

2010 No. 1462

HARBOURS, DOCKS, PIERS AND FERRIES

**The Newlyn Pier and Harbour Revision (Constitution) Order
2010**

Made - - - - - *20th May 2010*

Coming into force - - - - - *21st May 2010*

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SCHEDULE 3 — REVOCATIONS

The Newlyn Pier and Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

(a) 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; by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1; by the Planning Act 2008, s. 36, Schedule 2, paragraphs 8 and 9; and by S.I.2009/1941, article 2, Schedule 1, paragraph 12.

The Secretary of State for Transport is satisfied as mentioned in section 14(2)(b) of that Act.

The Secretary of State for Transport (being the appropriate Minister under section 14(7) of that Act), in exercise of the powers conferred by that section and now vested in him(a), makes the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Newlyn Pier and Harbour Revision (Constitution) Order 2010 and shall come into force on 21st May 2010.

(2) The Newlyn Pier and Harbour Orders 1906 to 1996(b) and this Order may be cited together as the Newlyn Pier and Harbour Orders 1906 to 2010.

Interpretation

2. In this Order, unless the context otherwise requires—

“appointed Commissioner” means a Commissioner appointed under article 4(1)(a) or (b), 6 or 8;

“appointing bodies” means the Commissioners and the Council;

“the chair” means the person who chairs the meetings of the Commissioners;

“the clerk” means the clerk of the Commissioners;

“the Commissioners” means the Newlyn Pier and Harbour Commissioners;

“the Council” means the Cornwall Council;

“the harbour” means the harbour of Newlyn within the limits described in section 6 of the Newlyn Pier and Harbour Order 1906 and includes any land or property belonging to the Commissioners;

“the harbour management representative” means the senior executive responsible for the operational, financial and other business activities of the harbour for the time being employed by the Commissioners;

“licensed fishing boat” means a fishing boat in respect of which fishing is licensed under regulations made under section 4 of the Sea Fish (Conservation) Act 1967(c);

“local councillor” means a member of the Council who represents an electoral area which includes all or part of the towns of Penzance or Newlyn;

“the new constitution date” means 31st May 2010.

Incorporation of the Commissioners’ Clauses Act 1847

3. Sections 1 to 4, 6 to 10, 12, 14 to 16, 36 to 92, 94 to 97, 99 to 102, 104 and 109 to 111 of the Commissioners Clauses Act 1847(d) (so far as applicable to and not inconsistent with the Newlyn Pier and Harbour Orders 1906 to 2010), are incorporated with and form part of this Order.

Constitution of the Commissioners

4.—(1) On and after the new constitution date, the Commissioners, subject to articles 5, 6, 8, 10 and 11, are to consist of eleven persons of whom—

(a) eight are to be appointed by the Commissioners;

(a) S.I. 1981/238, S.I. 1997/2971, S.I. 2001/2568 and S.I.2002/2626.

(b) See 1906 c.cxiii; 1910 c.lxxi, 1920 c.cxx, SR&O 1942/369, S.I. 1951/850, S.I. 1968/1886, S.I. 1978/427, S.I. 1987/2095, S.I. 1996/197.

(c) 1967 c.84.

(d) 1847 c.16.

- (b) two are to be appointed by the Council;
- (c) one is to be the harbour management representative.

(2) Each Commissioner appointed under paragraph (1)(a) and (b) and article 10 must be a person who appears to the appointing body in question to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Commissioners of their functions.

(3) Without prejudice to the generality of paragraph (2), the appointing bodies must have regard to the importance of the fishing industry to Newlyn and Cornwall and to the objective of ensuring that the Commissioners include persons having special knowledge, experience or ability in one or more of the following matters—

- (a) commercial licensed fishing boat ownership (in the case of at least three Commissioners, of whom at least one must be an active sea-going fisherman);
- (b) wholesale fish selling (in the case of at least one Commissioner);
- (c) commercial or financial matters;
- (d) water related leisure interests;
- (e) community matters;
- (f) management of harbours;
- (g) administration;
- (h) local government;
- (i) environmental matters; and
- (j) any other skills and abilities considered from time to time by the Commissioners to be relevant to the discharge by them of their functions.

(4) Each of the appointing bodies must secure, so far as 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.

(5) In making an appointment under article (1)(b) the Council must have special regard to the local knowledge of any local councillor who applies to become a Commissioner under that article.

(6) In making an appointment under paragraph (1)(a) or (b) or article 8 or 10, each of the appointing bodies must 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 Commissioners

5.—(1) The first appointments under article 4(1)(a) and (b) must be made on, or as soon as reasonably practicable after, 24th May 2010.

- (2) Of the Commissioners appointed under article 4(1)(a)—
 - (a) three of the Commissioners are to hold office from the new constitution date until 30th May 2011,
 - (b) three of the Commissioners are to hold office from the new constitution date until 30th May 2012;
 - (c) two of the Commissioners are to hold office from the new constitution date until 30th May 2013;

as the Commissioners must specify when they make each of those appointments.

(3) One of the Commissioners holding office until 30th May 2013 must be appointed as the chair.

(4) One of the Commissioners appointed under article 4(1)(b) is to hold office from the new constitution date until 30th May 2011 and the other is to hold office from the new constitution date until 30th May 2012.

Transitional appointed Commissioner

6.—(1) To ensure that the Commissioners have sufficient experience for the efficient exercise of their functions on and after the new constitution date, the existing Commissioners may before that date appoint from their number one other Commissioner to serve, in addition to the Commissioners appointed under article 4, as an appointed Commissioner for a period of six months beginning on the new constitution date.

(2) The Commissioner appointed under paragraph (1) is not entitled to vote on any matter to be decided by the Commissioners or any committee of the Commissioners.

Terms of office of subsequent Commissioners

7. An appointed Commissioner (other than any first Commissioner appointed under article 5) is, unless appointed to fill a casual vacancy and subject to articles 9 and 11 of and paragraph 3 of Schedule 2, to hold office for the period of three years from 31st May next following his appointment.

Casual vacancies

8.—(1) A casual vacancy arising in the office of an appointed Commissioner must, unless it is not reasonably practical to do so, be filled by the appointment of a Commissioner by the relevant appointing body in accordance with the requirements of article 4(2) to (6) as if the appointment were made under article 4.

(2) A Commissioner appointed to fill a casual vacancy under this article is, subject to articles 9 and 11 and paragraph 3 of Schedule 2, to hold office during the remainder of the term for which the Commissioner in whose place he has been appointed was appointed.

Declaration to be made by Commissioners

9. No person may act as a Commissioner until that person has made the declaration set out in Schedule 1 (or a declaration to that effect), and a person who fails to make that declaration within three months of being appointed must cease to be a Commissioner.

Additional Commissioners

10. The Commissioners, if they see fit, may at any time appoint up to two additional Commissioners for a fixed term of up to twelve months.

Disqualification of Commissioners

11.—(1) If the Commissioners are satisfied that a Commissioner (other than the harbour management representative)—

- (a) has been absent from meetings of the Commissioners for a period of six consecutive months without the permission of the Commissioners;
- (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 on such a resolution coming into effect that office is to 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 or, by resolution, declare the office of that Commissioner to be vacant and on receipt of the resignation or on such a resolution coming into effect, as the case may be, that office is to become vacant.

Advisory body

12.—(1) The Commissioners must establish one or more advisory body or bodies which the Commissioners must consult on all matters substantially affecting the harbour.

(2) The Commissioners must make arrangements for every advisory body to meet not less than twice a year.

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

(4) An advisory body established under this article is to consist of such number of persons appointed by the Commissioners as the Commissioners consider appropriate.

(5) Appointments to an advisory body must be made by the Commissioners in accordance with a scheme prepared by them for that purpose and the scheme must 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.

(6) An advisory body may determine its own quorum and procedure and must appoint a chair.

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

(8) A member of an advisory body is to hold office for the period of three years from the date of this appointment and at the end of that period is to be eligible for reappointment.

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

Indemnity insurance for the Commissioners

13. 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.

Provisions applying to Commissioners

14. On and after the new constitution date, Schedule 2 has effect with respect to the Commissioners.

Revocations

15. On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 are revoked to the extent specified in the third column of that Schedule.

Signed by authority of the Secretary of State for Transport

20th May 2010

Richard Bennett
Head of Ports Division
Department for Transport

FORM OF DECLARATION BY COMMISSIONERS

NEWLYN PIER AND HARBOUR COMMISSIONERS
NEWLYN PIER AND HARBOUR ORDERS 1906 TO 2010
DECLARATION

I, [FULL NAME] 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 Newlyn Pier and Harbour Commissioners by virtue of the Newlyn Pier and Harbour Orders 1906 to 2010;

(2) that I have read and understood the notes entitled “Note for Guidance of Commissioners on the Disclosure of Financial and Other Interests” and “Duties of Commissioners” and that I will comply with the requirements as to the disclosure of such interests, laid down by sub-paragraphs (6), (7) and (8) of paragraph 7 of Schedule 2 to the Newlyn Pier and Harbour Revision (Constitution) Order 2010, and in particular that:

(a) I have disclosed to the clerk details of every financial or other interest such as is mentioned in those notes;

(b) I will notify the clerk of any alteration in those interests, and of any new interest, such as is mentioned in those notes, which I may acquire.

Signed

Dated

PROVISIONS APPLYING TO THE COMMISSIONERS

Meetings of Commissioners

1.—(1) The first meeting of the Commissioners on or after the new constitution date must be convened by the clerk as soon as reasonably possible on or after that date and the clerk must send notice of that meeting by post to each of the Commissioners.

(2) The Commissioners must meet at least six times in each year.

Chair and vice-chair of Commissioners

2.—(1) The chair is to be appointed by the Commissioners.

(2) The first person taking office as chair after the new constitution date is, unless that person resigns as chair or ceases to be a Commissioner, to continue in office as chair until that person's initial term of office as a Commissioner has expired.

(3) Subject to sub-paragraph (7), every person subsequently appointed as chair under sub-paragraph (1) is, unless that person resigns as chair or ceases to be a Commissioner, to hold office for a period of three years.

(4) There must be a vice-chair of the Commissioners who is to be appointed by the Commissioners from among the appointed Commissioners.

(5) The first person taking office as vice-chair after the new constitution date must be appointed as soon as practicable after the new constitution date and is, unless that person resigns as vice-chair or ceases to be a Commissioner, to continue in office as vice-chair until his term of office as a Commissioners has expired.

(6) Subject to sub-paragraph (7), every person subsequently appointed as vice-chair under sub-paragraph (4) is, unless that person resigns as vice-chair or ceases to be a Commissioner, to hold office for a period of 3 years.

(7) If the appointed Commissioners are satisfied that the chair or vice-chair should cease to hold office as such, they may terminate his or her office as such and appoint another Commissioner to be chair or vice-chair during the remainder of the term for which the former chair or vice-chair was appointed.

(8) On a casual vacancy occurring in the office of chair or vice-chair of the Commissioners, the vacancy must be filled by the Commissioners at a meeting held as soon as practicable after the vacancy occurs.

(9) A Commissioner appointed under sub-paragraph (8) to fill a casual vacancy in the office of chair or vice-chair is, unless he or she resigns that office or ceases to be a Commissioner, to hold that office during the remainder of the term for which the chair or vice-chair being replaced was appointed.

(10) In the absence of the chair the person for the time being holding office as vice- chair is to have and may exercise all the powers of the chair.

(11) If at a meeting of the Commissioners neither the chair nor the vice-chair is present the Commissioners present must choose one of their number to be chair of the meeting.

Vacation of office by Commissioners

3. A Commissioner (other than the harbour management representative) may resign that office at any time by notice in writing given to the chair or if that Commissioner is the chair, the vice-chair.

Reappointment of Commissioners

4.—(1) Subject to the provisions of this Schedule, a vacating Commissioner is eligible for reappointment as a Commissioner unless disqualified from office under article 11 of this Order.

(2) Subject to sub-paragraph (3), a vacating appointed Commissioner, who has held office for three consecutive terms, is not eligible for reappointment as a Commissioner.

(3) A chair of the Commissioners who is an appointed Commissioner and who, immediately before the date in question, has held office for four consecutive terms is not eligible for reappointment as a Commissioner.

(4) For the purposes of this paragraph, "term" does not include—

(a) a term referred to in article 5(2)(a) or (b) of this Order; or

(b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 8 of this Order.

Reappointment of chair

5.—(1) A chair of the Commissioners who has served as the chair for three consecutive terms immediately beforehand is not eligible for reappointment as the chair

- (2) For the purposes of this paragraph, “term” does not include—
- (a) a term served by the Commissioner as the chair under paragraph 2(2);
 - (b) the remainder of a term during which the chair was appointed to fill a casual vacancy in the office of the chair under paragraph 2; or
 - (c) any term served by the chair as a Commissioner prior to the new constitution date.

Committees

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

Proceedings of Commissioners and Committees

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

(2) If at any meeting of the Commissioners there is an equality of votes on a question, the chair of the meeting has a second or casting vote.

(3) The quorum required for a meeting of the Commissioners is five.

(4) The Commissioners must 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; and
- (b) of all proceedings or resolutions at such meeting;

and such minutes, if signed by a person purporting to be chair of the meeting to which the minutes relate or of a subsequent meeting at which the minutes were approved as a correct record, is to be received in evidence without further proof.

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

(6) A Commissioner who has any interest, direct or indirect—

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

must declare that interest.

(7) A Commissioner, who 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, must—

- (a) as soon as is practicable after the commencement of that meeting, disclose that 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 so required by a resolution of the Commissioners present; and
 - (ii) while a decision on that contract or matter is being made.

(a) Paragraph 9B was inserted by the Transport and Works Act 1992(c.42) section 63 and Schedule 3, paragraph 9(5).

- (8) This paragraph does 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 trading community in general;
 - (c) which a Commissioner has as an employer of a public utility undertaking or as a shareholder, not being a director of a company, with a holding which does not exceed five per cent of the issued share capital of the company; or
 - (d) which the Commissioners present at the meeting by resolution declare to be too remote.

Validity of acts of Commissioners

8. The Commissioners may act notwithstanding a vacancy among the Commissioners and no act of the Commissioners or of any committee of the Commissioners is to be deemed to be invalid by reason of any vacancy in their number or defect or irregularity in the appointment of any person as a Commissioner or as chair or vice-chair of the Commissioners or committee.

Authentication of seal

9.—(1) The application of the seal of the Commissioners must be authenticated by the signature of the chair or some other Commissioner authorised by the Commissioners to authenticate the application of the seal, and of the clerk or some person authorised by the Commissioners to act in the place of the clerk in that behalf.

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

Remuneration of Commissioners

10. The Commissioners may pay to the chair and other Commissioners such salary, allowances and expenses as the Commissioners from time to time determine.

General

11. The Commissioners may appoint upon such terms and conditions as they see fit such officers and servants as they may determine.

12. Subject to the provisions of this Schedule, the procedure of the Commissioners is to be regulated in such manner as the Commissioners determine.

SCHEDULE 3

Article 15

REVOCATIONS

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of revocation</i>
1906 c.cxiii	The Newlyn Pier and Harbour Order 1906	In article 8, the words “not exceeding nine in number” Articles 10, 12 and 14 to 17.
1996 S.I. No 197	The Newlyn Pier and Harbour (Revision of Constitution of Commissioners) Order 1996	The whole Order

EXPLANATORY NOTE

(This note is not part of the Order)

This Order alters the constitution of the Newlyn Pier and Harbour Commissioners as from 31st May 2010. It provides for the Commissioners to consist of a body of 11 members, with experience in relevant matters. Eight Commissioners will be appointed by the Commissioners and two by the Cornwall Council. They will all have experience in relevant matters. A harbour management representative will hold office as of right. The appointed Commissioners will retire in rotation.

The order also includes other provisions with respect to the Commissioners' constitution including provision for the protection of the Commissioners from personal liability in the discharge of their functions. Provision is made for the establishment of advisory bodies and the Order also repeals and revokes certain statutory provisions.

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STATUTORY INSTRUMENTS

2010 No. 1462

HARBOURS, DOCKS, PIERS AND FERRIES

The Newlyn Pier and Harbour Revision (Constitution) Order
2010

£5.75