

2005 No.133

HARBOURS, DOCKS, PIERS AND FERRIES

The Scrabster Harbour Revision (Constitution) Order 2005

Made - - - - - *1st March 2005*

Coming into force - - - *2nd March 2005*

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

And whereas the making of this Order is not opposed;

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

PART I
PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Scrabster Harbour Revision (Constitution) Order 2005 and shall come into force on 2nd March 2005.

(2) The Scrabster Acts and Orders 1841 to 2000 and this Order may be cited together as the Scrabster Harbour Acts and Orders 1841 to 2005.

Interpretation

2. In this Order—

“Act of 1841” means the Act for making and maintaining a Harbour at Scrabster Roads in the Bay of Thurso and County of Caithness, and Road thereto(c);

“application date” means a date eight weeks before the Annual General Meeting of the Trust;

“Board” has the meaning given to it by article 3(1);

“Clerk” means the Clerk to the Board, who shall also serve as Clerk to the Trust Body;

“executive member” means a person referred to in article 3(1)(d);

“first application date” means a date eight weeks before the new constitution date;

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

(b) 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)

(c) 1841 c. 1.

“household” means the occupiers of any residential dwelling house situated along the A9 trunk road to the east of and including the Old Post Office buildings at Scrabster;

“loan stock holder” means the lawful holder for the time being of—

- (a) an assignment or assignments issued by the Trustees under section 41 of the Act of 1841 in respect, in aggregate, of not less than £100; or
- (b) any loan stock having a nominal value of not less than £100 issued by the Trustees or the Board pursuant to any other enactment and designated by the Trustees or the Board upon issue as loan stock to which this definition refers;

“Management Trustees” means persons who were Trustees of the harbour as members of the Management Committee under the Scrabster Acts and Orders 1841 to 2000;

“the new constitution date” means the date of the first Annual General Meeting of the Trust that occurs more than three months after the date of coming into force of this order,

“non-executive member” means a person referred to in article 3(1)(a), 3(1)(b) or 3(1)(c);

“Preses” has the meaning given to it by article 12(6);

“Scrabster Harbour Trust Management Committee” means the body managing the trust at the date of coming into force of this order;

“senior port manager” means one of the following: the manager or harbour master or such other senior member of staff as may be appointed by the Board and designated as such from time to time;

“Trust” means Scrabster Harbour Trust;

“Trust Body” means the Scrabster Harbour Trust Body established under article 11; and

“Trustees” means the Trustees of Scrabster Harbour Trust acting under the Scrabster Acts and Orders 1841 to 2000.

PART II THE BOARD

Constitution of Board

3.—(1) On and after the new constitution date Scrabster Harbour Trust shall be managed by a Board consisting of—

- (a) two persons appointed in 2005 and every third year thereafter;
- (b) two persons appointed in 2006 and every third year thereafter;
- (c) two persons appointed in 2007 and every third year thereafter;
- (d) a maximum of two further persons who are senior port managers and are co-opted by resolution of the other Board members.

(2) The term of office of non-executive members shall be three years.

Application procedure

4.—(1) The Board shall set a deadline for the receipt of applications, which the Clerk shall cause to be advertised in at least one newspaper published or circulated in Scrabster not less than fourteen days prior to the deadline.

(2) All persons seeking appointment as non-executive members shall lodge an application form with the Clerk by the application date.

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

- (a) the name, address and date of birth of the applicant;
- (b) an indication of any pecuniary or non-pecuniary interests;

- (c) such biographical information as the applicant sees fit to supply;
- (d) a declaration of interests as set out in Schedule 1; and
- (e) such other information as the Board may require.

Interviews and selection

5.—(1) There shall be an appointing body consisting of the following three persons none of whom shall have made an application under article 4—

- (a) the Chairman of the Board, unless the Chairman has made an application under article 4, in which case another Board member nominated by the Board;
- (b) a member of the Trust Body nominated by the Board; and
- (c) a person independent of the Trust nominated by the Board in line with guidance issued or endorsed by Scottish Ministers.

(2) The appointing body shall meet as soon as practicable after the application date to consider the applications made under article 4.

(3) The appointing body shall interview applicants as it sees fit.

(4) The appointing body shall decide which persons who have applied under article 4, being no more than two in number, shall be submitted to the annual general meeting of the Trust, which shall decide whether to endorse the appointments.

(5) At its first meeting following the annual general meeting of the Trust, the Board shall appoint to be Board members such persons submitted by the appointing body under paragraph (4) as it sees fit, having regard to the decision of the Trust Body under that paragraph.

(6) The appointing body shall have particular regard to the following considerations when making decisions under paragraph (4)—

- (a) the special knowledge, experience or ability of applicants to contribute to the efficient and economic discharge by the Board of its functions;
- (b) the special knowledge, experience or ability of applicants in one or more of the following matters—
 - (i) management of harbours;
 - (ii) shipping or other forms of transport;
 - (iii) the fishing industry;
 - (iv) sailing and other water-related leisure activities;
 - (v) navigation;
 - (vi) industrial, commercial or financial matters;
 - (vii) administration;
 - (viii) the law relating to Scotland;
 - (ix) safety;
 - (x) personnel management;
 - (xi) environmental matters affecting harbours; and
 - (xii) any other skills and matters considered relevant from time to time by the Board to the discharge by it of its functions;
- (c) any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions; and
- (d) without prejudice to the generality of paragraph (c), guidance that the Board members shall not normally be eligible for re-appointment who have already served three terms, or in the case of the Chairman of the Board, four terms.

(7) Each Board member shall renew the declaration of interests as set out in Schedule 1 annually following initial appointment.

Co-option and casual vacancies

6.—(1) The Board members referred to in article 3(1) above and paragraph (2) below may at any time co-opt not more than three persons to serve as Board members for such period not exceeding twelve months as the co-opting members may specify at the time of co-option.

(2) Subject to the provisions of paragraph (3), if a Board member refuses to accept office or that office is declared vacant, or dies or resigns, or ceases to be qualified, or if the Board appoints fewer than two applicants as Board members, the resulting vacancy or vacancies shall be filled in manner following—

- (a) the Board shall fill each vacancy by co-opting as a Board member any person duly qualified in accordance with the provisions of this order, and the Board member so substituted shall continue in office for the period that the person in whose place the co-opted Board member is appointed would in the ordinary course have continued in office;
- (b) at the end of such period the co-opted Board member shall go out of office but shall be eligible for re-appointment if still qualified and an application under article 4(2) is made.

(3) Any casual vacancy occurring four months or less before the end of the vacating Board member's normal term of office may, at the discretion of the remaining Board members, be left unfilled for the remainder of that term of office.

Termination of office

7.—(1) If the Board is satisfied that a Board member—

- (a) has without the permission of the Board been absent from Board meetings during a period when three such meetings have been held;
- (b) has become bankrupt or has made an arrangement with the creditors of the Board member;
- (c) has made an untrue or incomplete declaration of interests; or
- (d) is incapacitated by physical or mental illness from discharging the functions of a Board member;

the Board may declare the office of such a member vacant and thereupon the office shall become vacant.

(2) Any Board member may resign office at any time upon giving the Board not less than three weeks' written notice of such intention.

Declaration of interests

8. No Board 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.

Incidental provisions relating to Board

9. From the date of first appointments to the Board by the appointing body the provisions of Schedule 2 to this Order shall have effect with respect to the Board and its members.

Transitional provisions

10.—(1) The nine members of the Sub-Committee of the Scrabster Harbour Trust Management Committee operating as the Board of Management shall become the members of the Board upon the coming into force of this Order.

(2) On the new constitution date, all powers and duties of the Trustees shall vest in the Board except those given to the Trust Body by article 12, all assets and liabilities of the Trustees shall vest in the Trust, and the Trustees are extinguished, but the body corporate established by the Act of 1841 remains as a body corporate with perpetual succession.

- (3) At the first meeting of the Board after the coming into force of this Order, it shall decide—
- (a) which two of its non-executive members shall retire when the first set of appointments is made to the Board under this Order; and
 - (b) which two of its non-executive members shall retire when the second set of appointments is made to the Board under this Order.
- (4) The remaining three Board non-executive members shall retire when the third set of appointments is made to the Board under this Order.
- (5) The requirements of article 5(6)(d) shall not apply to any arrangement made under paragraphs (3) and (4) of this article.
- (6) Section 43 of the 1841 Act shall continue to apply to any claim arising from a contract entered into before the date of coming into force of this Order.

PART III

THE TRUST BODY

Constitution of Trust Body

- 11.**—(1) On and after the first application date there shall be a Trust Body consisting of—
- (a) those persons who are, at that date, loan stock holders;
 - (b) those persons who are former Management Trustees;
 - (c) those persons who were appointed under article 5(5) or 10(1) of this Order and who no longer hold such office and whose office was not terminated under article 7(1);
 - (d) one person nominated by each household;
 - (e) two persons nominated by Highland Council;
 - (f) two persons nominated by the Caithness Chamber of Commerce;
 - (g) three persons nominated by the Wick and Scrabster Fish Traders Association;
 - (h) three persons nominated by the Caithness Fish Salesmen Association;
 - (i) two persons nominated by the Scottish White Fish Producers Association;
 - (j) two persons nominated by the Caithness Static Gear Association;
 - (k) one person nominated by the operators of the Scrabster/Orkney Lifeline Ferry Service;
 - (l) one person nominated by the Pentland Firth Yacht Club;
 - (m) one person nominated by the Royal National Lifeboat Institute;
 - (n) one person nominated by the Royal National Mission to Deep Sea Fishermen; and
 - (o) two persons nominated by the Harbour Users Group.
- (2) The persons referred to in sub-paragraph (1)(a) shall hold office for their lifetimes.
- (3) The persons referred to in sub-paragraphs (1)(b) and (1)(c) shall hold office for 10 years.
- (4) The persons referred to in sub-paragraphs (1)(d) to (1)(o) shall hold office for three years, whereupon they shall be eligible for reappointment.
- (5) The Trust Body may vary its composition from time to time following the passing of a resolution to that effect by a 70% majority of those present and voting, and all other matters shall be decided by a simple majority.
- (6) The acts and proceedings of the Trust Body, or any committee of the Trust Body, 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 Trust Body member, of the Trust Body or committee.

Powers of Trust Body

12.—(1) The Board shall consult the Trust Body on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour.

(2) The Board shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to it by the Trust Body whether or not the Trust Body was consulted by the Board on the matter, recommendation or representation so referred or made.

(3) The Board may regulate the procedures of the Trust Body to the extent that such regulation is not inconsistent with this Order.

(4) The Trust Body shall decide whether to endorse the promotion of Harbour Revision Orders by Scrabster Harbour Trust.

(5) The Board shall have regard to any decision of the Trust Body under paragraph (4), without prejudice to the statutory procedure for promotion of Harbour Revision Orders.

(6) The Trust Body shall determine its own quorum and appoint its own Chairman, to be known as the Preses.

(7) The Trust shall hold an annual general meeting at such time within six months of the end of the financial year (or in the year that this order comes into force, within nine months of the end of the financial year) and such place as the Board shall determine, which shall be open to the public.

(8) At annual general meetings of the Trust the Chairman of the Board shall preside, whom failing the Vice Chairman of the Board, or in their absence such other Board Member nominated by the Board for the purpose, and the Trust Body shall—

(a) decide whether to endorse the prospective Board members submitted to it by the appointing body; and

(b) receive and decide whether to endorse the annual statement of accounts submitted to it by the Board.

(9) If the Trust Body rejects the annual statement of accounts at any annual general meeting then the meeting shall be adjourned.

(10) The Trust Body may hold other meetings relating to matters set out at paragraph (2) at its own discretion.

PART IV MISCELLANEOUS

Extension of harbour limits

13. The limits of jurisdiction of the Trust shall be extended according to Schedule 3.

Statement of accounts

14.—(1) As soon as reasonably practicable after its annual statement of accounts is prepared the Board shall submit the statement to the Preses of the Trust Body.

(2) The Board shall make a copy of the annual statement of accounts available, for a period of three months from the date of the annual general meeting to which it is submitted, , 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.

Personal liability

15. Nothing done and no contract entered into by the Trust, and nothing done by the Board or the Trust Body, or by any member of the Board or the Trust Body, or by any officer of the Trust or other person acting under the direction of the Trust, shall, if the thing were done or the contract

were entered into in good faith for the purpose of executing the Scrabster Harbour Acts and Orders 1841 to 2005, subject them or any of them personally to any action, liability, claim or demand whatsoever, and any expense incurred by any such Board member, Trust Body member, officer or other person acting shall be met by the Trust.

Annual increase in borrowing limit

16.—(1) On 1 April each year the Board shall adjust the borrowing limit of the Trust in line with any increase in RPI which occurred during the year ended on 31st December immediately preceding the anniversary in question, rounded to the nearest million pounds.

(2) Any adjustment made under paragraph (1) above shall be recorded in the next following annual statement of accounts prepared by the Board.

(3) In paragraph (1) above, “RPI” means the general index of retail prices for all items published in the monthly publication of the Office for National Statistics known as the “Monthly Digest of Statistics”, or any successor from time to time of that index.

Amendments to Act of 1841

17. The provisions of the Act of 1841 specified in Schedule 4 to this Order shall have effect subject to the amendments set out in that Schedule.

Repeals

18.—(1) On the new constitution date the enactments mentioned in the first and second columns of Schedule 5 to this Order (which include spent enactments) shall be repealed to the extent specified in the third column of that Schedule.

It is hereby declared that paragraph 5(2) of Schedule 2 to the Requirements of Writing (Scotland) Act 1995(a) shall apply to the Trust.

Victoria Quay
Edinburgh
1st March 2005

D M HART
A member of the staff of the Scottish Executive

(a) 1995 c. 7.

SCHEDULE 1

Article 5

DECLARATION OF INTERESTS

Personal Details

Name

Date of Birth

Private address

Business address

Telephone

Have you changed your name? If so give details

Other Relevant Information

Any appointee to the Board could find that matters or incidents which previously attracted no attention could become matters of public interest once the person concerned holds public office.

If the answer to any of the following questions is “yes” please provide details on a separate sheet.

Have you

- ever been convicted of any offence (other than minor motoring) which is not spent in accordance with the Rehabilitation of Offenders Act 1974?
- any charges outstanding?
- become bankrupt in the past ten years?
- been dismissed from any office or employment in the past ten years?
- ever been disqualified from either acting as a company director or in the management of a company?
- ever been a director, partner or manager of a company which has gone into liquidation, receivership or administration?

Are there any other relevant facts to declare which you feel might be raised in public in future in relation to your suitability to hold the appointment for which you are being considered, for example because they could be presented as a conflict of interest?

Other Business Interests

Current employment details.

Please state whether there are any companies, partnerships, or other organisations:

- in which you or members of your family or close associates have shares or securities with a nominal value of more than 1/100th of the total issued share capital;
- of which you are or have been a director or partner in the last 10 years;
- of which you own more than 50% whether or not you are a director or partner.

If the answer to any of these questions is yes, please give details on a separate sheet.

Other Appointments

Have you any other current public appointments paid or unpaid? Please give details.

Other Interests

Are you a member of any political party, club or closed society (such as the Freemasons)? Please give details.

Do any of your close family or associates have pecuniary or non-pecuniary interests which relate closely, or could be construed as relating closely, to the Scrabster Harbour Trust's activities? If yes please provide details on a separate sheet.

Declaration

You are required to notify the Board of Scrabster Harbour Trust of any other information that you consider relevant to an assessment of your suitability as a trustee. For example you must declare any associations, convictions, bankruptcies or other appointments which might lead to allegations of a conflict of interest and to report any significant change in the future to the information provided here.

I certify that the information given above is complete and correct to the best of my knowledge.

I also certify that, if appointed to the Board of Scrabster Harbour Trust I will inform the Chairman immediately of any change of circumstances which would result in a "yes" answer being given to any of the above questions if they were put to me.

Signed

Name

Date

INCIDENTAL PROVISIONS RELATING TO BOARD

Appointment of Chairman and Vice-Chairman of Board

1. There shall be a Chairman and Vice-Chairman of the Board who shall be elected annually by the Board members from among their number at their first meeting following the annual general meeting of the Trust, except that executive members shall not be eligible to be so elected.

2. At all meetings the Chairman, and in the absence of the Chairman, the Vice-Chairman, shall preside.

3. In the event of neither the Chairman nor Vice-Chairman being present, or both posts being vacant, a Board member shall be chosen by the meeting to preside at that meeting.

4. If the Board is satisfied that the Chairman or Vice-Chairman should cease to hold office as such, it may terminate that office as such at a meeting of the Board and appoint another member to be Chairman or Vice-Chairman during the remainder of the term for which the former Chairman or Vice-Chairman was appointed.

5.—(1) On a casual vacancy occurring in the office of Chairman or Vice-Chairman of the Board, the vacancy shall be filled by the Board at a meeting held as soon as practicable after the vacancy occurs.

(2) A Board member appointed under this paragraph to fill a casual vacancy in the office of Chairman or Vice-Chairman shall, unless such member resigns that office or ceases to be a Board member, hold that office during the remainder of the term for which the Chairman or Vice-Chairman whom such a member replaces was appointed.

Meetings of the Board

6. The Board shall hold a meeting once in every month, or more or less often as the Board shall think fit, on such day, at such hour and at such place in Scrabster, or such alternative location, as it shall from time to time appoint.

7. At all meetings of the Board, five shall be a quorum and no business shall be transacted at any meeting of the Board unless a quorum shall be present at such meeting and every meeting of the Board may be adjourned from time to time whether a quorum be present or not.

8. The Board may hold extraordinary meetings, which may be called by either—

- (a) the Chairman or Vice-Chairman;
- (b) any two non-executive members; or
- (c) one executive member.

9. All meetings to be held under the authority of this Order shall be called or announced by an intimation of an agenda specifying the business to be transacted at the meeting, and the day, hour and place when and where the same are to be held, which shall be delivered to, left at the usual place of abode or place of business of, or posted by ordinary first-class post to, each Board member not less than 48 hours before such meeting.

Committees

10. The Board may from time to time appoint committees for such purposes as, in its opinion, would be better regulated and managed by means of such committees and the Board shall fix the quorum of such committees and may continue, alter, or discontinue such committees.

Proceedings of Board meetings and committees

11. The acts and proceedings of the Board, or 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 Board member, or as Chairman or Vice-Chairman, of the Board or committee.

12.—(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 chairman of the meeting shall have a second or casting vote.

General

13. The Board may appoint a Clerk, Treasurer, Auditor or other post-holder as required.

14. The Board may pay the chairman and other members such salary, allowances and expenses as it may from time to time determine.

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

SCHEDULE 3

Article 13

NEW HARBOUR LIMITS

The seaward harbour limit shall be extended to include the following area:—

from a point on the shore at Holborn Head at grid reference (310949, 971559) in a straight line due north to (310949, 973168), then in a straight line due east to (316617, 973168) then in a straight line approximately east south east to (319813, 971844) then in a straight line due south to (319813, 969431) then in a straight line approximately west north west to (316840, 970662), then in a straight line due west to (314423, 970662), then in a straight line approximately west south west to the Coastguard Station Scrabster at (310700, 969120).

SCHEDULE 4

Article 17

AMENDMENTS TO ACT OF 1841

1. For section XI (Trustees to appoint officers, Books and Accounts to be kept) of the Act of 1841 there shall be substituted—

“XI.—(1) The Board may employ such persons upon such terms as shall appear reasonable to them and shall ensure that accurate financial records of the business of the Trust are kept.

(2) The financial records will be available for inspection by members of the Board and any person authorised by the Board on reasonable notice during reasonable office hours.

(3) The Board shall ensure that the Trust’s annual accounts are prepared within six months of the end of each financial year.”.

2. For Section XII (Accounts to be audited annually) there shall be substituted—

“XII. Within five months of the end of each financial year the Board shall render the Trust’s books and accounts to the Auditor so that he may examine such books and accounts, audit the accounts and report on the accounts at the annual general meeting of the Trust.”.

3. For Section XIV (An Auditor to be appointed) there shall be substituted—

“XIV. The Board shall employ an auditor to audit the Trust’s accounts and shall pay the auditor such reasonable fee as it shall determine.”.

SCHEDULE 5

Article 18

REPEALS

<i>Chapter (1)</i>	<i>Short title (2)</i>	<i>Extent of repeal (3)</i>
1841 c. 1.	An Act for making and maintaining a Harbour at Scrabster Roads in the Bay of Thurso and County of Caithness, and Road thereto.	Sections 2, 3, 4, 5, 6, 8, 9, 10, 13 and 15. Section 43 except as provided by article 10(5).
1975 c. vii	Scrabster Harbour Order Confirmation Act 1975	In the Schedule, article 9 of the Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order alters the constitution of the Scrabster Harbour Trust in line with the recommendations of the Trust Ports Review published by the Department of the Environment, Transport and the Regions in January 2000 and endorsed by the Scottish Executive. The Order also extends the seaward limit of the harbour.

£3.00

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