
STATUTORY INSTRUMENTS

2002 No. 2476

HARBOURS, DOCKS, PIERS AND FERRIES

The Brightlingsea Harbour Revision (Constitution) Order 2002

Made - - - - 13th September 2002

Coming into force - - 18th September 2002

Whereas the Commissioners of the Harbour of Brightlingsea 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;

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

Now, therefore, the Secretary of State for Transport, Local Government and the Regions (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 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 Brightlingsea Harbour Revision (Constitution) Order 2002 and shall come into force on 18th September 2002.

(2) The Brightlingsea Harbour Acts and Orders 1927 to 1985 and this Order may be cited together as the Brightlingsea Harbour Acts and Orders 1927 to 2002.

Interpretation

2. In this Order—

“the appointed Commissioners” (except in article 4) means the Commissioners appointed under article 3(1)(a) or 7(1) below;

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

(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. Schedule 3 was substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, S.I.1999/3445, regulation 15(4) and Schedule 3 (amended by S.I. 2000/2391).

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

(3) S.I. 1981/238, S.I. 1997/2971 and S.I. 2001/2568.

“the Commissioners” means the Brightlingsea Harbour Commissioners;

“the harbour” means the harbour of Brightlingsea within the limits prescribed by section 13 of the Brightlingsea Harbour Order 1927(4); and

“the new constitution date” means 1st October 2002.

Constitution of Commissioners

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

- (a) six persons appointed by the Commissioners;
- (b) the chief executive for the time being of the Commissioners; and
- (c) the Harbour Master for the time being of the Commissioners.

(2) Each appointed Commissioner shall be a person who appears to the Commissioners making the appointment 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) water related leisure activities;
- (b) shipping or other forms of transport;
- (c) financial management;
- (d) the laws relating to England;
- (e) safety or personnel management;
- (f) commercial marketing or information technology;
- (g) environmental issues affecting harbours;
- (h) 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 shall 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.

(3) In making an appointment under paragraph (1)(a) above or article 7(1) 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.

(4) Appointments to the Commissioners shall be made on merit in accordance with a published recruitment policy.

Appointment and periods of office of first Commissioners

4.—(1) The first appointments under article 3(1)(a) of this Order shall be made before and so as to take effect on the new constitution date.

(2) The Commissioners shall appoint the person who is, at the date when they make the first appointments referred to in paragraph (1) above, the chairman of the Commissioners to be one of the first of such appointed Commissioners and he shall hold office as a Commissioner from the new constitution date until 30th September 2004; and on and after the new constitution date shall be the chairman of the Commissioners.

(3) Of the remaining first such appointed Commissioners—

- (a) two shall hold office from the new constitution date until 30th September 2004;
 - (b) three shall hold office from the new constitution date until 30th September 2006;
- as the Commissioners shall specify when they make each of those appointments.

Periods of office of subsequent Commissioners

5. An appointed Commissioner (other than the first Commissioners appointed under article 3(1) (a) above) shall, unless appointed to fill a casual vacancy and subject to articles 6 and 8 of, and paragraph 10 of Schedule 2 to, this Order, hold office for the period of four years from the 1st October next following his appointment.

Declaration to be made by Commissioners

6. No person shall act as a Commissioner until he has made a declaration in the form 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 three months of the date of his appointment.

Casual vacancies

7.—(1) A casual vacancy arising in the office of an appointed Commissioner 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 the requirements of article 3(2) and (3) 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 Commissioner) during the remainder of the term for which the Commissioner whom he replaces was appointed.

Disqualification of Commissioners

8. If the Commissioners are satisfied that a Commissioner—

- (a) has without the permission of the Commissioners been absent from the meetings of the Commissioners—
 - (i) for a period during which three such meetings have been held; or
 - (ii) for a period of three consecutive months,whichever of these periods is the longer; or
- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or
- (d) has acted in a manner which has seriously impeded or prejudiced the carrying on of the business of the Commissioners; or
- (e) has failed to comply with the standards required for the governance of the harbour by the Commissioners;
- (f) 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;
- (g) is otherwise unable, unwilling, or unfit to discharge the functions of a Commissioner;

the Commissioners may declare his office as a Commissioner to be vacant and thereupon his office shall become vacant.

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 an 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 in breach of duty or concerning which that Commissioner was reckless as to whether it was such a breach.

Incidental provisions applicable to the Commissioners

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

Advisory bodies

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

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

(3) 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.

(4) 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 being persons who, in the opinion of the Commissioners, are representative of persons having an interest in the functioning of the harbour.

(5) The chief executive or his representative shall be entitled to attend any meeting of an advisory body.

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

(7) 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.

(8) A member of an advisory body shall hold office for the period of three years from the date of his appointment and at the end of the period shall 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 chief executive.

Revocation

12. On the new constitution date the Brightlingsea Harbour Revision Order 1981⁽⁵⁾ shall be revoked.

(5) S.I. 1981/1096.

Signed by authority of the Secretary of State for Transport, Local Government and the Regions

13th September 2002

Stephen Reeves
Head of Ports Division,
Department for Transport

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SCHEDULE 1

Article 6

BRIGHTLINGSEA HARBOUR COMMISSIONERS

(Brightlingsea Harbour Acts and Orders 1927 to 2002)

DECLARATION OF ACCEPTANCE OF OFFICE

I (Full Name)

Having been duly appointed to act as a member of the Brightlingsea Harbour Commissioners 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 Brightlingsea Harbour Commissioners by virtue of the Brightlingsea Harbour Acts and Orders 1927 to 2002;
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
3. that, in particular, I have disclosed to the chief executive details of every financial or other interest such as is mentioned in paragraph 16 of Schedule 2 to the Brightlingsea Harbour Revision (Constitution) Order 2002 and that I will comply with the requirements as to the disclosure of such interests and will also, in the future, notify the chief executive to the Commissioners of any alteration in those interests, and of any new interest which I may acquire.

Dated this day of

Signature of commissioner

Witnessed:

Note: Where the declaration is to be made by the chief executive, the form shall be amended so that, for references to “the chief executive”, there shall be substituted references to “the Chairman”.

SCHEDULE 2

Article 10

INCIDENTAL PROVISIONS RELATING TO COMMISSIONERS

Appointment of chairman and vice-chairman of Commissioners

1. Subject to article 4(2) there shall be a chairman of the Commissioners who shall be appointed by those of the Commissioners who are appointed under article 3(1)(a) or 7(1) above from among their number.
2. The chairman appointed under article 4(2) above shall, subject to paragraph 7 below, and unless he resigns his office as chairman or ceases to be a Commissioner, continue in office as chairman until his initial term of office as a Commissioner has expired.
3. Subject to paragraph 7 below, every chairman subsequently appointed under paragraph 1 above shall, unless he resigns his office as chairman or ceases to be a Commissioner, hold office for a period of four years.
4. There shall be a vice-chairman of the Commissioners who shall be appointed by those of the Commissioners who are appointed under article 3(1)(a) or 7(1) above from among their number.
5. 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 7 below, shall, unless he resigns his office as vice-chairman or ceases to be a Commissioner, continue in office as vice-chairman until his initial term of office as a Commissioner has expired.

6. Subject to paragraph 7 below, every vice-chairman subsequently appointed under paragraph 4 above shall, unless he resigns his office as vice-chairman or ceases to be a Commissioner, hold office for a period of four years.

7. If those of the Commissioners who are appointed under article 3(1)(a) or 7(1) above are satisfied that the chairman or vice-chairman should cease to hold his office as such, they may terminate his office as such and appoint another Commissioner to be the chairman or vice-chairman during the remainder of the term for which the former chairman or vice-chairman was appointed.

8.—(1) On a casual vacancy occurring in the office of chairman or vice-chairman of the Commissioners, the vacancy shall be filled by one of those of the Commissioners who are appointed under article 3(1)(a) or 7(1) above at a meeting held as soon as practicable after the vacancy occurs.

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

Meetings and procedure

9.—(1) The Commissioners shall hold a public Annual General Meeting in October each year.

(2) The Commissioners shall hold not less than five further meetings each year.

(3) The quorum required for a meeting of the Commissioners shall be four.

(4) In the absence of the chairman, the vice-chairman shall have and may exercise all the powers of the chairman.

(5) If, at any meeting of the Commissioners, neither the chairman or the vice-chairman is present the Commissioners present at the meeting shall elect one of their number to be chairman of the meeting.

(6) If, at any meeting of the Commissioners, there is an equality of votes on any question the chairman of the meeting shall have a second and casting vote.

(7) The Commissioners may act notwithstanding a vacancy among the Commissioners and no act of the Commissioners or of any committee of the Commissioners shall be deemed invalid by reason of any irregularity in the appointment of a Commissioner or their chairman or vice-chairman.

(8) 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.

Resignation of Commissioner

10. A Commissioner (other than the chief executive) may at any time resign from office by notice in writing to the chief executive.

Reappointment of Commissioners

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

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

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(3) A chairman of the Commissioners who is an appointed Commissioner shall not be eligible for reappointment as a Commissioner where, immediately before the date in question, he has held office as a Commissioner for three consecutive periods.

(4) For the purposes of this paragraph, “period” does not include:—

- (a) a period referred to in article 4(2) or (3) above;
- (b) the remainder of a period during which the Commissioner was appointed to fill a casual vacancy under article 7(1) above; or
- (c) any period served by the Commissioner prior to the new constitution date.

Reappointment of chairman

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

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

- (a) any period served by the Commissioner as chairman under paragraph 2 above where that period is less than four years;
- (b) the remainder of a period of office during which the Commissioner was appointed to fill a casual vacancy in the office of chairman under paragraph 8 above; or
- (c) any period of office served by the Commissioner as chairman prior to the new constitution date.

Fees

13. The Commissioners may pay to each of the Commissioners such fees and expenses in respect of their work as a Commissioner as they may determine.

Appointment of officers

14. The Commissioners shall appoint a chief executive and a harbour master and may appoint such other officers and employees as they may determine, in each case upon such terms and conditions as they see fit.

Committees

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

Declaration of interests

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

he 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 he has an interest is to be considered he shall—

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

- (a) as 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 Commissioners present by resolution require him so to do,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 public 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 5 per cent of the issued share capital of that company; or
 - (d) which the Commissioners present at the meeting by resolution declare to be too remote.

Register of interests

17. The Commissioners shall maintain and regularly update a register of interests declared by Commissioners, and shall make the register available to members of the public at all times during normal office hours.

Authentication of seal and other documents

18.—(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 chief executive of the Commissioners or some person authorised by the Commissioners to act in his place in that behalf.

(2) The Commissioners may authorise a person to act instead of the chief executive under this paragraph whether or not the chief executive 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 chief executive of the Commissioners or a duly authorised officer of the Commissioners.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Brightlingsea Harbour Commissioners as from 1st October 2002. It provides for the Commissioners to consist of a body of eight Commissioners with experience in relevant matters. Six persons will be appointed by the Commissioners and the chief executive and the harbour master will also hold office as Commissioners. Under the terms of the Order the appointed Commissioners will retire in rotation.

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The Order includes other provision with respect to the Commissioners' constitution and provision for the protection of the Commissioners from personal liability in the discharge of their functions.

The Order revokes the Order which put in place the current constitutional arrangements.