

**2013 No. 308**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Whitehills Harbour and Marina (Constitution) Order 2013**

*Made* - - - - - *31st October 2013*

*Coming into force* - - - *1st November 2013*

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The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1) of the Harbours Act 1964(a), 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(b).

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

- (a) this Order is made following a written application to Ministers by the Whitehills Harbour Commissioners (“the Commissioners”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) (except in so far as this order is made for achieving objects mentioned in section 14(2A) of that 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In accordance with section 14(2) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

In accordance with paragraph 5 of Schedule 3 to that Act(c), Ministers have informed the Commissioners in writing that the application does not relate to a project which falls within Annex I or II to Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(d).

Notice has been published by the Commissioners in accordance with the requirements of paragraph 10 of that Schedule.

The provisions of paragraph 17 of that Schedule(e) have been satisfied. No objections to the application have been made.

In accordance with paragraph 19(2) of that Schedule(f), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

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- (a) 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 definition of “the appropriate Ministers” 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).
  - (b) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.
  - (c) Paragraph 5 of Schedule 3 was substituted by S.I. 1999/3445.
  - (d) O.J. L 26, 28.1.2012, p.1.
  - (e) 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).
  - (f) 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 Whitehills Harbour and Marina (Constitution) Order 2013 and comes into force on the day after the day on which it was made.

(2) The Whitehills Harbour Order 1895 and this Order may be together cited as the Whitehills Harbour Orders 1895 to 2013.

### Interpretation

2. In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

“the 1895 Order” means the Whitehills Harbour Order 1895 confirmed by the Pier and Harbour Orders Confirmation (No. 2) Act 1895, Session 2;

“application date” means the third Tuesday in November;

“appointing body” has the meaning given by article 6(1);

“appointment date” means the third Tuesday in December;

“the Commissioners” means the Whitehills Harbour Commissioners holding office under the 1895 Order or this Order as the case may require;

“convenor” means the convenor of Commissioners elected according to paragraph 1 of Schedule 2;

“the harbour” means the harbour of Whitehills under the management and control of the Commissioners and as defined in section 19 of the 1895 Order;

“the new constitution date” means the appointment date in the year 2013.

### Incorporation of the 1847 Act

3.—(1) Sections 1 to 4, 34, 35, 37 to 39, 42, 51, 54, 55 and 63 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission)(b) shall have effect subject to the modification that for the words from “be liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Section 65 (harbour master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

(4) In construing the provisions of the 1847 Act as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expression “the undertakers” means the Commissioners and the expression “the harbour, dock, or pier” shall mean the harbour; and

(b) for the definition of the word “vessel” in section 3 (interpretations in this and the special Act) there shall be substituted the definition of that word in paragraph (1) of article 2 (interpretation).

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(a) 1847 c.27

(b) There are amendments to section 63 not relevant to this Order.

## PART 2

### CONSTITUTION

#### **Constitution of Commissioners**

**4.**—(1) On and after the new constitution date—

- (a) all Commissioners elected or appointed in accordance with the 1895 Order shall continue in office for the remainder of their elected or appointed term of office under that Order; and
- (b) subject to (a), the Commissioners shall consist of—
  - (i) three persons appointed by the appointing body in 2013 and every third year thereafter;
  - (ii) three persons appointed by the appointing body in 2014 and every third year thereafter; and
  - (iii) three persons appointed by the appointing body in 2015 and every third year thereafter.

(2) The term of office for all Commissioners shall be three years.

(3) Subject to the provisions of paragraph 10(2) of Schedule 2 to this Order, a vacating Commissioner shall be eligible to apply for appointment or reappointment under this Order.

(4) The Commissioners shall continue to be a body corporate under the name or style of “the Whitehills Harbour Commissioners”.

#### **Application procedure**

**5.**—(1) All persons seeking appointment under article 4(1) shall submit an application form to the Commissioners by the application date.

(2) The Commissioners shall cause the said application date and the information to be supplied by an applicant as set out in paragraph (3) to be advertised in at least one newspaper published or circulating in Whitehills not less than fourteen days beforehand.

(3) A completed application form must contain the following information—

- (a) the name and address of the applicant; and
- (b) such other biographical information as the Commissioners may require.

(4) The Commissioners shall be entitled to reject an incomplete application.

#### **Interviews and selections**

**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 Convenor of Commissioners unless the convenor has made an application under article 5, in which case another Commissioner nominated by the Commissioners;
- (b) a person who is not a Commissioner, who shall be nominated by the Commissioners and considered by them to represent persons or one or more groups of persons with an interest in the harbour; and
- (c) an independent person appointed by the Commissioners.

(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 within two weeks of the application date.

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

(4) The appointing body shall decide which persons who have applied under article 5(1) shall be appointed as Commissioners and shall make those appointments accordingly.

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

- (a) the knowledge, experience or ability of applicants to contribute to the efficient and economic discharge by the Commissioners of their functions;
- (b) the knowledge and experience of applicants of the harbour and the practicalities of attendance at meetings and participation in the running of the harbour;
- (c) the 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) tourism;
  - (vi) local community interests;
  - (vii) legal or accountancy services;
  - (viii) navigation;
  - (ix) industrial, commercial or financial matters;
  - (x) administration;
  - (xi) the law relating to Scotland;
  - (xii) safety;
  - (xiii) personnel management;
  - (xiv) environmental matters affecting harbours;
  - (xv) any other skills and matters considered relevant from time to time by the Commissioners to the discharge by them of their functions; and
- (d) where not inconsistent with this Order any guidance issued by the Scottish Ministers from time to time with respect to the exercise of functions such as those of the Commissioners.

### **Failure of appointment**

7. In the case of the failure or partial failure at any time of an appointment to fill a vacancy under the terms of this order, including the case where there are fewer applicants for a vacancy to be filled by the appointing body under paragraph (4) of article 6, the Commissioners may fill that vacancy by co-opting as a Commissioner any person whom they consider to be suitable having regard to the provisions of this Order and any person so co-opted shall, in respect of continuance in office, be on the same footing as if that person had been appointed on the appointment date immediately preceding the co-option.

### **Casual vacancies**

8.—(1) Subject to the provisions of paragraph (2) of this article, if a Commissioner refuses to accept office, or dies or resigns, or ceases to be qualified or becomes incapable of acting, the resulting vacancy shall be filled in the following manner—

- (a) the Commissioners shall fill the vacancy by co-opting as a Commissioner any person duly qualified in accordance with the provisions of this Order, and the Commissioner so substituted shall continue in office for the period that the person in whose place the co-opted Commissioner is appointed would in the ordinary course have continued in office;
- (b) at the end of such period the co-opted Commissioner shall go out of office but shall be eligible for reappointment if qualified.

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

#### **Declaration to be made by Commissioner**

9. No person shall be capable of acting as a Commissioner until the declaration set out in Schedule 1 to this Order has been made; and a person shall cease to be a Commissioner if that declaration has not been made within one month of the date of appointment.

#### **Termination of office**

10.—(1) If the Commissioners are satisfied that a Commissioner—

- (a) has without the permission of the Commissioners been absent from meetings of the Commissioners—
  - (i) during a period when 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 the creditors of the Commissioner; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or
- (d) is otherwise unable, unwilling, unsuitable (in the opinion of the Commissioners) or unfit to discharge the functions of a Commissioner;

the Commissioners may declare the office of such a Commissioner vacant and thereupon the office shall be vacant.

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

#### **Indemnity insurance**

11. The Commissioners may enter into, and pay premiums for, a contract of insurance to indemnify the Commissioners jointly or severally against personal liability arising from any act or omission of the Commissioners or of any of them; not being an act or omission which the Commissioner or Commissioners in question knew to be a breach of duty or, concerning which, was or were reckless as to whether it was such a breach.

#### **Convenor of Commissioners etc.**

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

## **PART 3**

### **MISCELLANEOUS**

#### **Statement of accounts**

13. As soon as reasonably practicable after their annual statement of accounts is prepared the Commissioners shall make available for inspection free of charge by members of the public a copy of the statement for a period of three months from the date of approval of the accounts at the offices of the Commissioners 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**

14. The Commissioners 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 Commissioners under this article, the Commissioners may, if they see fit, borrow those moneys upon the security of their assets or of their revenues or of both their assets and their revenues.

### **Repeals**

15. 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 to the extent specified in the third column of that Schedule.

*JOHN NICHOLLS*

A member of the staff of the Scottish Ministers

St Andrew's House,  
Edinburgh  
31st October 2013



**SCHEDULES**

**SCHEDULE 1**

Article 9

**FORM OF DECLARATION BY COMMISSIONERS**

**Whitehills Harbour Commissioners**

**Whitehills Harbour Orders 1895 to 2013**

**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 Commissioner of the Whitehills Harbour by virtue of the Whitehills Harbour Orders 1895 to 2013;

(2) that I have read and understood the notes in “Modern Trust Ports for Scotland – Guidance for good governance” relating to probity and interests and that I will comply with the requirements as to the disclosure of such interests, laid down by paragraph 14 of Schedule 2 to the Whitehills Harbour and Marina (Constitution) Order 2013, and in particular that—

- (a) I have disclosed to the Clerk to the Commissioner details of every financial interest or business interest that might lead to a conflict of interest;
- (b) I will in future notify, the Clerk to the Commissioner forthwith of any alteration in those interests, and of any new interest which I may acquire.

Made and signed in Whitehills, on the

[                      ] day of [                      ]

.....

(signature)

Witnessed by

.....

Clerk to the Whitehills Harbour Commissioners

## SCHEDULE 2

Article 12

### INCIDENTAL PROVISIONS RELATING TO COMMISSIONERS

#### *Appointment of convenor and vice-convenor of Commissioners*

1. There shall be a convenor of the Commissioners who shall be appointed by the Commissioners from among their number.

2. The first convenor taking office after the new constitution date shall be appointed at the first meeting of the Commissioners referred to in paragraph 9.

3. Subject to paragraph 7, every convenor appointed under paragraph 1 shall, unless resigning office as convenor or ceasing to be Commissioner, hold office for a period of one year.

4. There shall be a vice-convenor of the Commissioners who shall be appointed by the Commissioners from among their number.

5. The first vice-convenor holding office after the new constitution date shall be appointed as soon as practicable after that date.

6. Subject to paragraph 7, every vice-convenor appointed under paragraph 4 shall, unless resigning office as vice-convenor or ceasing to be a Commissioner, hold office for a period of one year.

7. If the Commissioners are satisfied that the convenor or vice-convenor should cease to hold office as such, they may terminate the appointment and appoint another member to be convenor or vice-convenor during the remainder of the term for which the former convenor or vice-convenor was appointed.

8.—(1) On a casual vacancy occurring in the office of convenor or vice-convenor of the Commissioners, the vacancy shall be filled by the Commissioners at a meeting held as soon as practicable after the vacancy occurs.

(2) A Commissioner appointed under this paragraph to fill a casual vacancy in the office of convenor or vice-convenor shall, unless resigning that office or ceasing to be a Commissioner, hold that office during the remainder of the term for which the convenor or vice-convenor who is replaced was appointed.

#### *Meetings of Commissioners*

9.—(1) The first meeting of the Commissioners after the new constitution date shall be convened as soon as practicable after that date, and arrangements shall be made for notice of that meeting to be sent by post to each of the Commissioners.

(2) Subject to paragraph (9) the Commissioners shall meet at least six times in every year and may hold such further meetings or as the Commissioner thinks fit on such day and at such hour as they shall by resolution appoint.

#### *Reappointment of Commissioners*

10.—(1) A vacating Commissioner shall be eligible for reappointment as a Commissioner unless that Commissioner has been disqualified from office under article 10.

(2) A vacating Commissioner shall not be eligible for reappointment as a Commissioner where immediately before appointment, the Commissioner has held office for three consecutive terms.

(3) For the purposes of this paragraph, “term” does not include—

(a) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 8 above; or

(b) any term served by the Commissioner prior to the new constitution date.

#### *Committees*

**11.** The Commissioners may, consistently with their duties and subject to such conditions as they think fit, delegate any of their functions to a committee of the Commissioners.

#### *Proceedings of Commissioners and committees*

**12.** The acts and proceedings of the Commissioners, or any committee of the Commissioners, 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 Commissioner, or as convenor or vice-convenor, of the Commissioners or committee.

**13.** The quorum required for a meeting of the Commissioners or any committee of the Commissioners shall be five.

**14.** If a Commissioner is in any way directly or indirectly interested in any contract or proposed contract to which the Commissioners are, or would be, a party and is present at a meeting of the Commissioners or of any committee of the Commissioners at which that contract is the subject of consideration, that Commissioner shall as soon as practicable after the commencement of the meeting disclose that fact at the meeting and shall leave the meeting and not take part in any deliberation or decision of the Commissioners or committee with respect to that contract.

**15.** The person for the time being holding office as vice-convenor shall have and may exercise in the absence of the convenor all the powers of the convenor.

**16.** If at any meeting of the Commissioners neither the convenor nor the vice-convenor are present the Commissioners present at the meeting shall choose one of their number to be the convenor of the meeting.

**17.—(1)** Every question at a meeting of the Commissioners or of a committee of the Commissioners shall be decided by a majority vote of the Commissioners present and voting.

(2) If at any meeting of the Commissioners or of a committee of the Commissioners there is an equality of votes on any question the convenor of the meeting shall have a second or casting vote.

#### *Authentication of seal*

**18.—(1)** The application of the seal of the Commissioners shall be authenticated by the signature of the convenor of the Commissioners or some other Commissioner authorised by the Commissioners to authenticate the application of the seal, and of the Harbour Master or some person authorised by the Commissioners to act in the place of the Harbour Master in that behalf.

(2) The Commissioners may authorise a person to act instead of the Harbour Master under this paragraph whether or not the Harbour Master is absent or incapable of acting.

(3) Any notice, licence or other document given or issued by the Commissioners shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the Harbour Master or a duly authorised officer of the Commissioners.

#### *Remuneration of Commissioners*

**19.** The Commissioners may pay to the convenor and other Commissioners such salary, allowances and expenses as the Commissioners from time to time determine.

#### *General*

**20.** Subject to the provisions of this Schedule, the procedure, business conduct towards each other and activities of the Commissioners and of any committee of the Commissioners shall be regulated in such manner as the Commissioners from time to time determine and see fit.

## SCHEDULE 3

Article 15

### REPEALS

<i>Chapter</i>	<i>Short Title</i>	<i>Extent of repeal</i>
1895 c. iv	Pier and Harbour Orders Confirmation (No. 2) Act 1895, Session 2	Sections 5 to 11, 13, 15, 16, 52 to 54 and 60 of Schedule 5 relating to the Whitehills Harbour Order 1895
1924 c. iii.	Whitehills Harbour Order Confirmation Act 1924	The whole Act

## **EXPLANATORY NOTE**

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

This Order re-constitutes the Whitehills Harbour Commissioners in line with the recommendations of *Modern Trust Ports for Scotland – Guidance for Good Governance* published by Transport Scotland in November 2012.

The Order also includes other provisions with respect to the constitution including provisions for the protection of the Commissioners from personal liability in the discharge of their functions. The Order also amends the Commissioners borrowing powers.

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