
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 457

The Fraserburgh Harbour Revision (Constitution) Order 2001

PART I
PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Fraserburgh Harbour Revision (Constitution) Order 2001 and shall come into force on 12th December 2001.

(2) The Fraserburgh Harbour Order Confirmation Act 1985(1), the Fraserburgh Harbour Order Confirmation Act 1990(2), the Fraserburgh Harbour Revision Order 1995(3), the Fraserburgh Harbour Revision Order 1999(4) and this Order may be cited together as the Fraserburgh Harbour Orders 1985 to 2001.

Interpretation

2. In this Order—

“the 1990 Act” means the Fraserburgh Harbour Order Confirmation Act 1990;

“application date” in 2001 means 21st December and for all other years means the first Friday in November;

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

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

“the Commissioners” means the Fraserburgh Harbour Commissioners holding office either under the 1990 Act or this Order as the case may require;

“election date” means the second Friday in January;

“the new constitution date” means the election date in the year 2004;

“parish” means the parish of Fraserburgh in Aberdeenshire; and

“senior salaried official” means any of the Harbour Master, the Harbour Superintendent, the Harbour Treasurer or the Harbour Clerk.

(1) 1985 c. xlv.
(2) 1990 c. xxxii.
(3) S.S.I. 1995/1527.
(4) S.S.I. 1999/40.

PART II

CONSTITUTION

Constitution of Commissioners

- 3.—(1) On and after the new constitution date, the Commissioners shall consist of—
- (a) four persons nominated and elected by the shipowners, qualified as hereinafter provided;
 - (b) four persons nominated and elected by the harbour ratepayers, qualified as hereinafter provided;
 - (c) two persons nominated and elected by the parishioners, qualified as hereinafter provided;
 - (d) one person appointed by the Commissioners who is a senior salaried official of the Commissioners; and
 - (e) one person appointed by the Commissioners having been nominated by Aberdeenshire Council

and application, appointment or election under a sub-paragraph of this paragraph shall mean application, appointment or election for the post of Commissioner described in that sub-paragraph.

- (2) The arrangements for election and appointment of Commissioners shall be as follows—
- (a) on the election date in the year 2002 and every third year thereafter,
 - (i) two Commissioners shall be elected in accordance with sub-paragraph (1)(a) above,
 - (ii) one Commissioner shall be elected in accordance with sub-paragraph (1)(b) above, and
 - (iii) one Commissioner shall be appointed in accordance with sub-paragraph (1)(d) above;
 - (b) on the election date in the year 2003 and every third year thereafter,
 - (i) one Commissioner shall be elected in accordance with sub-paragraph (1)(a) above,
 - (ii) two Commissioners shall be elected in accordance with sub-paragraph (1)(b) above, and
 - (iii) one Commissioner shall be appointed in accordance with sub-paragraph (1)(e) above;
 - (c) on the election date in the year 2004 and every third year thereafter,
 - (i) one Commissioner shall be elected in accordance with sub-paragraph (1)(a) above,
 - (ii) one Commissioner shall be elected in accordance with sub-paragraph (1)(b) above, and
 - (iii) two Commissioners shall be elected in accordance with sub-paragraph (1)(c) above.
- (3) The term of office for all Commissioners shall be three years.

Application procedure

4.—(1) All persons seeking election or appointment under article 3(1) shall submit an application form to the Commissioners by the application date in the year preceding the election date.

(2) The Commissioners shall cause the said application date and application format set out in paragraphs (3) to (5) below to be advertised in at least one newspaper published or circulating in Fraserburgh not less than six days previous to the application date.

- (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)(c), a statement that the applicant appears on the electoral register as defined in article 6(1)(c);
 - (d) for applications made under article 3(1)(d), a statement that the applicant is a qualifying staff member of the Commissioners;
 - (e) for applications made under articles 3(1)(d) and 3(1)(e), a declaration of interests as set out in Schedule 1;
 - (f) such biographical information as the applicant sees fit to supply.
- (4) Applications made under articles 3(1)(a), (b) and (c) shall be accompanied by nomination papers as follows—
- (a) applications made under article 3(1)(a) shall be accompanied by no fewer than four nomination papers from persons whose names appear on the list of shipowners as defined in article 6(1)(a);
 - (b) applications made under article 3(1)(b) shall be accompanied by no fewer than four nomination papers from persons whose names appear on the list of harbour ratepayers maintained in accordance with article 6(1)(b);
 - (c) applications made under article 3(1)(c) shall be accompanied by no fewer than four nomination papers from persons whose names appear on the electoral register as defined in article 6(1)(c).
- (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 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) the Chief Executive of Aberdeenshire 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 4 and in any event within one week of the application date.
- (3) The appointing body shall interview applicants as it sees fit.
- (4) The appointing body shall decide whether those persons who have applied under articles 3(1)(a), (b) and (c) shall be candidates in the election.
- (5) The appointing body shall decide which persons who have applied under articles 3(1)(d) and (e) shall be appointed as Commissioners.
- (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 Commissioners 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 Commissioners 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.

Registers

6.—(1) The Commissioners shall cause the following lists to be made up:—

- (a) a list of shipowners, being those persons—
 - (i) who have a place of business in the parish; and
 - (ii) on 1st November preceding the application date whose names appear in the register of British fishing vessels under Part II of the Merchant Shipping Act 1995 as owner or part-owner of a fishing vessel;
- (b) a list of harbour ratepayers, being those persons—
 - (i) who reside or have their place of business in the parish and,
 - (ii) during the year ending 31st October preceding the application date, have paid as principal £50 or more of rates to the Commissioners; and
- (c) a list of parishioners, being those persons who appear on the register of electors for the electoral wards of Buchan North, Buchan North East, Central Buchan, Fraserburgh East, Fraserburgh North, Fraserburgh South, Fraserburgh West and Lonmay & St. Fergus held by Aberdeenshire Council and last published in the year preceding the application date.

(2) For the purpose of making up the list of ratepayers of the harbour, the Commissioners shall cause to be entered in a book or books kept by them the name and designation of every such person and the total amounts of such rates paid by such person during the period of 12 months ending 31st October in that year, which book or books shall be open to public inspection at all times during the hours of business.

(3) Where rates are paid or a ship or share in a ship is owned by any company or partnership consisting of two or more members or partners having a place of business within the parish, such company or partnership may, before expiration of the first week of November immediately preceding the election, intimate in writing to the Commissioners the name of any one of the members or partners by whom such payment shall be deemed to have been made or by whom such ship or share in a ship shall be deemed to be owned, and such payment or such ship or share in a ship, as the case may be, shall, for the purposes of the election, be deemed to be made or owned, as the case may be, by the member or partner so named, if resident within the parish, and the member or partner so named shall be qualified to be an elector, and to nominate the elected Commissioners, in the same

manner as if such payment had been made or such ship or share in a ship had been owned by that person as an individual, provided that the amount of rates paid by such company or partnership, be sufficient to afford the qualification in sub-paragraph (1)(b) above in respect of rates to each of the members or partners so named.

Elections

7. The following rules shall be observed with respect to the elections for Commissioners under articles 3(1)(a), (b) and (c):—

(1) At least 7 days previous to each election the Commissioners shall make available for inspection at the office of the Commissioners and at the office of the clerk a copy of the lists of electors made up in the manner prescribed in article 6;

(2) The convenor of the Commissioners shall fix the place of the elections, which shall be within the parish;

(3) The Commissioners shall cause the day and place of the election to be advertised in at least one newspaper published or circulating in Fraserburgh not less than thirteen days previous to the election;

(4) The returning officer shall be the Sheriff Principal of the sheriffdom of Grampian, Highlands and Islands or such other person as may be appointed by the Sheriff Principal and the returning officer shall preside at the polling place;

(5) The convenor of the Commissioners may be appointed returning officer under paragraph (4) of this article provided that the convenor is not a candidate at the elections;

(6) Any application by a candidate may be withdrawn by notice of withdrawal to the returning officer and such notice of withdrawal shall be signed by the person who made the application;

(7) If there are no more approved candidates than the number to be elected in a particular class the returning officer shall on or before the Wednesday preceding the election cause public notice to be given of the persons so nominated, which notice shall be affixed in some place accessible to the public within the office of the Commissioners or in some conspicuous place on the outside thereof and advertised in one or more newspapers published or circulating in Fraserburgh, and shall give notice that as the number nominated for election in such class does not exceed the number of vacancies to be filled at the election there will be no poll for that class, and shall further declare that the persons so proposed will on the day of election be deemed to be the elected Commissioners, and on the day of the election the persons so proposed shall accordingly be deemed to be duly elected;

(8) If there are more approved candidates for any of the classes than the number to be elected the returning officer shall order a poll which shall take place on the day fixed for the election and shall be by secret ballot;

(9) The returning officer shall appoint a sufficient number of poll clerks and cause proper polling books to be provided;

(10) Each poll clerk shall have at the polling place copies of the lists of electors certified by the clerk and the votes shall be taken according to such lists;

(11) The poll shall be open at ten o'clock in the forenoon of the day of election, and close at four o'clock in the afternoon of the same day;

(12) No returning officer or poll clerk officiating at any election shall vote at that election;

(13) At the close of the poll the returning officer shall sum up in the polling books the votes taken and shall thereafter sign the polling books, and shall forthwith transmit them to the clerk;

(14) Such of the persons who, being not more than the number of elected Commissioners at an election, shall be found to have the greatest number of valid votes at such election as appearing from the summation of the returning officer in the polling books, which shall be conclusive evidence of

the number of votes and who are duly qualified in accordance with the provisions of this Order shall be deemed to be duly elected as Commissioners;

(15) In case of an equality in the number of votes at an election, the Commissioners at their first meeting to be held after such election shall, if necessary to prevent an excess in the number of elected Commissioners, determine by lot which of the persons having such equality of votes shall be the Commissioner or Commissioners.

Failure of election

8.—(1) In the case of the failure or partial failure at an time of the electors to make a valid election in terms of this Order of persons duly qualified to be elected Commissioners, the Commissioners shall, within six weeks after such failure shall have been ascertained, cause an election of such persons to be made according, in so far as may be, to the rules with respect to the annual elections of Commissioners; and any person so elected shall, in respect of continuance of office, be on the same footing as if the election of that person had taken place on the election date immediately preceding the date thereof.

(2) For the avoidance of doubt, if fewer candidates are nominated to take part in the election than the number of vacancies in any category, then the election for the remaining number shall be deemed to have failed.

(3) Without prejudice to the provisions of paragraph (1) above, if after an election pursuant to the provisions of paragraph (1) above there is still a vacancy in any class of Commissioners, the Commissioners may fill that vacancy by co-opting as a Commissioner any person duly qualified in accordance with the provisions of this Order and any person so co-opted shall, in respect of continuance in office, be on the same footing as if that person had been elected on the election date immediately preceding the co-option.

Casual vacancies

9.—(1) Subject to the provisions of paragraph (2) of this article, if a Commissioner refuses to accept office, or dies or resigns, or ceases to be qualified or becomes incapable of acting, the resulting vacancy shall be filled in manner following:—

- (a) the Commissioners shall fill the vacancy by co-opting as a Commissioner any person duly qualified in accordance with the provisions of this Order, and the Commissioner so substituted shall continue in office for the period that the person in whose place the co-opted Commissioner is 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-election if qualified.

(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.

Transitional provisions

10.—(1) All Commissioners elected or appointed in accordance with the 1990 Act, except as specified in paragraph (2) below, shall remain in office for the term specified in that Act.

(2) The Commissioners appointed under paragraphs 4(1)(a) and (b) of the Schedule to the 1990 Act shall go out of office on the second Friday of January 2002.

(3) No further elections or appointments shall be made under the 1990 Act save for the filling of casual vacancies under section 14 of the Schedule to that Act.

Declaration of interests

11. No Commissioner shall take part in any debate or vote on any matter in which that Commissioner has a personal, financial or other significant involvement; and at the start of any proceedings on such a matter such a Commissioner shall declare the interest and withdraw from the debate or vote.

Termination of office

12.—(1) If the Commissioners are satisfied that a Commissioner—

- (a) has without the permission of the Commissioners been absent from meetings of the Commissioners—
 - (i) during a period when three such meetings have been held; or
 - (ii) for a period of three consecutive months;whichever of those periods is the longer; or
- (b) has become bankrupt or made an arrangement with the creditors of the Commissioner; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or
- (d) is otherwise unable, unwilling or unfit to discharge the functions of a Commissioner;

the Commissioners may declare the office of such a Commissioner vacant and thereupon the office shall become vacant.

(2) Any Commissioner may resign office at any time upon giving to the Commissioners not less than three weeks' written notice of such intention.

Indemnity insurance

13. The Commissioners shall enter into, and pay premiums for, a contract of insurance to indemnify the Commissioners jointly or severally against personal liability arising from any act or omission of the Commissioners or of any of them; not being an act or omission which the Commissioner or Commissioners in question knew to be a breach of duty or, concerning which, was or were reckless as to whether it was such a breach.

Convenor of Commissioners etc.

14. On and after the election date in 2002 the provisions of Schedule 2 to this Order shall have effect with respect to the Commissioners.

MISCELLANEOUS

Statement of accounts

15. As soon as reasonably practicable after their annual statement of accounts is prepared the Commissioners shall make available a copy of the statement, for a period of three months from the date of approval of the accounts by the Harbour Board, at the offices of the Commissioners 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.

Borrowing powers

16.—(1) Subject to paragraph (2) below, the Commissioners may from time to time borrow upon the security of their assets for the time being or of their revenues or both their assets and revenues, by any methods they see fit—

- (a) such sums of money as they think necessary not exceeding eight million pounds; and
- (b) with the consent of the Scottish Ministers, such further sums of money as they may require.

(2) In calculating the aggregate sums of money borrowed by the Commissioners under paragraph (1) above, there shall be excluded any sums borrowed for the purpose of repaying within 12 months of the date of borrowing any sum for the time being outstanding by way of principal on any amount previously borrowed.

(3) Moneys borrowed by the Commissioners under this article shall be applied only to purposes for which the Commissioners may apply such money under any statutory provision.

(4) For the purposes of paragraph (3) above, but without prejudice to the generality of that paragraph, purposes to which capital money is properly applicable shall be deemed to include—

- (a) the payment of any interest, falling due within five years immediately following the date of borrowing, on any sum of money borrowed by the Commissioners under this article; and
- (b) the repayment, within twelve months from the date of borrowing, of any sum for the time being outstanding by way of principal on any amount previously borrowed.

Annual increase in borrowing limit

17.—(1) On each anniversary of the new constitution date the Commissioners shall adjust the sum mentioned in article 16(1)(a) above in line with any movement (calculated to one decimal place) in RPI which occurred during the year ended on 31st December immediately preceding the anniversary in question.

(2) Any adjustment made under paragraph (1) above shall be recorded in the next following annual statement of accounts prepared by the Commissioners.

(3) In paragraph (1) above, “RPI” means the general index of retail prices for all items published in the monthly publication of the Office for National Statistics known as the “Monthly Digest of Statistics”, or any successor from time to time of that index.

Amendments

18. For the definition of “Commissioners” in section 2 of the Fraserburgh Harbour Order 1985 there shall be substituted—

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

Repeals

19. On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order (which include spent enactments) shall be repealed to the extent specified in the third column of that Schedule.

Victoria Quay,
Edinburgh
11th December 2001

A member of the Staff of the Scottish Ministers