
STATUTORY INSTRUMENTS

2002 No. 3268

HARBOUR, DOCKS, PIERS AND FERRIES

The Gloucester Harbour Revision (Constitution) Order 2002

Made - - - - - *12th December 2002*

Coming into force - - - - - *16th December 2002*

Whereas the Gloucester Harbour Trustees have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas no objections to the application have been made pursuant to paragraph 10(2)(f) of Schedule 3 to the said Act;

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(2)), in exercise of the powers conferred by that section and now vested in him(3), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Gloucester Harbour Revision (Constitution) Order 2002 and shall come into force on 16th December 2002.

(2) The Gloucester Harbour Orders 1889 to 1994 and this Order may be cited together as the Gloucester Harbour Orders 1889 to 2002.

Interpretation

2. In this Order—

“the chairman” means the chairman of the Trustees;

“the clerk” means the clerk to the Trustees;

“the 1994 Order” means the Gloucester Harbour Revision Order 1994(4);

“the harbour” means the harbour of Gloucester within the limits prescribed by article 11 of this Order;

(1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4 and 14, and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1.

(2) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(3) S.I.1981/238.

(4) S.I. 1994/3162.

“the principal operational officer” means the harbour master or such other officer of the Trustees for the time being appointed by the Trustees to be the principal operational officer for the purposes of this Order;

“the Trustees” means the Gloucester Harbour Trustees;

“trustee” means a member of the Trustees, including the chairman;

“the vice-chairman” means the vice-chairman of the Trustees; and

“the new constitution date” means 1st January 2003.

Constitution of the Trustees

3.—(1) On and after the new constitution date, the Trustees shall consist of—

- (a) the chairman;
- (b) not less than eight and not more than nine persons appointed by the Trustees; and
- (c) the principal operational officer of the Trustees.

(2) Each trustee appointed under paragraph (1)(a) or (b) above shall be a person who appears to the Trustees to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Trustees 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) commercial shipping;
- (b) water related leisure activities;
- (c) community matters;
- (d) estuarial environmental matters;
- (e) health and safety;
- (f) financial management;
- (g) the laws relating to England and Wales; and
- (h) any other skills and abilities considered from time to time by the Trustees to be relevant to the discharge by them of their functions;

and the Trustees shall secure, so far as is reasonably practicable, that the Trustees appointed by them 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.

(3) In making an appointment under paragraph (1)(a) or (b) above or article 6 below, the Trustees shall act in accordance with any guidance issued by the Secretary of State from time to time with respect to the exercise of such functions.

Appointment and terms of office of first Trustees

4. The first appointments under article 3(1)(a) and (b) shall be made on, or as soon as reasonably practicable after, 16th December 2002 and of the Trustees so appointed—

- (a) four shall be those trustees appointed under article 3(1)(c), (e) and (f) and one of the persons appointed under 3(4) of the 1994 Order, who shall hold office from the new constitution date until 31st December 2003;
- (b) three shall hold office from the new constitution date until 31st December 2004; and
- (c) three, one of whom shall be appointed as the chairman, shall hold office from the new constitution date until 31st December 2005,

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

Terms of office of subsequent Trustees

5. A Trustee appointed under article 3(1)(a) or (b) above (other than a Trustee appointed under article 4 above) shall, unless appointed to fill a casual vacancy and subject to articles 7 and 8 of, and paragraph 7 of Schedule 2 to, this Order, hold office for a period of three years from 1st January next following his appointment.

Casual vacancies

6.—(1) A casual vacancy arising amongst the trustees appointed under article 3(1)(a) or (b) of this Order shall, unless it is not reasonably practicable to do so, be filled by the appointment of a trustee by the Trustees, and any such appointment shall be made in accordance with article 3(2) and (3) above.

(2) A trustee appointed to fill a casual vacancy under this article shall, subject to articles 7 and 8 of, and paragraph 7 of Schedule 2 to, this Order, hold office during the remainder of the term for which the trustee whom he replaces was appointed.

Declaration to be made by Trustees

7. No person shall act as a trustee until he has made the declaration set out in Schedule 1 to this Order (or a declaration to that effect) and a person shall cease to be a trustee if he fails to make that declaration within 3 months of the date of his appointment.

Disqualification of Trustees

8.—(1) If the Trustees are satisfied that a trustee (other than the principal operational officer)—

- (a) has been absent from meetings of the Trustees for a period of six consecutive months without the permission of the Trustees; or
- (b) has become bankrupt or has made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a trustee;

the Trustees may by resolution declare the office of that trustee to be vacant and thereupon his office shall become vacant.

(2) If the Trustees are satisfied that a trustee—

- (a) has acted in a manner which has seriously impeded or prejudiced the Trustees in the performance of their functions;
- (b) has failed to comply with the standards required for the governance of the harbour by the Trustees;
- (c) has acted in a manner which may bring the Trustees into disrepute or which is otherwise inappropriate having regard to the functions of the Trustees; or
- (d) is otherwise unable, unwilling or unfit to discharge adequately the functions of a trustee;

the Trustees may request in writing the resignation of that trustee and, by resolution, declare the office of that trustee to be vacant and thereupon his office shall become vacant.

Indemnity insurance for the Trustees

9. The Trustees may enter into, and pay premiums for, a contract of insurance to indemnify the Trustees jointly or severally against personal liability arising from any act or omission of the Trustees or of any of them; not being an act or omission by any trustee which that trustee knew to be a breach of duty or concerning which that trustee was reckless as to whether it was such a breach.

Incidental provisions applying to the Trustees

10. On and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the Trustees.

Limits of harbour

11.—(1) The limits within which the Trustees have authority and within which the enactments relating to the harbour apply shall comprise those areas of the Severn estuary, river Severn and river Wye up to mean high water springs and lying between the following seaward and inward limits—

The seaward limit—a line from the Welsh shore at Goldcliff in the county of Monmouthshire at reference point ST 337318 181860 due south to the limits of the Port of Bristol as prescribed by Article 3 and Schedule 1 to the Bristol Port and Harbour Revision Order 1972(5) at reference point ST 337318 176461 and (thereafter coterminous with the limits of that Port) then north-eastward to Denny Island at reference point ST 345880 180994 and then to the English shore south of Severn Beach in the county of South Gloucestershire at reference point ST 353680 183720.

The inward limits—

- (a) on the river Severn, the foot of the weir at Maisemore in the county of Gloucestershire at reference point SO 381800 221660 on the western parting of the river and to the foot of the weir known as Llanthony weir in the City of Gloucester at reference point SO 382185 218200 on the eastern parting of the river;
- (b) on the river Wye, the downstream face of Bigsweir Bridge at reference point SO 353870 205100 on the boundary of the county of Gloucestershire and the county of Monmouthshire.

(2) In this article reference points refer to National Grid reference points and shall be construed as if the words “or thereabouts” were inserted after each reference point.

Advisory bodies

12.—(1) The Trustees shall establish one or more advisory body or bodies which the Trustees shall consult on all matters substantially affecting the management, maintenance, improvement, conservation or regulation of the harbour and its navigation.

(2) The Trustees shall make arrangements for every such advisory body to meet not less than twice a year provided that there is sufficient business to be transacted.

(3) The Trustees shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by such an advisory body whether or not that advisory body has been consulted by the Trustees on the matter, recommendation or representation so referred or made.

(4) The advisory body or bodies established pursuant to this article shall consist of such number or numbers of persons appointed by the Trustees as the Trustees shall from time to time consider appropriate.

(5) Appointments to an advisory body established under this article shall be made by the Trustees in accordance with a scheme prepared by them for that purpose and the scheme shall provide for the appointment of persons who, in the opinion of the Trustees, are representative of persons having an interest in the functioning of the harbour.

(6) Any such advisory body may determine its own quorum and procedure.

(7) An individual member of any such advisory body may, on giving notice in writing to the clerk, send a substitute to any meeting of the body.

(8) Subject to paragraph (9) of this article, a member of such an advisory body shall hold office for the period of three years from the date of appointment and at the end of that period shall be eligible for reappointment.

(9) A member of such an advisory body may resign from office at any time by notice in writing given to the clerk.

Repeals and revocations

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

Signed by authority of the Secretary of State for Transport

12th December 2002

Stephen Reeves
Head of Ports Division,
Department for Transport

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SCHEDULE 1

Article 7

DECLARATION TO BE MADE BY TRUSTEES

GHH Gloucester Harbour Trustees

I,
of,

do solemnly declare

- (1) that I will faithfully and impartially, according to the best of my skill and judgement, execute all the powers and authorities vested in me as a member of the Gloucester Harbour Trustees by virtue of the Gloucester Harbour Orders 1889 to 2002;
- (2) that I undertake to be guided in the performance of my functions as one of the Trustees by the guidance for the time being issued by the Trustees concerning their conduct and in particular that:
 - (a) I will disclose to the clerk details of every financial or other interest such as is mentioned in paragraph 13 of Schedule 2 to the Gloucester Harbour Revision (Constitution) Order 2002;
 - (b) I will notify the clerk of any alteration in those interests, and of any new interest, such as is mentioned in paragraph 13 of Schedule 2 to the Gloucester Harbour Revision (Constitution) Order 2002, which I may acquire.

SIGNED

DATED

SCHEDULE 2

Article 10

INCIDENTAL PROVISIONS APPLYING TO THE TRUSTEES

Appointment of vice-chairman of Trustees

1. There shall be a vice-chairman of the Trustees who shall be appointed by the Trustees from amongst those trustees who are appointed under article 3(1)(b) or 6 above.
2. The first vice-chairman holding office after the new constitution date shall be appointed as soon as practicable after that date and, subject to paragraph 4 below, shall, unless he resigns his office as vice-chairman or ceases to be a trustee, continue in office as vice-chairman for a period of one year from the date of his appointment as vice-chairman.
3. Subject to paragraph 4 below, every vice-chairman subsequently appointed under paragraph 1 above shall, unless he resigns his office as vice-chairman or ceases to be a trustee, hold office for a period of one year.
4. If the Trustees are satisfied that the vice-chairman should cease to hold office as such, they may terminate his office as such and appoint another trustee to be the vice-chairman during the remainder of the term for which the former vice-chairman was appointed.
- 5.—(1) On a casual vacancy arising in the office of vice-chairman of the Trustees, the vacancy shall be filled by the Trustees from amongst those trustees who are appointed under article 3(1)(b) or 6 above at a meeting held as soon as practicable after the vacancy occurs.

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

Meetings of the Trustees

6.—(1) The first meeting of the Trustees after the new constitution date shall be convened as soon as practicable by the clerk for such a date as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to each of the trustees.

(2) The Trustees shall meet at least four times in every year.

(3) A resolution circulated to all trustees and approved by six or more of them in writing, shall take effect as if approved at a meeting of the Trustees, but must then be reported to and included in the minutes of the next meeting of the Trustees.

(4) The Trustees shall cause minutes to be made—

(a) of the names of trustees present at a meeting of the Trustees or of a committee of the Trustees;

(b) of all proceedings or resolutions at such meetings.

(5) Until the contrary is proved, a meeting for which minutes have been made or signed shall be deemed to have been duly convened and, if it was a meeting of a committee, that committee shall be deemed to have had the power to deal with the subject of the minutes.

Vacation of office by Trustees

7. A trustee (other than the principal operational officer) may resign his office at any time by notice in writing given to the clerk.

Reappointment of Trustees

8.—(1) Subject to the provisions of this Schedule, a vacating trustee shall be eligible for reappointment as a trustee unless he has been disqualified from office under article 8 above.

(2) A vacating appointed trustee shall not be eligible for reappointment as a trustee where, immediately before the date in question, he has held office for three consecutive terms unless he is the chairman of the Trustees.

(3) For the purposes of this paragraph, “term” does not include—

(a) a term referred to in article 4(a) or (b) above;

(b) the remainder of a term during which the trustee was appointed to fill a casual vacancy under article 6 above; or

(c) any term served by the trustee prior to the new constitution date.

(4) In this paragraph “appointed trustee” means a trustee appointed under article 3(1)(a) or (b) above.

Reappointment of chairman

9.—(1) A chairman of the Trustees shall not be eligible for reappointment as the chairman where, immediately before the date in question, he has served as chairman for three consecutive terms.

(2) For the purposes of this paragraph, “term” does not include—

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- (a) the remainder of a term during which the chairman was appointed to fill a casual vacancy in the office of chairman under article 6 above; or
- (b) any term served by the chairman as a trustee prior to the new constitution date.

Committees

10. The Trustees may, consistently with their duties and subject to such conditions as they think fit, delegate any of their functions (other than the functions set out in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964⁽⁶⁾) to a committee of the Trustees.

Proceedings of Trustees and committees

11. The acts and proceedings of the Trustees, or of any committee of the Trustees, 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 trustee, or as chairman or vice-chairman of the Trustees or committee.

12. The quorum required for a meeting of the Trustees shall be five.

13.—(1) If a trustee has any interest, direct or indirect—

- (a) in any contract or proposed contract to which the Trustees are or would be a party or is a director of a company or body which the contract or proposed contract is made or proposed to be made; or
- (b) in any other matter with which the Trustees are concerned,

he shall declare that interest.

(2) If a trustee is present at a meeting of the Trustees or of any committee of the Trustees at which a contract or other matter in which that trustee has an interest is to be considered the trustee shall—

- (a) so soon as is practicable after the commencement of that meeting disclose his interest;
- (b) not vote on any question with respect to that contract or matter; and
- (c) withdraw from the meeting—
 - (i) at any time if the Trustees present by resolution so require; and
 - (ii) while a decision on that contract or matter is being made.

(3) This paragraph shall not apply to any interest—

- (a) which a trustee has in respect of the payment to the Trustees of pilotage charges or harbour dues;
- (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general;
- (c) which a trustee has as an employee of a public utility undertaking or as a shareholder, not being a director of a company, unless he possesses more than five per cent of the issued share capital of that company; or
- (d) which the Trustees present at the meeting by resolution declare to be too remote or which is the subject of a general resolution by the Trustees to that effect.

(4) The trustees shall maintain and regularly update a register of interests declared by each trustee and shall make the register available for inspection by members of the public at all times during usual office hours.

⁽⁶⁾ Paragraph 9B was inserted by the Transport and Works Act 1992 (c. 42) section 63(1) and Schedule 3, paragraph 9.

14. The person for the time being holding office as vice-chairman shall have and may exercise in the absence or incapacity of the chairman all the functions of the chairman.

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

16. Every question at a meeting of the Trustees or of a committee of the Trustees shall be decided by a majority vote of the trustees present and voting.

(2) If at any meeting of the Trustees or of a committee of the Trustees there is an equality of votes on any question the chairman of the meeting shall have a second or casting vote which he may exercise for or against the status quo.

Authentication of seal and other documents

17.—(1) The application of the seal of the Trustees shall be authenticated by the signature of the chairman of the Trustees or some other trustee authorised by the Trustees to authenticate the application of the seal, and of the clerk or some other person authorised by the Trustees to act in his place in that behalf.

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

(3) Any notice, licence or other document given or issued by the Trustees shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the clerk or a duly authorised officer of the Trustees.

(4) A document purporting to be duly executed under the seal of the Trustees shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document duly executed.

(5) A document which—

(a) purports to be a copy of—

(i) a resolution, order, direction or byelaw of the Trustees; or

(ii) the minutes of the proceedings at a meeting of the Trustees or a committee of the Trustees; and

(b) bears a certificate purporting to be signed by the chairman or the clerk or a person authorised in that behalf by the Trustees and stating that the resolution was passed or that the order, direction or byelaw was made by the Trustees on the date specified in the certificate or that the minutes are a true copy of the proceedings of the Trustees or of a committee of the Trustees,

shall be received in evidence and shall, unless the contrary is proved, be deemed to be a true record of the matter stated in the certificate and of the terms of the resolution, order, direction, byelaw or minutes in question.

Remuneration of Trustees

18. The Trustees may pay to the chairman and other trustees such salary, allowances and expenses as the Trustees may from time to time determine.

General

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

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20. The Trustees may appoint such persons as from time to time they think necessary or desirable for and incidental to the performance of their functions and pay to them such remuneration as the Trustees think fit.

21. Any change of address of a trustee during his term of office must be notified in writing to the clerk.

SCHEDULE 3

Article 13

REPEALS AND REVOCATIONS

<i>Chapter or number</i>	<i>Short Title</i>	<i>Extent of repeal or revocation</i>
13 & 14 Cha. 2 c. xiv (1662)	An Act for the making navigable the Rivers Wye and Lugg, and the Rivers and Brooks running into the same, in the Counties of, Hereford, Gloucester and Monmouth	So far as relating to any part of the harbour
7 & 8 Will. 3 c. 14 (1695)	An Act for making navigable the Rivers of Wye and Lugg in the County of Hereford	So far as relating to any part of the harbour
13 Geo. 1 c. 34 (1727)	An Act for explaining and amending any Act passed in the Seventh and Eighth Years of the Reign of His Majesty King William the Third, intituled, An Act for making navigable the Rivers Wye and Lugg, in the County of Hereford, and for making the same more effectual	So far as relating to any part of the harbour
49 Geo. 3 c. lxxviii (1809)	An Act for amending several Acts for making navigable the Rivers Wye and Lugg, in the County of Hereford; and for making a Horse Towing-path on certain Parts of the Banks of the said River Wye	So far as relating to any part of the harbour
1889 c.cvi	Pier and Harbour Orders Confirmation (No 3) Act 1889	Sharpness Lighthouses Order 1889 except sections 13, 14, 15, 22, 23 and 25
1890 c.xcvii	Pier and Harbour Orders Confirmation (No 3) Act 1890	Sections 4, 5, 6 and 7 of the Gloucester Harbour Order 1890
S.I. 1988/1040	The Gloucester Harbour Revision Order 1988	Article 10

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<i>Chapter or number</i>	<i>Short Title</i>	<i>Extent of repeal or revocation</i>
S.I. 1994/3162	The Gloucester Harbour Revision Order 1994	Articles 3, 4 and 5 and the Schedule

EXPLANATORY NOTE

(This note is not part of the Order)

This Order alters the constitution of the Gloucester Harbour Trustees.

The previous constitution provided for 10 trustees to be appointed by various appointing bodies, for one trustee to be appointed as representative of pilots and for up to two trustees to be appointed by the other trustees. The new constitution provides for a body of 10 trustees of whom nine are to be appointed by the Trustees. The remaining trustee is to be the principal operational officer thereby securing executive representation on the Trustees. Provision is included to enable a gradual transition to the new appointment arrangements. The Order also makes provision to govern the selection and terms of appointment of trustees and the manner in which they are to conduct business.

The Order also extends the seaward limits of the harbour and repeals ancient legislation relating to the River Wye.