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STATUTORY INSTRUMENTS

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**1996 No. 197**

**HARBOURS, DOCKS, PIERS AND FERRIES**

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

*Made - - - - 5th February 1996*

*Coming into force - - 1st March 1996*

Whereas the Minister of Agriculture, Fisheries and Food is satisfied in accordance with section 15(1) of the Harbours Act 1964<sup>(1)</sup> that a harbour revision order ought to be made for the purpose of altering the constitution, and regulating the procedure, of the Newlyn Pier and Harbour Commissioners and that the making of such an order is desirable in the interests of securing the improvement, maintenance or management of Newlyn Harbour in an efficient and economical manner;

And whereas the said Minister in accordance with paragraph 7 in Part II of Schedule 3 to the said Act published a notice stating that he proposed to make a harbour revision order and served on the Newlyn Pier and Harbour Commissioners a copy of the draft of the proposed Order;

And whereas the said Minister, objections to the proposal having been duly made to him and not having been withdrawn, caused an inquiry to be held in relation thereto in accordance with paragraph 8 of the said Schedule;

And whereas the said Minister, having considered the said objections made and not withdrawn and the report of the person who made the said inquiry has modified the said draft of the proposed Order as he sees fit;

And whereas the said Minister, as it appears to him that the modifications which he has made to the draft Order substantially affect the character of the draft Order as originally proposed to be made, has informed persons likely to be concerned;

And whereas the said Minister, having informed persons likely to be concerned as provided in the previous paragraph, has waited until a period which he thinks reasonable for consideration of, and comment upon, the proposed modifications has elapsed;

Now, therefore, the said Minister, in exercise of the powers conferred on him by section 15(1) of the said Act and of all other powers enabling him in that behalf, hereby makes the following Order:

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<sup>(1)</sup> 1964 c. 40; section 15(1), and section 17(1) and Part II of Schedule 3 (which set out the relevant procedure for making the Order), were amended by Part I of Schedule 5 and Part II of Schedule 12 to the Transport Act 1981 (c. 56) and by Schedule 3 to the Transport and Works Act 1992 (c. 42); see section 15(3) for the definition of “the appropriate Minister”.

## **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<sup>(2)</sup> 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<sup>(3)</sup> as amended<sup>(4)</sup>;

“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.

(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.

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(2) 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.

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

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

(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<sup>(5)</sup> 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;
- “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—

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(5) [S.I. 1993 No. 3138](#).

- (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(6), 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

## SCHEDULE

Articles 4 and 5

### ELECTION PROCEDURE BOAT-OWNERS COMMISSIONERS AND FISH MERCHANT COMMISSIONER

1. An election of Commissioners shall take place on the election day and the Commissioners elected shall come into office as from one week after the end of the election day and shall hold office for a period of three years;

2. In respect of the election of Commissioners, the Commissioners shall advertise at least 56 days before the commencement of the election day in at least one newspaper circulating in the District and by notices affixed to the door of the office stating the day, hour and place on and at which the election is to be held;

3. Subject to paragraph 5, the election shall take place at a meeting of the Commissioners which shall be held within the District;

4. Any two voters may nominate any other voter as a candidate by sending to the clerk a nomination paper. The nomination paper shall be dated and signed by the two voters and shall contain the name and address of each of the signatories and of the candidate nominated. No nomination paper shall be accepted after the day which commences 35 days before the commencement of the election day and public notice shall be given not later than the day which commences 28 days before the commencement of the election day of the list of candidates by affixing the same to the door of the office and on such other conspicuous place as the Commissioners may direct. Any candidate may at any time before the day which commences 21 days before the commencement of the election day be withdrawn by the delivery of a notice of withdrawal signed by him and addressed to the clerk;

5. In the event of only the relevant number of persons being nominated as hereinbefore provided for election as Commissioners the clerk shall without further procedure declare such persons to be duly elected and such declaration shall be in writing signed by the clerk and shall be conclusive evidence of the due election of such persons;

6. In the event of more than the relevant number of persons being nominated as hereinbefore provided for election as Commissioner the clerk shall, not later than the day which commences 14 days before the commencement of the election day, post the relevant number of ballot papers to each voter and inform him in writing—

- (a) that he may either post his vote or may cast it in person but not both; and
- (b) of the details of the administrative arrangements which apply to voting.

7. The administrative arrangements which apply to voting at the election shall be such as to secure that, so far as is reasonably practicable, those voting do so in secret;

8. At an election every voter shall be entitled to the relevant number of votes and, where the relevant number of votes is more than one, may distribute them among the candidates as he may think fit but in no case shall he be entitled to give more than one vote to any one candidate;

9. No postal votes shall be accepted after first post on the election day;

10. At an election the clerk or one of the Commissioners for the time being shall act as chairman of the meeting and shall take note of the number of postal votes, conduct by ballot the poll of those voters who have not cast a postal vote and declare the number of votes given for each candidate;

11. The relevant number of candidates having the greatest number of votes at an election shall be elected and in every case of equality the chairman of the meeting shall have a casting vote in addition to the vote (if any) to which he may be entitled as an elector;

12. Any question or dispute regarding the election of a candidate shall be determined at the meeting by the chairman of the meeting whose decision shall be final;

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

13. If at any meeting the place of any retiring Commissioner is not filled up the retiring Commissioner shall continue in office as if he had been re-elected;

14. The expenses connected with each election (exclusive of the expenses of any candidate) shall be paid by the Commissioners out of the funds belonging to them as such Commissioners;

15. The chairman of the meeting at which any Commissioner is appointed shall report to the Commissioners in writing the name of every Commissioner appointed at that meeting.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order alters the constitution of the Newlyn Pier and Harbour Commissioners by revising the Newlyn Pier and Harbour Order 1906 (“the Principal Order”).

Article 3 revises the number of Commissioners so that the maximum number of Commissioners is increased from nine to ten, comprising:

- (a) three Boat-owners Commissioners (increased from two);
- (b) one Fish Merchant Commissioner;
- (c) one (optional) Co-opted Commissioner;
- (d) one County Council Commissioner whose status derives from the Principal Order; and
- (e) four Commissioners who are appointed by the Minister of Agriculture, Fisheries and Food and whose status derives from the Principal Order.

The Order also—

- (a) makes certain changes to the criteria for eligibility to vote and stand and to the procedure for election as Boat-owner Commissioner (article 4);
- (b) establishes the criteria for eligibility to vote and stand and the procedure for election as Fish Merchant Commissioner (article 5);
- (c) provides for the appointment by the Commissioners of a person who is not directly connected with the fishing industry at the harbour but who has expertise or experience which would benefit the Commissioners as a Co-opted Commissioner (article 6);
- (d) increases the quorum for a meeting of Commissioners from three to five (article 7(1));
- (e) increases the quorum for a committee of Commissioners from two to four (article 7(2));
- (f) provides for the record of the proceedings of the Commissioners and their committees to be available to the public (article 8);
- (g) subject to qualifications, incorporates section 9 of Commissioners Clauses Act 1847 (article 9).