

2012 No. 262

HARBOUR, DOCKS, PIERS AND FERRIES

The Fraserburgh Harbour Revision (Constitution) Order 2012

Made - - - - - *27th September 2012*

Coming into force - - - - - *28th September 2012*

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SCHEDULE — REVOCATIONS

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—

this Order is made following a written application to Ministers by the Fraserburgh Harbour Commissioners (“the Commissioners”) being the authority engaged in improving, maintaining or managing the harbour; and

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In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.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

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

The provisions of paragraph 17 of that Schedule(h) have been satisfied. No objections to the application have been made.

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

(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) OJ L 175, 5.7.1985, p.40.

(e) OJ L 73, 14.3.1997, p.5.

(f) OJ L 156, 25.6.2003, p.17.

(g) 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).

(h) 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).

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

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This order may be cited as the Fraserburgh Harbour Revision (Constitution) Order 2012 and shall come into force on the day following the day on which it is made.

(2) The Fraserburgh Harbour Order Confirmation Act 1985(a), The Fraserburgh Harbour Order Confirmation Act 1990(b), The Fraserburgh Harbour Revision Order 1995(c), The Fraserburgh Harbour Revision Order 1999(d), The Fraserburgh Harbour Revision (Constitution) Order 2001(e), The Fraserburgh Harbour Revision Order 2011(f) and this Order may be cited together as the Fraserburgh Harbour Acts and Orders 1985 to 2012.

Interpretation

2. In this Order—

“the 2001 Order” means the Fraserburgh Harbour Revision (Constitution) Order 2001;

“the 2011 Order” means the Fraserburgh Harbour Revision Order 2011;

“application date” in 2012 means 21st December and for all other years means the first Friday in November;

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

“appointment date” means the second Friday in January;

“Commissioners” means the body corporate known as the Fraserburgh Harbour Commissioners;

“employee” means an employee of the Commissioners; and

“the new constitution date” means the appointment date in the year 2013.

PART 2

REVISION OF CONSTITUTION

Constitution of Commissioners

3.—(1) On and after the new constitution date—

(a) all Commissioners elected or appointed in accordance with the 2001 Order shall continue in office for the remainder of their elected or appointed term of office under that Order; and

(b) subject to (a), the Commissioners shall consist of—

(i) four persons appointed by the appointing body in 2013 and every third year thereafter;

(ii) three persons appointed by the appointing body in 2014 and every third year thereafter;

(iii) one employee appointed by the appointing body in 2014 and every third year thereafter; and

(a) 1985 c.xlv.
(b) 1990 c.xxxii.
(c) S.I. 1995/1527.
(d) S.S.I. 1999/40.
(e) S.S.I. 2001/457.
(f) S.S.I. 2011/447.

- (iv) four persons appointed by the appointing body in 2015 and every third year thereafter.
- (2) The term of office for all Commissioners shall be three years.
- (3) Subject to the provisions of paragraph 10(2) of Schedule 2 to the 2001 Order, a vacating Commissioner shall be eligible to apply for appointment or reappointment under this Order.
- (4) The Commissioners shall continue to be a body corporate under the name or style of “the Fraserburgh Harbour Commissioners”.
- (5) All deeds and instruments to be made and granted by the Commissioners shall be valid and effectual if subscribed by any two of their number and sealed with their common seal.

Application procedure

- 4.—(1) Every person seeking appointment under article 3(1) shall submit an application form to the Commissioners by the application date in the year preceding the appointment date.
- (2) The Commissioners shall cause the application date and the information they require to be provided with an application as set out in paragraph (3) to be advertised in at least one newspaper published or circulating in Fraserburgh not less than fourteen days previous to the application date.
- (3) A completed 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 to the 2011 Order;
 - (c) such biographical information as the applicant sees fit to supply; and
 - (d) such other information as the Commissioners may require.
- (4) The Commissioners shall be entitled to reject an incomplete application.

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 of Commissioners unless the Convenor has made an application under article 4, in which case another Commissioner nominated by the Commissioners;
 - (b) a person who is not a Commissioner, who shall be nominated by the Commissioners and considered to represent the interests of one or more groups of persons interested in Fraserburgh Harbour; and
 - (c) an independent person appointed by the Commissioners.
- (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 which persons who have applied under article 4(1) shall be appointed as Commissioners and shall make those appointments accordingly.
- (5) The appointing body shall have particular 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 Commissioners of their functions;
 - (b) the special knowledge and experience of applicants of Fraserburgh Harbour and the practicalities of attendance at meetings and participation in the running of Fraserburgh 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 Commissioners to the discharge by them of their functions; and
- (d) where not inconsistent with this Order any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

(6) Any employee appointed as a Commissioner under this Order shall occupy the office of Commissioner in addition to their position as employee.

Casual vacancies

6.—(1) Subject to the provisions of paragraph (2) of this article, if a Commissioner refuses to accept office, or dies or resigns, or is no longer an employee, or becomes incapable of acting, whether a Commissioner elected under the provisions of the 2001 Order or appointed under the provisions of that Order or this Order, or if the appointing body select fewer applicants to become Commissioners than there are vacancies, the resulting vacancy or vacancies shall be filled in the manner following—

- (a) the Commissioners shall fill the vacancy by co-opting as a Commissioner a person whom they consider to be suitable to act as a Commissioner having regard to the considerations in article 5(5), and the Commissioner so substituted shall continue in office for the period that the person in whose place the co-opted Commissioner is appointed (or would have been appointed) would in the ordinary course have continued in office;
- (b) at the end of such period the co-opted Commissioner shall go out of office but shall be eligible for re-appointment.

(2) Any casual vacancy occurring four months or less before the end of the vacating Commissioner's normal term of office may, at the discretion of the remaining Commissioners, be left unfilled for the remainder of that term of office.

PART 3

MISCELLANEOUS

Reappointment of Commissioner

7.—(1) In paragraph 10(2) of Schedule 2 (incidental provisions relating to Commissioners) of the 2001 Order the words “or re-election” are deleted.

(2) For paragraph 10(3) of Schedule 2 (incidental provisions relating to Commissioners) of the 2001 Order there shall be substituted the following—

“(3) For the purpose of this paragraph, “term” does not include the remainder of a term during which the Commissioner was appointed to fill a casual vacancy.”.

Termination of office

8.—(1) In article 12 (termination of office) of the 2001 Order there is inserted after paragraph (2)—

“(3) An employee appointed as a Commissioner under article 3(1)(b)(iii) of the Fraserburgh Harbour Revision (Constitution) Order 2012 who ceases to be an employee shall cease to hold office as a Commissioner but such person shall not, by virtue of no longer being an employee, be ineligible for appointment as a Commissioner at the next or any subsequent appointment date.”.

(2) In the 2001 Order, the expressions “appointment date” and “employee” have the same meanings as in this Order.

Amendments

9.—(1) For the definition of “Commissioners” in section 2 of the Fraserburgh Harbour Order 1985(a) there shall be substituted—

““Commissioners” means the Fraserburgh Harbour Commissioners holding office under the authority of this Order, the Fraserburgh Harbour Order 1990(b), the Fraserburgh Harbour Revision (Constitution) Order 2001, the Fraserburgh Harbour Revision Order 2011 or the Fraserburgh Harbour Revision (Constitution) Order 2012.”.

Revocations

10. On the new constitution date the enactments mentioned in the first and second columns of the Schedule to this Order are revoked to the extent specified in the third column of that Schedule.

JOHN NICHOLLS

A member of the staff of the Scottish Ministers

St Andrew’s House,
Edinburgh
27th September 2012

(a) The Fraserburgh Harbour Order 1985 is contained in the schedule to the Fraserburgh Harbour Order Confirmation Act 1985 c.xlv.
(b) The Fraserburgh Harbour Order 1990 is contained in the schedule to the Fraserburgh Harbour Order Confirmation Act 1990 c.xxxii.

SCHEDULE
REVOCATIONS

Article 10

<i>Chapter</i>	<i>Short Title</i>	<i>Extent of repeal or revocation</i>
S.S.I. 2001/457	The Fraserburgh Harbour Revision (Constitution) Order 2001	Articles 3 to 8 and 16(4).
S.S.I. 2011/447	The Fraserburgh Harbour Revision Order 2011	Articles 22 to 25.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made following an application by the Fraserburgh Harbour Commissioners (“the Commissioners”), revises the constitution of the Commissioners and makes provision for all Commissioners to be appointed.

The Order revokes legislation relating to the Commissioners and Fraserburgh Harbour.

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