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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 421**

**The Dunbar Harbour Revision (Transfer) Order 2004**

**PART III**

**CONSTITUTION OF TRUST**

**Application procedure**

**9.—**(1) Not less than 21 clear days prior to the application date in every year the Chair shall by notice posted on a board outside the harbour office and published by insertion at least once in a newspaper circulating in the council area, intimate that there are four vacancies for trustees.

(2) All persons seeking appointment under article 9(1) shall lodge an application form with the Chair by the application date.

(3) The 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;
- (c) such biographical information as the applicant sees fit to supply.

**Interviews and selection**

**10.—**(1) There shall be an appointing body consisting of the following three persons, none of whom shall have made an application under article 9:

- (a) the Chair of trustees unless the Chair has made an application under article 9, in which case another trustee nominated by the trustees;
- (b) a person who is not a trustee, who shall be nominated by the trustees and considered to represent the interests of one or more groups of persons interested in Dunbar Harbour; and
- (c) the chief executive of the 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 9.

(3) The appointing body shall interview applicants as it sees fit.

(4) The appointing body shall select up to four of the persons who have applied under article 9 to be appointed as trustees.

(5) The appointing body shall have particular regard to the following considerations when making decisions 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, 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;
- (c) any guidance issued by the Scottish Ministers from time to time with respect to the exercise of such functions.

#### **Failure, postponement, etc. of appointment**

**11.**—(1) In the case of the failure or partial failure at any time to fill any vacancy under the in terms of this Order, the trustees may fill up such a vacancy.

(2) For the avoidance of doubt, if the appointing body selects a number of persons to be appointed as trustees that is fewer than the number of vacancies, then the appointment of the remaining number shall be deemed to have failed.

(3) In the event of circumstances arising in connection with any appointment procedure authorised by this Order which may render it necessary or expedient to fix, postpone, alter, vary or dispense with any date or procedure described by or in pursuance of the provisions of this Order or any other matter arising under it, the sheriff may on a petition by the trustees or the Chair forthwith fix, postpone, alter, vary or dispense with any such date, procedure or other matter in such manner as may in the judgment of the sheriff be best fitted to meet the circumstances of the case and the sheriff's determination shall be final.

#### **Casual vacancies**

**12.** If a trustee refuses to accept office, or dies or resigns, or ceases to be qualified or becomes incapable of acting, at the discretion of the trustees the resulting vacancy shall either be left vacant or shall be filled in manner following:—

- (a) the trustees shall fill the vacancy by co-opting as a trustee any person duly qualified in accordance with the provisions of this Order, and the trustee so substituted shall continue in office for the period that the person in whose place the co-opted trustee is appointed would in the ordinary course have continued in office;
- (b) at the end of such period the co-opted trustee shall go out of office but shall be eligible for re-appointment if qualified.

#### **Transitional provisions**

**13.**—(1) Upon the coming into force of this order, the twelve board members of the Dunbar Harbour Trust Association shall become trustees.

(2) At their first meeting after the coming into force of this order, the trustees shall decide—

- (a) four of their number who shall go out of office when the trustees are appointed according to article 10(4) in 2004, and those trustees shall duly go out of office on that date; and
  - (b) four of their number who shall go out of office when the trustees are appointed according to article 10(4) in 2005, and those trustees shall duly go out of office on that date.
- (3) The remaining trustees shall go out of office when the trustees appointed according to article 10(4) in 2006.
- (4) The appointing body for 2004 shall be appointed by the council and shall consist of:–
- (a) two persons who are considered to represent the interests of one or more groups of persons interested in Dunbar Harbour; and
  - (b) the chief executive of the council or the nominee of the chief executive.

### **Declaration of interests**

14.—(1) If a trustee has a personal, financial or other significant involvement in a matter on which a debate or vote is to take place, then at the start of any proceedings on such a matter the trustee shall declare the interest and offer to withdraw from the debate or vote.

(2) The chair, in consultation with the other trustees, may decide that the trustee offering to withdraw should do so, in which case that trustee shall withdraw from the remainder of the proceedings on that item, or the chair may decide that the trustee be invited to remain and contribute on a factual basis only, in which case that trustee may do so, but shall withdraw while any vote that is taken on that item.

### **Termination of office**

15.—(1) If the trustees are satisfied that a trustee–

(a) has without the permission of the trustees been absent from meetings of the trustees–

(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 trustee;

(c) is incapacitated by physical or mental illness from discharging the functions of a trustee; or

(d) is otherwise unable, unwilling or unfit to discharge the functions of a trustee;

the trustees may declare the office of such a trustee vacant and thereupon such office shall become vacant.

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

### **Chair and meetings of trustees**

16. On and after the transfer date the provisions of Schedule 3 to this Order shall have effect with respect to the trustees.