

2012 No. 114

HARBOURS, DOCKS, PIERS AND FERRIES

The Mallaig Harbour Revision (Constitution) Order 2012

Made - - - - *29th March 2012*

Coming into force - - *30th March 2012*

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The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964(a) and all other powers enabling Ministers to do so.

(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 definitions of “the appropriate Minister” 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).

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(a).

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

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In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

Notice has been published by the Mallaig Harbour Authority in accordance with the requirements of paragraph 10 of Schedule 3 to that Act(b).

The provisions of paragraph 17 of that Schedule(c) have been satisfied. No objections to the application have been made. In accordance with paragraph 19(2) of that Schedule(d), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

PRELIMINARY

Citation and Commencement

1.—(1) This Order may be cited as the Mallaig Harbour Revision (Constitution) Order 2012 and shall come into force on the day after the day on which it is made.

(2) The Mallaig Harbour Acts and Orders 1968 to 1995 and this Order may be cited together as the Mallaig Harbour Acts and Orders 1968 to 2012.

Interpretation

2. In this Order—

“the Authority” means the Mallaig Harbour Authority(e);

“the new constitution date” means 1st April 2012;

“a major stakeholder” means a person or body who—

- (a) is entitled to benefit from the use of the harbour by paying a commercial rate for its services; and
- (b) during a financial year pays dues to the Authority in excess of ten per centum (10%) of the gross dues earned by the Authority in that year.

(a) Schedule 2 was relevantly amended by the Transport and Works Act 1992(c.42), Schedule 3, paragraph 9.
(b) 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).
(c) Paragraph 17 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)(g).
(d) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.
(e) Mallaig Harbour Authority was constituted by the Mallaig Harbour Revision Order 1968.

CONSTITUTION

Constitution of Authority

3.—(1) From the new constitution date the Authority shall consist of nine members and these shall be—

- (a) eight members appointed by the Authority; and
- (b) the Port Manager or Senior Executive of the Authority as long as he or she remains in the employment of the Authority.

(2) Each member appointed under paragraph (1)(a) shall be a person who appears to have a special knowledge, experience or ability appropriate to the efficient and economic discharge by the Authority of its function 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) the fishing industry;
- (d) safety or personnel management;
- (e) industrial marketing or information technology;
- (f) civil engineering and environmental matters affecting harbours;
- (g) the law of Scotland;
- (h) water related leisure activities and;
- (i) any other skills and abilities considered from time to time by the Members to be relevant to the discharge by them of their functions,

and the Authority shall secure, so far as reasonable practicable, that the Members appointed 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 its functions.

(3) In making any appointment under paragraph (1)(a) above the Authority shall act in accordance with the existing guidance endorsed by the Scottish Ministers with respect to the exercise of such functions(a).

Rights of Major Stakeholders regarding appointments

4. Notwithstanding the provisions of Article 3 major stakeholders shall be invited to have considered for appointment a candidate who shall conform to the requirements of Article 3(2) and Article 3(3) above.

Appointment and terms of office of First Members

5.—(1) The first appointments under Article 3(1)(a) above shall be made before the new constitution date and of the Members so appointed—

- (a) two shall hold office from the new constitution date until 1st April 2013;
- (b) three shall hold office from the new constitution date until 1st April 2014;
- (c) three shall hold office from the new constitution date until 1st April 2015,

as the Authority shall specify when the appointments are made.

(2) Provided that such person satisfies the requirements set out in Article 3(2), the Authority shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above the chair of the Authority to be one of the first such appointed members and

(a) Guidance is issued in the publication “Modernising Trust Ports - Guide to Good Governance” published January 2000 by the Department of the Environment, Transport and the Regions.

he or she shall hold office as a member from the new constitution date until 1st April 2015 and on or after the new constitution date shall be the Chair of the Authority.

(3) Provided that such person satisfies the requirements set out in Article 3(2), the Authority shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above the Vice-Chair of the Authority to be one of the first such appointed members and he or she shall hold office as a member from the new constitution date until 1st April 2014 and on or after the new constitution date shall be the Vice-Chair of the Authority.

Terms of office of Subsequent Members

6. A member appointed under Article 3(1)(a) (other than a member appointed under Article 5 above) shall unless appointed to fill a casual vacancy and subject to provisions of this Order, hold office for the period of three years from 1st April next following that Member's appointment.

Declaration to be made by Members

7. No person shall be capable of acting as a member until having made the declaration set out in Schedule 1 to this Order, and a person shall cease to be a member who fails to make that declaration within three months of the date of their appointment.

Casual Vacancies

8.—(1) A casual vacancy arising in the office of a member appointed by the Authority shall, where reasonably practicable, be filled by the appointment of a member in accordance with article 3 above.

(2) A member appointed to fill a casual vacancy under this Article shall hold office (unless he or she 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 is 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 four such meeting have been held; or
 - (ii) for a period of four consecutive months;whichever of these periods is the longer; or
- (b) has had an award of sequestration made against their estate; 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 or her office as a member to be vacant and thereupon his or her office shall become vacant.

Indemnity Insurance For Members

10. The Authority may enter into, and pay premiums for, a contract of insurance to indemnify its Members jointly and severally against personal liability arising from any act or omission of the Members either collectively or individually; not being an act or omission which the member or Members in question knew to be a breach of duty or, concerning which, the member or Members was or were reckless as to whether it was such a breach.

Incidental provisions relating to the Authority

11. From 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 Mallaig Harbour Authority Acts and Orders 1968 to 2006 which are in force at the date when this Order comes into force and are not repealed by this Order.

Borrowing Powers

12.—(1) The Authority may from time to time borrow upon the security of its assets for the time being or of its revenues or both its assets and revenues, by any methods it sees fit such sums of money as it thinks necessary.

(2) Moneys borrowed by the Authority under this article shall be applied only to purposes to which capital money is properly applicable.

(3) 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 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 Authority 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.

Audit and Publication of Annual Statement of Accounts

13. The Authority shall have its accounts audited by a firm of registered auditors who shall present audited accounts to the Authority within six months of the end of the financial year and as soon as reasonably practicable after their annual statement of accounts is audited the Authority shall make available a copy of the statement for a period of twelve 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.

Revocations

14. On the new constitution date the Order mentioned in the first and second columns of Schedule 3 to this Order shall be repealed to the extent specified in the third column of that Schedule.

ALASTAIR WILSON

A member of the staff of the Scottish Ministers

Victoria Quay,
Edinburgh
29th March 2012

SCHEDULE 1

Article 7

FORM OF DECLARATION BY MEMBERS

MALLAIG HARBOUR AUTHORITY

MALLAIG HARBOUR ACTS AND ORDERS 1968 to 2012

DECLARATION

I, (FULL NAME) do solemnly declare

1. that I will faithfully and impartially, according to the best of my skill and judgment execute all the powers and authorities vested in me as a member of Mallaig Harbour Authority by virtue of the Mallaig Harbour Acts and Orders 1968 to 2012.

2. that I have read and understood the notes entitled “Note of 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 Mallaig Harbour Revision Order 2012, and in particular that—

- (a) I have disclosed to the Port Manager or Senior Executive details of every financial or other interest such as is mentioned in those notes;
- (b) I will in future notify the Port Manager or Senior 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 Mallaig on the

..... day of

..... (Signature)

Witnessed by the

Port Manager/Senior Executive

As a member of Mallaig Harbour Authority (Signature)

Note:— Where the declaration is to be made by the Port Manager or Senior Executive the Form shall be amended, so that for references to “Port Manager or Senior Executive”, there are substituted reference to “the Chair”.

SCHEDULE 2

Article 11

INCIDENTAL PROVISIONS RELATING TO THE TRUST

Appointment of chair and vice-chair of Authority

1. There shall be a chair of the Authority who shall be appointed by the Members from among their number.

2. The chair in office at the new constitution date shall, subject to paragraph 7 below, and unless he or she resigns his or her office as chair, or ceases to be a member, continue in office as chair until his or her 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 or she 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 Members from among their number.

5. The vice-chair holding office at the new constitution date shall, subject to paragraph 7 below, unless he or she resigns his or her office as vice-chair or ceases to be a member, continue in that office until his or her term of office has expired.

6. Subject to paragraph 7 below, every vice-chair subsequently appointed under paragraph 4 above shall, unless he or she resigns his or her office or ceases to be a member, hold office for a period of three years.

7. If the Members of the Authority are satisfied that the chair or vice-chair should cease to hold office as such, they may terminate his or her appointment as such and appoint another member to be 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 Members of 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 or she 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 or she 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 chair for such date as he or she may fix, and he or she shall make arrangements for notice of that meeting to be sent by post to each of the other members.

(2) The Authority shall meet on at least a minimum of five times during the year in accordance with an agreed schedule of meetings which shall endeavour to evenly space these meetings throughout the year.

Vacation of office by members

10. A member (other than an ex-officio member referred to in article 3(1)(b) above) may resign his or her 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.

Re-appointment of Authority

11.—(1) Subject to the provisions of this Schedule, a vacating member shall be eligible for reappointment as a member unless he or she has been disqualified from office under Article 9 above.

(2) A vacating member shall not be eligible for reappointment as a member where, immediately before that date in question, he or she has held office for three consecutive terms unless he or she is chair of the Authority.

(3) A chair of the Authority shall not be eligible for re-appointment as a member where immediately before the date in question, he or she has held office as a member for four consecutive terms.

(4) For the purpose of this paragraph “term” does not include—

- (a) a term referred to in article 5(1)(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.

Re-appointment of Chair

12.—(1) The Chair of the Authority shall not be eligible for re-appointment as the chair where immediately before the date in question, he or she has served as a chair for three consecutive terms.

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

- (a) the remainder of a term during which the member was appointed to fill a casual vacancy under article 8 above; or
- (b) any term served by the member prior to the new constitution date.

Committees

13. The Authority may, consistent with their duties and subject to such conditions as it considers fit, delegate any of their functions (other than the functions set out in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964) to a committee of the Authority.

Proceedings of Authority and committees

14. The acts and proceedings of the Authority, or 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 is, 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 or she 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 is present the members present at the meeting shall choose one of their numbers 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 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.

Remuneration of Authority

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

General

21. 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

Article 14

| <i>Reference</i> | <i>Title</i> | <i>Extent of Revocation</i> |
|------------------|---|---|
| S.I. 1968/1202 | The Mallaig Harbour Revision Order 1968 | Schedule 1, paragraphs 2 to 17 and Schedule 2 |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Mallaig Harbour Authority in line with the recommendations of the Trust Ports Review, published by the Department of the Environment, Transport and the Regions in January 2002 and endorsed by the Scottish Executive. Mallaig Harbour Authority was constituted by The Mallaig Harbour Revision Order 1968 and is a Trust Port classified as a fishery-marine work (Page 52 of The Ports Review).

The Order amends certain existing statutory requirements and revokes certain statutory provisions.

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SCOTTISH STATUTORY INSTRUMENTS

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