

2009 No.1231

HARBOURS, DOCKS, PIERS AND FERRIES

**The Berwick Upon Tweed Harbour Revision (Constitution)
Order 2009**

Made - - - - - *14th May 2009*
Coming into force - - - - - *1st June 2009*

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The Berwick Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(a).

The Secretary of State is the appropriate Minister under section 14(7)(b) of that Act and is satisfied as mentioned in section 14(2)(b) of that Act.

The Secretary of State, in exercise of the powers conferred by that section and now vested in him(c) makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Berwick upon Tweed Harbour Revision (Constitution) Order 2009 and comes into force on 1st June 2009.

(2) The Berwick upon Tweed Harbour Acts and Orders 1862 to 1923 and this Order may be cited together as the Berwick upon Tweed Harbour Acts and Orders 1862 to 2009.

Incorporation of provisions of Commissioners Clauses Act 1847

2. Sections 15, 48, 53, 56, 58 to 60, 62 to 65, 67, 69 to 83, 85 to 88, 96, 97, 99 to 102, 104 and 109 to 111 of the Commissioners Clauses Act 1847(d) (so far as applicable and not inconsistent with the Berwick upon Tweed Harbour Acts and Orders 1862 to 2009) are incorporated with this Order.

Interpretation

3. In this Order—

“the Commissioners” means the Berwick Harbour Commissioners;

“the new constitution date” means 1st June 2009.

Constitution of Commissioners

4.—(1) On and after the new constitution date, the Commissioners shall continue as a body corporate and shall consist of—

- (a) nine persons appointed by the Commissioners; and
- (b) the Harbour Master appointed for the time being by the Commissioners.

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

- (a) commerce;
- (b) maritime activities;
- (c) health and safety;
- (d) management;
- (e) public relations and community issues;
- (f) industrial relations;

(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 and section 4 and Schedule 12 (Part II), and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1.

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

(c) S.I. 1981/238.

(d) 1847 c.16.

- (g) shipping, fishing or cargo handling;
- (h) accountancy or financial management;
- (i) management of boating and other water related leisure activities;
- (j) environment matters affecting harbours; and
- (k) any other skills and abilities considered from time to time by the Commissioners to be relevant to the discharge by them of their functions.

(3) The Commissioners 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.

(4) In making an appointment under paragraph (1)(a) or article 9, the Commissioners 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) must be made on, or as soon as reasonably practicable after, the coming into force of this Order.

(2) The Commissioners must appoint to be three of the first of such appointed Commissioners, the persons who, at the date when they make the first appointments under paragraph (1) above, are—

- (a) the Chairman of the Commissioners;
- (b) the Vice-Chairman of the Commissioners;
- (c) another one of their number.

(3) Subject to articles 8 and 10 and paragraph 10 of Schedule 2, the Commissioners appointed under paragraph (2) hold office as Commissioners on and from the new constitution date until 31st May 2012.

(4) Of the remaining first such appointed Commissioners—

- (a) three hold office on and from the new constitution date until 31st May 2010; and
 - (b) three hold office on and from the new constitution date until 31st May 2010,
- as the Commissioners specify when they make each of those appointments.

Terms of office of subsequent Commissioners

6. A Commissioner appointed under article 4(1)(a) (other than a Commissioner appointed in accordance with article 5), unless appointed to fill a casual vacancy and subject to articles 8 and 10, and paragraph 10 of Schedule 2, holds office for the period of three years starting on 1st June next following that Commissioner's appointment.

Power to co-opt additional Commissioners

7. The Commissioners referred to in article 4(1) may at any time co-opt not more than two persons to serve as Commissioners for such period not exceeding twelve months as the co-opting Commissioners may specify at the time of co-option.

Declaration to be made by Commissioners

8. No person shall act as a Commissioner who has not made the declaration set out in Schedule 1 (or a declaration to that effect); and a person shall cease to be a Commissioner who fails to make that declaration within three months of the date of appointment.

Casual Vacancies

9.—(1) A casual vacancy arising in the office of a Commissioner appointed under article 4(1) must, unless it is not reasonably practicable to do so, be filled by the appointment of a Commissioner by the Commissioners and in accordance with article 4(2) and (3).

(2) A Commissioner appointed to fill a casual vacancy under this article shall, subject to articles 8 and 10, and paragraph 10 of Schedule 2, hold office during the remainder of the term for which the Commissioner whom that Commissioner replaces was appointed.

Disqualification of Commissioners

10. If the Commissioners are satisfied that a Commissioner—

- (a) has without the permission of the Commissioners been absent from the meetings of the Commissioners during a period when three such meetings have been held;
 - (b) has become bankrupt or made an arrangement with creditors;
 - (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or
 - (d) is otherwise unable, unwilling or unfit to discharge the functions of a Commissioner,
- the Commissioners may declare the office of that Commissioner to be vacant and from the date of that declaration that Commissioner shall cease to be a Commissioner.

Indemnity insurance for Commissioners

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

Incidental provisions relating to Commissioners

12. On and after the new constitution date the provisions of Schedule 2 have effect.

Publication of Commissioners' annual statement of accounts

13. As soon as reasonably practicable after their annual statement of accounts is prepared, the Commissioners must 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 must, 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.

Borrowing Powers

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

- (a) such sums of money as they think necessary not exceeding one million pounds (or that sum as adjusted in accordance with article 16); 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), 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 must be applied to purposes to which capital money is properly applicable.

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

- (a) the payment of any interest, falling due within five years immediately following the date of borrowing, on any sum of money borrowed by the Commissioners under this article; and
- (b) the repayment, within twelve months of 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.—(1) The Commissioners may borrow temporarily, by way of overdraft or otherwise, such sums of money as the Commissioners may require.

(2) The total amount outstanding at any one time of money borrowed under paragraph (1) must not exceed two hundred and fifty thousand pounds (or that sum as adjusted in accordance with article 16).

CPI adjustment of borrowing limits

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

(2) Any adjustment made pursuant to paragraph (1), must be recorded in the next following annual statement of accounts prepared by the Commissioners.

(3) In paragraph (1), “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.

Advisory bodies

17.—(1) The Commissioners must consult an accredited advisory body or bodies on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and its navigation.

(2) 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 accredited advisory body whether or not the accredited advisory body has been consulted by the Commissioners on the matter, recommendation or representation so referred or made.

(3) In this paragraph “accredited advisory body” means any body which appears to the Commissioners—

- (a) to represent interests concerned with the harbour; and
- (b) to comply with such standards of openness and accountability as the Commissioners may from time to time prescribe.

Amendment of the Berwick upon Tweed Harbour Act 1862

18. Section 22 of the Berwick upon Tweed Harbour Act 1862^(a) is amended by substituting for the words from “Mayor” to “execution, and” the word “Commissioners”.

(a) 1862 c. xxxi.

Repeals

19. With effect on the new constitution date the enactments mentioned in the first and second columns of Schedule 3 (which include spent enactments) are repealed to the extent specified in the third column of that Schedule.

Signed by authority of the Secretary of State for Transport

14th May 2009

R C Bennett
Head of Ports Division
Department for Transport

SCHEDULES

SCHEDULE 1

Article 8

FORM OF DECLARATION BY COMMISSIONERS
BERWICK HARBOUR COMMISSIONERS
BERWICK UPON TWEED HARBOUR ACTS AND ORDERS 1862
TO 2009

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 Berwick Harbour Commissioner by virtue of the Berwick upon Tweed Harbour Acts and Orders 1862 to 2009;

(2) that I have read and understood the notes entitled “Notes 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 paragraph 16 of Schedule 2 to the Berwick upon Tweed Harbour Revision (Constitution) Order 2009, and in particular that—

- (a) I have disclosed to the Clerk, or such other person acting from time to time as Clerk, of the Berwick Harbour Commissioners details of every financial or other interest such as is mentioned in those notes;
- (b) I will in future notify the Clerk, or such other person acting from time to time as Clerk, of the Berwick Harbour Commissioners of any alteration in those interests, or any new interest, such as is mentioned in those notes, which I may acquire.

Made and signed in Berwick upon Tweed on the)
 day of)
) (signature)
) (signature)

Witnessed by the Clerk/Acting Clerk

To Berwick Harbour Commissioners

.....

 (signature)

SCHEDULE 2

Article 12

INCIDENTAL PROVISIONS RELATING TO COMMISSIONERS

Appointment of Chairman and Vice-Chairman of Commissioners

1. There shall be a Chairman of the Commissioners who shall be appointed, as soon as practicable after the new constitution date, by those of the Commissioners who are appointed under article 4(1)(a) or 9 from among their number.

2. The first person appointed under paragraph 1 shall, subject to paragraph 7 and unless that person resigns office as Chairman or ceases to be a Commissioner, continue in office as Chairman until that person's initial term of office as a Commissioner has expired.

3. Subject to paragraph 7, every Chairman subsequently appointed under paragraph 1 shall, unless that Chairman resigns office as Chairman or ceases to be a Commissioner, hold office for a period of three years.

4. There shall be a Vice-Chairman of the Commissioners who shall be appointed, as soon as practicable after the new constitution date, by those of the Commissioners who are appointed under article 4(1)(a) or 9 from among their number.

5. The first person appointed under paragraph 4 shall, subject to paragraph 7, and unless that person resigns office as Vice-Chairman or ceases to be a Commissioner, continue in office as Vice-Chairman until that person's initial term of office as a Commissioner has expired.

6. Subject to paragraph 7, every Vice-Chairman subsequently appointed under paragraph 4 shall, unless that Vice-Chairman resigns office as Vice-Chairman or ceases to be a Commissioner, hold office for a period of two years.

7. If those of the Commissioners who are appointed under article 4(1)(a) or 9 are satisfied that a person appointed as Chairman or Vice-Chairman should cease to hold office as such, they may terminate that appointment 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 must be filled by those of the Commissioners who are appointed under article 4(1)(a) or 9 appointing one of their number to the vacant office 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 that Commissioner 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 that Commissioner replaces was appointed.

Meetings of Commissioners

9.—(1) The first meeting of the Commissioners after the new constitution date must be convened as soon as practicable by the Clerk for such date as the Clerk may fix; and the Clerk must make arrangements for notice of that meeting to be sent by post to each of the Commissioners.

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

Vacation of office by Commissioners

10. A Commissioner (other than the Harbour Master) may resign as Commissioner at any time by notice in writing given to the Chairman of the Commissioners or, if that Commissioner is the Chairman, the Vice-Chairman.

Reappointment of Commissioners

11.—(1) Subject to the provisions of this Schedule, a Commissioner who has completed that Commissioner's term of office as a Commissioner shall be eligible for reappointment as a Commissioner.

(2) Subject to sub-paragraph (3), a Commissioner who—

- (a) is not the Chairman of the Commissioners; and
- (b) has completed three consecutive terms of office

is not eligible for reappointment as a Commissioner until a period of three years has elapsed from the date on which that person vacated the office of Commissioner.

(3) A Chairman of the Commissioners who—

- (a) is an appointed Commissioner; and
- (b) has completed four consecutive terms of office as a Chairman of the Commissioners before vacating that office

is not eligible for reappointment as a Commissioner.

(4) For the purposes of sub-paragraphs (2) and (3), "terms" does not include—

- (a) a term referred to in article 5(4)(a) or (b);
- (b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 9; 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).

Reappointment of Chairman

12.—(1) A Chairman of the Commissioners who has held the office of Chairman for three consecutive terms before vacating that office shall not be eligible for reappointment as the Chairman of the Commissioners until a period of three years has elapsed from the date on which that person vacated the office of Chairman of the Commissioners.

(2) For the purposes of sub-paragraph (1), "term" does not include—

- (a) a term served by the Commissioner as Chairman under paragraph 2 where that term is less than 3 years;
- (b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy in the office of Chairman under paragraph 8; or
- (c) any term served by the Commissioner as Chairman prior to the new constitution date.

Committees

13. 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 1964(a)) to a committee of the Commissioners.

Proceedings of Commissioners and committees and declaration of interests

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 the appointment, or the

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

qualification for appointment, of any person as a Commissioner, or as Chairman or Vice-Chairman, of the Commissioners or committee.

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

16.—(1) A Commissioner who—

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

must declare that interest.

(2) 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 the other Commissioners present so require by resolution; and
 - (ii) in any event while a decision on that contract or matter is being made.

(3) 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 employee of a public utility undertaking or as a shareholder, not being a director of a company, unless that Commissioner possesses more than five per cent of the issued share capital of that company; or
- (d) which the other Commissioners present at the meeting by resolution declare to be too remote.

17. In the absence or incapacity of the Chairman, the person for the time being holding office as Vice-Chairman of the Commissioners has and may exercise all the functions of the Chairman of the Commissioners.

18. If at any meeting of the Commissioners neither the Chairman of the Commissioners nor the Vice-Chairman of the Commissioners are present, the Commissioners present at the meeting must choose one of their number to be the chairman of the meeting.

19.—(1) Every question at a meeting of the Commissioners or of 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 or of a committee of the Commissioners there is an equality of votes on any question the chairman of the meeting has a second or casting vote which may be exercised for or against the status quo.

Authentication of seal and other documents

20.—(1) The application of the seal of the Commissioners may be authenticated only 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 Clerk of the Commissioners 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.

(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 Clerk of the Commissioners or a duly authorised officer of the Commissioners.

Remuneration of Commissioners

21. The Commissioners may pay to the Chairman of the Commissioners, the Vice-Chairman of the Commissioners and other Commissioners such salary, allowances and expenses as the Commissioners from time to time determine.

General

22. 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.

23. The Commissioners must appoint a Harbour Master, a Clerk 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 19

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1862 c. xxxi.	Berwick upon Tweed Harbour Act 1862	Sections 23 to 47 and 67.
1872 c. ix.	Berwick upon Tweed Harbour Act 1872	In section 2, the words from “The Commissioners” to the word “mortgages” and section 33.
1913 c. cxlvi.	Pier and Harbour Orders Confirmation (No 1) Act 1913	Sections 32, 34 and 48 of the Berwick upon Tweed Order 1913 as set out in the Schedule to the Pier and Harbour Orders Confirmation (No 1) Act 1913.
1923 c. lxi.	Pier and Harbour Orders Confirmation (No 3) Act 1923	Section 5 of the Berwick upon Tweed Harbour Order 1923 as set out in the schedule to the Pier and Harbour Orders Confirmation (No 3) Act 1923.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes Berwick Harbour Commissioners with effect from 1st June 2009. The new constitution provides for the Commissioners to consist of a body of ten Commissioners, nine of whom will be appointed by the Commissioners from amongst persons with experience in relevant matters. The remaining Commissioner is to be the Harbour Master. Under the terms of the Order the appointed Commissioners will retire in rotation.

The Order also includes other provisions with respect to the Commissioners' constitution including provisions for the co-option of up to two additional Commissioners and for the protection of the Commissioners from personal liability in the discharge of their functions. The Order increases the Commissioners' borrowing powers, amends existing statutory requirements as to the Commissioners' accounts and repeals certain statutory provisions.

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£5.50