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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 5**

**The Tarbert (Loch Fyne) Harbour  
Revision (Constitution) Order 2007**

**Citation and commencement**

1.—(1) This Order may be cited as the Tarbert (Loch Fyne) Harbour Revision (Constitution) Order 2007 and shall come into force on 15th January 2007.

(2) The Pier and Harbour Order Confirmation (No.1) Act 1912 and this Order may be cited together as the Tarbert (Loch Fyne) Harbour Act and Order 1912 to 2007.

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

2. Section 60 of the Commissioners Clauses Act 1847(1) shall be incorporated with this Order.

**Interpretation**

3. In this Order—

“the appointments panel” means a panel comprising the chair or vice-chair of the Trustees, unless the chair or vice-chair is seeking re-election or re-appointment under article 5, in which case another Trustee, to be selected by the Trustees; the chair, or an appointee of the Consultation Group referred to in article 17 hereof, who is a stakeholder representative; and at least one other person appointed by the Trustees who is unconnected with and independent of the activities carried on by the Trustees under the Tarbert (Loch Fyne) Harbour Act and Order 1912 to 2007; in accordance with any guidelines issued by Scottish Ministers from time to time with respect to the exercise of such functions.

“a Trustee” means a Tarbert (Loch Fyne) Harbour Trustee;

“the Trustees” means the Tarbert (Loch Fyne) Harbour Trustees;

“the new constitution date” means 1st April 2008.

“the Tarbert electors” means those persons whose names appear on the full register(2) of voters for Wards No. 4 – North and West Kintyre (Polling District AA09 – Tarbert) and No. 5 – Knapdale (Polling District AA16 – Tarbert) of Argyll and Bute Councils Electoral Register from time to time.

**Constitution of Trustees**

4.—(1) On and after the new constitution date, the Trustees shall, subject to article 7 below, consist of—

- (a) four persons elected by the Tarbert electors after approval by the appointments panel;
- (b) three persons appointed by the appointments panel; and

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(1) 1847 c. 16.

(2) S.I.2001/497, as defined by the Representation of the People (Scotland) Regulations 2001 as inserted by regulation 5 of the Representation of the People (Scotland) (Amendment) Regulations 2002 (S.I. 2002/1872).

(c) the senior port manager referred to in paragraph 13 of Schedule 2 to this Order.

(2) Each Trustee elected under paragraph 1(a) above or appointed under paragraph 1(b) above shall be a person who appears to the appointments panel to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Trustees 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) business management;
- (b) finance;
- (c) marine civil engineering;
- (d) fishing industry;
- (e) tourism;
- (f) environmental issues;
- (g) legal services;
- (h) accountancy services;
- (i) local community interests;
- (j) marine leisure interests;
- (k) marketing;

and the appointments panel shall secure, so far as reasonably practicable, that the elected Trustees and the Trustees appointed by them will, amongst them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of their functions, and taking into account the skills, abilities, background, experience and special knowledge of the elected Trustees and the Trustees appointed by them.

(3) In giving approval under paragraph (1)(a) above or making an appointment under paragraph (1)(b) above or article 7 below, the appointments panel shall act in accordance with any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

### **Election, appointment and terms of office of first Trustees**

- (a) **5.** (2) (a) The first elections under article 4(1)(a) above shall take place on the second Tuesday of March 2008 and the Trustees elected at that election shall assume office on 1st April 2008 and shall hold office until 1st April 2011 when the Trustees elected at the next election meeting to be held on the second Tuesday of March 2011 shall come into office and so on in every third year thereafter.
  - (b) the three Trustees to be appointed under article 4(1)(b) above shall assume office on 1st April 2009 and shall hold office for three years until 1st April 2012 and those who are appointed on 1st April 2012 will hold office for three years and so on.
- (2) A timetable and procedure for election of elected Trustees shall be as follows:
- (a) the election shall be held by secret ballot between the hours and at a place in Tarbert appointed by the Trustees on the second Tuesday in March 2008 and on the second Tuesday in March in every third year thereafter and at that election the Tarbert electors shall elect the four Trustees to serve for three years from the immediately following 1st April;
  - (b) at every election the clerk not being a candidate for election shall be the chair and returning officer of the election and failing him the Trustees shall appoint some person, not being a candidate for election, to be chair and returning officer;
  - (c) the Trustees shall cause the day, hours and place of each election to be made public by a notice to be affixed to the door of the Trustees' office in Tarbert and on such other

conspicuous places as may be directed by the Trustees and also to be advertised once at least in at least one newspaper published or circulated in the district. The notice shall be posted and such advertisements placed no later than 31st December in the year prior to the election, seeking applications to be submitted to the Trustees no later than 31st January following;

- (d) on each occasion when Trustees are to be elected the Trustees will convene an appointments panel;
- (e) the appointments panel shall consider the nominations for the positions of elected Trustees, interview some or all of them as the panel sees fit, and determine which nominees are suitable for election as elected Trustees;
- (f) any two of the Tarbert electors may nominate any person to be a Trustee by sending to the clerk a nomination paper. The nomination paper shall be dated and signed by the two Tarbert electors and shall contain the full names, addresses and designations of those Tarbert electors and of the person who is nominated as a candidate. No nomination paper shall be validly accepted after 31 January immediately preceding the day of election. Public notice shall be given of the list of candidates nominated and determined to be suitable by the appointments panel by fixing the same to the door of the Trustees' office and on such other conspicuous places as the Trustees may direct. Any candidate may at any time before the day of election withdraw from the election by delivery of a notice of withdrawal signed by him and addressed to the clerk;
- (g) in the event of only four duly qualified candidates having been nominated (and remaining nominated and not having withdrawn) the chair and returning officer of the election shall without further procedure declare those candidates to be duly elected as Trustees and such declaration shall be in writing signed by the chair and returning officer and shall be conclusive evidence of the due election of those candidates;
- (h) only in the event of more than four candidates remaining nominated on the day of election will the poll be conducted by secret ballot and in that event each of the Tarbert electors shall be entitled to four votes for the offices of Trustee but in no case shall an elector be entitled to give more than one vote to any one candidate;
- (i) the four candidates for the office of Trustees having the greatest number of votes at any contested election shall be elected and in every case of equality the chair and returning officer shall have a casting vote in addition to the vote (if any) to which that person may have been entitled as an elector;
- (j) any question or dispute regarding the election of any candidate or the conduct of the secret ballot or otherwise in connection with the election process shall be summarily determined at the election by the chair and returning officer of the election whose decision shall be final;
- (k) notice of the election of any person to be a Trustee shall be sent to that person in writing by the clerk together with a notice to attend the first meeting of the Trustees to be held on or after 1st April following the election. Such notice shall state the time and place at which such meeting is to be held;
- (l) the poll at every contested election shall be taken by secret ballot in such manner as the chair and returning officer shall direct;
- (m) if at any election the number of candidates remaining nominated on election day is less than four the existing Trustees shall agree that one or more Trustees from their number (who have not been elected at the election) shall remain as Trustees for the period which would have been served by the elected Trustee or Trustees had he or they been validly nominated;

- (n) on the first occasion the four elected Trustees will hold office from 1st April 2008 until 1st April 2011 and the foregoing procedure will be repeated every three years on the basis that each group of four elected Trustees will hold office for three years;
  - (o) provided the foregoing procedure is followed it shall be permissible for an elected Trustee or elected Trustees to be re-elected, subject to the provisions at paragraph (3)(g) below.
- (3) The procedure for appointment of Trustees under article 4(1)(b) above shall be as follows:
- (a) as an interim provision and for the period from 1st April 2008 until 1st April 2009 the existing Trustees will nominate three of their number to be interim appointed Trustees to serve until 1st April 2009 along with the elected Trustees;
  - (b) the elected Trustees and the interim appointed Trustees shall elect from amongst their number a chair of Trustees;
  - (c) the Trustees shall, by advertisement affixed to the door of the Trustees' office in Tarbert and on such other conspicuous places as may be directed by the Trustees and also by notice to be advertised once at least in at least one newspaper published or circulated in the district, invite suitably qualified persons (bearing in mind the terms of article 4(1)(b) hereof) to apply to be appointed Trustees and such notices shall be posted and such advertisements placed no later than 31st December in the year prior to appointment seeking applications to be submitted to the Trustees no later than 31st January following;
  - (d) on each occasion when Trustees are to be appointed the Trustees will convene an appointments panel;
  - (e) the appointments panel shall consider the applications received for the positions of appointed Trustees, interview some or all of them as the panel sees fit, and shall, bearing in mind the provisions of Article 4(2) hereof, appoint three appointed Trustees;
  - (f) on the first occasion the three appointed Trustees will hold office from 1st April 2009 until 1st April 2012 and the foregoing procedure will be repeated every three years on the basis that each group of three appointed Trustees will hold office for three years;
  - (g) the appointments panel shall not appoint as a Trustee or select as a candidate for election or appointment a person who has served two previous terms of office after the new constitution date unless the appointments panel considers that there are exceptional circumstances to justify a further term, and in no event should such a person be selected or appointed for a fourth term. The chair of the board should also be subject to an absolute maximum of 12 years on the board in whatever capacity.

### **Terms of office of subsequent Trustees**

6. A Trustee elected under article 4(1)(a) shall, subject to articles 8 and 10 of, and paragraph 10 of Schedule 2 to this Order, hold office for the period of three years from 1st April next following his election and a Trustee appointed under article 4(1)(b) (other than a Trustee appointed under article 5(3)(a) shall, unless appointed to fill a casual vacancy and subject to articles 8 and 10 of, and paragraph 10 of Schedule 2 to this Order, hold office for the period of three years from 1st April next following his appointment.

### **Power to co-opt additional Trustees**

7. The Trustees referred to in article 4(1) above may at any time co-opt not more than 2 persons for their specific qualifications and skills to serve as Trustees for such period not exceeding 12 months as the co-opting Trustees may specify at the time of co-option.

### **Declaration to be made by Trustees**

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

### **Casual vacancies**

9.—(1) A casual vacancy arising in the office of an elected Trustee or an appointed Trustee shall, unless it is not reasonably practicable to do so, be filled by the appointment of a Trustee by the Trustees bearing in mind the provisions of articles 4(2) and (3) above.

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

### **Disqualification of Trustees**

10. If the Trustees are satisfied that a Trustee—

- (a) has without the permission of the Trustees been absent from the meetings of the Trustees—
  - (i) for a period during which three such meetings have been held; or
  - (ii) for a period of six 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 Trustee; or
- (d) is otherwise unable, unwilling or unfit to discharge the functions of a Trustee; or
- (e) has an interest in the management or running of any other harbour and whose interest in respect thereof conflicts with those of Tarbert (Loch Fyne) Harbour Authority

the Trustees may declare his office as a Trustee to be vacant and thereupon his office shall become vacant.

### **Indemnity insurance for Trustees**

11. The Trustees may enter into, and pay premiums for, a contract of insurance to indemnify the Trustees jointly or severally against personal liability arising from any act or omission of the Trustees or of any of them; not being an act or omission which the Trustee or Trustees 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 Trustees**

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

### **Publication of Trustees annual statement of accounts**

13.—(1) An annual statement of accounts will be published on or before 1st September in each year and the Trustees shall—

- (a) make available a copy of the statement for a period of twelve months at the offices of the Trustees 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 the Scottish Ministers.

(2) The Trustees shall appoint from time to time duly qualified accountants to act as auditors of the Trustees accounts.

(3) In paragraph (1) hereof the references to an annual statement of accounts shall mean an annual statement of accounts duly audited by the auditor appointed as herein before provided.

(4) Call an annual public meeting within three months of 1st September which all stakeholders may attend and discuss each item on the agenda. The notice of the public meeting will give twenty one days clear notice of the meeting and state the date, place and time of meeting. The notice of the meeting and the agenda will be printed in the local press and displayed on the local public notice board at the harbour office. Any stakeholder who wishes an item to be included in the agenda should deliver this in writing to the harbour office not later than fourteen days prior to the public meeting.

### **Borrowing powers**

**14.**—(1) Subject to paragraph (2) below, the Trustees may from time to time borrow upon the security of their assets for the time being or of their revenues or both their assets and their revenues, by any methods they see fit such sums of money as they think necessary for the purpose of meeting their obligations in carrying out their functions as harbour Trustees and any such sums of money may be secured on their assets or revenue.

(2) Monies borrowed for the purposes of maintaining the operational functioning of the harbour shall not exceed the average of the last three years' turnover of the harbour authority.

(3) Prior to entering into any additional financial borrowing for the purposes of improvements to the harbour facilities the Trustees shall:—

- (a) publish details of the improvements proposed together with a full business plan detailing how the improvements will be financed, the benefits to be accrued by the various stakeholders and the wider community;
- (b) present these improvements to the consultation group in the first instance;
- (c) take due cognisance of the views of the consultation group prior to finalising the proposals which will be presented to a public meeting specifically called for that purpose; and
- (d) prior to entering into any borrowing commitments or contractual agreements the Trustees will consider any objections or representations made to them either at the meeting or in writing within ten days of the conclusion of the meeting.

(4) For the purposes of paragraph (2) above, but without prejudice to the generality of that paragraph, purposes to which capital money is properly applicable shall be deemed to include—

- (a) the payment of any interest, falling due within five years immediately following the date of borrowing, on any sum of money borrowed by the Trustees under this article; and
- (b) the repayment, within twelve months from the date of borrowing, of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(5) The Trustees must advertise and seek competitive tenders for any contract with a value in excess of £10,000.

### **Temporary borrowing powers**

**15.** The Trustees may borrow temporarily by way of overdraft or otherwise such sums of money as the Trustees may require for the purposes of meeting their obligations in carrying out their

functions as harbour Trustees, but such sums shall not exceed £70,000 (or that sum as adjusted in accordance with paragraph 15(1) and (2)).

(1) On each anniversary of the coming into force of this Act, the sums mentioned in articles 14 (1) and 15 above, shall be adjusted in line with any movement (calculated to one decimal place) in R.P.I. which occurred during the year ended on 31st December immediately preceding the anniversary in question.

(2) Any adjustment referred to in paragraph (1) shall be recorded in the next following annual statement of accounts prepared by the Trustees. In paragraph (1) above R.P.I. means the general index of retail prices for all items published in the monthly publication of the Office for National Statistics known as “Monthly Digest of Statistics” or any successor from time to time of that index.

### **Purchase, sale and lease of property**

16.—(1) The Trustees shall have power to purchase or take on lease land or property (including buildings) within the limits as defined in section 18(1) of the 1912 Act or within other parts of the village of Tarbert or surrounding district, for the purposes of carrying out the Trustees functions as harbour Trustees, and that at such prices, upon such terms and conditions and, in the case of leases, for such periods as shall to the Trustees seem proper.

(2) The Trustees may sell land or property, (including buildings) provided such land, property, (including buildings) is not in the opinion of the Trustees required for the proper exercise of the Trustees functions as harbour Trustees or for a purpose which in the opinion of the Trustees, will benefit the village of Tarbert and the residents thereof, and that at such prices and upon such terms and conditions as shall to the Trustees seem proper. Any such transaction shall be the subject of a unanimous vote of Trustees and thereafter the proposal and the Trustees reasons therefor must be submitted to the consultation group who, on achieving a two thirds support of its membership, may recommend to the Trustees that they proceed. The Trustees will not unreasonably set aside any recommendation made.

(3) The Trustees may grant leases over parts of the land or property, (including buildings) which form part of the harbour undertaking from time to time and that for such purposes, to such parties at such rents for such terms and upon such conditions as shall to the Trustees seem proper.

### **Consultation group**

17.—(1) The Trustees shall establish a consultation group which the Trustees shall consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and its navigation.

(2) The Trustees shall make arrangements for such consultation group to meet not less than twice a year.

(3) The Trustees shall take into consideration (3) any matter, recommendation or representation which may from time to time be referred or made to them by the consultation group whether or not the consultation group has been consulted by the Trustees on the matter, recommendation or representation so referred or made.

(4) The consultation group established pursuant to this article shall consist of such number or numbers of persons appointed by the Trustees, in consultation with the consultation group, as the Trustees shall from time to time consider appropriate.

(5) Appointments to the consultation group established under this article shall be made initially by the Trustees and thereafter any properly constituted organisation who can demonstrate that they represent a grouping of stakeholders or other material stakeholder interest not already represented may apply to the consultation group for membership. Membership will not unreasonably be refused to such an organisation.

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(6) The consultation group may determine its own quorum and procedure and shall appoint a chair.

(7) An individual member of such consultation group may, on giving notice in writing to the chair of the consultation group, send a substitute to any meeting of the body.

(8) A member of the consultation group shall hold office for the period of three years from the date of his appointment and at the end of that period shall be eligible for re-appointment.

(9) A member of the consultation group may resign his office at any time by notice in writing given to the chair of the Trustees.

### **Repeals and revocations**

**18.** On the date of coming into force of this Order the enactments mentioned in the first and second columns of Schedule 3 to this Order shall be repealed or revoked to the extent specified in the third column of that Schedule.

11th January 2007

*TAVISH SCOTT*  
A member of the Scottish Executive