SCOTTISH STATUTORY INSTRUMENTS

2003 No. 435

HARBOURS, DOCKS, PIERS AND FERRIES

The Stornoway Harbour Revision (Constitution) Order 2003

Made - - - -	*10th September 2003*
Coming into force - -	*11th September 2003*

Whereas the Stornoway Pier and Harbour Commission has 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 10(2)(f) of Schedule 3 to the said Act:

Now, therefore, the Scottish Ministers in exercise of the powers conferred by that section and now vested in them(**2**), 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 Stornoway Harbour Revision (Constitution) Order 2003 and shall come into force on 11th September 2003.

(2) The Stornoway Harbour Order Confirmation Act 1976(**3**), the Stornoway (Ferry Terminal) Harbour Revision Order 1995(**4**) and this Order may be cited together as the Stornoway Harbour Act and Orders 1976 to 2003.

Incorporation of section 60 of the Commissioners Clauses Act 1847

2. Section 60 of the Commissioners Clauses Act 1847(**5**) shall be incorporated with this Order.

Interpretation

3. In this Order–

(**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, paragraphs 1 and 10.
(**2**) Section 14(7) contains a definition of "the appropriate Minister" relevant to the exercise of the powers 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).
(**3**) 1976 c.xxi.
(**4**) S.I. 1995/964 (S.80).
(**5**) 1847 c. 16.

"the Authority" means the Stornoway Port Authority or, in respect of any period prior to the new constitution date, the Stornoway Pier and Harbour Commission;

"the new constitution date" means 1st May 2004.

Constitution of Authority

4.—(1) On and after the new constitution date, the Stornoway Pier and Harbour Commission shall be known as the Stornoway Port Authority and shall, subject to article 8 below, consist of–

(a) two members appointed by the Authority;

(b) two members appointed by Comhairle nan Eilean Siar;

(c) one member appointed by the Stornoway Trust;

(d) four members appointed or elected in April 2004 and subsequently in each third year in accordance with article 5 below; and

(e) the Chief Executive of the Authority.

(2) Each member appointed under paragraph (1) above shall be a person who appears to the those persons making the appointment to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Authority of its functions 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) usage of port facilities;

(d) industrial, commercial and financial matters including, in particular, but without prejudice to the foregoing, matters relating to the oil industry;

(e) administration;

(f) the organisation of employees;

(g) the fishing industry;

(h) financial management;

(i) the laws relating to Scotland;

(j) safety management;

(k) commercial marketing;

(l) information technology;

(m) environmental matters affecting harbours;

(n) civil engineering; and

(o) any other skills and abilities considered from time to time by the Authority to be relevant to the discharge by them of its functions;

and the Authority, Comhairle nan Eilean Siar and the Stornoway Trust respectively shall secure, so far as reasonably practicable, that the members appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of its functions.

(3) In making an appointment under paragraph (1) above or article 8 below, the Authority, Comhairle nan Eilean Siar and the Stornoway Trust respectively shall act in accordance with any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

Other members to be appointed or elected

5.—(1) The Chief Executive shall not later than 15th March 2004 and subsequently in each third year by public notice call for suitably qualified persons to apply to hold office as members from 1st May next following; and any question as to whether a person is suitably qualified for appointment or election as a member of the Authority under this article shall be determined by a panel of persons appointed by the Authority (acting in accordance with the guidance referred to in article 4(3) above) to determine that question.

(2) Each application shall be delivered to the Chief Executive not later than 31st March following the notice referred to in paragraph (1) of this article.

(3) If not more than four suitably qualified persons apply for appointment in accordance with paragraph (2) above, the Chief Executive shall by public notice declare them duly appointed.

(4) If more than four suitably qualified persons apply for appointment the Chief Executive shall give public notice of the date, time and place of an election to be held during the month of April in the same year and that notice shall be given not less than fourteen days before the date of the election.

(5) The Chief Executive shall be the preses at any election held under this article.

(6) Each eligible person at the election shall be entitled to one vote for each of the four offices of member, and in case of an equality of votes, the Chief Executive shall exercise a casting vote in addition to any deliberative vote exercised by him.

(7) At the conclusion of the election the Chief Executive shall forthwith give public notice of the result thereof.

(8) In this article–

"election" means an election held in accordance with this article;

"eligible person" means a person who at the time of an election is registered on the register for the time being of local government electors for any electoral ward situated in the Isle of Lewis;

"public notice" means a notice published once in a newspaper circulating in the Isle of Lewis or by means of notices posted in conspicuous places throughout the Isle.

Appointment and terms of office of first members

6.—(1) The first appointments under article 4(1) above shall be made on, or as soon as reasonably practicable after, 1st March 2004.

(2) The members shall appoint the person who is, at the date when they make the first appointments under paragraph (1) above, the chairman of the Stornoway Pier and Harbour Commission to be one of the first of such appointed members and he shall hold office as a member from the new constitution date until 30th April 2007; and on and after the new constitution date shall be the chair of the Authority .

(3) Of the remaining first such appointed members–

(a) the one appointed by the Stornoway Trust shall hold office from the new constitution date until 30th April 2005;

(b) the two appointed by Comhairle nan Eilean Siar shall hold office from the new constitution date until 30th April 2006;

(c) the two appointed by the Authority shall hold office from the new constitution date until 30th April 2007.

Terms of office of subsequent members

7. A member appointed under article 4(1)(a) to (c) above shall, unless appointed to fill a casual vacancy and subject to articles 9 and 11 of, and paragraph 12 of Schedule 2 to, this Order, hold office for the period of three years from 1st May next following his appointment.

Power to co-opt additional members

8. The members referred to in article 4(1) above and article 10 below may at any time co-opt not more than two persons to serve as members for such period not exceeding twelve months as the co-opting members may specify at the time of co-option.

Declaration to be made by members

9. No person shall act as a member until he has made the declaration set out in Schedule 1 to this Order (or a declaration to that effect); and a person shall cease to be a member if he fails to make that declaration within three months of the date of his appointment.

Casual vacancies

10.—(1) A casual vacancy arising in the office of a member appointed by the Authority, Comhairle nan Eilean Siar or the Stornoway Trust shall, unless it is not reasonably practicable to do so, be filled by the appointment of a member by the Authority, Comhairle nan Eilean Siar or the Stornoway Trust in accordance with article 4(2) and (3) above.

(2) A member appointed to fill a casual vacancy under this article shall, subject to articles 9 and 11 of, and paragraph 12 of Schedule 2 to, this Order, hold office during the remainder of the term for which the member whom he replaces was appointed.

Disqualification of members

11. If the Authority is satisfied that a member–

(a) has without the permission of the Authority been absent from the 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 become bankrupt or made an arrangement with his creditors; 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 office as a member to be vacant and thereupon his office shall become vacant.

Indemnity insurance for members

12. The Authority may enter into, and pay premiums for, a contract of insurance to indemnify the Authority jointly or severally against personal liability arising from any act or omission of the members of the Authority or of any of them; not being an act or omission which the member or members in question knew to be a breach of his or their duty or, concerning which, he or they were reckless as to whether it was such a breach.

Incidental provisions relating to Authority

13. On and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the Authority.

Chief Executive of Authority

14. The secretary shall on and after the coming into force of this Order be known as the Chief Executive of the Authority and references to the secretary in any local enactment or in any document applicable to the Authority shall be construed accordingly.

Publication of Authority's annual statement of accounts

15. As soon as reasonably practicable after its annual statement of accounts is prepared, the Authority shall–

(a) make available a copy of the statement for a period of three 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; and

(b) send a copy of the statement to Comhairle nan Eilean Siar.

Borrowing powers

16. The Authority may from time to time borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions; and where moneys are borrowed by the Authority under this article, the Authority may, if they see fit, borrow those moneys upon the security of their assets for the time being or of their revenues or of both their assets and their revenues.

Extension of area of jurisdiction of Authority

17. Section 8 of the Stornoway Harbour Order Confirmation Act 1976 shall be amended by substituting for subsections (1) and (2) the following subsections–

"(1) The area within which the Authority shall exercise jurisdiction and within which the powers of the harbourmaster shall be exercised shall comprise–

(a) that part of the Bay of Stornoway within the boundary–

Commencing at Rudh a' Bhaigh Uaine at latitude 58°10−31'N, longitude 6°22−34'W thence in an easterly direction to position latitude 58°10−31'N longitude 6°18−39'W thence in a northerly direction to position latitude 58°11−57'N longitude 6°18−39'W thence in a south westerly direction to Gob Shilldinish at latitude 58°11−44'N longitude 6°19−05'W thence following the level of high water in a generally westerly direction (excluding Eilean nan Caorach, Eilean nan Uan, Holm Island and associated small unnamed islets) to Holm Point at latitude 58°11−21'N longitude 6°21−06'W;

thence following the level of high water in a generally northerly direction to the point at which the southern face of the embankment linking Eilean na Gothail with Inaclete Point coincides with the level of high water;

thence in a straight line to the point at which the northern face of the said embankment coincides with the level of high water;