

**2003 No. 258**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Montrose Port Authority Harbour Revision  
(Constitution) Order 2003**

*Made* 21st April 2003

*Coming into force* 22nd April 2003

**ARRANGEMENT OF ARTICLES**

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**SCHEDULES**

Schedule 1 – Form of declaration by members

Schedule 2 – Incidental provisions relating to Authority

Schedule 3 – Revocations

Whereas the Montrose Port Authority have applied for a harbour revision order under section 14 of the Harbours Act 1964(a):

And whereas there were objections made to the application which were not withdrawn, and an inquiry was held in accordance with paragraph 18 of Schedule 3 to the Harbours Act 1964;

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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.

And whereas the Scottish Ministers have considered the objections made and not withdrawn and the report of the person holding the inquiry, and are satisfied as mentioned in section 14(2)(b) of the Act;

Now, therefore, the Scottish Ministers in exercise of the powers conferred upon them by section 14 of the Act(a), 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 Montrose Port Authority Harbour Revision (Constitution) Order 2003 and shall come into force on 22nd April 2003.

(2) This Order and the Montrose Harbour Acts and Orders 1837 to 1999 may be cited together as the Montrose Harbour Acts and Orders 1837 to 2003.

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

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

### **Interpretation**

3. In this Order–

“the Authority” means the Montrose Port Authority;

“the new constitution date” means 1st October 2003.

### **Constitution of Authority**

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

- (a) seven members appointed by the Authority;
- (b) two members appointed by Angus Council; and
- (c) the Chief Executive, the finance director and the commercial manager for the time being respectively of the Authority.

(2) Each member appointed under paragraph (1)(a) and (b) above shall be a person who appears to have special knowledge, experience or ability appropriate to the efficient and economic discharge by the Authority 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) financial management;
- (d) the laws relating to Scotland;
- (e) safety or personnel management;
- (f) commercial marketing or information technology;
- (g) environmental matters affecting harbours;
- (h) local government and local community interests; and
- (i) any other skills and abilities considered from time to time by the Authority and Angus Council respectively to be relevant to the discharge by the Authority of their functions;

and the Authority and Angus Council respectively 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 and economic discharge by the Authority of their functions.

(3) In making an appointment under paragraph (1) above or article 8 below, the Authority and Angus Council respectively shall act in accordance with any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

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(a) 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).

(b) 1847 c.16.

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

5.—(1) The first appointments under article 4(1)(a) and (b) above shall be made before 1st September 2003.

(2) The Authority shall appoint the person who is, at the date when they make the first appointments under paragraph (1)(a) above, the chairman of the Authority to be one of the first of such appointed members and he shall hold office as a member from the new constitution date until 30th September 2006; and on and after the new constitution date shall be the chair of the Authority.

(3) Of the remaining first such appointed members—

(a) three shall hold office from the new constitution date until 30th September 2004;

(b) three shall hold office from the new constitution date until 30th September 2005;

(c) two shall hold office from the new constitution date until 30th September 2006;

as the Authority and Angus Council shall specify when they make the appointments for which they are respectively responsible.

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

6. A member appointed under article 4(1)(a) or (b) above (other than a member appointed under article 5 above) shall, unless appointed to fill a casual vacancy and subject to the provisions of this Order, hold office for the period of three years from 1st October next following his appointment.

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

7. No person shall be capable of acting as a member until he has made the declaration set out in Schedule 1 to this Order; 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 Authority or Angus Council shall, where reasonably practicable, be filled by the appointment of a member by the Authority or Angus Council in accordance with article 4(3) above.

(2) A member appointed to fill a casual vacancy under this article shall hold office (unless he previously dies or otherwise ceases to be a member) during the remainder of the term for which the member whom he replaces was appointed.

### **Disqualification of members**

9. If the Authority are satisfied that a member—

(a) has without the permission of the Authority been absent from meetings of the Authority—

(i) for a period during which three such meetings have been held; or

(ii) for a period of three consecutive months,  
whichever of these periods is the longer; or

(b) has had an award of sequestration made against his estate or has become bankrupt or made an arrangement with his creditors;

(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 Authority may declare his office as a member to be vacant and thereupon his office shall become vacant.

### **Indemnity insurance for members**

**10.** The Authority 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 Authority**

**11.** On and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the administrative arrangements and proceedings of the Authority in addition to those provisions of the Montrose Acts and Orders 1837 to 1974 which are in force at the date when this Order comes into force and are not repealed by this Order.

### **Borrowing powers**

**12.** The Authority 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 Authority under this article, the Authority 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.

### **Revocations**

**13.** 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 revoked to the extent specified in the third column of that Schedule.

St Andrew's House,  
Edinburgh  
21st April 2003

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

**SCHEDULES**

Article 7

**SCHEDULE 1**

**FORM OF DECLARATION BY MEMBERS**

**MONTROSE PORT AUTHORITY**

**MONTROSE HARBOUR ACTS AND ORDERS 1837 to 2003**

**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 Montrose Port Authority by virtue of the Montrose Harbour Acts and Orders 1837 to 2003;
- (2) that I have read and understood the notes 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 16 of Schedule 2 to the Montrose Port Authority Harbour Revision (Constitution) Order 2003, 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 notes;
  - (b) I will in future notify the Chief Executive of any alteration in those interests, of any new interest, such as is mentioned in those notes, which I may acquire.

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

Witnessed by the )  
 Chief Executive..... ) .....  
 as a member of the Montrose Port Authority ) (signature)

*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"*

## SCHEDULE 2

### INCIDENTAL PROVISIONS RELATING TO AUTHORITY

#### *Appointment of chair and vice-chair of Authority*

1. There shall be a chair of the Authority who shall be appointed by the Authority 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 three years.

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

5. The first vice-chair holding office after the new constitution date shall be appointed as soon as practicable after that date and, subject to paragraph 7 below, shall, unless he resigns his office as vice-chair or ceases to be a member, continue in office as vice-chair until his 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 three years.

7. If the Authority 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 Authority, the vacancy shall be filled by the Authority 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 Authority*

9.—(1) The first meeting of the Authority after the new constitution date shall be convened as soon as practicable by the Chief Executive for such date as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to each of the other members.

(2) The Authority shall meet at least once in every month.

#### *Vacation of office by members*

10. A member (other than an ex officio member referred to in article 4(1)(c) above) may resign his office at any time by notice in writing given to the chair of the Authority or, if that member is the chair, the vice-chair.

#### *Reappointment of members*

11.—(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 Authority.

(3) A chair of the Authority 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(3)(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) or (b) above.

#### *Reappointment of chair*

**12.—**(1) A chair of the Authority shall not be eligible for reappointment as the chair where, immediately before the date in question, he has served as a chair for three 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 a chair prior to the new constitution date.

#### *Committees*

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

#### *Proceedings of Authority and committees*

**14.** The acts and proceedings of the Authority, or of any committee of the Authority, 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 Authority or committee.

**15.** The quorum required for a meeting of the Authority shall be five.

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

**17.** 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 powers of the chair.

**18.** If at any meeting of the Authority 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.

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

(2) If at any meeting of the Authority or of a committee of the Authority 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.

#### *Authentication of seal and other documents*

**20.—**(1) The application of the seal of the Authority shall be authenticated by the signature of the chair of the Authority or some other member authorised by the Authority to authenticate the application of the seal, and of the Chief Executive of the Authority or some person authorised by the Authority to act in his place in that behalf.

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

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

*Remuneration of members*

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

*General*

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



**SCHEDULE 3**  
**REVOCATIONS**

<b>S.I.</b>	<b>Title</b>	<b>Extent of revocation</b>
S.I. 1991/1745	The Montrose Harbour Revision Order 1991	Article 4(1) to (7). In Article 4(8) the words “under paragraph (2), (3) or (5) above”. Article 5. Article 6.
S.I. 1999/200	The Montrose Harbour Revision Order 1999	Article 4(a) to (d).

## **EXPLANATORY NOTE**

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

This Order reconstitutes the Montrose Port Authority. It provides for the appointment of members of the Authority with experience in relevant matters, makes other provision with respect to the Authority and amends the borrowing powers of the Authority.



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(Constitution) Order 2003

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