
STATUTORY INSTRUMENTS

2005 No. 2932

HARBOUR, DOCKS, PIERS AND FERRIES

The Cattewater Harbour Revision (Constitution) Order 2005

Made - - - - - *17th October 2005*

Coming into force - - - - - *24th October 2005*

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

And whereas objections to the application made pursuant to paragraph 10(2)(f) of Schedule 3(2) to the said Act have been withdrawn;

And whereas the Secretary of State for Transport is satisfied as mentioned in subsection (2)(b) of the said section 14;

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(3)), 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:

Citation and commencement

1.—(1) This Order may be cited as the Cattewater Harbour Revision (Constitution) Order 2005 and shall come into force on 24th October 2005.

(2) The Cattewater Harbour Order 1915(5), the Cattewater Harbour Order 1925(6), the Cattewater Harbour Order 1950(7), the Cattewater Harbour Order 1986(8) and this Order may be cited together as the Cattewater Harbour Orders 1915 to 2005.

(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) Schedule 3 was substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445).
(3) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).
(4) S.I. 1981/238 and S.I. 1997/2971.
(5) Confirmed by 1915 c. xcix.
(6) Confirmed by 1925 c. lxxiii.
(7) Confirmed by 1950 c. xxxvi.
(8) S.I. 1986/137.

Incorporation of provisions of the Commissioners Clauses Act 1847

2. Sections 60, 62 to 65 and 75 to 83 of the Commissioners Clauses Act 1847⁽⁹⁾ (so far as applicable and not inconsistent with the Cattewater Harbour Orders 1915 to 2005) are incorporated with this Order.

Interpretation

3. In this Order—

“the administration manager” means the officer appointed by the Commissioners for general administrative purposes;

“the chairman” means the chairman of the Commissioners;

“the Commissioners” means the Cattewater Harbour Commissioners;

“commissioner” means a member of the Commissioners;

“the deputy chairman” means the deputy chairman of the Commissioners;

“the designated officer” means the harbour master appointed by the Commissioners or such other officer of the Commissioners as may be designated by them;

“the harbour” means the harbour of Cattewater within the limits prescribed by section 17 of the Cattewater Harbour Order 1915⁽¹⁰⁾; and

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

Continuation of Commissioners

4. 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 Cattewater Harbour Orders 1915 to 2005.

Constitution of the Commissioners

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

- (a) eight persons appointed by the Commissioners;
- (b) one person appointed by the Secretary of State for Defence; and
- (c) the designated officer.

(2) Each commissioner appointed under paragraph (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 or more of the following matters—

- (a) accounting and financial management;
- (b) commerce;
- (c) community issues;
- (d) environmental matters affecting harbours;
- (e) health and safety;
- (f) management;
- (g) maritime leisure activities;

⁽⁹⁾ 1847 c. 16.

⁽¹⁰⁾ see 1915 c. xcix.

- (h) shipping, fishing or cargo handling; and
- (i) any other skills and abilities considered from time to time by the Commissioners to be relevant to the discharge by them of their functions;

and the Commissioners and the Secretary of State for Defence 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 paragraph (1)(a) above or article 8 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 members

6.—(1) The first appointment of commissioners under article 5 above shall be made so as to take effect as follows—

- (a) three commissioners one year after the new constitution date;
- (b) three commissioners two years after the new constitution date; and
- (c) three commissioners, including the commissioner to be appointed by the Secretary of State for Defence, three years after the new constitution date.

(2) Successive appointments under article 5(1)(a) and (b) above shall be made so as to have effect on each third anniversary of the date specified in paragraph (1) above in relation to those commissioners.

(3) With the exception of any such commissioner who dies, resigns or becomes disqualified from office or who is appointed to fill a casual vacancy, each commissioner appointed under article 5 above shall hold office for a term of 3 years.

(4) A commissioner may apply for re-appointment and be re-appointed to hold office again but shall not be appointed for more than three consecutive terms except for any commissioner appointed as the chairman who may be appointed to hold office for not more than four consecutive terms.

(5) For the purposes of paragraph (4) above, “term” does not include—

- (a) a term referred to in article 7(3)(a) or (b) below;
- (b) the remainder of any term during which a commissioner was appointed to fill a casual vacancy under article 8 below; and
- (c) any term served by a commissioner prior to the new constitution date.

Transitional provisions

7.—(1) Each commissioner who holds office at the date of the coming into force of this Order shall continue in office and, in the case of the chairman and deputy chairman, in that capacity until the re-appointment of commissioners pursuant to paragraph (3) below unless, prior to such re-appointment, that commissioner dies, resigns or becomes disqualified from office.

(2) Each remaining commissioner within the meaning of paragraph (7) shall at the date of coming into force of this Order be re-appointed to office and, in the case of the chairman and deputy chairman, to office in that capacity and the appointment shall last until any re-appointment under paragraph (3).

(3) As soon as practicable after the coming into force of this Order, the Commissioners shall at a meeting of the Commissioners and upon the basis of the criteria for appointments specified in article 5(2) above re-appoint from amongst their number—

- (a) three commissioners to serve for a further term of one year from the new constitution date;

(b) three commissioners to serve for a further term of two years from the new constitution date; and

(c) three commissioners, including the commissioner appointed by the Secretary of State for Defence, to serve for a further term of three years from the new constitution date.

(4) Article 8 below shall apply to a casual vacancy arising amongst any of the Commissioners in office at the coming into force of this Order (including the chairman and deputy chairman) as it applies to the successor to that commissioner to be appointed pursuant to this Order.

(5) Article 9 below shall apply to each of the Commissioners in office at the coming into force of this Order as if they had been appointed on the day that this Order comes into force.

(6) The designated officer shall first take up office as a commissioner on the coming into force of this Order.

(7) A remaining commissioner under paragraph (2) above is a commissioner who was appointed or elected as such before this Order came into force and who continues to act as such at the date of the coming into force of this Order.

Casual vacancies

8.—(1) A casual vacancy arising amongst the Commissioners appointed under article 5 or article 7(3) above shall, unless it is not reasonably practicable to do so, be filled by the appointment of a commissioner by the Commissioners, and any such appointment shall be made in accordance with article 5 above.

(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 member) during the remainder of the term for which the member whom he replaces was appointed.

Declaration to be made by commissioners

9. On and after the new constitution date, 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 that declaration within 3 months of the date of his appointment.

Disqualification of commissioners

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

(a) has been absent from meetings of the Commissioners for a period of six consecutive months without the permission of the Commissioners; 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 commissioner;

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

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

(a) has acted in a manner which has seriously impeded or prejudiced the Commissioners in the performance of their functions;

(b) has failed to comply with the standards required for the governance of the harbour by the Commissioners;

(c) has acted in a manner which may bring the Commissioners into disrepute or which is otherwise inappropriate having regard to the functions of the Commissioners; or

(d) is otherwise unable, unwilling or unfit to discharge adequately the functions of a commissioner;

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

Indemnity insurance for the Commissioners

11. 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 of 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.

Incidental provisions applying to the Commissioners

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

Borrowing powers

13.—(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 both their assets and their revenues, by any methods they see fit—

- (a) such sums of money as they think necessary not exceeding five million pounds (or that sum as adjusted in accordance with article 15 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) Moneys borrowed by the Commissioners under this article shall be applied only to 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 of money 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.

(5) Section 44 (protection of lenders) and section 47 (appointment of receiver) of the Cattewater Harbour Order 1915⁽¹¹⁾ shall apply to the exercise of the powers of this article but subject to the substitution for the words “two thousand pounds in the whole” in section 47 of the words “one-tenth of the amount for the time being borrowed by the Commissioners”.

Temporary borrowing powers

14. 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 15 below).

(11) 1915 c. xcix.

CPI adjustment of borrowing limits

15.—(1) On each anniversary of the new constitution date, the sums mentioned in articles 13(1) (a) and 14 above shall be adjusted in line with any movement (calculated to one decimal place) in CPI which occurred during the year ended 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 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 of the Commissioners to act

16. The Commissioners may do anything which appears to the Commissioners to be necessary or expedient for the purpose of, or in connection with, the exercise of their functions including, in particular—

- (a) acquiring and disposing of land and other property; and
- (b) entering into contracts.

Advisory bodies

17.—(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 an advisory 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.

Repeals, revocations and savings

18.—(1) 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.

(2) Notwithstanding the repeal of section 5 of the Cattewater Harbour Order 1915, the provisions of the Commissioners Clauses Act 1847(12) with respect to borrowing shall continue to be incorporated with that Order so far as consistent with and not expressly varied by that Order.

Signed by the authority of the Secretary of State for Transport

17th October 2005

Phil Carey
Head of Ports Division
Department for Transport

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SCHEDULES

SCHEDULE 1

Article 9

DECLARATION OF ACCEPTANCE OF OFFICE BY COMMISSIONERS

Cattewater Harbour Commissioners

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 reposed in me as a member of the Cattewater Harbour Commissioners by virtue of the Cattewater Harbour Orders 1915 to 2005:
- (2) that I undertake to be guided in the performance of my functions as one of the Commissioners by the guidance for the time being issued by the Commissioners concerning their conduct and in particular that:
 - (a) I will disclose to the administration manager details of every financial or other interest such as is mentioned in paragraph 9 of Schedule 2 to the Cattewater Harbour Revision (Constitution) Order 2005:
 - (b) I will notify the administration manager of any alteration in those interests, and of any new interest, such as is mentioned in paragraph 9 of Schedule 2 to the Cattewater Harbour Revision (Constitution) Order 2005, which I may acquire.

SIGNED

WITNESSED BY

DATED

SCHEDULE 2

Article 12

PROVISIONS APPLYING TO THE COMMISSIONERS

Vacancies

- 1. The Commissioners may act notwithstanding a vacancy among the Commissioners and no act of the Commissioners or any committee of the Commissioners shall be deemed to be invalid

by reason of any irregularity in the appointment of a commissioner or their chairman or deputy chairman.

Quorum

2. The quorum required for a meeting of the Commissioners is five.

Voting

3.—(1) Every question at a meeting of the Commissioners or of a committee of the Commissioners shall be decided by a majority vote of the Commissioners present and voting.

(2) 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 which he may exercise for or against the question.

Resolutions outside meetings

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

Appointment of officers

5. The Commissioners may appoint upon such terms and conditions as they see fit an administration manager and such other officers and employees as they may determine.

Committees

6. The Commissioners 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(13)) to a committee of the Commissioners.

Minutes

7.—(1) The Commissioners shall cause minutes to be made—

- (a) of the names of commissioners present at a meeting of the Commissioners or of a committee of the Commissioners,
- (b) of all proceedings or resolutions at such meetings.

(2) Until the contrary is proved, a meeting for which minutes have been made or signed shall be deemed to have been duly convened and held 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.

Authentication of seal and other documents

8.—(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 administration manager of the Commissioners or some person authorised by the Commissioners to act in his place in that behalf.

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

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

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

(4) In sub-paragraph (1) the reference to the signature of a person includes a reference to a facsimile of a signature reproduced by any process; and “signed” in sub-paragraph (3) above shall be construed accordingly.

Declaration of interests

9.—(1) If a commissioner has any interest, direct or indirect—

- (a) in any contract or proposed contract to which the Commissioners are or would be a party; or
- (b) in any other matter with which the Commissioners are concerned,

the commissioner shall declare that interest.

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

- (a) so soon as is practicable after the commencement of that meeting disclose the 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 Commissioners 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 commissioner has in respect of the payment to the Commissioners of harbour dues;
- (b) which arises in respect of the provision of harbour services or facilities affecting the stakeholders in general;
- (c) which a commissioner 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;
- (d) which the commissioner appointed by the Secretary of State for Defence has in respect of his responsibilities; or
- (e) which the Commissioners present at the meeting by resolution declare to be too remote or which is the subject of a general resolution by the Commissioners to that effect.

Register of interests

10. The Commissioners shall maintain and regularly update a register of interests declared by each commissioner and shall make the register available for inspection by members of the public at all times during usual office hours.

Resignation

11. A commissioner (other than the designated officer) may resign his office at any time by notice in writing given to the administration manager.

Meetings of the Commissioners

12.—(1) The first meeting of the Commissioners after the new constitution date shall be convened as soon as practicable by the administration manager 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 Commissioners.

(2) The Commissioners shall hold not less than six meetings in each year.

(3) The administration manager shall ensure that at least 14 days notice of any meeting is sent to each commissioner.

(4) The chairman or deputy chairman may cancel a meeting of the Commissioners where there is insufficient business to be transacted at the meeting.

Chairman and deputy chairman

13.—(1) There shall be a chairman and deputy chairman of the Commissioners, each of whom shall be appointed by the Commissioners from amongst the commissioners then serving (other than the designated officer) and, in the case of the chairman, from such of the Commissioners as have already served a full three year term.

(2) A commissioner appointed as chairman or deputy chairman shall serve in that capacity for a period of one year unless before the expiry of that term the commissioner dies, resigns or becomes disqualified for office but shall be eligible for re-appointment.

(3) On a casual vacancy occurring in the office of chairman or deputy chairman of the Commissioners, the vacancy shall be filled by those of the Commissioners who are appointed under articles 5(1)(a) or 8 above at a meeting held as soon as practicable after that vacancy occurs.

(4) In the absence of the chairman, the deputy chairman may exercise all the powers of the chairman.

(5) If, at a meeting of the Commissioners, neither the chairman nor the deputy chairman is present, the commissioners present shall choose one of their number to be chairman of the meeting.

Payments to Commissioners

14. The Commissioners may pay to each commissioner such allowances and expenses as the Commissioners may from time to time determine.

General

15. 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 may from time to time determine.

SCHEDULE 3

Article 18

REPEALS AND REVOCATIONS

<i>Chapter or number</i>	<i>Short Title</i>	<i>Extent of repeal or revocation</i>
1915 c. xcix.	Pier and Harbour Orders Confirmation (No. 2) Act 1915	Sections 4, 5, 9 to 11, 41, 42 and 46 of the Cattewater Harbour Order 1915

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<i>Chapter or number</i>	<i>Short Title</i>	<i>Extent of repeal or revocation</i>
1925 c. lxxiii	Pier and Harbour Orders Confirmation (No. 1) Act 1925	Section 4 of the Cattewater Harbour Order 1925
1950 c. xxxvi.	Pier and Harbour Order (Cattewater) Confirmation Act 1950	Sections 7 to 13 and 17 of the Cattewater Harbour Order 1950
S.I.1985/1504	The Harbour Authorities (Constitution) Order 1985	Article 3
S.I. 1986/137	Cattewater Harbour Revision Order 1986	The whole Order

EXPLANATORY NOTE

(This note is not part of the Order)

This Order re-constitutes the Cattewater Harbour Commissioners and increases the borrowing powers of the Commissioners from £1 million to £5 million.

The previous constitution provided for a body of nineteen Commissioners of whom thirteen were appointed by various appointing bodies and six were elected by owners and lessees having a frontage on the harbour. The new constitution provides for a body of ten Commissioners of whom eight are to be appointed by the Commissioners from amongst persons with experience in relevant matters and one is to be appointed by the Secretary of State for Defence. The remaining commissioner is to be either the harbour master or another officer designated by the Commissioners thereby securing executive representation on the Commissioners. 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 Commissioners and the manner in which they are to conduct business. It further provides for the appointment of one or more advisory bodies.