SCOTTISH STATUTORY INSTRUMENTS

2004 No. 421

HARBOURS, DOCKS, PIERS AND FERRIES

The Dunbar Harbour Revision (Transfer) Order 2004

Made - - - -	*29th September 2004*
Coming into force - -	*30th September 2004*

Whereas East Lothian Council have applied for a Harbour Revision Order under section 14 of the Harbours Act 1964(**1**):

And whereas no objections to the application have been made pursuant to paragraph 3(2)(a) of Schedule 3 to the said Act:

Now, therefore, the Scottish Ministers, 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. This Order may be cited as the Dunbar Harbour Revision (Transfer) Order 2004 and shall come into force on 30th September 2004.

Interpretation

2. In this Order–

"application date" means the date by which applications must be lodged with the Chair under article 9(1) and shall be such date as the trustees decide in the month of September;

"appointing body" has the meaning given by article 10(1);

"the council" means East Lothian Council;

"the harbour" means the area of land known as Dunbar Harbour as defined in Schedule 1;

"sheriff" means the sheriff principal of the sheriffdom of Lothian and Borders and includes any sheriff sitting in the sheriff court district of Haddington;

(**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. The functions of the Minister under this section transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

"the transfer date" means the date upon which this Order shall come into force;

"the Trust" means the Dunbar Harbour Trust; and

"the trustees" means the trustees of the Trust holding office under this Order.

PART II

ESTABLISHMENT OF TRUST

Constitution of Trust

3.—(1) On and after the transfer date, there shall be established a Dunbar Harbour Trust consisting of twelve trustees for the purposes of–

(a) operating the harbour for the benefit of all its stakeholders including both port users and the local community;

(b) maintaining and improving the harbour facilities;

(c) attracting new uses of the harbour and new business to the harbour;

(d) advancing public education concerning the harbour; and

(e) providing facilities in the interest of social welfare for recreation and leisure-time occupation.

(2) Four trustees shall be appointed each year.

(3) All trustees shall hold office for a term of three years, and no trustee shall serve for more than four terms.

Powers of Trust

4.—(1) The Trust may enter into contracts or agreements with any other person and may employ such officers and staff as they consider necessary or desirable.

(2) The Trust may provide, maintain and operate–

(a) port and harbour services and facilities;

(b) services and facilities for warehousing;

(c) services and facilities for consignment or storage of goods on routes which include the harbour premises, and all services ancillary thereto.

(3) The Trust may construct, maintain, alter, renew or extend any works in the harbour and may dredge the harbour, or may on such terms and conditions as they think fit authorise any person to do so.

(4) The Trust may acquire by agreement any land required for their purposes, and may dispose of land belonging to them in such manner and upon such conditions as they think fit.

(5) The Trust may construct, purchase, contract for or hire, maintain, use, let, sell or dispose of–

(a) vessels, including tugs for the use and accommodation of vessels;

(b) machinery;

(c) vehicles; and

(d) equipment.

(6) The Trust may demand, take and recover such reasonable charges for services and facilities provided by them as they may from time to time determine.

(7) The Trust may demand, take and recover in respect of any floating plant or equipment that is not a ship as defined by section 57(1) of the Harbours Act 1964 (c. 40), entering or leaving the harbour such charge as they think fit and the provisions of sections 30, 31, 32 and 40 of the said Act shall with any necessary modifications apply to the charges which may be demanded under this paragraph as they apply to ship, passenger and goods dues.

(8) The Trust may make byelaws.

(9) Without prejudice to the responsibility of the master of any vessel, the Trust may issue directions, whether general or specific, in respect of all vessels or a specified class of vessels within the harbour or any part thereof, and may amend or revoke the same, for the purpose of–

(a) ensuring the safety of vessels in the harbour;

(b) preventing injury to persons or property in the harbour; or

(c) securing the efficient management and regulation of the harbour.

(10) The making, amendment or revocation of such directions shall as soon as practicable be published once in Lloyd's List or some other newspaper specialising in shipping news, and the making, amendment or revocation of general directions shall be subject to consultation with the General Council of British Shipping.

(11) The Trust may borrow upon the security of their assets for the time being and of the revenues of the Trust, by any methods they see fit such sums of money as they think necessary not exceeding in the aggregate ten million pounds.

Duties of Trust

5. The Trust shall at all times–

(a) hold, maintain and manage the harbour;

(b) ensure access to and departure from the harbour where reasonably practicable; and

(c) preserve existing public rights of way within the harbour where reasonably practicable.

Transfer of harbour

6. Subject to the provisions of this Order the harbour presently held and maintained by the council is transferred to the Trust as from the transfer date.

Transfer of powers, rights and liabilities

7.—(1) All powers, rights and liabilities in relation to the harbour or part of the harbour enjoyed by or falling upon the council are transferred to and shall vest in the Trust as from the transfer date.

(2) Without prejudice to the scope of paragraph (1), all powers contained in the Act for the Amendment and Continuation of the Burgh Customs, and Water, Shore, and Harbour Rates of the Burgh of Dunbar, and for other Purposes connected with the said Burgh, and the Supply of Water to the same and the Harbour thereof (11 & 12 Vict. cxxii) and the Pier and Harbour Orders Confirmation Act 1886 (50 Vict. ix) are vested in the Trust as from the transfer date.

Harbour authority

8. The Trust shall be the harbour authority for the Harbour within the meaning of the Harbours Act 1964 (c. 40) and shall have all the functions and duties of a harbour authority under that Act.

PART III

CONSTITUTION OF TRUST

Application procedure

9.—(1) Not less than 21 clear days prior to the application date in every year the Chair shall by notice posted on a board outside the harbour office and published by insertion at least once in a newspaper circulating in the council area, intimate that there are four vacancies for trustees.

(2) All persons seeking appointment under article 9(1) shall lodge an application form with the Chair by the application date.

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

(a) the name and address of the applicant;

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

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

Interviews and selection

10.—(1) There shall be an appointing body consisting of the following three persons, none of whom shall have made an application under article 9:

(a) the Chair of trustees unless the Chair has made an application under article 9, in which case another trustee nominated by the trustees;

(b) a person who is not a trustee, who shall be nominated by the trustees and considered to represent the interests of one or more groups of persons interested in Dunbar Harbour; and

(c) the chief executive of the council or the nominee of the chief executive.

(2) The appointing body shall meet as soon as practicable after the application date to consider the applications made under article 9.

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

(4) The appointing body shall select up to four of the persons who have applied under article 9 to be appointed as trustees.

(5) 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 trustees of their 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;

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

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

Failure, postponement, etc. of appointment

11.—(1) In the case of the failure or partial failure at any time to fill any vacancy under the in terms of this Order, the trustees may fill up such a vacancy.

(2) For the avoidance of doubt, if the appointing body selects a number of persons to be appointed as trustees that is fewer than the number of vacancies, then the appointment of the remaining number shall be deemed to have failed.

(3) In the event of circumstances arising in connection with any appointment procedure authorised by this Order which may render it necessary or expedient to fix, postpone, alter, vary or dispense with any date or procedure described by or in pursuance of the provisions of this Order or any other matter arising under it, the sheriff may on a petition by the trustees or the Chair forthwith fix, postpone, alter, vary or dispense with any such date, procedure or other matter in such manner as may in the judgment of the sheriff be best fitted to meet the circumstances of the case and the sheriff's determination shall be final.

Casual vacancies

12. If a trustee refuses to accept office, or dies or resigns, or ceases to be qualified or becomes incapable of acting, at the discretion of the trustees the resulting vacancy shall either be left vacant or shall be filled in manner following:–

(a) the trustees shall fill the 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 would in the ordinary course have continued in office;

(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.

Transitional provisions

13.—(1) Upon the coming into force of this order, the twelve board members of the Dunbar Harbour Trust Association shall become trustees.

(2) At their first meeting after the coming into force of this order, the trustees shall decide–

(a) four of their number who shall go out of office when the trustees are appointed according to article 10(4) in 2004, and those trustees shall duly go out of office on that date; and

(b) four of their number who shall go out of office when the trustees are appointed according to article 10(4) in 2005, and those trustees shall duly go out of office on that date.

(3) The remaining trustees shall go out of office when the trustees appointed according to article 10(4) in 2006.

(4) The appointing body for 2004 shall be appointed by the council and shall consist of:–

(a) two persons who are considered to represent the interests of one or more groups of persons interested in Dunbar Harbour; and