
STATUTORY INSTRUMENTS

2002 No. 306

HARBOURS, DOCKS, PIERS AND FERRIES

The Whitehaven Harbour Commissioners
(Constitution) Harbour Revision Order 2002

Made - - - - - *11th February 2002*

Coming into force - - - - - *4th March 2002*

Whereas the Secretary of State is satisfied that a harbour revision order ought to be made for the purpose of achieving, in relation to Whitehaven Harbour, the objects mentioned in section 15(1) of the Harbours Act 1964⁽¹⁾;

And whereas one objection made pursuant to paragraph 3(2)(a) of Schedule 3 to the said Act⁽²⁾ is considered by the Secretary of State to be frivolous or too trivial to warrant the holding of an inquiry;

Now, therefore, the Secretary of State for Transport, Local Government and the Regions, (being the appropriate Minister under subsection (3) of the said section 15⁽³⁾ for the purposes of making this Order), in exercise of the powers conferred by that section and now vested in him⁽⁴⁾, and of all other powers enabling him in that behalf, hereby makes the following Order:—

PART I

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Whitehaven Harbour Commissioners (Constitution) Harbour Revision Order 2002 and shall come into force on 4th March 2002.

(2) The Whitehaven Town and Harbour Acts and Orders 1708 to 1996 and this Order may be cited together as the Whitehaven Town and Harbour Acts and Orders 1708 to 2002.

(1) 1964 c. 40; section 15 was amended by the Transport Act 1981 (c. 56), section 40(1) and Schedule 12 Part II.

(2) Schedule 3 was substituted by S.I. 1999/3445.

(3) For the definition of “the Minister” (mentioned in section 15(3)), see section 57(1).

(4) S.I. 1981/238 and S.I. 1997/2971.

Incorporation of Commissioners Clauses Act 1847

2. Sections 12, 14 to 16 and 60 of the Commissioners Clauses Act 1847(5) shall be incorporated with this Order.

Interpretation

3. In this Order—

“the Appointing Body” has the meaning given by article 5(6) below;

“the Commissioners” means the Whitehaven Harbour Commissioners;

“the transitional constitution” means the constitution of the Commissioners which, in accordance with Schedule 1 to this Order, has effect from the transitional constitution date until 31st March 2003;

“the transitional constitution date” means the first day of the second month after the expiry of the month current at the commencement of this Order.

PART II

Transitional Constitution

Transitional constitution

4. The provisions of Schedule 1 to this Order shall apply to the transitional constitution.

PART III

Permanent Constitution

Constitution of Commissioners

5.—(1) On and after 1st April 2003, the Commissioners shall consist of not less than seven nor more than nine as provided in this article.

(2) Six of the Commissioners shall be appointed by the Appointing Body.

(3) The Chief Executive of the Commissioners shall, by virtue of his office, be a Commissioner.

(4) Each Commissioner appointed under paragraph (2) above shall be a person who appears to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Commissioners of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge, experience or ability in one or more of the following matters—

- (a) management of harbours;
- (b) management of water related leisure activities;
- (c) shipping or other forms of transport;
- (d) the fishing industry;
- (e) navigation;
- (f) industrial, commercial or financial matters;

(g) administration;

and the Appointing Body shall secure, so far as reasonably practicable, that Commissioners appointed by it will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of their functions.

(5) The Commissioners appointed under paragraph (2) above may co-opt not more than two persons to serve as a Commissioner or Commissioners during such period not exceeding two years as may be specified by the co-opting Commissioners at the time of co-option.

(6) For the purposes of appointing the Commissioners referred to in paragraph (2) above, the Appointing Body means a body consisting of—

- (a) a person (not being a Commissioner) nominated from time to time by Copeland Borough Council;
- (b) a person (not being a Commissioner) nominated from time to time by Cumbria County Council;
- (c) the Chairman of the Commissioners or, if the Chairman is a candidate for re-appointment as a Commissioner, the vice-chairman of the Commissioners;
- (d) two other Commissioners appointed by the qualifying Commissioners from amongst their number at a meeting at which not less than four of their number shall be present;

and in this paragraph, “qualifying Commissioners” means the Commissioners appointed under paragraph 2(2) of Schedule 1 to this Order or paragraph (2) above.

Appointment and terms of office of first Commissioners

6.—(1) The Appointing Body shall appoint the first Commissioners to be appointed by it before 1st April 2003.

(2) Of the first Commissioners appointed by the Appointing Body—

- (a) two shall hold office until 31st March 2004;
- (b) two shall hold office until 31st March 2005; and
- (c) three shall hold office until 31st March 2006;

as the Appointing Body shall specify when they make each of those appointments.

Terms of office of other Commissioners

7. A Commissioner appointed by the Appointing Body (other than a Commissioner appointed under article 6 above) shall, unless appointed to fill a casual vacancy and subject to the provisions of this Order, hold office for the period of three years from 1st April next following his appointment.

Casual vacancies

8.—(1) A casual vacancy arising in the office of a Commissioner appointed by the Appointing Body shall be filled by the appointment of a Commissioner by the Appointing Body.

(2) A Commissioner appointed to fill a casual vacancy under this article shall hold office (unless he previously dies or otherwise ceases to be a Commissioner) during the remainder of the term for which the Commissioner whom he replaces was appointed.

Disqualification of Commissioners

9. If the Commissioners holding office under article 5(2) or (3) above are satisfied that a Commissioner—

- (a) has been absent from meetings of the Commissioners for three consecutive months or more without the permission of the Commissioners; or
- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or
- (d) is otherwise unable or unfit to discharge the functions of a Commissioner;

those Commissioners may declare his office as a Commissioner to be vacant and thereupon his office shall become vacant.

Indemnity insurance for Commissioners

10. The Commissioners may subscribe, and pay premiums, for a policy 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 his or their duty or, concerning which, he or they were reckless as to whether it was such a breach.

Incidental provisions relating to Commissioners

11. On and after 1st April 2003 the provisions of Schedule 2 to this Order shall have effect with respect to the Commissioners.

Revocations

12. On the transitional constitution date, the instruments mentioned in the first and second columns of Schedule 3 to this Order shall be revoked to the extent specified in the third column of that Schedule.

Signed by the authority of the Secretary of State for Transport, Local Government and the Regions.

Stephen Reeves
Head of Ports Division,
Department for Transport, Local Government
and the Regions

11th February 2002

SCHEDULE 1

Article 4

TRANSITIONAL CONSTITUTION

Transitional Commissioners

1. In this Schedule—

“the appointing Commissioners” means the Commissioners for the time being holding office under paragraph 2(2)(a) to (e) below; and

“the co-opting Commissioners” means the Commissioners holding office under paragraph 2(2) below.

2.—(1) On and after the transitional constitution date and until 31st March 2003, the Commissioners shall consist of not less than seven nor more than nine as provided by this paragraph.

(2) Of the Commissioners—

- (a) one shall be appointed by Copeland Borough Council;
- (b) one shall be appointed by Cumbria County Council;
- (c) one shall be appointed by British Nuclear Fuels plc;
- (d) one shall be appointed by W3M Charitable Foundation;
- (e) one shall be the Chief Executive Officer for the time being of the Commissioners; and
- (f) two shall be appointed by the appointing Commissioners at a meeting at which not less than four of their number shall be present.

(3) Each Commissioner appointed under sub-paragraph (2)(a) to (d) above shall be a person who appears to the body appointing him to have special knowledge, experience or ability appropriate to the efficient and economic discharge by the Commissioners of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge, experience or ability in one or more of the following matters—

- (a) management of harbours;
- (b) management of water related leisure activities;
- (c) shipping or other forms of transport;
- (d) navigation;
- (e) industrial, commercial or financial matters;
- (f) administration;

and each appointing body mentioned in sub-paragraph (2)(a) to (d) above shall, before appointing a Commissioner, consult with the appointing bodies so mentioned with a view to securing, so far as reasonably practicable, that Commissioners are appointed who will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient and economic discharge by them of their functions.

(4) Of the Commissioners appointed under sub-paragraph (2)(f) above—

- (a) one shall be a person who appears to the appointing Commissioners to have experience of, and to have shown capacity in, the conduct (with or without others) of a business which is a port user at Whitehaven; and
- (b) the other shall be a bondholder who appears to the appointing Commissioners to have such special knowledge, experience or ability as is mentioned in sub-paragraph (3) above.

(5) The co-opting Commissioners may co-opt not more than two persons to serve as a Commissioner or Commissioners during such period not exceeding two years as may be specified

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by the co-opting Commissioners at the time of co-option. No Commissioners shall hold office under this paragraph after 31st March 2003.

(6) In this paragraph “bondholder” means a registered holder of a bond, assignment or mortgage issued under the Whitehaven Town and Harbour Acts and Orders 1708 to 1996.

Terms of office of Transitional Commissioners

3.—(1) The bodies mentioned in paragraph 2(2)(a) to (d) above shall appoint the Commissioners to be appointed by them under that provision before the transitional constitution date.

(2) The Commissioners appointed under sub-paragraph (1) above shall, subject to the provisions of this Order, hold office from the transitional constitution date until 31st March 2003.

(3) The persons who are Commissioners holding office immediately before the transitional constitution date shall cease to hold office on the transitional constitution date.

(4) As soon as practicable after the transitional constitution date, the appointing Commissioners shall appoint the Commissioners under paragraph 2(2)(f) and each Commissioner so appointed shall, subject to the provisions of this Order, hold office from the date of his appointment until 31st March 2003.

Casual vacancies

4.—(1) A casual vacancy arising in the office of a Commissioner appointed by a body mentioned in paragraph 2(2)(a) to (d) above or by the appointing Commissioners shall be filled by the appointment of a Commissioner, in accordance with the provisions of this Schedule, by that body or the appointing Commissioners (as the case may be).

(2) A Commissioner appointed to fill a casual vacancy shall hold office (unless he previously dies or otherwise ceases to be a Commissioner) until 31st March 2003.

Disqualification of Transitional Commissioners

5. If, in the case of a Commissioner—

- (a) appointed under paragraph 2(2)(a) to (d) above, the body who appointed him is;
- (b) appointed under paragraph 2(2)(f) above, the appointing Commissioners are; or
- (c) co-opted under paragraph 2(5) above, the co-opting Commissioners are;

satisfied that—

- (i) that he has been absent from meetings of the Commissioners for three consecutive months or more without the permission of the Commissioners; or
- (ii) he has become bankrupt or made an arrangement with his creditors; or
- (iii) he is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or
- (iv) he is otherwise unable or unfit to discharge the functions of a Commissioner;

that body, the appointing Commissioners or the co-opting Commissioners (as the case may be) may declare his office as a Commissioner to be vacant and thereupon his office shall become vacant.

Appointment of chairman and vice-chairman of Transitional Commissioners

6. There shall be a chairman of the Commissioners who shall be appointed by the Commissioners from among the Commissioners holding office under paragraph 2(1) above.

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7. The first chairman shall be appointed at the first meeting of the Commissioners referred to in paragraph 13 below and shall, unless he resigns his office as chairman or ceases to be a Commissioner, continue in office as chairman until his term of office as a Commissioner has expired.

8. Every chairman subsequently appointed under paragraph 6 above shall, unless he resigns his office as chairman or ceases to be a Commissioner, hold office for his term of office as a Commissioner.

9. There shall be a vice-chairman of the Commissioners who shall be appointed by the Commissioners from among the Commissioners holding office under paragraph 2(1) above.

10. The first vice-chairman shall be appointed as soon as practicable after the transitional constitution date and shall, unless he resigns his office as vice-chairman or ceases to be a Commissioner, continue in office as vice-chairman until his term of office as a Commissioner has expired.

11. Every vice-chairman subsequently appointed under paragraph 9 above shall, unless he resigns his office as vice-chairman or ceases to be a Commissioner, hold office for his term of office as a Commissioner.

12.—(1) On a casual vacancy occurring in the office of chairman or vice-chairman of the Commissioners, the vacancy shall be filled by appointment by the Commissioners from among the Commissioners holding office under paragraph 2(1) above at a meeting held as soon as practicable after the vacancy occurs.

(2) A Commissioner appointed under this paragraph to fill a casual vacancy in the office of chairman or vice-chairman shall, unless he resigns that office or ceases to be a Commissioner, hold that office during the remainder of his term of office as a Commissioner.

First meeting of Transitional Commissioners

13. The first meeting of the Commissioners after the transitional constitution date shall be convened by the Commissioner appointed under paragraph 2(2)(a) above for such date and such place as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to each of the other Commissioners.

Vacation of office by Transitional Commissioners

14. A Commissioner may resign his office at any time by notice in writing given to—
- (a) the chairman of the Commissioners or, if that Commissioner is the chairman, the vice-chairman; and
 - (b) in the case of a Commissioner appointed under paragraph 2(2)(a) to (d) above, to the body who appointed him.

Committees

15. The Commissioners may, subject to such conditions as they think fit, delegate any of their functions to a committee of the Commissioners.

Proceedings of Commissioners and committees

16. The acts and proceedings of the Commissioners, or of any committee of the Commissioners, shall not be invalidated by any vacancy in their number or by any defect in the appointment, or the qualification for appointment, of any person as a member, or as chairman or vice-chairman, of the Commissioners or committee.

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17. The quorum required for a meeting of the Commissioners shall be four.

18. If a Commissioner is in any way directly or indirectly interested in any contract or proposed contract to which the Commissioners are, or would be, a party and is present at a meeting of the Commissioners or of any committee of the Commissioners at which that contract is the subject of consideration, he shall as soon as practicable after the commencement of the meeting disclose that fact at the meeting and shall not take part in any deliberation or decision of the Commissioners or committee with respect to that contract.

19. The person for the time being holding office as vice-chairman shall have and may exercise in the absence of the chairman all the powers of the chairman.

20. If at any meeting of the Commissioners neither the chairman nor the vice-chairman are present the Commissioners present at the meeting shall choose one of their number to be the chairman of the meeting.

21. If at any meeting of the Commissioners or of a committee of the Commissioners there is an equality of votes on any question the chairman of the meeting shall have a second or casting vote.

Authentication of seal

22.—(1) The application of the seal of the Commissioners shall be authenticated by the signature of the chairman of the Commissioners or some other Commissioner authorised by the Commissioners to authenticate the application of the seal, and of the Chief Executive Officer of the Commissioners or some person authorised by the Commissioners to act in his place in that behalf.

(2) The Commissioners may authorise a person to act instead of the Chief Executive Officer under this paragraph whether or not the Chief Executive Officer is absent or incapable of acting.

General

23. Subject to the provisions of this Schedule, the procedure and business of the Commissioners and of any committee of the Commissioners shall be regulated in such manner as the Commissioners from time to time determine.

SCHEDULE 2

Article 11

INCIDENTAL PROVISIONS RELATING TO COMMISSIONERS

Appointment of chairman and vice-chairman of Commissioners

1. There shall be a chairman of the Commissioners who shall be appointed by the Commissioners from among the Commissioners holding office under article 5(2) above.

2. The first chairman shall be appointed at the first meeting of the Commissioners referred to in paragraph 8 below and shall, unless he resigns his office as chairman or ceases to be a Commissioner, continue in office as chairman until his initial term of office as a Commissioner has expired.

3. Every chairman subsequently appointed under paragraph 1 above shall, unless he resigns his office as chairman or ceases to be a Commissioner, hold office for a period of three years.

4. There shall be a vice-chairman of the Commissioners who shall be appointed by the Commissioners from among the Commissioners holding office under article 5(2) above.

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5. The first vice-chairman shall be appointed as soon as practicable after 1st April 2003 and shall, unless he resigns his office as vice-chairman or ceases to be a Commissioner, continue in office as vice-chairman until his term of office as a Commissioner has expired.

6. Every vice-chairman subsequently appointed under paragraph 4 above shall, unless he resigns his office as vice-chairman or ceases to be a Commissioner, hold office for a period of 3 years.

7.—(1) On a casual vacancy occurring in the office of chairman or vice-chairman of the Commissioners, the vacancy shall be filled by the Commissioners at a meeting held as soon as practicable after the vacancy occurs.

(2) A Commissioner appointed under this paragraph to fill a casual vacancy in the office of chairman or vice-chairman shall, unless he resigns that office or ceases to be a Commissioner, hold that office during the remainder of the term for which the chairman or vice-chairman whom he replaces was appointed.

Meetings of Commissioners

8.—(1) The first meeting of the Commissioners after 1st April 2003 shall be convened as soon as practicable by the Chief Executive for such date and such place as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to each of the other Commissioners.

(2) The Commissioners shall meet at least eight times in each year commencing on 1st April and at intervals of not more than nine weeks.

Vacation of office by Commissioners

9. A Commissioner may resign his office at any time by notice in writing given to the chairman of the Commissioners or, if that Commissioner is the chairman, the vice-chairman.

Normal age limit for Commissioners

10. The Appointing Body shall not appoint a person as a Commissioner, and the Commissioners holding office under article 5(2) or (3) above shall not co-opt a person as Commissioner under article 5(5) above, where that person is aged over sixty five years unless, in the opinion of the Appointing Body or those Commissioners (as the case may be) that person has such qualifications as justify his appointment or co-option over that age.

Reappointment of Commissioners

11.—(1) Subject to the provisions of this Schedule, a vacating Commissioner shall be eligible for reappointment as a Commissioner unless he has been disqualified from office under article 9 above.

(2) Subject to sub-paragraph (3) below, a vacating Commissioner shall not be eligible for reappointment as a Commissioner where he has held office for three consecutive terms.

(3) A chairman of the Commissioners may hold office for not more than three consecutive terms as chairman notwithstanding that he may have previously held office as a Commissioner for up to three consecutive terms immediately preceding his appointment as chairman.

Committees

12. The Commissioners may, subject to such conditions as they think fit, delegate any of their functions to a committee of the Commissioners.

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Proceedings of Commissioners and committees

13. The acts and proceedings of the Commissioners, or of any committee of the Commissioners, shall not be invalidated by any vacancy in their number or by any defect in the appointment, or the qualification for appointment, of any person as a member, or as chairman or vice-chairman, of the Commissioners or committee.

14. The quorum required for a meeting of the Commissioners shall be four.

15. If a Commissioner is in any way directly or indirectly interested in any contract or proposed contract to which the Commissioners are, or would be, a party and is present at a meeting of the Commissioners or of any committee of the Commissioners at which that contract is the subject of consideration, he shall as soon as practicable after the commencement of the meeting disclose that fact at the meeting and shall not take part in any deliberation or decision of the Commissioners or committee with respect to that contract.

16. The person for the time being holding office as vice-chairman shall have and may exercise in the absence of the chairman all the powers of the chairman.

17. If at any meeting of the Commissioners neither the chairman nor the vice-chairman are present the Commissioners present at the meeting shall choose one of their number to be the chairman of the meeting.

18. If at any meeting of the Commissioners or of a committee of the Commissioners there is an equality of votes on any question the chairman of the meeting shall have a second or casting vote.

Authentication of seal

19.—(1) The application of the seal of the Commissioners shall be authenticated by the signature of the chairman of the Commissioners or some other Commissioner authorised by the Commissioners to authenticate the application of the seal, and of the Chief Executive Officer of the Commissioners or some person authorised by the Commissioners to act in his place in that behalf.

(2) The Commissioners may authorise a person to act instead of the Chief Executive Officer under this paragraph whether or not the Chief Executive Officer is absent or incapable of acting.

General

20. Subject to the provisions of this Schedule, the procedure and business of the Commissioners and of any committee of the Commissioners shall be regulated in such manner as the Commissioners from time to time determine.

SCHEDULE 3

Article 12

REVOCATIONS

<i>Reference</i>	<i>Title of instrument</i>	<i>Extent of revocation</i>
Conferred by Order in Council dated 27 June 1894	The Borough and Harbour of Whitehaven Scheme 1894.	In article 6, the words from “The said Harbour Commissioners shall be fifteen in number” to the end. Articles 7 to 13.

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<i>Reference</i>	<i>Title of instrument</i>	<i>Extent of revocation</i>
S.I.1991/238	The Whitehaven Harbour Revision Order 1991.	Schedules 4 and 5. The whole Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Whitehaven Harbour Commissioners. It provides for the appointment of Commissioners with experience in relevant matters and lays down procedures for their meetings with transitional arrangements.