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STATUTORY INSTRUMENTS

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**2004 No. 3400**

**The Falmouth Harbour Revision (Constitution) Order 2004**

**Citation and commencement**

1.—(1) This Order may be cited as the Falmouth Harbour Revision (Constitution) Order 2004 and shall come into force on 31st December 2004.

(2) The Falmouth Harbour Act and Orders 1870 to 1991 and this Order may be cited together as the Falmouth Harbour Act and Orders 1870 to 2004.

**Interpretation**

2. In this Order—

“the 1976 Order” means the Falmouth Harbour Revision Order 1976(1);

“the chairman” means the chairman of the Commissioners;

“chief executive” means the chief executive of the Commissioners;

“commissioner” means a member of the Commissioners including the chairman;

“the Commissioners” means the Falmouth Harbour Commissioners;

“the harbour” means Falmouth harbour as defined in section 4 of the Falmouth Harbour Act 1958(2); and

“the new constitution date” means 1st January 2005.

**Continuation of the Commissioners**

3. The Commissioners shall continue in existence as a body corporate and with power to exercise the functions conferred on the Commissioners by or in consequence of the Falmouth Harbour Act and Orders 1870 to 2004.

**Constitution of the Commissioners**

4.—(1) Subject to article 5(1) below, on and after the new constitution date, the Commissioners shall consist of—

(a) seven commissioners to be appointed by the Commissioners; and

(b) the chief executive.

(2) Each commissioner appointed under article 4(1)(a) above shall be a person who appears to the Commissioners 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 of the following matters—

(a) commerce;

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(1) S.I.1976/494.

(2) 1958 c. xlvi as amended by article 4 of the Falmouth Harbour Revision Order 1985 (S.I. 1985/1678) and article 3 of the Falmouth Harbour Revision Order 1991 (S.I. 1991/1853).

- (b) maritime activities;
- (c) health and safety;
- (d) management;
- (e) public relations and community issues;
- (f) industrial relations;
- (g) shipping or fishing;
- (h) accountancy or financial management;
- (i) leisure boating and associated interests and the management of boating events;
- (j) environmental matters affecting harbours; and
- (k) any other skills and abilities considered from time to time by the Commissioners to be relevant to the efficient and economic discharge by them of their functions;

and the Commissioners shall secure, so far as is reasonably practicable, that the commissioners 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 article 4(1)(a) above or article 6 below, the Commissioners 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 Commissioners**

5.—(1) Subject to articles 6 and 7 and paragraph 4 of Schedule 2 below, each commissioner appointed in accordance with the 1976 Order shall (unless that commissioner previously dies or resigns) continue in office until the expiry of the term for which that commissioner has been appointed.

- (2) The Commissioners shall appoint in accordance with article 4(2)—
  - (a) three commissioners on or as soon as practicable after 1st January 2005 and before every third anniversary of 1st November 2004;
  - (b) two commissioners before 1st November 2005 and every third anniversary of that date; and
  - (c) two commissioners before 1st November 2006 and every third anniversary of that date.

(3) Each commissioner appointed in accordance with paragraph (2) above shall take office on 1st January following that person's appointment or, in the case of the first appointments made under paragraph (2)(a) above, on the day of their appointment.

(4) Subject to articles 6 and 7 and paragraph 4 of Schedule 2 below, each commissioner shall hold office (unless the commissioner previously dies or resigns) until 1st January in the third year after their appointment.

#### **Casual vacancies**

- 6.—(1) A casual vacancy arising in the office of a commissioner shall be filled—
  - (a) if occurring in or between December and June, as soon as practicable in accordance with article 4; or
  - (b) if occurring in or between July and November, in conjunction with such other vacancies as shall arise in the next following January.

(2) A commissioner appointed to fill a casual vacancy under this article shall, subject to articles 7 and 8 and paragraph 4 of Schedule 2, hold office during the remainder of the term of the commissioner being replaced.

#### **Declaration to be made by Commissioners**

7. No person shall act as a commissioner 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 commissioner if he fails to make such a declaration within three months of the date of his appointment or, in the case of a commissioner continuing in office from the new constitution date, that date.

#### **Disqualification of Commissioners**

8.—(1) If the Commissioners are satisfied that a commissioner—

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

the Commissioners may by a resolution passed at a meeting of the Commissioners declare the office of that commissioner to be vacant.

(2) If the Commissioners are satisfied that a commissioner—

- (a) has persistently acted in a manner calculated seriously to impede or prejudice the carrying on of the business of the Commissioners; or
- (b) is in breach of the standards required for the governance of the harbour; or
- (c) has acted in a manner inappropriate to the interests of the harbour or likely to bring the Commissioners into disrepute; or
- (d) is otherwise unable or unfit to discharge the functions of a commissioner;

the Commissioners may request in writing the resignation of that commissioner or by a resolution passed at a meeting of the Commissioners declare the office of that commissioner to be vacant.

(3) Before passing a resolution under paragraph (2) above declaring the office of a commissioner to be vacant, the Commissioners shall provide that commissioner with an opportunity to make representations to them.

#### **Indemnity insurance for Commissioners**

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

#### **Chairman of the Commissioners**

10.—(1) From the new constitution date but subject to articles 7 and 8 above and paragraph 4 of Schedule 2 below, the chairman shall be the person who held the office of chairman immediately prior to that date.

(2) At the commencement of each annual meeting of the Commissioners other than any such meeting which takes place within a period of six months from the new constitution date, the Commissioners shall elect one of their number (other than the chief executive) to be the chairman.

(3) No commissioner shall hold the office of chairman for a period in excess of three consecutive years and no more than nine years in total.

### **Incidental provisions applying to the Commissioners**

**11.** On and after the new constitution date, the provisions of Schedule 2 to this Order shall have effect with respect to the Commissioners.

### **Publication of Commissioners' annual statement of accounts**

**12.** As soon as reasonably practicable after their annual statement of accounts is prepared, the Commissioners shall—

- (a) make available a copy of the statement for a period of three months at the offices of the Commissioners for inspection free of charge by members of the public; and
- (b) subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests to be supplied with a copy.

### **Advisory bodies**

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

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

(3) An advisory body established pursuant to this article shall consist of such number of persons appointed by the Commissioners as the Commissioners shall from time to time consider appropriate.

(4) Appointments to a consultative body shall be made by the Commissioners in accordance with a scheme prepared by them for the purpose which shall provide for the appointment of persons who, in the opinion of the Commissioners, are representative of persons having an interest in the functioning of the harbour.

(5) An advisory body may determine its own quorum and procedure and shall appoint a chairman. It shall meet at least twice per year.

(6) An individual member of an advisory body may, on giving notice in writing to the chairman of that body, send a substitute to any meeting of the body.

(7) A member of an advisory body shall hold office for a period of three years from the date of his appointment and at the end of that period be eligible for reappointment.

(8) A member of an advisory body may resign his office at any time by notice in writing given to the chairman of the Commissioners.

### **Borrowing powers**

**14.—(1)** Subject to paragraph (2) below, the Commissioners may from time to time borrow upon the security of their assets for the time being, or of their revenues, or of their assets and revenues, by any method which they see fit—

(a) such sums of money as they think necessary not exceeding an aggregate of five million pounds (or that sum as adjusted in accordance with article 17 below ); and

(b) with the consent of the Secretary of State, such further sums of money as they may require.

(2) In calculating the aggregate sums of money borrowed by the Commissioners under paragraph (1) above, there shall be excluded any sums borrowed for the purpose of repaying within twelve months of the date of borrowing any sum for the time being outstanding by way of principal on any amount previously borrowed.

(3) Monies borrowed by the Commissioners under this article shall be applied only to the purposes to which capital money is properly applicable.

(4) For the purposes of paragraph (3) above, but without prejudice to the generality of that paragraph, purposes to which capital money is properly applicable shall be deemed to include—

(a) the payment of any interest, falling due within five years immediately following the date of borrowing, on any sum borrowed by the Commissioners under this article; and

(b) the repayment, within twelve months from the date of borrowing, of any sum for the time being outstanding by way of principal on any amount previously borrowed.

### **Temporary borrowing powers**

15. The Commissioners may borrow temporarily, by way of overdraft or otherwise, such sums of money as the Commissioners may require but the total amount outstanding at any one time of money so borrowed shall not exceed two hundred and fifty thousand pounds (or that sum as adjusted in accordance with article 17 below).

### **Reserve fund**

16. Section 13 (Reserve fund) of the Falmouth Harbour Act 1958 is amended by the substitution of “£3,000,000 (or that sum as adjusted in accordance with article 17 of the Falmouth Harbour Revision (Constitution) Order 2004)” for “£1,000,000” in subsection (1).

### **CPI adjustment of borrowing and reserve fund limits**

17.—(1) On each anniversary of the new constitution date, the sums mentioned in articles 14(1) (a) and 15 above and in section 13 of the Falmouth Harbour Act 1958 shall be adjusted in line with any movement (calculated to one decimal place) in CPI which occurred during the year ending on 31st December immediately preceding the anniversary in question.

(2) Any adjustment referred to in paragraph (1) above, shall be recorded in the next following annual statement of accounts prepared by the Commissioners.

(3) In paragraph (1) above “CPI” means the Consumer Price Index, being the main measure of inflation published in the monthly publication of the Office for National Statistics known as “Monthly Digest of Statistics”, or any successor from time to time of that index.

### **General powers**

18.—(1) Subject to the other provisions of the Falmouth Harbour Act and Orders 1870 to 2004, the Commissioners may take such steps from time to time as they consider necessary or desirable for the maintenance, operation, management and improvement of the harbour and the accommodation and facilities (including navigation facilities) available in or in connection with the harbour.

(2) Without prejudice to the generality of paragraph (1) above but subject to the other provisions of the Falmouth Harbour Act and Orders 1870 to 2004, the Commissioners may—

(a) improve, maintain, regulate, manage, mark and light the harbour;

- (b) do any other thing (including the provision of facilities or the carrying on of any business) which, in their opinion, is in the interests of the proper carrying on or development of the harbour or can advantageously be undertaken by them by virtue of their activities in relation to the harbour; and
- (c) turn their resources to account so far as not required for the purposes of their harbour undertaking.

### **Charges for services and facilities**

**19.**—(1) In addition to their power to demand ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Commissioners may demand, take and recover such charges for services and facilities provided by them as they may from time to time determine.

(2) The Commissioners may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(3) Nothing in section 30 of the Harbours Act 1964 shall require the Commissioners to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included that list.

### **Repeals and revocations**

**20.** On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order are repealed or revoked to the extent specified in the third column of that Schedule (which includes provision for the repeal of enactments containing exemptions and other limitations on the Commissioners' power to levy dues).

Signed by authority of the Secretary of State for Transport

22nd December 2004

*C A Morris*  
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