SCOTTISH STATUTORY INSTRUMENTS

2005 No. 276

HARBOURS, DOCKS, PIERS AND FERRIES

The Wick Harbour Revision (Constitution) Order 2005

Made - - - -	*23rd May 2005*
Coming into force - -	*24th May 2005*

Whereas the Wick Harbour Trustees have applied in writing to the Scottish Ministers for a Harbour Revision order under section 14 of the Harbours Act 1964(**1**).

Now therefore, the Scottish Ministers in exercise of the powers conferred by section 14 of the said Act(**2**), and of all other powers enabling them in that behalf, hereby make the following Order:

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Wick Harbour Revision (Constitution) Order 2005 and shall come into force on 24th May 2005.

(2) The Pulteney Harbour Act 1879, the Wick and Pulteney Harbour Order 1883, the Pulteney Harbours Act 1899, the Wick Burgh Extension Order 1902, the Wick and Pulteney Harbours Order Confirmation Act 1903, the Wick Harbour Confirmation Act 1914, the Public Works Facilities Scheme (Wick Harbour) Confirmation Act 1931 and this Order may be cited together as the Wick and Pulteney Harbour Acts and Orders 1879 to 2005.

Interpretation

2. In this Order unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively–

"the Appointing Body" has the meaning given by article 5(1) below;

"the Authority" means Wick Harbour Authority;

"the Board" means the Members of the Authority or a quorum thereof acting collectively;

"the new constitution date" means 1st July 2005;

(**1**) 1964 c. 40; section 14 was amended by the Transport Act 1982 (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 and Schedule 3, paragraphs 1 and 10.

(**2**) Section 14(7) contains a definition of "the appropriate minister" relevant to the exercise of the power 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).

"the Trust" means Wick Harbour Trust (otherwise the Wick Harbour Trustees);

"'the Trustees" means the Wick Harbour Members;

"Member" means a member of the Authority unless otherwise stated.

NAME AND CONSTITUTION

Name of Authority

3.—(1) The Wick Harbour Trustees shall continue to exist as a body corporate acting pursuant to and under the Wick and Pulteney Harbour Acts and Orders 1879 to 2005 but on and after the coming into force of this Order shall be known as "Wick Harbour Authority".

(2) The Trustees and the Chairman of the Trustees in office at the coming into force of this Order, and their successors, shall thereafter be known respectively as "Members" of the Authority and "Chairman" of the Authority.

(3) The change of names effected by paragraphs (1) and (2) of this article shall not affect the rights or obligations of any person or render defective any legal proceedings; and any reference in–

(a) any enactment; or

(b) any agreement, deed, lease, licence or other instrument,

in force or in existence immediately before the coming into force of this Order, to the Wick Harbour Trust, Wick Harbour Trustees or a Trustee of Wick Harbour shall be read as a reference to Wick Harbour Authority or, as the case may require, to a Member or to the Chairman of the Authority.

Constitution of Authority

4.—(1) On and after the new constitution date the Authority shall consist of seven Members as provided in this article.

(2) Six of the Members shall be appointed in accordance with article 5 or 6.

(3) The Harbour Master of Wick Harbour shall, by virtue of that office, be a Member.

(4) Each Member appointed under paragraph (2) 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 their 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) industrial, commercial, marketing or financial matters;

(e) water related leisure activities;

(f) navigation;

(g) safety matters affecting harbours;

(h) environmental matters affecting harbours;

(i) the law of Scotland;

(j) administration;

(k) local government and local community interest;

(l) information technology;

(m) personnel management;

(n) civil engineering,

and the Members shall secure, so far as reasonably 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 them of their functions.

Appointment and terms of office of First Members

5.—(1) For the purposes of appointing the first Members referred to in article 4(2) above, the Appointing Body means a body consisting of–

(a) a person (not being a Member) nominated by the Highland Council, the local authority in terms of the Local Government etc (Scotland) Act 1994;

(b) a person (not being a Member) nominated by Caithness and Sutherland Enterprise, a company limited by guarantee having its registered office at Cowan House, Inverness Retail & Business Park, Inverness; and

(c) a person appointed by the existing Trustees.

(2) In making any appointment under article 4(2) above the Appointing Body shall act in accordance with any guidance issued by the Scottish Ministers from time to time in respect to the exercise of such functions.

(3) The Appointing Body shall appoint the Members to be appointed by it before 1st July 2005.

(4) Of the first Members appointed by the Appointing Body–

(a) two shall hold office until 1st November 2006;

(b) two shall hold office until 1st November 2007;

(c) two shall hold office until 1st November 2008,

as the Appointing Body shall specify when they make each of those appointments.

(5) Until the new constitution date, the existing Trustees shall remain in office with the full powers and authorities as exercised under the Wick Harbour Acts 1879 to 1931, but without requirement to hold any further elections thereunder.

Terms of office of subsequent Members

6. A Member appointed under article 4(2) (other than a Member appointed under article 5 above) shall–

(a) be appointed by the Authority; and

(b) unless appointed to fill a casual vacancy and subject to provisions of this Order, hold office for the period of three years from 1st November 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 who fails to make that declaration within three months of the date of their appointment shall cease to be a Member.

Casual Vacancies

8.—(1) A casual vacancy arising in the office of a Member shall, where reasonably practicable, be filled by the appointment of a Member in accordance with article 4 above.

(2) A Member appointed to fill a casual vacancy under this article shall hold office during the remainder of the term for which the Member whom is being replaced was appointed.

Disqualification of Members

9. If the Members are satisfied that a Member–

(a) has without permission of the Members 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 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 Members may declare that Member's office as a Member to be vacant and thereupon that Member's office shall be vacant.

Indemnity Insurance for Members

10. The Members 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 their duty or, concerning which, they where reckless as to whether it was such a breach.

Incidental provisions relating to the 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 Members in addition to those provisions of the Wick and Pulteney Harbour Acts and Orders 1879 to 2005 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 Members 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 revenues, by any methods they see fit such sums of money as they think necessary.

(2) Moneys borrowed by the Members 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 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 Members 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.

Subsidiaries

13.—(1) The Authority may form and promote a wholly-owned subsidiary for carrying on any activities which the Authority has power to carry on.

(2) The Authority shall secure that any company formed in exercise of the powers conferred by paragraph (1) above remains such a wholly-owned subsidiary.

(3) The Authority may enter into arrangements with a company formed in exercise of the powers conferred by paragraph (1) above for the transfer to that company from the Authority or any other company so formed, in such manner and on such terms (including payments by any of the parties to the arrangement to any of them), as may be provided for by the arrangements, of any property, rights, liabilities or obligations of the Authority or of that other company which are relevant to the carrying on of the activities to be carried on by the first-mentioned company.

(4) In this article "wholly-owned subsidiary" has the meaning given by section 736 of the Companies Act 1985.

Audit and publication of annual statement of accounts

14. The Members shall have their accounts audited by a firm of registered auditors who shall present audited accounts to Members 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 Members 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

15. On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order shall be revoked to the extent specified.

St Andrew's House, Edinburgh
23rd May 2005

GORDON BROWN
A member of the staff of the Scottish Ministers