

**2002 No. 310**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Aberdeen Harbour Revision (Constitution) Order 2002**

*Made* 24th June 2002

*Coming into force* 25th June 2002

ARRANGEMENT OF ARTICLES

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**SCHEDULES**

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Whereas the Aberdeen Harbour Board have applied for a harbour revision order under section 14 of the Harbours Act 1964(a) (hereinafter called "the Act"):

Now therefore the Scottish Ministers in exercise of the powers conferred upon them by section 14 of the Act(b) and of all other powers enabling them in that behalf, hereby make the following Order:—

### **Citation and commencement**

1. —(1) This Order may be cited as the Aberdeen Harbour Revision (Constitution) Order 2002 and shall come into force on 25th June 2002.

(2) The Aberdeen Harbour Orders 1960 to 1992 and this Order may be cited together as the Aberdeen Harbour Orders 1960 to 2002.

### **Incorporation of section 60 of the Commissioners Clauses Act 1847**

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

### **Interpretation**

3. In this Order—

"the Board" means the Aberdeen Harbour Board;

"the new constitution date" means 1st January 2003.

### **Constitution of Board**

4. —(1) On and after the new constitution date, the Board shall consist of—

- (a) nine persons appointed by the Board;
- (b) the Chief Executive of the Board; and
- (c) two other senior officers of the Board as may, from time to time, be specified by the members appointed under subparagraph (a) above.

(2) Each member appointed under paragraph (1)(a) above shall be a person who appears to the Board to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Board of their 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 the oil industry;
- (e) administration;
- (f) the organisation of employees;
- (g) the fishing industry;

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(a) 1964 c.40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4, 12 and 14; and by the Transport and Works Act 1992 (c.42), section 63 and Schedule 3, paragraphs 1 and 10.

(b) 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).

- (h) financial management;
- (i) the laws relating to Scotland;
- (j) safety management;
- (k) commercial marketing;
- (l) information technology;
- (m) environmental matters affecting harbours;
- (n) civil engineering;
- (o) local community interests; and
- (p) any other skills and matters considered from time to time by the Board to be relevant to the discharge by them of their functions;

and the Board shall secure, so far as reasonably practicable, that the members 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 them of their functions.

(3) In making an appointment under paragraph (1) above or article 8 below, the Board shall take account of any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

#### **Appointment and terms of office of first members**

**5.**—(1) Subject to paragraph (3) below, the first appointments under article 4(1)(a) above shall be made on, or as soon as reasonably practicable after, 31st October 2002.

(2) The Board shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above, the chair of the Board to be one of the first of such appointed members and he shall hold office as a member from the new constitution date until 31st December 2005; and on and after the new constitution date shall be the chair of the Board.

(3) The Board shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above, the vice-chair of the Board to be one of the first of such appointed members and he shall hold office as a member from the new constitution date until 31st December 2004; and on and after the new constitution date shall be the vice-chair of the Board.

(4) Of the remaining first members appointed by the Board—

- (a) three shall hold office from the new constitution date until 31st December 2003;
- (b) two shall hold office from the new constitution date until 31st December 2004;
- (c) two shall hold office from the new constitution date until 31st December 2005;

as the Board shall specify when they make each of those appointments.

#### **Terms of office of subsequent members**

**6.** A member appointed under article 4(1)(a) above (other than a member appointed under article 5 above) shall, unless appointed to fill a casual vacancy and subject to articles 7 and 9 of, and paragraph 12 of Schedule 2 to, this Order, hold office for the period of three years from 1st January next following his appointment.

### **Declaration to be made by members**

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

### **Casual vacancies**

8. —(1) A casual vacancy arising in the office of a member appointed by the Board shall, unless it is not reasonably practicable to do so, be filled by the appointment of a member by the Board in accordance with article 4(2) and (3) above.

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

### **Disqualification of members**

9. —(1) If the Board are satisfied that a member—

- (a) has without the permission of the Board been absent from meetings of the Board—
  - (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; or

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

(2) Subject to article 4(1)(b) and (c) above, an officer or other employee of the Board shall be disqualified from being appointed as a member of the Board during the period that he is such an officer or employee.

### **Indemnity insurance for Board**

10. The Board 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 his or their duty or, concerning which, he or they were reckless as to whether it was such a breach.

### **Incidental provisions relating to Board**

11. On and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the Board.

### **Publication of Board's annual statement of accounts**

12. As soon as reasonably practicable after their annual statement of accounts is prepared, the Board shall make available a copy of the statement for a period of three months at the offices of the Board 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.

### **Borrowing powers**

**13.** The Board may from time to time borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions; and where moneys are borrowed by the Board under this article, the Board may, if they see fit, borrow those moneys upon the security of their assets for the time being or of their revenues or of both their assets and their revenues.

### **Repeals and revocations**

**14.** On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in the third column of that Schedule.

Victoria Quay,  
Edinburgh  
24th June 2002

*DAVID M HART*  
A member of the staff of the Scottish Executive

**SCHEDULES**

**SCHEDULE 1**

Article 7

**FORM OF DECLARATION BY MEMBERS**

**ABERDEEN HARBOUR BOARD**

**ABERDEEN HARBOUR ORDERS 1960 TO 2002**

**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 Aberdeen Harbour Board by virtue of the Aberdeen Harbour Orders 1960 to 2002;
- (2) that I have read and understood the Standing Orders of the Board and the documents 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 Aberdeen Harbour Revision (Constitution) Order 2002, 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 Standing Orders and documents;
  - (b) I will in future notify the Chief Executive forthwith of any alteration in those interests, of any new interest, such as is mentioned in those Standing Orders and documents, which I may acquire.

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

Witnessed by the )  
Chief Executive..... )  
as a member of the Aberdeen Harbour ) (signature)  
Board )

*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 BOARD**

*Appointment of chair and vice-chair of Board*

1. There shall be a chair of the Board who shall be appointed by those of the members who are appointed under article 4(1)(a) or 8 above from among their number.

2. The first chair appointed under article 5(2) above shall, subject to paragraph 7 below and unless he resigns his office as chair or ceases to be a member, continue in office as chair until his initial term of office as a member has expired.

3. Subject to paragraph 7 below, every chair subsequently appointed under paragraph 1 above shall, unless he resigns his office as chair or ceases to be a member, hold office for a period of one year.

4. There shall be a vice-chair of the Board who shall be appointed by those of the members who are appointed under article 4(1)(a) or 8 above from among their number.

5. The first vice-chair appointed under article 5(3) above shall, subject to paragraph 7 below, and, unless he resigns his office as vice-chair or ceases to be a member, continue in office as vice-chair until his initial term of office as a member has expired.

6. Subject to paragraph 7 below, every vice-chair subsequently appointed under paragraph 4 above shall, unless he resigns his office as vice-chair or ceases to be a member, hold office for a period of one year.

7. If those of the members who are appointed under article 4(1)(a) or 8 above are satisfied that the chair or vice-chair should cease to hold his office as such, they may terminate his 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 Board, the vacancy shall be filled by those of the members who are appointed under article 4(1)(a) or 8 above 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 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 replaces was appointed.

*Meetings of Board*

9.—(1) The first meeting of the reconstituted Board shall be convened within one month after the new constitution date.

(2) The Board shall meet at least six times in every year.

*Convening meetings*

10.—(1) Meetings of the Board shall be convened by the secretary.

(2) Every meeting shall be convened by circular delivered to each member of the Board or sent by post to his residence or to his place of business five clear days at least before the day of the meeting:

Provided—

- (a) that the chair or in his absence the vice-chair may where he considers it necessary to do so authorise the convening of a meeting on shorter notice; and
- (b) that want of notice to any member of the Board shall not affect the validity of a meeting.

#### *Minutes*

**11.**—(1) Minutes of the proceedings of a meeting of the Board shall be drawn up by or on behalf of the secretary and shall be submitted to the meeting for approval as a record of the meeting and signed at the meeting by the person presiding thereat or shall be so submitted to the next ensuing ordinary meeting of the Board for like approval and signed by the person presiding at that next ensuing meeting and without prejudice to any of the other provisions of this Order any minute purporting to be so signed shall be received in evidence without further proof.

(2) Subject to any standing orders of or other directions by the Board the provisions of subparagraph (1) above shall apply with respect to any committee [or sub-committee] of the Board in like manner as they apply with respect to the Board.

(3) Until the contrary is proved a meeting of the Board or of any committee [or sub-committee] thereof in respect of the proceedings whereof a minute has been made and signed in manner above provided shall be deemed to have been duly convened and held and all the members present at the meeting shall be deemed to have been qualified and where the proceedings are proceedings of a committee [or sub-committee] the committee [or sub-committee (as the case may be)] shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

#### *Vacation of office by members*

**12.** A member (other than the members referred to in article 4(1)(b) and (c)) may resign his office at any time by notice in writing given to the chair of the Board 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 unless he has been disqualified from office under article 9 above.

(2) A vacating appointed member shall not be eligible for reappointment as a member where, immediately before the date in question, he has held office for three consecutive terms unless he is the chair of the Board.

(3) A chair of the Board who is an appointed member shall not be eligible for reappointment as a member where, immediately before the date in question, he 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 5(4)(a) or (b) above;
- (b) the remainder of a term during which the member was appointed to fill a casual vacancy under article 8 above; 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 4(1)(a) above.



### *Reappointment of chair*

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

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

- (a) the remainder of a term during which the member was appointed to fill a casual vacancy in the office of chair under paragraph 8 above; or
- (b) any term served by the member as chair prior to the new constitution date.

### *Committees*

**15.**—(1) Subject to subparagraph 2 below, the Board may, consistently with their duties and subject to such conditions as they think fit, delegate any of their functions to a committee of the Board and the chair and vice-chair of the Board shall be ex-officio members of any committee of the Board unless they or either of them expressly request to be excluded therefrom.

(2) There shall be excluded from the delegation to any committee of the Board the following—

- (a) the functions set out in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964(a);
- (b) the appointment or dismissal of the general manager, secretary, treasurer, engineer, collector or harbour master of the Board;
- (c) the appointment or dismissal of a solicitor to the Board.

### *Proceedings of Board and committees*

**16.**—(1) The acts and proceedings of the Board, or of any committee of the Board, shall not be invalidated by any vacancy in their 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 Board or committee.

(2) If the proceedings of a meeting of the Board or of a committee thereof are notwithstanding anything in this Order open to challenge on the ground that the meeting has not been duly convened such proceedings shall be validated by confirmation of the minutes of the meeting at a subsequent meeting duly convened by the Board or committee as the case may be.

**17.** The quorum required for a meeting of the Board shall be six.

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

- (a) in any contract or proposed contract to which the Board are 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 Board are concerned,

he shall declare that interest.

(2) If a member is present at a meeting of the Board or of any committee of the Board at which a contract or other matter in which he has an interest is to be considered he shall—

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(a) Paragraph 9B was inserted by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9.

- (a) as soon as is practicable after the commencement of that meeting disclose his interest;
  - (b) not vote on any question with respect to that contract or matter; and
  - (c) withdraw from the meeting during the consideration and decision on the matter unless members present require him not to do so.
- (3) This paragraph shall not apply to any interest—
- (a) which a member has in respect of the payment to the Board 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 possesses more than five per cent of the issued share capital of that company; or
  - (d) which the members 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 Board neither the chair nor the vice-chair are present the members 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 Board or of a committee of the Board shall be decided by a majority vote of the members present and voting.

(2) If at any meeting of the Board or of a committee of the Board there is an equality of votes on any question the chair of the meeting shall have a second or casting vote which he may exercise for or against the status quo.

#### *Execution of deeds*

**22.**—(1) A deed to which the Board are a party shall be held to be validly executed on behalf of the Board whether attested by witnesses or not if it is sealed with the common seal of the Board and subscribed on behalf of the Board by two members and the secretary.

(2) Any notice, licence or other document given or issued by the Board shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the Chief Executive of the Board or a duly authorised officer of the Board.

#### *Remuneration of members*

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

#### *General*

**24.** Subject to the provisions of this Schedule, the procedure and business of the Board and of any committee of the Board shall be regulated in such manner as the Board may from time to time determine.

**SCHEDULE 3**

Article 14

**REPEALS AND REVOCATIONS**

<b>Number</b>	<b>Short title</b>	<b>Extent of repeal or revocation</b>
1960 c.i	Aberdeen Harbour Order Confirmation Act 1960	Sections 5(2), 7(1), 9 to 11 and 29 to 31 and the First Schedule.
S.I. 1972/275	Aberdeen Harbour Revision Order 1971	The whole Order.
S.I. 1972/1704	Aberdeen Harbour Revision Order 1972	The whole Order.
S.I. 1976/817	Aberdeen Harbour Revision Order 1976	The whole Order.
1987 c.xxi	Aberdeen Harbour Order Confirmation Act 1987	Sections 3 to 6 and section 9(a) to (c) and (i).
S.I. 1990/2359	Aberdeen Harbour Revision Order 1990	The whole Order.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order reconstitutes the Aberdeen Harbour Board as from 1st January 2003. It provides for the Board to consist of a body of twelve members with experience in relevant matters. Nine persons will be appointed by the Board. The Chief Executive and two other senior officers of the Board 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 provisions for the protection of the members from personal liability in the discharge of their functions. The Order amends the Board's borrowing powers, amends existing statutory requirements as to the Board's accounts and repeals or revokes certain statutory provisions.

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