimate in writing to the Authority the name of one of their members or partners whom they desire to be an elector and such member or partner so named shall qualify to be an elector and Member. In the event of any incorporated company or firm appearing in said Valuation Roll as the owner or tenant of a property or properties with an aggregate annual rateable value of £5000 or more then the company or firm may intimate the names of two members or partners to qualify as electors and Members.

(4) At each revaluation of the rateable value of business properties the sums of £2500 and £5000 mentioned in article 6(1) and (3) shall be re-assessed, retained, increased or decreased by the Authority in accordance with any changes in the Retail Price Index, as published by the Office of National Statistics which have occurred in said Index from the position in which it stood as at the date of the immediately preceding revaluation and the Authority shall arrange for the resultant figures to be published in a newspaper circulating in the Shetland Islands.

(5) A ratepayer, other than an incorporated company or a firm, is qualified to be an elector and a Member.

(6) The Authority, its officials and employees shall not qualify as ratepayers.

(7) The following persons shall not qualify as ratepayers:

- (a) The Council;
- (b) Any company or body wholly owned or controlled by the Council.

Nomination, Election and Appointment of Members

Shipowners and Ratepayers

7.—(1) By 12th April 1999 the Chief Executive shall have prepared lists of the names of all ratepayers and shipowners eligible, or in the case of Council members, who may become eligible, to vote for or to be nominated or elected as Members of the Authority. The list of shipowners shall contain two categories of shipowners namely shipowners in the commercial sector and shipowners in the fishing sector.

(2) By 19th April 1999 the Chief Executive shall have caused notice to be published in a newspaper circulating in the Shetland Islands that the lists are available for public inspection at the principal office of the Authority during normal business hours for a specified period of not less than 15 working days. For the purpose of this section “working days” means Monday to Friday inclusive in any week.

(3) Any person who has cause for complaint that the lists are inaccurate, whether by commission or omission, shall be entitled, only during the period for public inspection, to make representations in writing to the Authority who shall without delay acknowledge in writing receipt of such representations.

(4) The Authority shall within 14 days of the expiry of the period for complaint give written notification of its decision to those persons having made representations. The Authority’s decision shall be final and not subject to appeal.

(5) By 24th May 1999 the Chairman shall have appointed a returning officer who may be an official of the Authority who shall give at least 14 days notice in a newspaper circulating in the Shetland Islands of nomination meetings to be held on a specified Tuesday in June 1999 at a specified time and venue in Lerwick for the purpose of nomination of Members who are shipowners or ratepayers or persons whose names have been intimated in writing to the Authority in accordance with Articles 5(2) and 6(5).

(6) At the nomination meetings, the returning officer will accept nominations duly proposed and seconded by qualified electors and if there are four or fewer nominations at either or both meetings then the nominees will be declared duly appointed Members of the Authority.

(7) In the event of a meeting producing more than four nominees, the returning officer shall publish details of the date, time and venue for a further meeting to take place in Lerwick within 14 days of the nomination meeting for the purpose of taking a poll.

(8) The returning officer shall, at any meetings to take a poll, appoint one or more polling officers and polling shall be conducted between 1000 hours and 1600 hours by secret ballot. Votes shall be given personally, and each elector shall only be entitled to cast one vote for each Member to be elected. At the close of polling the returning officer shall count the votes. In the event that all shipowner Members would otherwise be entirely from either the fishing or commercial sectors then the nominee from that sector who has polled the fourth highest number of votes shall be disregarded and the nominee from the other sector who has polled the highest number of votes shall be substituted.

(9) At any poll:—

- (a) to elect ratepayers, in the event of an equal number of votes being cast for the fourth nominee then the successful nominee shall be chosen by lot;
- (b) to elect shipowners, in the event of an equal number of votes being cast for the third nominee and the first two successful nominees and the tied nominees are all from either the fishing or commercial sectors, then the third nominee shall be chosen by lot and the fourth nominee shall be the nominee from the other sector who has polled the highest number of votes. In the event of an equal number of votes being cast for the fourth nominee and the first three successful nominees and the tied nominees are all from either the fishing or commercial sectors, then the fourth Member shall be the nominee from the other sector who has polled the highest number of votes. In the event of a tie for fourth place where there are already successful nominees from both sectors then the successful nominee shall be chosen by lot.

(10) The returning officer shall then announce the names of the successful nominees who shall, subject to the provisions of Article 4(2), be declared duly appointed Members of the Authority.

(11) Subject to the provision of Article 4(4) hereof the arrangements to apply in 1999 set out in paragraphs (1) to (10) above shall apply triennially thereafter.

Council Members

8.—(1) At the first meeting of the Council in May 1999, and on the first full meeting of each subsequently elected Council thereafter, the Council shall appoint four of their number to be Members of the Authority in accordance with the provisions of the articles of this Order.

(2) Of the four Members appointed by the Council, at least three shall represent electoral divisions with the name “Lerwick” in the title.

(3) Should any Member so appointed subsequently cease to be a member of the Council then that member shall also cease to be a Member of the Authority and the Council shall appoint a replacement from their number at the earliest convenient opportunity to serve for the remainder of the term of appointment of the Member ceasing to be a Member.

General

9.—(1) No name shall appear on more than one list of electors.

(2) Where a person is qualified to have his name appear on both the list of shipowners and the list of ratepayers his name shall be entered in the list containing the lesser number of names and in the event of each list containing an equal number of names the Chief Executive will select the list in which the names shall be entered.

(3) No shipowner or ratepayer or person whose name has been intimated in writing to the Authority in accordance with Articles 5(2) and 6(3) shall be qualified to vote for or nominate or be a Member of the Authority nor to continue to serve as such Member whilst being a member of the Council.

(4) No person shall be qualified to be nominated as a Member or to be appointed by the Council as a Member of the Authority if that person shall have attained their 70th birthday before the date of the nomination meeting or the meeting of the Council appointing members of the Authority.

(5) Members shall be eligible for re-appointment provided they otherwise continue to be eligible in accordance with the provisions of this Order.

(6) No person shall be capable of acting as a Member of the Authority, except in administrating the declaration aftermentioned, without having made and signed before the Chief Executive or one of the Members a declaration to the following effect

“I, AB, [design] do solemnly declare, 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 Lerwick Port Authority by virtue of the Harbour Acts and Orders and also that I am qualified to act as a Member of the Authority being a [here state the basis of qualification required by the Harbour Acts and Orders]”.

PART III

BOARD PROCEEDINGS

10. At each inaugural meeting of the Board of the Authority being the first meeting immediately following the nomination or election and appointment of members, the members shall choose one of their number to be Chairman and another to be Deputy Chairman for the forthcoming period of office of Members. If the Chairman and Deputy Chairman are ever both absent from any meeting, one of the other Members shall be chosen to be chairman of the meeting. At all meetings the presiding chairman shall, in the case of equality of votes, have a deliberative as well as a casting vote.

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

12. The Board shall meet from time to time at such time and at such place as it thinks fit.

13.—(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. He 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. No business shall be discussed or transacted at any special meeting except the business specified in the written notice.

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

14. The Board may from time to time appoint committees from its Members and may delegate powers to any such committee. The Board shall fix the quorum of any such committee, name the chairman and may continue, alter or discontinue such committee. 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. At all meetings of the committee the chairman, or in his absence one of the Members present to be appointed by that meeting, shall preside. All questions shall be determined by the majority of the votes of the Members present and in the case of equality of votes the chairman shall have a deliberative as well as a casting vote.

PART IV

RESIGNATION, DISQUALIFICATION OR REPLACEMENT OF MEMBERS

15. A Member of the Authority may resign his membership by giving notice in writing to the Chairman of the Authority.

16. If the Board is satisfied that a Member—

- (a) has been absent from meetings of the Board for three consecutive months without the permission of the Board; or
- (b) has his estate sequestrated, becomes bankrupt or makes a trust deed for his creditors or otherwise compounds with his creditors; or
- (c) is a Member qualified in terms of either Article 5(2) or 6(3) hereof and the incorporated company or the firm who has intimated his name to the Authority in terms of said articles and being an incorporated company has a receiver appointed to its undertaking or enters into liquidation or, being a firm, has its assets sequestrated or becomes bankrupt; or

- (d) is incapacitated by physical or mental illness from discharging the functions of a Member; or
- (e) is otherwise unable or unfit to discharge the functions of a Member,

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

17. In the event that a Member—

- (a) within the period of two months from the date of the first meeting of the Authority following his nomination, election or appointment as a Member, neglects to sign the declaration of loyalty required in terms of Article 9(6); 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 office as Member shall become vacant.

18. If there is a vacancy in the number of Authority Members because the shipowners or the ratepayers fail to nominate or to elect, or if the Council fails to appoint Members at the time specified for their appointment, or in the event that any Member dies, or resigns, or becomes disqualified, or ceases for any reason to be a Member before the expiry of their term of office, the remaining Members may, if they think fit, elect another Member or Members from electors in the category of Member in which the vacancy or vacancies has or have arisen to fill any such vacancy or vacancies. Every Member so elected shall continue in office for the remainder of the term of the Member whose place has been left vacant or has been vacated.

19. No act or proceedings of the Members, 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, or of the non-election or non-appointment for any Members.

20. All acts and proceedings of the Members, 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 nomination, election or 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 nominated elected and appointed and was qualified to be a Member.

21. The Authority 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 a Member of the Authority. Knowledge of any such information provided shall be confined to the Chairman or in his absence the Deputy Chairman and to the Chief Executive subject to the proviso that, where in the opinion of the Chairman or Deputy Chairman 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.

22. The Authority may pay to each Member of the Authority such reasonable remuneration, allowances and expenses as the Authority may from time to time determine.

23. Subject to the provisions of this Order the Authority shall have power to regulate its own procedure.

REPEALS

24. The following enactments are repealed to the extent specified: Lerwick Harbour Improvements Act, 1877**(a)**, Part II (*Appointment of Trustees and Commencement of Act*) with the exception of section 20.

Lerwick Harbour Order Confirmation Act 1911**(b)**, sections 12, 13, 14 and 15.

Lerwick Harbour (Miscellaneous Provisions) Order Confirmation Act 1975**(c)**, sections 3(1) and 5.

(a) 1877 c.exciv.
(b) 1911 c.clxxxiii.
(c) 1975 c.xxv.

Lerwick Harbour Revision Order 1994^(a), the whole Order.

Signed by the authority of the
Secretary of State for the Environment,
Transport and the Regions

12th April 1999

Stephen Reeves
Head of Ports Division,
Department of the Environment,
Transport and the Regions

^(a) S.I. 1994 No.1778.

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order:–

- (a) changes the name of “The Trustees of the Port and Harbour of Lerwick” to “Lerwick Port Authority” and “the General Manager and Clerk” to the “Chief Executive”.
- (b) introduces a new category of business ratepayers to replace harbour ratepayers.
- (c) specifies that at least one shipowner Member should be from the commercial sector and one from the fishing sector.
- (d) alters the composition of the Board from 6 Councillors, 3 harbour ratepayers and 3 shipowners to 4 Councillors, 4 business ratepayers and 4 shipowners.
- (e) changes the time of Board appointments from a sixth of the Members annually to all every three years, or as otherwise determined.
- (f) simplifies the selection process for appointments and co-ordinates its timing with local government elections.
- (g) provides that no-one can appear on more than one list of electors and no-one aged 70 or over can be nominated as a candidate.
- (h) sets out the main provisions for Board proceedings.
- (i) provides for resignation, disqualification and replacement of Members.
- (j) empowers the Authority to seek information from Members on potential conflicts of interest and to pay Members reasonable remuneration.

1999 No. 1170

HARBOURS, DOCKS, PIERS AND FERRIES

The Lerwick Harbour Revision Order 1999

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