SCOTTISH STATUTORY INSTRUMENTS

2005 No. 133

HARBOURS, DOCKS, PIERS AND FERRIES

The Scrabster Harbour Revision (Constitution) Order 2005

Made - - - -	*1st March 2005*
Coming into force - -	*2nd March 2005*

Whereas the Scrabster Harbour Trustees have applied for a harbour revision order under section 14 of the Harbours Act 1964(**1**);

And whereas the making of this Order is not opposed;

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

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Scrabster Harbour Revision (Constitution) Order 2005 and shall come into force on 2nd March 2005.

(2) The Scrabster Acts and Orders 1841 to 2000 and this Order may be cited together as the Scrabster Harbour Acts and Orders 1841 to 2005.

Interpretation

2. In this Order—

"Act of 1841" means the Act for making and maintaining a Harbour at Scrabster Roads in the Bay of Thurso and County of Caithness, and Road thereto(**3**);

"application date" means a date eight weeks before the Annual General Meeting of the Trust;

"Board" has the meaning given to it by article 3(1);

(**1**) 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, paragraph 1.
(**2**) 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)
(**3**) 1841 c. 1.

"Clerk" means the Clerk to the Board, who shall also serve as Clerk to the Trust Body;

"executive member" means a person referred to in article 3(1)(d);

"first application date" means a date eight weeks before the new constitution date;

"household" means the occupiers of any residential dwelling house situated along the A9 trunk road to the east of and including the Old Post Office buildings at Scrabster;

"loan stock holder" means the lawful holder for the time being of—

(a) an assignment or assignments issued by the Trustees under section 41 of the Act of 1841 in respect, in aggregate, of not less than £100; or

(b) any loan stock having a nominal value of not less than £100 issued by the Trustees or the Board pursuant to any other enactment and designated by the Trustees or the Board upon issue as loan stock to which this definition refers;

"Management Trustees" means persons who were Trustees of the harbour as members of the Management Committee under the Scrabster Acts and Orders 1841 to 2000;

"the new constitution date" means the date of the first Annual General Meeting of the Trust that occurs more than three months after the date of coming into force of this order,

"non-executive member" means a person referred to in article 3(1)(a), 3(1)(b) or 3(1)(c);

"Preses" has the meaning given to it by article 12(6);

"Scrabster Harbour Trust Management Committee" means the body managing the trust at the date of coming into force of this order;

"senior port manager" means one of the following: the manager or harbour master or such other senior member of staff as may be appointed by the Board and designated as such from time to time;

"Trust" means Scrabster Harbour Trust;

"Trust Body" means the Scrabster Harbour Trust Body established under article 11; and

"Trustees" means the Trustees of Scrabster Harbour Trust acting under the Scrabster Acts and Orders 1841 to 2000.

PART II

THE BOARD

Constitution of Board

3.—(1) On and after the new constitution date Scrabster Harbour Trust shall be managed by a Board consisting of—

(a) two persons appointed in 2005 and every third year thereafter;

(b) two persons appointed in 2006 and every third year thereafter;

(c) two persons appointed in 2007 and every third year thereafter;

(d) a maximum of two further persons who are senior port managers and are co-opted by resolution of the other Board members.

(2) The term of office of non-executive members shall be three years.

Application procedure

4.—(1) The Board shall set a deadline for the receipt of applications, which the Clerk shall cause to be advertised in at least one newspaper published or circulated in Scrabster not less than fourteen days prior to the deadline.

(2) All persons seeking appointment as non-executive members shall lodge an application form with the Clerk by the application date.

(3) The application form shall contain the following information—

(a) the name, address and date of birth of the applicant;

(b) an indication of any pecuniary or non-pecuniary interests;

(c) such biographical information as the applicant sees fit to supply;

(d) a declaration of interests as set out in Schedule 1; and

(e) such other information as the Board may require.

Interviews and selection

5.—(1) There shall be an appointing body consisting of the following three persons none of whom shall have made an application under article 4—

(a) the Chairman of the Board, unless the Chairman has made an application under article 4, in which case another Board member nominated by the Board;

(b) a member of the Trust Body nominated by the Board; and

(c) a person independent of the Trust nominated by the Board in line with guidance issued or endorsed by Scottish Ministers.

(2) The appointing body shall meet as soon as practicable after the application date to consider the applications made under article 4.

(3) The appointing body shall interview applicants as it sees fit.

(4) The appointing body shall decide which persons who have applied under article 4, being no more than two in number, shall be submitted to the annual general meeting of the Trust, which shall decide whether to endorse the appointments.

(5) At its first meeting following the annual general meeting of the Trust, the Board shall appoint to be Board members such persons submitted by the appointing body under paragraph (4) as it sees fit, having regard to the decision of the Trust Body under that paragraph.

(6) The appointing body shall have particular regard to the following considerations when making decisions under paragraph (4)—

(a) the special knowledge, experience or ability of applicants to contribute to the efficient and economic discharge by the Board of its functions;

(b) the special knowledge, experience or ability of applicants in one or more of the following matters—

(i) management of harbours;

(ii) shipping or other forms of transport;

(iii) the fishing industry;

(iv) sailing and other water-related leisure activities;

(v) navigation;

(vi) industrial, commercial or financial matters;

(vii) administration;

(viii) the law relating to Scotland;

(ix) safety;

(x) personnel management;

(xi) environmental matters affecting harbours; and

(xii) any other skills and matters considered relevant from time to time by the Board to the discharge by it of its functions;

(c) any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions; and

(d) without prejudice to the generality of paragraph (c), guidance that the Board members shall not normally be eligible for re-appointment who have already served three terms, or in the case of the Chairman of the Board, four terms.

(7) Each Board member shall renew the declaration of interests as set out in Schedule 1 annually following initial appointment.

Co-option and casual vacancies

6.—(1) The Board members referred to in article 3(1) above and paragraph (2) below may at any time co-opt not more than three persons to serve as Board members for such period not exceeding twelve months as the co-opting members may specify at the time of co-option.

(2) Subject to the provisions of paragraph (3), if a Board member refuses to accept office or that office is declared vacant, or dies or resigns, or ceases to be qualified, or if the Board appoints fewer than two applicants as Board members, the resulting vacancy or vacancies shall be filled in manner following—

(a) the Board shall fill each vacancy by co-opting as a Board member any person duly qualified in accordance with the provisions of this order, and the Board member so substituted shall continue in office for the period that the person in whose place the co-opted Board member is appointed would in the ordinary course have continued in office;

(b) at the end of such period the co-opted Board member shall go out of office but shall be eligible for re-appointment if still qualified and an application under article 4(2) is made.

(3) Any casual vacancy occurring four months or less before the end of the vacating Board member's normal term of office may, at the discretion of the remaining Board members, be left unfilled for the remainder of that term of office.

Termination of office

7.—(1) If the Board is satisfied that a Board member—

(a) has without the permission of the Board been absent from Board meetings during a period when three such meetings have been held;

(b) has become bankrupt or has made an arrangement with the creditors of the Board member;

(c) has made an untrue or incomplete declaration of interests; or

(d) is incapacitated by physical or mental illness from discharging the functions of a Board member;

the Board may declare the office of such a member vacant and thereupon the office shall become vacant.

(2) Any Board member may resign office at any time upon giving the Board not less than three weeks' written notice of such intention.

Declaration of interests

8. No Board member shall take part in any debate or vote on any matter in which that member has a personal, financial or other significant involvement; and at the start of any proceedings on such a matter such a member shall declare the interest and withdraw from the debate or vote.

Incidental provisions relating to Board

9. From the date of first appointments to the Board by the appointing body the provisions of Schedule 2 to this Order shall have effect with respect to the Board and its members.

Transitional provisions

10.—(1) The nine members of the Sub-Committee of the Scrabster Harbour Trust Management Committee operating as the Board of Management shall become the members of the Board upon the coming into force of this Order.

(2) On the new constitution date, all powers and duties of the Trustees shall vest in the Board except those given to the Trust Body by article 12, all assets and liabilities of the Trustees shall vest in the Trust, and the Trustees are extinguished, but the body corporate established by the Act of 1841 remains as a body corporate with perpetual succession.

(3) At the first meeting of the Board after the coming into force of this Order, it shall decide—

(a) which two of its non-executive members shall retire when the first set of appointments is made to the Board under this Order; and

(b) which two of its non-executive members shall retire when the second set of appointments is made to the Board under this Order.

(4) The remaining three Board non-executive members shall retire when the third set of appointments is made to the Board under this Order.

(5) The requirements of article 5(6)(d) shall not apply to any arrangement made under paragraphs (3) and (4) of this article.

(6) Section 43 of the 1841 Act shall continue to apply to any claim arising from a contract entered into before the date of coming into force of this Order.

PART III

THE TRUST BODY

Constitution of Trust Body

11.—(1) On and after the first application date there shall be a Trust Body consisting of—

(a) those persons who are, at that date, loan stock holders;

(b) those persons who are former Management Trustees;

(c) those persons who were appointed under article 5(5) or 10(1) of this Order and who no longer hold such office and whose office was not terminated under article 7(1);

(d) one person nominated by each household;

(e) two persons nominated by Highland Council;

(f) two persons nominated by the Caithness Chamber of Commerce;

(g) three persons nominated by the Wick and Scrabster Fish Traders Association;

(h) three persons nominated by the Caithness Fish Salesmen Association;