
STATUTORY INSTRUMENTS

1996 No. 197

**The Newlyn Pier and Harbour (Revision of
Constitution of Commissioners) Order 1996**

Title and commencement

1.—(1) This Order may be cited as the Newlyn Pier and Harbour (Revision of Constitution of Commissioners) Order 1996 and shall come into force on 1st March 1996.

(2) The Newlyn Pier and Harbour Orders 1906 to 1987⁽¹⁾ and this Order may be cited together as the Newlyn Pier and Harbour Orders 1906 to 1996.

Interpretation

2. In this Order, unless the context otherwise requires,

“the Boat-owners Commissioner” has the same meaning as in article 8(5) of the Principal Order;

“the clerk” has the same meaning as in article 3 of the Principal Order;

“the Commissioners” has the same meaning as in article 3 of the Principal Order;

“the District” means the districts of the Penwith and Kerrier District Councils;

“election year” means 1996 and every subsequent third year;

“fish” includes shellfish;

“fishing boat” means a boat 7 metres or more in length, and in whatever way propelled, which is for the time being employed, or is equipped for employment, in sea fishing;

“the Fish Merchant Commissioner” means the Commissioner elected in accordance with article 5 of this Order;

“the harbour” means the harbour of Newlyn within the limits described in article 6 of the Newlyn Pier and Harbour Orders 1906 to 1987;

“length” means, in relation to a boat, the length calculated in accordance with the rules specified in Article 2(1) of Council Regulation (EEC) 2930/86 defining characteristics for fishing vessels⁽²⁾ as amended⁽³⁾;

“the office” has the same meaning as in article 3 of the Principal Order;

“the Principal Order” means the Newlyn Pier and Harbour Order 1906;

“ship, passenger and goods dues” has the same meaning as in section 57(1) of the Harbours Act 1964.

Revision of the provisions relating to the number of Commissioners

3.—(1) The maximum number of Commissioners shall be increased to ten.

(1) 1906 c.cxiii; 1910 c.lxxi; 1920 c.cxx; SR & O 1942/369; S.I.1951/850; S.I. 1968/1886; S.I. 1978/427; S.I. 1987/2095.

(2) OJNo. L274, 25.9.86, p. 1.

(3) There are no amendments relevant to this definition.

- (2) There shall be three Boat-owners Commissioners.
- (3) There shall be one Fish Merchant Commissioner.
- (4) There may be one Co-opted Commissioner.

Revision of provisions relating to the Boat-owners Commissioners

4.—(1) Any person who, immediately before the date on which this Order comes into force, is a Boat-owner Commissioner elected pursuant to the Principal Order shall be treated on or after such date for the remainder of the period for which he would, under the terms of the Principal Order, have held office, as if he had been elected as a Boat-owners Commissioner pursuant to this article.

(2) The provisions of the Principal Order relating to the Boat-owners Commissioners shall be revised in accordance with the provisions of paragraphs (3) to (10) below and references to the Boat-owners Commissioners in the Principal Order shall be deemed to be references to Boat-owners Commissioners elected pursuant to this article.

(3) The clerk shall maintain a register (in this article referred to as “the boat owner register”) of those persons who have notified him of the fact that they fulfil the conditions set out in paragraph (4) below.

(4) The conditions referred to in paragraph (3) above are that the person—

- (a) is resident within the District and has been so for a period of at least six months;
- (b) is the registered owner of a fishing boat which is registered as a fishing vessel pursuant to the Merchant Shipping (Registration of Ships) Regulations 1993⁽⁴⁾ and provided that, if there is more than one registered owner which fulfills the other conditions of this paragraph, the registered owner whose name appears first on the register shall be the registered owner for the purposes of this article;
- (c) from time to time lands fish from the fishing boat referred to in paragraph (4)(b) above at the harbour;
- (d) is not in default to the Commissioners in respect of any ship, passenger and goods dues; and
- (e) is 18 or more years of age.

(5) A person who ceases to fulfil the conditions set out in paragraph (4) above shall notify the fact to the clerk who shall remove that person from the boat owner register.

(6) Any person may notify the clerk that another person is not entitled to be on or remain on the boat owner register.

(7) Any question as to whether a person is entitled to be or remain on the boat owner register shall be determined by the Commissioners, other than the Fish Merchant Commissioner, but before making any determination, they shall give notice to such person of their intention to determine a question and consider any representations he may make to them within such reasonable time as they may allow.

(8) The clerk shall be informed of the determination made pursuant to paragraph (7) above and shall amend the register accordingly.

(9) Subject to paragraph (10) below, the provisions of the Schedule to this Order shall apply to the election of the Boat-owners Commissioners.

(10) In this article and in the Schedule to this Order—

“voter” means a person who appears on the boat owner register on the qualification day;

“the qualification day” means the day which commences four calendar months before the commencement of the election day;

(4) S.I. 1993 No. 3138.

“the election day” means the first Monday in November in an election year;

“the relevant number” means three.

Election of Fish Merchant Commissioner

5.—(1) The clerk shall maintain a register (in this article referred to as “the fish merchant register”) of those persons who have notified him of the fact that they fulfil the conditions set out in paragraph (2) below.

(2) The conditions referred to in paragraph (1) above are that the person is resident within the District and has been so for a period of at least six months and either—

- (a) (i) purchases fish landed at the harbour in the ordinary course of trade;
 - (ii) has purchased at least 2% of the total value of fish which has been both landed and sold at the harbour during the previous 12 months; and
 - (iii) has deposited records which prove that sub-paragraph (ii) above is correct with the clerk; or
- (b) has been nominated to be entered on the fish merchant register as its representative by a partnership of fish merchants which fulfils the conditions set out in sub-paragraphs (i), (ii) and (iii) above and who is a partner in that partnership.

(3) A person who ceases to fulfil the conditions set out in paragraph (2) above shall notify the fact to the clerk who shall remove that person from the fish merchant register.

(4) Any person may notify the clerk that another person is not entitled to be on or remain on the fish merchant register.

(5) Subject to paragraph (6) below, any question as to whether a person is entitled to be or remain on the fish merchant register shall be determined by the Commissioners, other than the Boat-owners Commissioners, but before making any determination, they shall give notice to such person of their intention to determine a question and consider any representations he may make to them within such a reasonable time as they may allow.

(6) If a question arises as to whether a person or a partnership of fish merchants fulfils the conditions set out at paragraph (2)(a)(ii) above, the question shall be determined by an independent auditor appointed jointly by the person or partnership concerned and the Commissioners.

(7) The clerk shall be informed of any determination made pursuant to paragraphs (5) and (6) above and shall amend the register accordingly.

(8) Subject to paragraph (9) below, the provisions of the Schedule to this Order shall apply to the election of the Fish Merchant Commissioner.

(9) In this article and in the Schedule to this Order—

“voter” means a person who appears on the fish merchant register on the qualification day;

“the qualification day” means the day which commences four calendar months before the commencement of the election day;

“the election day” means the first Monday in December in an election year;

“the relevant number” means one.

Appointment of Co-opted Commissioner

6.—(1) The Commissioners may, from time to time, appoint, in accordance with paragraph (2), one Commissioner (in this Order referred to as the “Co-opted Commissioner”) who shall be a person nominated in accordance with paragraph (3) below.

(2) The Co-opted Commissioner shall be appointed by a unanimous vote at a meeting of Commissioners.

(3) A Commissioner may nominate any person who fulfils the conditions set out in paragraph (4) below as a candidate for the position of Co-opted Commissioner by sending to the clerk a nomination paper. The nomination paper shall be dated and signed by the Commissioner and shall contain the name and address of the candidate.

(4) The conditions referred to in paragraph (3) above are that the person—

- (a) is not directly connected with the fishing industry at the harbour; and
- (b) has expertise or experience which would benefit the Commissioners.

(5) Subject to paragraph (6) below the Co-opted Commissioner shall hold office for such period as the Commissioners shall determine on making the appointment up to a maximum of three years from the date of making the appointment.

(6) The appointment of a person as Co-opted Commissioner may be revoked with the consent of all the other Commissioners.

Quorum

7.—(1) In article 14(2) of the Principal Order (quorum for a meeting of Commissioners), the word “five” shall be substituted for the word “three”.

(2) In article 17(7) of the Principal Order (quorum for a committee of Commissioners), the word “four” shall be substituted for the word “two”.

Minutes

8. Article 17 of the Principal Order (meetings) shall be revised by the insertion of the following paragraph after paragraph (7)—

“(8) The record of the proceedings of Commissioners and of the committees appointed by them, maintained pursuant to section 55 of the Commissioners Clauses Act 1847(5), shall, save for such parts of the record considered by the chairman to be confidential, at all reasonable times be open to inspection by the public.”.

Incorporation of the Commissioners Clauses Act 1847

9.—(1) Subject to paragraphs (2) and (3) below, article 9 of the Principal Order (incorporation of Commissioners Clauses Act) shall also apply to this Order.

(2) Section 9 of the Commissioners Clauses Act 1847 (Commissioner holding office or concerned in a contract to cease to be a Commissioner), as incorporated with the Principal Order and this Order, shall be read and have effect subject to the exception contained in paragraph (3) below.

(3) At the discretion of the Commissioners and provided he complies with the requirements specified in paragraph (4) below, a person shall not be disqualified from being appointed or elected as a Commissioner or, having been so appointed or elected, from remaining in office as a Commissioner, by reason of his being a party to, or being otherwise interested in, a lease or other grant conferred by the Commissioners under article 27 of the Newlyn Pier and Harbour Revision Order 1977.

(4) The requirements for the purposes of paragraph (3) above are—

- (a) where prior to his appointment or election as a Commissioner he has become a party to, or has become otherwise interested in, such a lease or grant, he shall within 7 days of his

appointment or election give to the Commissioners a written declaration of the nature and extent of that interest, and

- (b) where having been so appointed or elected he intends to become a party to, or to become otherwise interested in, such a lease or grant, he shall—
 - (i) give notice of his intention to the Commissioners (and such notice shall contain a declaration of the nature and extent of that interest), and
 - (ii) not vote at a meeting of the Commissioners on any resolution concerning that lease or grant.

Consequential

10.—(1) In article 14(3) of the Principal Order (resignation of Commissioner), the words “Boat-owners Commissioner or Fish Merchant Commissioner” shall be substituted for the words “Mortgage Commissioner or Boat-owners Commissioner”.

(2) In article 15 of the Principal Order (casual vacancies):

- (a) in paragraph (1), the words “other than the Fish Merchant Commissioner” shall be inserted after the words “the Commissioners” where those words first occur; and
- (b) after paragraph (1), the following paragraph shall be inserted—

“(1A) In the event of a casual vacancy occurring in the office of Fish Merchant Commissioner by reason of death or resignation or otherwise the Commissioners, other than the Boat-owners Commissioners, shall as soon as may be thereafter at a meeting of the Commissioners elect a person duly qualified as aforesaid to fill the vacancy and the Commissioner so elected shall continue in office for the same period and retire from office at the same time as the person whose vacancy he fills would in the ordinary course have continued in or retired from office but shall be eligible for re-election.”.

Revocation

11. Articles 10(2), (3) and (5), 11 and 13 of the Principal Order are hereby revoked.

5th February 1996

Tony Baldry
Minister of State, Ministry of Agriculture,
Fisheries and Food