

2016 No. 250

HARBOURS, DOCKS, PIERS AND FERRIES

The Dover Harbour (Constitution) Revision Order 2016

Made - - - - 26th February 2016

Laid before Parliament 3rd March 2016

Coming into force - - 25th March 2016

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SCHEDULE — INCIDENTAL PROVISIONS RELATING TO THE BOARD

The Dover Harbour Board have applied in accordance with section 14(2)(a) of the Harbours Act 1964(a) (“the Act”) for a harbour revision order under section 14.

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an order(a) under section 42A of the Act(b) delegated the functions of the appropriate Minister under section 14(c) to the Marine Management Organisation(d).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Dover Harbour (Constitution) Revision Order 2016 and will come into force on 25th March 2016.

(2) The Dover Harbour Acts and Orders 1954 to 2014 and this Order may together be cited as the Dover Harbour Acts and Orders 1954 to 2016.

Interpretation

2. In this Order—

“the Board” means the Dover Harbour Board;

“director” means member of the Board;

“the Dover Port Users Group” means the body referred to in article 9(2)(b);

“harbour” means Dover Harbour and has the meaning given by section 4 of the Dover Harbour Consolidation Act 1954(e);

“the new constitution date” means 1st May 2016; and

“the Port & Community Forum” means the body referred to in article 9(2)(a).

New constitution

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

(a) one person appointed by the Secretary of State as the chair.

(b) two further persons appointed by the Secretary of State;

(c) four persons appointed by the Board;

(d) the chief executive of the Board; and

(e) one other senior officer employed by the Board as specified by the directors appointed under subparagraphs (a) to (d).

(2) No employee of the Board may be appointed a director under paragraph (1)(a), (b) or (c).

(3) Subject to article 4—

(a) no person is to be appointed by the Secretary of State as a director under paragraph (1)(a) unless he or she is recommended for appointment by a panel comprising the Board’s deputy chair, such other director as may be determined by the Board, an official of the Department for Transport and an independent member to be agreed from time to time between the Board and the Secretary of State, and

(b) no person is to be appointed by the Secretary of State as a director under paragraph (1)(b) unless he or she is recommended for appointment by a panel comprising the Board’s

(a) S.I. 2010/674.

(b) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).

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

(d) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

(e) 1954 c. iv.

chair, the Board's deputy chair, an official of the Department for Transport and an independent member to be agreed from time to time between the Board and the Secretary of State.

(4) A recommendation by the panel under paragraph (3) must identify a candidate who satisfies the pre-determined and advertised criteria for the role and shall be made by a majority of the persons on the panel.

(5) Two of the directors appointed under paragraph (1)(c) must be persons who appear to the Board to have special knowledge or experience of the position of the harbour within the local community and local economy.

(6) Before any person is appointed as a director in accordance with paragraph (5) he or she must be interviewed by, and the Board must consult with, a panel comprising the Board's chair and three members of a committee of the Board to be known as the Nomination Committee, the chair of the Dover Port Users Group, the chair of the Port & Community Forum, one elected member of the Dover District Council, one elected member of Dover Town Council, the Member of Parliament for Dover and the chair of the South East Local Enterprise Partnership.

(7) If the office of chair of the Dover Port Users Group, the Port & Community Forum or the South East Local Enterprise Partnership falls vacant or the chair is unable to attend a meeting of the panel mentioned in paragraph (6), the body in question may nominate another member of the body to be the acting chair for the purposes of that paragraph; and the proceedings of the panel will not be affected by any vacancy among the members of the panel or any failure of a member to participate in the proceedings.

(8) If the Board's deputy chair is unable to attend a meeting of the panel mentioned in paragraph (3)(a) or (3)(b) his or her place shall be taken by such other director as the Board may determine; and if the Board's chair is unable to attend a meeting of the panel mentioned in paragraph (3)(b) or (6) his or her place shall be taken by the Board's deputy chair or (in his or her absence) such other director as the Board may determine.

(9) If a body mentioned in paragraph (6) ceases to exist, the requirements for a person to be interviewed by, and the Board to consult with, the body shall be inapplicable as respects that body but those requirements shall apply as respects any body that the Board consider to be a successor to that former body.

(10) A director appointed under paragraph (1)(a) or (b) must be a person who appears to the Secretary of State, and a director appointed under paragraph (1)(c) (but without prejudice to the foregoing paragraphs) must be a person who appears to the Board, to have special knowledge, experience or ability appropriate to discharge the fiduciary duties of directors and contribute to the efficient, effective and economic discharge by the Board of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge or experience of, or ability in, one or more of the following matters—

- (a) the ports industry;
- (b) shipping or other forms of transport;
- (c) navigation or marine operations;
- (d) industrial, commercial or financial management;
- (e) administration;
- (f) safety and personnel management;
- (g) environmental matters affecting harbours;
- (h) strategic planning; or
- (i) any other skills and abilities considered from time to time by the Secretary of State or, as the case may be, the Board to be relevant to the discharge of the Board's functions.

(11) Without prejudice to paragraphs (2) to (10), appointments under paragraph (1) or article 6 must be made in accordance with any guidance issued by the Secretary of State from time to time with respect to the appointment of Board members.

Appointment and terms of office of the first directors

4.—(1) Subject to paragraphs (2) and (3), the first appointments under article 3(1)(a), (b) and (c) must be made to take effect on, or as soon as reasonably practicable after, the new constitution date.

(2) The Secretary of State must appoint as the first chair of the Board as required by article 3(1)(a) the person who is the last Chairman of the Board before the new constitution date.

(3) The Secretary of State must appoint as first members of the Board under article 3(1)(b) the persons who are the two directors appointed before the new constitution date to hold office until 12 June 2018.

(4) The Board must appoint as first members of the Board under article 3(1)(c) the persons who are before the new constitution date respectively—

(a) the director appointed to hold office until 23 May 2016; and

(b) the director appointed to hold office until 30 September 2016.

(5) A director appointed under paragraph (2), (3) or (4) shall hold office until the date on which his previous period of office would have expired but for the making of this Order.

(6) The first two directors referred to in article 3(5) appointed by the Board under article 3(1)(c) shall hold office for a period of three years following their appointment.

(7) In the case of the first two directors mentioned in paragraph (6), consultation carried out by the Board as described in article 3(6) before the coming into force of this Order is to be taken to have been carried out under that provision.

(8) The senior officer appointed under article 3(1)(e) shall hold office as a director for such period as the Board may specify.

Terms of office of subsequent directors

5. A director appointed under article 3(1)(a), (b) or (c) (other than a director mentioned in article 4) shall, unless appointed to fill a casual vacancy, hold office for a period of three years following his or her appointment or for such lesser period as the Secretary of State or the Board (as the case may be) may specify.

Casual vacancies

6.—(1) A casual vacancy arising in the office of -

(a) a chair appointed by the Secretary of State under article 3(1)(a),

(b) a director appointed by the Secretary of State under article 3(1)(b), or

(c) a director appointed by the Board under article 3(1)(c),

(2) must, unless it is not reasonably practicable to do so, be filled by the appointment of a director by the Secretary of State or, as the case may be, the Board in accordance with article 3(2) to (11).

(3) The Secretary of State may fill a casual vacancy in the office of the chair by appointing as the chair a person who is already a director of the Board appointed under article 3(1)(b) or (c) and, if the Secretary of State does so, the appointment shall be deemed to create a casual vacancy in the office of the director who is appointed as the chair.

(4) A director appointed to fill a casual vacancy under this article shall, subject to paragraph 4 of the Schedule to this Order, hold office during the remainder of the term for which the director whom he or she replaces was appointed or such other period (not exceeding three years) as the appointing person or body may specify.

Appointment of a chief executive

7. For and incidental to the performance of their functions, the Board must appoint a chief executive.

Undertaking and declaration by directors

8. A director appointed by the Secretary of State or the Board must, before his or her appointment takes effect, sign an undertaking as to the discharge of the duties of a director and a declaration of interests in a form to be determined by the Board from time to time.

Advisory bodies

9.—(1) The Board must consult the advisory bodies specified in paragraph (2) on all matters which in the Board's reasonable opinion could substantially affect the management, improvement, conservation, protection or regulation of the harbour or navigation within it; but the Board is not required to consult on matters which in the Board's reasonable opinion are confidential or commercially sensitive or where it is not reasonably practicable to do so having regard to the urgency of the matter.

(2) The bodies referred to in paragraph (1) are—

- (a) an advisory body established by the Board before the coming into force of this Order known as the Port & Community Forum ("the PCF") consisting of persons who are representative of persons having an interest in the functioning of the harbour in the context of the local community and local economy; and
- (b) an advisory body established by the Board before the coming into force of this Order known as the Dover Port Users Group ("the Dover PUG") consisting of persons who are representative of port users, border agencies, the Board's operational tenants, and other persons having an interest in the commercial and operational functioning of the harbour.

(3) The initial appointments to the advisory bodies having been made by the Board in accordance with a scheme prepared by the Board for each advisory body, on and after the new constitution date subsequent appointments to the PCF and the Dover PUG must be made by each advisory body and must be made in accordance with those schemes.

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

(5) The Board must facilitate the arrangements for each advisory body to meet regularly as required by the chair of the advisory body; and for that purpose must provide reasonable accommodation for the meeting and provide it with reasonable secretarial services.

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

(7) A member of an advisory body may resign his or her office at any time by notice in writing given to the chair of that body who must send a copy to the chair of the Board.

(8) The Board must use all reasonable endeavours to facilitate the continued existence of the PCF and the Dover PUG but if either body ceases to exist on a resolution of its members paragraph (9) or, as the case may be, paragraph (10) shall have effect.

(9) If the PCF ceases to exist, the Board must appoint and maintain a replacement advisory body comprising persons who in the Board's reasonable opinion are representative of persons having an interest in the functioning of the harbour in the context of the local community and local economy and the relevant provisions of this article shall apply to that body.

(10) If the Dover PUG ceases to exist, the Board must appoint and maintain a replacement advisory body comprising persons who in the Board's reasonable opinion are representative of port users, border agencies, the Board's operational tenants and other persons having an interest in the commercial and operational functioning of the harbour and the relevant provisions of this article shall apply to that body.

(11) Initial appointments to an advisory body appointed under paragraph (9) or (10) must be made in accordance with a scheme prepared by the Board for that purpose and subsequent appointments must be made by the advisory body in the manner provided for by that scheme as agreed by the advisory body.

(12) In this article “advisory body” means the PCF or the Dover PUG or, as the case may be, a replacement body appointed under paragraph (9) or (10).

Incidental provisions relating to Board

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

Revocation

11. On the new constitution date the Dover Harbour Revision Order 1975(a) is revoked.

Signed by authority of the Marine Management Organisation

26th February 2016

J F Tuckett
Chief Executive Officer
An authorised employee of the Marine Management Organisation

SCHEDULE

Article 10

INCIDENTAL PROVISIONS RELATING TO THE BOARD

1. The first meeting of the Board after the new constitution date must be convened by the chair of the Board for such date and at such place as he or she may fix and the chair must make arrangements for notice of that meeting to be sent to each of the other directors.

2.—(1) The Board must at their first meeting after the new constitution date appoint one of their number to be the deputy chair and the deputy chair shall, unless he or she resigns his or her office or ceases to be a director, continue in office until 31 December 2016.

(2) The Board must appoint one of their number to be deputy chair for each subsequent calendar year who shall continue in office until the end of that calendar year unless he or she resigns his or her office or ceases to be a director.

3. Directors shall be appointed on such terms as the Secretary of State or, as the case may be, the Board determines and as soon as practicable after a director has been appointed, the appointment and the terms of it must be confirmed in writing by a person duly authorised to do so on behalf of the Board.

4.—(1) A director may resign his or her directorship by sending a notice in writing to the Register of the Board, and by sending a copy of that notice to the Secretary of State or, as the case may be, the Board.

(2) If the chief executive or the director appointed under article 3(1)(e) ceases to be a full-time employee of the Board, he or she shall thereupon cease to be a director.

5.—(1) This paragraph applies where a director—

(a) has failed to attend meetings of the Board for six consecutive months or more without the permission of the Board; or

(a) S.I. 1975/568.

- (b) has become bankrupt or has made an arrangement with his or her creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a director; or
- (d) has knowingly failed in a material respect to act in his or her capacity as a director independently of any particular interest; or
- (e) has been convicted of a criminal offence; or
- (f) has failed to declare a conflict of interest or otherwise acted improperly; or
- (g) appears to the chair or to a majority of the directors or the Secretary of State to be otherwise unable, unfit or unwilling to discharge the functions of a director.

(2) If the Secretary of State is (in the case of a director appointed by the Secretary of State) or the Board are (in the case of a director appointed by them) satisfied that this paragraph applies to any such director, and that the director should be disqualified from office in consequence, the Secretary of State may declare or, as the case may be, the Board may resolve that the director's office as a director shall be vacated and thereupon the office shall be vacant.

(3) For the purposes of sub-paragraph (1)(a) the attendance of a director at a meeting of any committee of the Board of which he or she is a member is to be treated as attendance at a meeting of the Board.

6. On a casual vacancy occurring in the office of deputy chair of the Board, the vacancy must be filled by the appointment by the Board of one of their number at a meeting held as soon as practicable after the vacancy occurs, and the person so appointed shall hold office until the end of the calendar year in which the vacancy occurs.

7.—(1) Subject to subparagraph (2), the Board must meet at least six times in each year.

(2) In addition to the meetings held under subparagraph (1), the Board must hold an annual consultative meeting to which members of the public must be admitted.

8. At meetings of the Board the quorum is to be four.

9.—(1) Meetings of the Board may be held and conducted in such a way that directors who are not present together at the same place may by electronic means attend and speak and vote at it; and any director attending a meeting by electronic means is to be counted in the quorum for that meeting.

(2) For the purposes of subparagraph (1) electronic means has the same meaning as it has for the purposes of section 360A of the Companies Act 2006(a).

10. A person who has held office as a director is eligible for re-appointment in accordance with any guidance issued by the Secretary of State from time to time.

11. Subject to the provisions of this Schedule, the procedure of the Board shall be regulated in such manner as the Board may from time to time determine.

12. In addition to providing the Secretary of State with the accounts and reports required under section 42 of the Harbours Act 1964, the Board must act in accordance with any general guidance to all trust ports on the provision of information issued by the Secretary of State from time to time.

EXPLANATORY NOTE

(This note is not part of the Order)

(a) 2006 c.46

This Order reconstitutes the Dover Harbour Board on the new constitution date (defined in article 2). It provides for the Board to consist of a body of nine members with experience in relevant matters. Three members will be appointed by the Secretary of State one of whom will be appointed as the chair. Four members will be appointed by the Board, two of whom will be appointed as having particular knowledge or experience of, or ability in, the position of the port within the local community and local economy. The remaining two members will be the chief executive and one other senior officer of the Board. Provision is also made for the Board to consult the two advisory bodies known as the Port & Community Forum and the Dover Port Users Group.

A full regulatory impact assessment has not been provided for this instrument as there is no impact on business or charities or the voluntary sector.

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£6.00

UK2016030110 03/2016 19585

<http://www.legislation.gov.uk/id/uksi/2016/250>

ISBN 978-0-11-114447-3



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