SCOTTISH STATUTORY INSTRUMENTS

2003 No. 211

HARBOUR, DOCKS, PIERS AND FERRIES

The Lerwick Harbour Revision (Constitution) Order 2003

Made - - - -	*19th March 2003*
Coming into force - -	*20th March 2003*

Whereas the Lerwick Port Authority has 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 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Lerwick Harbour Revision (Constitution) Order 2003 and shall come into force on 20th March 2003.

(2) The Lerwick Harbour Acts and Orders 1877 to 2001 and this Order may be cited together as the Lerwick Harbour Acts and Orders 1877 to 2003 (hereinafter referred to as the Lerwick Harbour Acts and Orders).

Interpretation

2. In this Order–

"the Authority" means Lerwick Port Authority;

"Seal" means the corporate seal of the Authority;

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

(**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 1999 Order" means the Lerwick Harbour Revision Order 1999(**3**);

"application date" means the last Friday of May 2003 and annually thereafter;

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

"approved candidates" means applicants for election whom the appointing body decide should go forward for election under article 5(4);

"Member" means a Member of Lerwick Port Authority holding office either under the 1999 Order or this Order as the case may require;

"election date" means a Tuesday in July;

"the revised constitution date" means the election date in the year 2003;

"authorised signatories" means the Chief Executive or the Deputy Chief Executive of the Authority from time to time;

"Harbour" means the Port and Harbour of Lerwick as described in the Harbour Acts and Orders and includes the land, buildings, works, plant, property and conveniences connected therewith or any part thereof as the case may be;

"Harbour dues" means dues recovered by the Authority in terms of S.26(2) of the Harbours Act 1964(**1**) and any statutory amendment or re-enactment thereof;

"register of British ships" means the list of vessels shown on the register which is presently maintained by the Registrar General of Shipping and Seamen as registrar in terms of The Merchant Shipping Act 1995(**4**);

"Shetland Islands Council" and "the Council" means the local authority for the Shetland Islands as constituted by the Local Government etc. (Scotland) Act 1994(**5**);

"works licence" means a works licence granted under section 10 of the Lerwick Harbour Order Confirmation Act 1974(**6**).

PART II

CONSTITUTION

Membership of the Authority

3.—(1) On and after the revised constitution date, the Members of the Authority shall be:–

(a) three persons nominated and elected by shipowners, qualified as hereinafter provided;

(b) three persons nominated and elected by business ratepayers, qualified as hereinafter provided;

(c) three persons having been nominated by Shetland Islands Council qualified as hereinafter provided;

(d) the Chief Executive and Deputy Chief Executive of the Authority from time to time acting *ex officio*;

and application, appointment or election under sub-paragraphs (a) – (c) of this paragraph shall mean application, appointment or election for the post of Members described in those sub- paragraphs.

(**3**) S.I. 1999/1170.
(**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.
(**4**) 1995 c. 21.
(**5**) 1994 c. 39.
(**6**) 1974 c.XX.

(2) The arrangements for application, appointment or election of Members after the revised constitution date shall be as follows:–

(i) All Members shall have their main place of residence in the Shetland Islands.

(ii)

(a) on the election date in the year 2003

(i) three Members shall be elected in accordance with sub-paragraph (1)(a) above

(ii) three Members shall be elected in accordance with sub-paragraph (1)(b) above

(iii) three Members shall be appointed in accordance with sub-paragraph (1)(c) above

(iv) two Members shall serve in accordance with sub-paragraph (1)(d) above

(b) the initial terms to be served by the Members elected or appointed in accordance herewith shall be as follows:–

(i) the three Members appointed in accordance with sub-paragraph (1)(c) above shall serve an initial term of one year

(ii) the Members elected in terms of sub-paragraph (1)(b) above shall serve an initial term of two years

(iii) the three Members elected in terms of sub-paragraph (1)(a) above shall serve an initial term of three years

(c) on the election date in the year 2004 the arrangements for election and appointment of Members shall be as follows:–

(i) the three Members appointed in terms of sub-paragraph (1)(c) above shall demit office and shall be entitled to be nominated and appointed as hereinafter provided

(ii) the remaining Members elected or appointed in terms of sub-paragraphs (1)(a) and (b) above will remain in office

(d) on the election date in the year 2005 the arrangements for election and appointment of Members shall be as follows:–

(i) the three Members elected in terms of sub-paragraph (1)(b) above shall demit office and shall be entitled to be elected and appointed as hereinafter provided

(ii) the remaining Members elected or appointed in terms of sub-paragraphs (1)(a) and (c) above will remain in office

(e) on the election date in the year 2006 the arrangements for election and appointment of Members shall be as follows:–

(i) the three Members elected in terms of sub-paragraph (1)(a) above shall demit office and shall be entitled to be elected and appointed as hereinafter provided

(ii) the remaining Members elected or appointed in terms of sub-paragraphs 1(b) and (c) above shall remain in office.

(3) after the expiry of the respective initial terms of office of the Members (other than Members *ex officio*) the term of office of Members shall be three years commencing with the date of the expiry of the initial term of office of the category of Member concerned.

Application procedure

4.—(1) All persons seeking election or appointment under article 3(1) (a)-(c) shall submit an application form to the Authority by the application date in the year of the election date.

(2) The Members shall cause the said application date and application procedure set out in paragraphs (3) to (5) below to be advertised in at least one newspaper published or circulating in the

Shetland Islands not later than the second Friday of May in 2003 and on each anniversary thereafter as shall occur in any year in which an election occurs of shipowners or ratepayers as the case may be.

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

(a) the name and address of the applicant;

(b) a statement as to under which sub-paragraph of article 3(1) the application is made;

(c) for applications made under article 3(1)(a), a statement that the applicant appears on the list of shipowners qualified as hereinafter provided;

(d) for applications made under article 3(1)(b), a statement that the applicant appears on the list of business ratepayers qualified as hereinafter provided;

(e) for applications under article 3(1)(c) a declaration of interests in such form as may be prescribed by the Authority from time to time containing particulars of all sources of income, business interests, securities held interest in any land in the vicinity of the Harbour and any other matter which might reasonably be conceived as having the potential to lead to a conflict of interest with the duties of a Member of the Authority.

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

(4) Applications made under articles 3(1)(a) and (b) shall be accompanied by nomination papers as follows:–

(a) applications made under article 3(1)(a) shall be accompanied by no fewer than two nomination papers from persons whose names appear on the list of shipowners maintained in accordance with article 6;

(b) applications made under article 3(1)(b) shall be accompanied by no fewer than two nomination papers from persons whose names appear on the list of business ratepayers maintained in accordance with article 7;

(5) Nomination papers shall contain a statement that the nominating person nominates the person seeking election and shall be signed by the nominating person.

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 Authority unless the Chairman has made an application under article 4, in which case another Member nominated by the Members;

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

(c) the Convener of Shetland Islands Council or the nominee of the Convener;

(2) The appointing body shall meet as soon as practicable after the application date to consider the applications made under article 4 and in any event by the first Friday of June 2003 and annually thereafter.

(3) The appointing body may interview such of the applicants as it sees fit.

(4) The appointing body shall decide whether those persons who have applied under articles 3(1) (a) and (b) shall be candidates in the election of Members.

(5) The appointing body shall decide which persons who have applied under article 3(1)(c) shall be appointed as Members.

(6) The appointing body shall have particular regard to the following considerations when making decisions under paragraphs (4) and (5):–

(a) the special knowledge, experience or ability of applicants to contribute to the efficient and economic discharge by the Members 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 oil industry;

(ix) safety;

(x) personnel management;

(xi) environmental matters affecting harbours;

(xii) local community interests;

(xiii) any other skills and matters considered relevant from time to time by the Members 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.

Shipowners

6.—(1) The Authority shall cause a list of shipowners to be made up.

(2) A shipowner is a person:–

(a) whose name appears in the register of British ships on the last Friday of February in any year of election of shipowner Members to the Authority as the owner or part owner to the extent of at least 10 tonnes gross in any vessel or vessels whose port of choice is shown as Lerwick in said register or

(b) who satisfies the Authority that he is the owner or part owner to the extent of at least 10 tonnes gross in a vessel which has in the year preceding the last Friday of February in any year of election of shipowner Members to the Authority made not less than 20 entries into the Harbour in respect of which harbour dues have been paid to the Authority.

(3) Where a shipowner is an incorporated company, such company may by the last Friday of February 2003 and on each anniversary thereafter as shall occur in a year in which there is an election to the Authority of shipowner Members, intimate in writing to the Authority the name of one of their members or employees whom they desire to be an elector and such member or employee so named shall qualify to be an elector and, subject to the provisions of articles 4 and 5, Member. In the event of such incorporated company being registered as the shipowner of any vessel or vessels to the extent of 20 tonnes gross or more then the company may intimate the names of two of their members or employees to qualify as electors and, subject to the provisions of articles 4 and 5, Members.

(4) Subject to the provisions of articles 4 and 5 hereof a shipowner, other than an incorporated company, is qualified to be an elector and Member.

(5) The Authority, its officials and employees shall not qualify as shipowners.

(6) The following persons shall not qualify as shipowners:–