

2011 No. 338

HARBOUR, DOCKS, PIERS AND FERRIES

The Ullapool Harbour Revision (Constitution) Order 2011

Made - - - - *20th September 2011*

Coming into force in accordance with article 1(1)

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (2A) of the Harbours Act 1964^(a) and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act^(b).

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to Ministers by the Ullapool Harbour Trustees (“the Trustees”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) (except in so far as this Order is made for achieving objects mentioned in section 14(2A) of that Act), Ministers are satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance, or management of the harbour in an efficient and economical manner.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

In accordance with paragraph 5 of Schedule 3 to that Act^(c), Ministers have informed the Trustees in writing that the application does not relate to a project which falls within Annex I or II to Council Directive 85/337/EEC^(d), as relevantly amended by Council Directive 97/11/EC^(e) and Council Directive 2003/35/EC^(f), on the assessment of the effects of certain public and private projects on the environment.

(a) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(c) Paragraph 5 of Schedule 3 was substituted by S.I. 1999/3445.

(d) O.J. L 175, 5.7.1985, p.40.

(e) O.J. L 73, 14.3.1997, p.5.

(f) O.J. L 156, 25.6.2003, p.17.

Notice has been published by the Trustees in accordance with the requirements of paragraph 10 of that Schedule(a).

The provisions of paragraph 17 of that Schedule(b) have been satisfied. No objections to the application have been made. No representations under paragraph 10(2)(f), or 10A(4)(d), of that Schedule have been made.

In accordance with paragraph 19(2) of that Schedule(c), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

Citation and commencement

1.—(1) This Order may be cited as the Ullapool Harbour Revision (Constitution) Order 2011 and shall come into force on the day after the day on which it is made.

(2) The Ullapool Pier and Harbour Orders 1911 to 2005 and this Order may be cited together as the Ullapool Pier and Harbour Orders 1911 to 2011.

Interpretation

2. In this Order—

“2005 Order” means the Ullapool Harbour Revision (Constitution) Order 2005(d);

“harbour” has the meaning given in section 2 (interpretation) of the Ullapool Harbour Order Confirmation Act 1986(e).

Amendments to the 2005 Order

3. There shall be substituted for articles 3 (constitution of Trustees), 4 (application procedure), 5 (interview and selection) and 6 (election procedure) of the 2005 Order, the following articles—

“Constitution of Trustees

3. On and after 1st December 2011 the Trustees shall consist of—

- (a) seven persons appointed by the appointing body; and
- (b) the person who is for the time being appointed by the Trustees as the harbour master.

Application procedure

4.—(1) This article and article 5 (interviews and appointments by the appointing body) shall govern the procedure for persons to be appointed as Trustees according to of article 3 (constitution of Trustees).

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

(a) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c). [Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).]

(b) Paragraph 17 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(g).

(c) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

(d) S.S.I. 2005/132.

(e) 1986 c.ix.

(3) The application date for the receipt of applications shall be 10th October, which the returning officer shall cause to be advertised in at least one newspaper published or circulating in Ullapool not less than fourteen days before the application date.

(4) All persons seeking 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 appointments by the appointing body

5.—(1) There shall be an appointing body consisting of the following three persons none of whom shall be an applicant for appointment as a Trustee—

- (a) the Convenor, unless the Convenor is such an applicant, in which case another Trustee appointed by the Trustees;
- (b) a person who is not a Trustee who is appointed by the Trustees and considered by them to be representative of persons having an interest in Ullapool Harbour; and
- (c) an independent person appointed by the Trustees in line with the guidance endorsed by the Scottish Ministers.

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

(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 shall be appointed as Trustees and shall make those appointments accordingly.

(5) The appointing body shall have regard to the following considerations when making appointments 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 Ullapool 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) where not inconsistent with this Order, the guidance endorsed by the Scottish Ministers.

(6) The appointing body shall not appoint as a Trustee a person who has served two previous terms of office after 1st December 2011 unless—

- (a) the appointing body considers that there are exceptional circumstances to justify the appointment of that person for one further term; or
- (b) immediately before the expiry of his or her previous term of office, that person was the Convenor.

(7) The Convenor shall not be eligible for reappointment as a Trustee where, immediately before the expiry of his or her previous term of office, he or she has held office as a Trustee for four terms.

(8) For the purposes of paragraphs(6) and (7) “term” does not include a term referred to in paragraph (3)(a) of article 6 (appointment and terms of office of first Trustees), a term referred to in article 6B (power to co-opt additional Trustees) or the remainder of any term during which the person in question was appointed to fill a casual vacancy in the office of a Trustee.

(9) In this article “guidance endorsed by the Scottish Ministers” means Modernising Trust Ports A Guide to Good Governance (Crown Copyright January 2000).

Appointment and terms of office of first Trustees

6.—(1) The first appointments under article 3(a) shall be made on, or as soon as reasonably practicable after, 1st November 2011.

(2) The appointing body shall appoint the person who is, at the date when they make the first appointments under paragraph (1), the Convenor of the Trustees to be one of the first such appointed Trustees and he or she shall hold office as a Trustee for the term from 1st December 2011 until 30th November 2014; and shall be deemed to have been elected as the Convenor for that term by the Trustees in accordance with paragraph 1 of Schedule 2.

(3) Of the remaining first such appointed Trustees—

- (a) three shall hold office on and from 1st December 2011 until 30th November 2012; and
- (b) three shall hold office on and from 1st December 2011 until 30th November 2014.

Terms of office of subsequent Trustees

6A. Subject to article 6 (appointment and terms of office of first Trustees), a Trustee appointed under article 3(a) shall, unless appointed to fill a casual vacancy and subject to article 8 (termination of office), hold office for the period of three years on and from 1st May next following his or her appointment.

Power to co-opt additional Trustees

6B. The Trustees referred to in article 3 and article 7 (casual vacancies) may at any time co-opt not more than two persons to serve as Trustees for such period not exceeding twelve months as the co-opting Trustees may specify at the time of co-option.”.

General powers of Trustees

4.—(1) The Trustees may take such steps from time to time as they consider necessary or expedient for the improvement, maintenance and management of the harbour and the accommodation and facilities afforded in or connected with the harbour.

(2) For those purposes, and without prejudice to the generality of paragraph (1), the Trustees may—

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities in the harbour (including facilities for the supply by the Trustees of fuel for vessels);
- (b) subscribe for or acquire shares or securities of any body corporate;
- (c) maintain such reserve funds as they think fit;
- (d) invest any sums not immediately required for the purposes of the harbour;
- (e) turn their resources to account so far as not required for those purposes; and
- (f) do all other things which in their opinion are necessary or expedient to facilitate the proper carrying on or development of the harbour.

(3) This article is without prejudice to any powers of the Trustees under or by virtue of any other enactment.

Subsidiaries

5.—(1) Subject to paragraph (5), the Trustees may form and promote a wholly-owned subsidiary and may delegate to that subsidiary the performance of any functions which the Trustees have power to perform other than the excepted functions.

(2) The Trustees shall secure that any company formed in exercise of the powers conferred by paragraph (1) remains such a wholly-owned subsidiary.

(3) Subject to paragraphs (4) and (5), the Trustees may enter into arrangements with a company formed in exercise of the powers conferred by paragraph (1) for the transfer to that company from the Trustees or from any other company so formed, in such manner and on such terms (including payments by any of the parties to the arrangements to any of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of the Trustees or of that other company which are relevant to the performance of any of the functions to be performed by the first-mentioned company.

(4) The Trustees shall secure that any company formed in exercise of the powers conferred by paragraph (1) shall not transfer any property, other than surplus property, to any person other than to the Trustees or to another company so formed.

(5) This article does not authorise the Trustees to transfer to a subsidiary formed under paragraph (1) any property, rights, liabilities or obligations of the Trustees used or required by the Trustees for the performance by them of any of the excepted functions.

(6) In this article—

“the excepted functions” means the functions referred to in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964(a);

“surplus property” means any property of the Trustees or of any wholly-owned subsidiary of the Trustees being property held for the purposes of the harbour and which is no longer required for those purposes; and

“wholly-owned subsidiary” has the meaning given by section 1159 of the Companies Act 2006(b).

(a) 1964 c.40.

(b) 2006 c.46.

Formation of companies for carrying on certain businesses

6.—(1) The Trustees may form and promote, or join with any other person in forming and promoting, a company (“the company”) for the purposes referred to in section 18 of the Pier and Harbour Order Confirmation (No’s) Act 1911^(a) (acquisition of land for extraordinary purposes) or for carrying on any of the activities referred to in section 37(1) of the Docks and Harbours Act 1966 (power of harbour authorities to acquire businesses relating to harbour activities or for inland clearance depots)^(b).

(2) Except as is otherwise provided by any enactment or rule of law, the powers of the company may include power to do anything necessary or expedient for the purposes of the objects mentioned in paragraph (1) or for the purposes incidental to those purposes.

Charges for services or facilities

7. In addition to their power to demand ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Trustees may demand, take and recover such reasonable charges for services and facilities provided by them at the harbour (including charges for the supply of fuel for vessels) as they may from time to time determine.

Borrowing powers

8. The Trustees 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 Trustees under this article, the Trustees may, if they see fit, borrow those moneys upon the security of some or all of their assets for the time being or of some or all of their revenues or of some or all of both their assets and their revenues.

Repeals and revocations

9. On 1st December 2011 the enactments mentioned in the first and second columns of the Schedule shall be repealed or revoked to the extent specified in the third column of the Schedule.

ALASTAIR WILSON

A member of the staff of the Scottish Ministers

St Andrew’s House,
Edinburgh
20th September 2011

(a) 1911 c.clxxxvi.

(b) 1966 c.28.

SCHEDULE

Article 10

REPEALS AND REVOCATIONS

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal or revocation</i>
1911 c.clxxxvi	Pier and Harbour Order Confirmation (No's) Act 1911	In section 49, the words “not exceeding seven years”, sections 50 and 54.
1973 c.xv	Ullapool Pier Order Confirmation Act 1973	Section 6.
1983 c.i	Ullapool Pier (Works) Order Confirmation Act 1983	Section 6(b).
S.I. 2005/132	The Ullapool Harbour Revision (Constitution) Order 2005	Article 14 and, in paragraph 1 of Schedule 2, the words “at their first meeting after the date of coming into force of this Schedule and thereafter”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made following an application by the Ullapool Harbour Trustees (“the Trustees”), reconstitutes the Trustees as from 1st December 2011.

Article 1 makes provision for the citation of the legislation relating to the Trustees and the harbour and article 2 defines certain words and expressions.

Article 3 amends the Ullapool Harbour Revision (Constitution) Order 2005 by substituting six new articles for articles 3, 4, 5 and 6 of that Order. Those new articles provide as follows:—

New article 3 provides for the Trustees to consist of a body of eight Trustees. Seven persons will be appointed by the Trustees and they will retire in rotation. The harbour master will also hold office as a Trustee.

New article 4 governs the procedure for persons to apply for appointment as Trustees.

New article 5 provides for an appointing body to be established to select and appoint persons with experience in relevant matters as Trustees.

New article 6 provides for the appointment and terms of office of the first Trustees who take office on 1st December 2011.

New article 6A provides for the terms of office of the Trustees who subsequently take office.

New article 6B provides for the co-option of up to two additional Trustees.

Article 4 confers general powers on the Trustees in respect of the harbour.

Article 5 empowers the Trustees to form wholly-owned subsidiaries for carrying on activities which the Trustees have power to carry on.

Article 6 empowers the Trustees to form by themselves or jointly with any other person companies for carrying on certain specified businesses.

Article 7 provides for the Trustees to make reasonable charges for services and facilities provided by them at the harbour.

Article 8 authorises the Trustees to borrow without any limit such sums of money as they think necessary.

Article 9 makes consequential repeals and revocations.

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£5.75

S5221 09/2011 315221T 19585

ISBN 978-0-11-101470-7



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