

2003 No. 435

HARBOURS, DOCKS, PIERS AND FERRIES

The Stornoway Harbour Revision (Constitution) Order 2003

Made

10th September 2003

Coming into force

11th September 2003

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Whereas the Stornoway Pier and Harbour Commission has applied for a harbour revision order under section 14 of the Harbours Act 1964(a):

And whereas no objections to the application have been made pursuant to paragraph 10(2)(f) of Schedule 3 to the said Act:

Now, therefore, the Scottish Ministers in exercise of the powers conferred by that section and now vested in them(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 Stornoway Harbour Revision (Constitution) Order 2003 and shall come into force on 11th September 2003.

(2) The Stornoway Harbour Order Confirmation Act 1976(c), the Stornoway (Ferry Terminal) Harbour Revision Order 1995(d) and this Order may be cited together as the Stornoway Harbour Act and Orders 1976 to 2003.

Incorporation of section 60 of the Commissioners Clauses Act 1847

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

Interpretation

3. In this Order-

“the Authority” means the Stornoway Port Authority or, in respect of any period prior to the new constitution date, the Stornoway Pier and Harbour Commission;

“the new constitution date” means 1st May 2004.

Constitution of Authority

4.—(1) On and after the new constitution date, the Stornoway Pier and Harbour Commission shall be known as the Stornoway Port Authority and shall, subject to article 8 below, consist of-

- (a) two members appointed by the Authority;
- (b) two members appointed by Comhairle nan Eilean Siar;
- (c) one member appointed by the Stornoway Trust;
- (d) four members appointed or elected in April 2004 and subsequently in each third year in accordance with article 5 below; and
- (e) the Chief Executive of the Authority.

(2) Each member appointed under paragraph (1) above shall be a person who appears to the those persons making the appointment to have special knowledge, experience or ability appropriate to the

(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, 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).

(c) 1976 c.xxi.

(d) S.I. 1995/964 (S.80).

(e) 1847 c.16.

efficient, effective and economic discharge by the Authority of its 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;
- (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; and
- (o) any other skills and abilities considered from time to time by the Authority to be relevant to the discharge by them of its functions;

and the Authority, Comhairle nan Eilean Siar and the Stornoway Trust 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, effective and economic discharge by them of its functions.

(3) In making an appointment under paragraph (1) above or article 8 below, the Authority, Comhairle nan Eilean Siar and the Stornoway Trust 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.

Other members to be appointed or elected

5.—(1) The Chief Executive shall not later than 15th March 2004 and subsequently in each third year by public notice call for suitably qualified persons to apply to hold office as members from 1st May next following; and any question as to whether a person is suitably qualified for appointment or election as a member of the Authority under this article shall be determined by a panel of persons appointed by the Authority (acting in accordance with the guidance referred to in article 4(3) above) to determine that question.

(2) Each application shall be delivered to the Chief Executive not later than 31st March following the notice referred to in paragraph (1) of this article.

(3) If not more than four suitably qualified persons apply for appointment in accordance with paragraph (2) above, the Chief Executive shall by public notice declare them duly appointed.

(4) If more than four suitably qualified persons apply for appointment the Chief Executive shall give public notice of the date, time and place of an election to be held during the month of April in the same year and that notice shall be given not less than fourteen days before the date of the election.

(5) The Chief Executive shall be the preses at any election held under this article.

(6) Each eligible person at the election shall be entitled to one vote for each of the four offices of member, and in case of an equality of votes, the Chief Executive shall exercise a casting vote in addition to any deliberative vote exercised by him.

(7) At the conclusion of the election the Chief Executive shall forthwith give public notice of the result thereof.

(8) In this article–

“election” means an election held in accordance with this article;

“eligible person” means a person who at the time of an election is registered on the register for the time being of local government electors for any electoral ward situated in the Isle of Lewis;

“public notice” means a notice published once in a newspaper circulating in the Isle of Lewis or by means of notices posted in conspicuous places throughout the Isle.

Appointment and terms of office of first members

6.—(1) The first appointments under article 4(1) above shall be made on, or as soon as reasonably practicable after, 1st March 2004.

(2) The members shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above, the chairman of the Stornoway Pier and Harbour Commission 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 April 2007; and on and after the new constitution date shall be the chair of the Authority .

(3) Of the remaining first such appointed members—

- (a) the one appointed by the Stornoway Trust shall hold office from the new constitution date until 30th April 2005;
- (b) the two appointed by Comhairle nan Eilean Siar shall hold office from the new constitution date until 30th April 2006;
- (c) the two appointed by the Authority shall hold office from the new constitution date until 30th April 2007.

Terms of office of subsequent members

7. A member appointed under article 4(1)(a) to (c) above shall, unless appointed to fill a casual vacancy and subject to articles 9 and 11 of, and paragraph 12 of Schedule 2 to, this Order, hold office for the period of three years from 1st May next following his appointment.

Power to co-opt additional members

8. The members referred to in article 4(1) above and article 10 below may at any time co-opt not more than two persons to serve as members for such period not exceeding twelve months as the co-opting members may specify at the time of co-option.

Declaration to be made by members

9. 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

10.—(1) A casual vacancy arising in the office of a member appointed by the Authority, Comhairle nan Eilean Siar or the Stornoway Trust shall, unless it is not reasonably practicable to do so, be filled by the appointment of a member by the Authority, Comhairle nan Eilean Siar or the Stornoway Trust 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 9 and 11 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

11. If the Authority is satisfied that a member—

- (a) has without the permission of the Authority been absent from the 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 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 Authority may declare his office as a member to be vacant and thereupon his office shall become vacant.

Indemnity insurance for members

12. The Authority may enter into, and pay premiums for, a contract of insurance to indemnify the Authority jointly or severally against personal liability arising from any act or omission of the members of the Authority 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

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

Chief Executive of Authority

14. The secretary shall on and after the coming into force of this Order be known as the Chief Executive of the Authority and references to the secretary in any local enactment or in any document applicable to the Authority shall be construed accordingly.

Publication of Authority's annual statement of accounts

15. As soon as reasonably practicable after its annual statement of accounts is prepared, the Authority shall—

- (a) make available a copy of the statement for a period of three months at the offices of the Authority 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; and
- (b) send a copy of the statement to Comhairle nan Eilean Siar.

Borrowing powers

16. 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.

Extension of area of jurisdiction of Authority

17. Section 8 of the Stornoway Harbour Order Confirmation Act 1976 shall be amended by substituting for subsections (1) and (2) the following subsections—

“(1) The area within which the Authority shall exercise jurisdiction and within which the powers of the harbourmaster shall be exercised shall comprise—

- (a) that part of the Bay of Stornoway within the boundary—

Commencing at Rudh a' Bhaigh Uaine at latitude 58°10'31"N, longitude 6°22'34"W thence in an easterly direction to position latitude 58°10'31"N longitude 6°18'39"W thence in a northerly direction to position latitude 58°11'57"N longitude 6°18'39"W thence in a south westerly direction to Gob Shillinish at latitude 58°11'44"N longitude 6°19'05"W thence following the level of high water in a generally westerly direction (excluding Eilean nan Caorach, Eilean nan Uan, Holm Island and associated small unnamed islets) to Holm Point at latitude 58°11'21"N longitude 6°21'06"W;

thence following the level of high water in a generally northerly direction to the point at which the southern face of the embankment linking Eilean na Gothail with Inaclete Point coincides with the level of high water;

thence in a straight line to the point at which the northern face of the said embankment coincides with the level of high water;

thence in a generally north-easterly and northerly direction along the seaward face of the sea wall to its junction (at latitude 58°12'47"N longitude 6°23'12"W) with the retaining wall situated to the south of the footpath leading from Bayhead Street to the Lews Castle Policies;

thence in a westerly direction along the south face of that wall and range thereof to the sea wall on the west side of Bayhead;

thence following the level of high water in a generally southerly direction to the point of commencement;

and

(b) the harbour premises.

(2) The area described in subsection (1)(a) above is, for the purpose of identification only, shown hatched black on the plan prepared in triplicate, signed by the Head of Transport Division 4 of the Enterprise Transport and Lifelong Learning Department of the Scottish Executive and marked "Plan referred to in the Stornoway Harbour Revision (Constitution) Order 2003", two copies of which have been deposited at that Department and one copy of which has been deposited at the offices of the Authority, Amity House, Esplanade Quay, Stornoway, Isle of Lewis, HS1 2XS."

Repeals and revocations

18. 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.

St Andrew's House,
Edinburgh
10th September 2003

David M Hart
A member of the Staff of the Scottish Ministers

SCHEDULES

SCHEDULE 1

FORM OF DECLARATION BY MEMBERS

STORNOWAY PORT AUTHORITY

STORNOWAY HARBOUR ACT AND ORDERS 1976 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 Stornoway Port Authority by virtue of the Stornoway Harbour Act and Orders 1976 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 18 of Schedule 2 to the Stornoway 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, or any new interest, such as is mentioned in those notes, which I may acquire.

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

Witnessed by the Chief Executive
as a member of the Stornoway 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 those of the members who are appointed under article 4(1) or 10 above from among their number.

2. The first chair appointed under article 6(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 those of the members who are appointed under article 4(1) or 10 above 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 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 three years.

7. If those members who are appointed under article 4(1) or 10 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 Authority, the vacancy shall be filled by those members who are appointed under article 4(1)(a) to (c) or 10 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 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) Subject to subparagraph (1) above, the Authority shall meet at least six times in every year and may hold such further meetings or as the Authority thinks fit on such day and at such hour as it shall from time to time by resolution appoint.

10. The Authority may hold special meetings and the chair and the Chief Executive, or any three members, of the Authority may require the Chief Executive to call a special meeting, but a special meeting shall not be held unless one day's notice thereof is given.

11. Any order made and any resolution adopted by the Authority at any of its meetings shall not be altered or revoked unless at some meeting called for that special purpose or unless notice of the intention to propose such alteration or revocation be—

- (a) given by a member of the Authority at some previous meeting; or

(b) received by the Chief Executive from a member of the Authority in writing not less than seven days before the day on which the meeting is held; and be intimated in the card, letter or circular calling the meeting at which it is intended to propose such alteration or revocation.

Vacation of office by members

12. A member (other than the Chief Executive) 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

13.—(1) Subject to the provisions of this Schedule, a vacating member shall be eligible for reappointment as a member of the Authority unless he has been disqualified from office under article 11 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 6(3)(a) or (b) above;
- (b) the remainder of a term during which the member was appointed to fill a casual vacancy under article 10 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) to (c) above.

Reappointment of chair

14.—(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 chair for three consecutive terms.

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

- (a) a term served by the member as chair under paragraph 2 above where that term is less than 3 years;
- (b) 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
- (c) any term served by the member as chair prior to the new constitution date.

Committees

15. The Authority may, consistently with its duties and subject to such conditions as it thinks fit, delegate any of its functions (other than the functions set out in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964)(a) to a committee of the Authority.

Proceedings of Authority and committees

16. The acts and proceedings of the Authority, or of any committee of the Authority, shall not be invalidated by any vacancy in its 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.

17. The quorum required for a meeting of the Authority shall be three.

(a) 1964 c.40.

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

- (a) in any contract or proposed contract to which the Authority is 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 Authority is concerned,
- he shall declare that interest.

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

- (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—
 - (i) at any time if the Authority present by resolution require him so to do; and
 - (ii) while a decision on that contract or matter is being made.

(3) This paragraph shall not apply to any interest—

- (a) which a member has in respect of the payment to the Authority 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 of the Authority 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 Authority neither the chair nor the vice-chair are present the Authority 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 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

22.—(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

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

General

24. 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.

25. The Authority shall appoint a Chief Executive and such other persons as from time to time they think necessary or desirable for and incidental to the performance of their functions and pay to them such remuneration as the Authority thinks fit.

SCHEDULE 3
REPEALS AND REVOCATIONS

Chapter or number	Short title	Extent of repeal or revocation
1976 c.xxi	Stornoway Harbour Order Confirmation Act 1976	In section 2, the definition of “the burgh” and sections 4(3) and (5), 5, 6 and 7 and Schedule 1.
S.I. 1995/740 (S.66)	The Stornoway Harbour Revision Order 1995	The whole Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order renames and reconstitutes the Stornoway Port Authority as from 1st May 2004. It provides for the Authority to consist of a body of ten members with experience in relevant matters. Two persons will be appointed by the Authority, two by Comhairle nan Eilean Siar and one by the Stornoway Trust; and four members will be appointed to office as members by a separate process if no more than four persons apply for such appointment but, if there are more than four applicants for such office, four of their number will be elected by the registered electorate of the Isle of Lewis. The Chief Executive will also hold office as a member. Under the terms of the Order the appointed or elected members will retire in rotation.

The Order also includes other provisions with respect to the Authority's constitution including provisions for the co-option of up to two additional members and for the protection of the members from personal liability in the discharge of their functions. The Order amends the Authority's borrowing powers, amends existing statutory requirements as to the Authority's accounts, extends the Authority's area of jurisdiction and repeals or revokes certain statutory provisions.

2003 No. 435

HARBOURS, DOCKS, PIERS AND FERRIES

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