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STATUTORY INSTRUMENTS

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**2004 No. 3400**

**HARBOURS, DOCKS, PIERS AND FERRIES**

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

Made - - - - 22nd December  
2004  
Coming into force - - 31st December 2004

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

And whereas no objections to the application were made pursuant to paragraph 10(2)(f) of Schedule 3 to the said Act;

Now, therefore, the Secretary of State for Transport (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 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 Falmouth Harbour Revision (Constitution) Order 2004 and shall come into force on 31st December 2004.

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

**Interpretation**

2. In this Order—

“the 1976 Order” means the Falmouth Harbour Revision Order 1976(4);

“the chairman” means the chairman of the Commissioners;

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

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

“the Commissioners” means the Falmouth Harbour Commissioners;

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

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

(4) S.I. 1976/494.

“the harbour” means Falmouth harbour as defined in section 4 of the Falmouth Harbour Act 1958(5); and

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

### **Continuation of the Commissioners**

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

### **Constitution of the Commissioners**

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

- (a) seven commissioners to be appointed by the Commissioners; and
- (b) the chief executive.

(2) Each commissioner appointed under article 4(1)(a) above shall be a person who appears to the Commissioners to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Commissioners of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge, experience or ability in one of the following matters—

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

and the Commissioners shall secure, so far as is reasonably practicable, that the commissioners appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of their functions.

(3) In making an appointment under article 4(1)(a) above or article 6 below, the Commissioners shall act in accordance with any guidance issued by the Secretary of State from time to time with respect to the exercise of such functions.

### **Appointment and terms of office of Commissioners**

5.—(1) Subject to articles 6 and 7 and paragraph 4 of Schedule 2 below, each commissioner appointed in accordance with the 1976 Order shall (unless that commissioner previously dies or

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(5) 1958 c. xlvii as amended by article 4 of the Falmouth Harbour Revision Order 1985 (S.I. 1985/1678) and article 3 of the Falmouth Harbour Revision Order 1991 (S.I. 1991/1853).

resigns) continue in office until the expiry of the term for which that commissioner has been appointed.

(2) The Commissioners shall appoint in accordance with article 4(2)—

- (a) three commissioners on or as soon as practicable after 1st January 2005 and before every third anniversary of 1st November 2004;
- (b) two commissioners before 1st November 2005 and every third anniversary of that date; and
- (c) two commissioners before 1st November 2006 and every third anniversary of that date.

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

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

#### **Casual vacancies**

6.—(1) A casual vacancy arising in the office of a commissioner shall be filled—

- (a) if occurring in or between December and June, as soon as practicable in accordance with article 4; or
- (b) if occurring in or between July and November, in conjunction with such other vacancies as shall arise in the next following January.

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

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

7. No person shall act as a commissioner until he has made the declaration set out in Schedule 1 to this Order (or a declaration to that effect); and a person shall cease to be a commissioner if he fails to make such a declaration within three months of the date of his appointment or, in the case of a commissioner continuing in office from the new constitution date, that date.

#### **Disqualification of Commissioners**

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

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

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

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

- (a) has persistently acted in a manner calculated seriously to impede or prejudice the carrying on of the business of the Commissioners; or
- (b) is in breach of the standards required for the governance of the harbour; or

(c) has acted in a manner inappropriate to the interests of the harbour or likely to bring the Commissioners into disrepute; or

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

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

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

### **Indemnity insurance for Commissioners**

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

### **Chairman of the Commissioners**

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

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

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

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

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

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

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

(a) make available a copy of the statement for a period of three months at the offices of the Commissioners for inspection free of charge by members of the public; and

(b) subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests to be supplied with a copy.

### **Advisory bodies**

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

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

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

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

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

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

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

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

### **Borrowing powers**

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

- (a) such sums of money as they think necessary not exceeding an aggregate of five million pounds (or that sum as adjusted in accordance with article 17 below); and
- (b) with the consent of the Secretary of State, such further sums of money as they may require.

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

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

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

- (a) the payment of any interest, falling due within five years immediately following the date of borrowing, on any sum borrowed by the Commissioners under this article; and
- (b) the repayment, within twelve months from the date of borrowing, of any sum for the time being outstanding by way of principal on any amount previously borrowed.

### **Temporary borrowing powers**

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

### **Reserve fund**

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

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

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

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

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

### **General powers**

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

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

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

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

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

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

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

### **Repeals and revocations**

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

Signed by authority of the Secretary of State for Transport

22nd December 2004

*C A Morris*  
Authorised Officer, Ports Division,  
Department for Transport

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SCHEDULE 1

Article 7

DECLARATION OF ACCEPTANCE OF OFFICE

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 commissioner of the Falmouth Harbour Commissioners by virtue of the Falmouth Harbour Act and Orders 1810 to 2004;

(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 chief executive details of every financial or other interest such as is mentioned in paragraph 13 of Schedule 2 to the Falmouth Harbour Revision (Constitution) Order 2004;

(b) I will notify the chief executive of any alteration in those interests, and of any new interest, such as is mentioned in paragraph 13 of Schedule 2 to the Falmouth Harbour Revision (Constitution) Order 2004, which I may acquire.

Dated this                      day of

Signature of Commissioner:

Witnessed:

Chief Executive:

*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 11

INCIDENTAL PROVISIONS APPLYING TO THE COMMISSIONERS

*Resignation of Commissioners*

1. A commissioner (other than the chief executive) may resign from office at any time by notice in writing given to the chairman or, if that commissioner is the chairman, the deputy chairman or chief executive.

*Reappointment of Commissioners*

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

(2) A vacating appointed commissioner other than the chairman for the time being shall not be eligible for reappointment as a commissioner where, immediately before the date in question, he has held office for three consecutive terms.

(3) An appointed commissioner who is the chairman for the time being shall not be eligible for reappointment as a commissioner where, immediately before the date in question, that commissioner has held office for four consecutive terms.



- (4) For the purposes of this paragraph “term” does not include—
- (a) a term referred to in article 5(1) above;
  - (b) the remainder of a term during which the commissioner was appointed to fill a casual vacancy under article 6 above; or
  - (c) any term served by the commissioner prior to the new constitution date.
- (5) In this paragraph “appointed commissioner” means a commissioner appointed under article 4(1)(a) above.

#### *Appointment of chairman and deputy chairman of Commissioners*

3. In addition to the election of a chairman in accordance with article 10, the Commissioners may at each annual meeting also elect another of their number to act as deputy chairman.
4. Subject to paragraph 5, a commissioner elected as chairman or deputy chairman shall, unless that commissioner resigns from that office or ceases to be a commissioner, hold office as such from and including the meeting at which the election takes place until the next election to that office at the next annual meeting.
5. On a casual vacancy occurring in the office of chairman or deputy chairman of the Commissioners, the Commissioners may elect some other commissioner to fill the vacancy. A commissioner elected under this paragraph shall, unless the commissioner resigns the office or ceases to be a commissioner, hold that office during the remainder of the term of the chairman or deputy chairman that the commissioner replaces.
6. In the absence of the chairman, the deputy chairman shall have and may exercise all the powers of the chairman.

#### *Conduct of Meetings*

7. The first meeting of the Commissioners after the new constitution date shall be convened as soon as practicable by the chief executive for such a date as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to the Commissioners.
8. The Commissioners shall hold an annual general meeting in March each year.
- 9.—(1) The Commissioners shall hold not less than ten further meetings per year.
- (2) The Chief Executive shall ensure that at least 14 days' notice of meetings is sent to each Commissioner.
10. If, at any meeting of the Commissioners, neither the chairman nor the deputy chairman is present, the commissioners present at the meeting shall elect one of their number to be chairman of the meeting.
11. The quorum for a meeting of the Commissioners shall be four.
- 12.—(1) Subject to sub-paragraph (2) below, every question of a meeting of the Commissioners or of a committee of the Commissioners shall be decided by a majority present and voting.
- (2) 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.
- 13.—(1) If a commissioner has any interest, direct or indirect—

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- (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 which the contract or proposed contract is made or proposed to be made; or
  - (b) in any other matter with which the Commissioners are concerned,
- that 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 pilotage charges or 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 employee of a public utility undertaking or as a shareholder, not being a director of a company, unless the commissioner possesses more than five 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 or which is the subject of a general resolution by the Commissioners to that effect.

(4) 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.

**14.** The acts and proceedings of the Commissioners, or of any committee of the Commissioners, shall not be invalidated by any vacancy in their number or by any defect in their appointment, or the qualification for appointment, of any person as a commissioner, or as chairman or vice chairman of the Commissioners or committee.

#### *Committees*

**15.** 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 sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act of 1964) to a committee of the Commissioners.

#### *Authentication of seal and other documents*

**16.—(1)** The application of the seal of the Commissioners shall be authenticated by the signature of the chairman of the Commissioners or some other member 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.

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(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.

#### *Remuneration of Commissioners*

**17.** The Commissioners may pay to individual commissioners such salary, fees and expenses as they may determine.

**18.** 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.

**19.** The Commissioners shall appoint a chief executive and such other persons as from time to time they think necessary or desirable for and incidental to the performance of their functions and pay to them such remuneration as the Commissioners think fit.

### SCHEDULE 3

Article 20

#### REPEALS AND REVOCATIONS

| <i>Chapter or S.I. number</i> | <i>Short Title</i>                                       | <i>Extent of repeal or revocation</i>                                     |
|-------------------------------|--|---|
| 1870 c. clviii                | The Pier and Harbour Orders Confirmation Act 1870 (No.2) | Sections 1, 5, 13 and 14 to 16 of the Falmouth Harbour Order 1870         |
| 1937 c. lxx                   | Pier and Harbour Order (Falmouth) Confirmation Act 1937  | Sections 11 and 13 to 18 of the Falmouth Harbour Order 1937               |
| 1958 c. xlvi                  | Falmouth Harbour Act 1958                                | Sections 3(1)(a), 6 to 12 and 14 to 19 and the First and Second Schedules |
| S.I. 1976/494                 | The Falmouth Harbour Revision Order 1976                 | The whole Order except article 10   |
| S.I. 1985/1678                | Falmouth Harbour Revision Order 1985                     | Articles 9 and 10   |

#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order alters the constitution of the Falmouth Harbour Commissioners and confers new powers on them.

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The previous constitution provided for seven commissioners to be appointed by various appointing bodies, and for one commissioner to be co-opted by the other commissioners. The new constitution provides for a body of eight commissioners of whom seven are to be appointed by the Commissioners for the time being from persons with experience in relevant areas. The remaining commissioner is to be the Chief Executive thereby securing executive representation of 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.

The Order also extends the borrowing powers of the Commissioners, increases the maximum sum which they can hold as a reserve fund and includes new general powers for the Commissioners to act, as well as a general power to charge for services and facilities provided by the Commissioners. Existing limitations on their powers to charge dues are also repealed.