SCOTTISH STATUTORY INSTRUMENTS

2005 No. 132

HARBOURS, DOCKS, PIERS AND FERRIES

The Ullapool Harbour Revision (Constitution) Order 2005

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

Whereas the Ullapool 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:—

Citation and commencement

1.—(1) This Order may be cited as the Ullapool Harbour Revision (Constitution) Order 2005 and shall come into force on the day after it is made.

(2) The Ullapool Pier and Harbour Orders 1911 to 1986 and this Order may be cited together as the Ullapool Pier and Harbour Orders 1911 to 2005.

Interpretation

2. In this Order—

"1911 Act" means the Pier and Harbour Order Confirmation (No. 4) Act 1911 (c. clxxxvi);

"application date" means the deadline set by the appointing body under article 4(3);

"appointing body" has the meaning given to it by article 5(1);

"Convenor" means the Convenor of Trustees elected according to paragraph 1 of Schedule 2;

"Elective Trustees" are the Trustees elected under article 4(2)(c) of the Ullapool Harbour Order Confirmation Act 1984 (c. iii);

"elector" means a person on the electoral register and entitled to vote at any election of members of the Lochbroom Community Council as a resident in the electoral area;

(**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).

"the electoral area" means so much of the area of the Lochbroom Community Council as constituted at the commencement of this Order as—

(i) in Ward A lies south of the river Kanaird extended by an imaginary straight line drawn due east from the waterfalls at National Grid reference NC 211 028 to the boundary of the said area;

(ii) in Ward B lies north of an imaginary line drawn straight from Cailleach Head to Loch and Fhiona at National Grid reference NH 164 850 and thence straight due east to the boundary of the said area;

"new constitution date" means the first day of December 2006;

"returning officer" means the officer appointed by the Trustees to act as such under article 4(2);

"Trustees" means the Trustees of Ullapool Harbour acting under the Ullapool Pier and Harbour Orders 1911 to 1986 or this Order as appropriate, and "Trustee" shall be construed accordingly; and

"Ullapool Harbour" means the harbour of Ullapool in the parish of Lochbroom under the management and control of the Trustees.

Constitution of Trustees

3.—(1) On and after the new constitution date the Trustees shall consist of—

(a) four persons elected in 2005 and every third year thereafter;

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

(c) the harbour master, by virtue of that office.

(2) The term of office of Trustees other than the harbour master shall commence on 1st December in the year of election or appointment and shall be for three years.

Application procedure

4.—(1) This article and articles 5 and 6 shall govern the procedure for Trustees to be elected according to article 3(1)(a) and appointed according to article 3(1)(b).

(2) In a year in which elections or appointments under article 3 are to take place, the Trustees shall appoint a returning officer, who may not seek election or appointment that year.

(3) The deadline for the receipt of applications shall be 30th September, which the returning officer shall cause to be advertised in at least one newspaper published or circulating in Ullapool not less than fourteen days beforehand.

(4) All persons seeking election or appointment as Trustees shall lodge an application form with the returning officer by the application date.

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

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

(b) a completed form of declaration of any pecuniary or non-pecuniary interests as set out in Schedule 1; and

(c) such other information as the Trustees 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 Convenor, unless the Convenor has made an application under article 4, in which case another Trustee nominated by the Trustees;

(b) a person who is not a Trustee who is nominated by the Trustees and considered by them to be representative of persons with an interest in Ullapool Harbour; and

(c) a person with no connection with Ullapool Harbour nominated by the Trustees in line with guidance in relation to such appointments 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—

(a) in a year in which Trustees are to be elected according to article 3(1)(a), which persons who have applied under article 4 shall be candidates in an election; and

(b) in a year in which Trustees are to be appointed according to article 3(1)(b), which persons who have applied under article 4 shall be appointed as Trustees.

(5) The appointing body shall have 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 Trustees of their functions;

(b) the special knowledge and experience of applicants of Ullapool Harbour and the practicalities of attendance at meetings and participation in the running of the harbour;

(c) 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;

(xii) any other skills and matters considered relevant from time to time by the Trustees to the discharge by them of their functions;

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

(e) where not inconsistent with this Order, any guidance issued by the Commissioner for Public Appointments in Scotland.

(6) The appointing body shall not appoint as Trustee or select as a candidate for election a person who has served two previous terms of office after the new constitution date unless the appointing body 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.

Election procedure

6.—(1) If, in a year in which Trustees are to be elected according to article 3(1)(a), four or fewer candidates are chosen by the appointing body, then those persons shall be deemed elected as Trustees.

(2) If in such a year more than four candidates are chosen by the appointing body, then the returning officer shall arrange for a poll to be taken and each of the electors shall be entitled to four votes for offices of Trustee but in no case shall an elector be entitled to give more than one vote to any one candidate.

(3) The poll shall be taken in such manner, whether by postal vote or by ballot in a meeting convened by the returning officer by public notice for that purpose, as the Trustees may by resolution from time to time determine.

(4) The four candidates receiving the highest number of votes shall be deemed elected as Trustees, and in the case of an equality of votes, the choice shall be made by the drawing of lots by the returning officer.

Casual vacancies

7. If a Trustee refuses to accept office, or dies or resigns, or ceases to be qualified or becomes incapable of acting, or if the appointing body selects fewer applicants to become Trustees than there are vacancies, the resulting vacancy or vacancies may be filled in the following manner—

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

(b) at the end of such period the co-opted Trustee shall go out of office but shall be eligible for re-appointment if qualified.

Termination of office

8.—(1) If the Trustees are satisfied that a Trustee—

(a) has, without the permission of the Trustees, been absent from three consecutive meetings;

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

(c) is incapacitated by physical or mental illness from discharging the functions of a Trustee;

the Trustees may declare the office of such a person vacant and thereupon the office shall become vacant.

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

Declaration of interests

9.—(1) Subject to paragraph (2), if a Trustee has a personal, financial or other significant involvement in any matter that is to be debated by the Trustees, then that Trustee shall declare the interest and offer to withdraw from the debate and any subsequent vote on the matter, to be voted on by the other Trustees.

(2) The following shall not constitute a personal, financial or other significant involvement for the purposes of paragraph (1)—

(a) the payment of harbour dues,

(b) interests as a shareholder owning less than five percent of the share capital, or as a director, of a public utility undertaking, and

(c) interests that affect the harbour in general.

Incidental provisions relating to Trustees

10. From 1st December 2005, the provisions of Schedule 2 to this Order shall have effect with respect to the Trustees.

Transitional provisions

11.—(1) On the date of coming into force of this order, the existing Trustees shall continue in office as Trustees.

(2) All powers and duties of the Trustees prior to the date of coming into force of this order shall continue to vest in the Trustees after the date of coming into force of this order.

(3) At the first meeting of the Trustees after the coming into force of this Order, they shall decide which four Elective Trustees shall retire on 1st December 2005.

(4) On 1st December 2005—

(a) the factor or agent of the estate of Ullapool shall cease to be a Trustee;

(b) the Trustee appointed by the Scottish Fishermen's Federation shall cease to be a Trustee;

(c) the four Elective Trustees selected under paragraph (3) shall cease to be Trustees; and

(d) the harbour master shall become a Trustee.

(5) The remaining three Elective Trustees shall retire on 1st December 2006.

(6) Retiring Elective Trustees shall be free to apply for appointments and elections under this Order, and terms of office held before the new constitution date shall be taken into account for the purposes of calculating the maximum number of terms of office under article 5(6).

Statement of accounts

12. As soon as reasonably practicable after their annual statement of accounts is prepared, the Trustees shall—

(a) make a copy of it available, for a period of three months from the date of the preparation, 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.

Indemnity insurance

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

Annual increase in borrowing limit

14.—(1) On 1st December each year the Trustees shall adjust their borrowing limit in line with any movement (calculated to one decimal place) in RPI which occurred during the year ended on 31st October immediately preceding the anniversary in question.

(2) Any adjustment made under paragraph (1) above shall be recorded in the next annual statement of accounts prepared by the Trustees.