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STATUTORY INSTRUMENTS

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**2009 No. 2207**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Neath Harbour Revision (Constitution) Order 2009**

*Made* - - - - 14th August 2009

*Coming into force* - - 21st August 2009

The Neath Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964<sup>(1)</sup>.

The Secretary of State is the appropriate Minister under section 14(7)(2) 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<sup>(3)</sup>, makes the following Order:

**Citation and commencement**

1.—(1) This Order may be cited as the Neath Harbour Revision (Constitution) Order 2009 and comes into force on 21st August 2009.

(2) The Neath Harbour Acts 1843 to 1924 and this Order may be cited together as the Neath Harbour Acts and Orders 1843 to 2009.

**Interpretation**

2. In this Order—

“the Authority” means the Neath Port Authority or, in respect of any period prior to the new constitution date, the Commissioners;

“the Commissioners” means the Neath Harbour Commissioners;

“the Council” means the Neath Port Talbot County Borough Council;

“the new constitution date” means 1st October 2009;

“the Operations Manager” means the Neath Harbour Operations Manager.

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(1) 1964 c. 40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, section 40 and Schedule 12 (Part II) and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1. See also the Criminal Justice Act 1982 c. 48, section 37 and 46.

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

(3) S.I. 1981/238.

### **Constitution of Authority**

3.—(1) On and after the new constitution date, the Commissioners shall be known as the Neath Port Authority and, subject to article 8, shall consist of—

- (a) seven members appointed by the Authority;
- (b) two members appointed by the Council; and
- (c) the Operations Manager.

(2) Each member appointed under paragraph (1)(a) or (b) must be a person who appears to the body making the appointment to have special knowledge, experience or ability appropriate to the efficient and economic discharge by the Authority of its 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;
- (g) shipping, fishing or cargo handling;
- (h) accountancy or financial management;
- (i) boating and other water related leisure activities;
- (j) environmental matters affecting harbours; and
- (k) any other skills and abilities considered from time to time by the appointing body to be relevant to the discharge by the Authority of its functions.

(3) The body making the appointment must secure, so far as reasonably practicable, that the members appointed by it will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient and economic discharge by the Authority of its functions.

(4) In making an appointment under paragraph (1)(a) or (b) or article 8 or a co-option under article 4, the Authority and the Council 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.

### **Power to co-opt additional members**

4. The members referred to in article 3(1) and article 8 may at any time co-opt not more than two persons to serve as members of the Authority for such period not exceeding twelve months as the co-opting members may specify at the time of co-option.

### **Declaration to be made by members**

5. No person may act as a member until that person has made the declaration set out in Schedule 1 to this Order; and a person shall cease to be a member who fails to make that declaration within three months of the date of appointment.

### **Appointment and terms of office of first members**

6.—(1) The Authority and the Council must appoint the first members to be appointed by them under article 3(1)(a) and (b) before, or as soon as reasonably practicable, after 21st August 2009.

(2) The Authority and the Council must appoint the person who is at the date when they make appointments under paragraph (1) the chair of the Commissioners to be one of the first such appointed members.

(3) That person shall, subject to paragraphs 11 and 12 of Schedule 2, hold office as a member from the new constitution date until 30th September 2013.

(4) On and after the new constitution date, and subject to paragraphs 2 and 7 of Schedule 2, that person shall be the chair of the Authority.

(5) Of the first members (other than the chair and the Operations Manager) appointed under paragraph (1)—

(a) two shall hold office until 30th September 2010;

(b) three shall hold office until 30th September 2011; and

(c) three shall hold office until 30th September 2012;

as the Authority and the Council respectively shall specify when they make each of those appointments.

#### **Terms of office of other members**

7. A member appointed by the Authority or the Council (other than a member appointed under article 6) shall, unless appointed to fill a casual vacancy and subject to the provisions of this Order, hold office for the period of three years starting on 1st October next following that member's appointment.

#### **Casual vacancies**

8.—(1) A casual vacancy arising in the office of a member appointed by the Authority or the Council under article 3(1) must, unless it is not reasonably practicable to do so, be filled by the appointment of a member by the Authority or the Council respectively as the case may be and in accordance with article 3(2) to (4).

(2) A member appointed to fill a casual vacancy under this article shall, subject to articles 5 and 9 and paragraph 11 of Schedule 2, hold office (unless that member otherwise ceases to be a member) during the remainder of the term for which the member whom that member replaces was appointed.

#### **Disqualification of members**

9. If the members holding office under article 3(1) are satisfied that a member—

(a) has been absent from the meetings of the Authority for three consecutive months or more without the permission of the members;

(b) has become bankrupt or made an arrangement with his creditors;

(c) is incapacitated by physical or mental illness from discharging the functions of a member; or

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

those members may declare the office of that member to be vacant and on the date of that declaration that member shall cease to be a member..

#### **Payments to members**

10.—(1) The Authority may pay to each member such expenses as the Authority may determine.

(2) The Authority may pay the chair such reasonable remuneration as the Authority may determine.

### **Indemnity insurance for the members**

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

### **Incidental provisions relating to members**

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

### **Publication of Authority's annual statement of accounts**

13. As soon as reasonably practicable after its annual statement of accounts is prepared, the Authority must—

- (a) make available a copy of the statement for a period of three months at the offices of the Authority for inspection free of charge by members of the public;
- (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; and
- (c) send a copy of the statement to the proper officer of the Council.

### **Borrowing powers**

14.—(1) Subject to paragraph (2), the Authority may from time to time borrow, upon the security of its assets for the time being or of its revenues or both, by any methods it sees fit—

- (a) such sums of money as it considers necessary not exceeding five 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 it may require.

(2) In calculating the aggregate sums of money borrowed by the Authority 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 Authority under this article may only 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, 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 borrowed by the Authority under this article; and
- (b) the repayment, within twelve months 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 Authority may temporarily, by way of overdraft or otherwise, borrow such sums of money as the Authority 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 Authority must calculate an adjustment of the figures mentioned in articles 14(1)(a) and 15(2) in line with any movement (calculated to one decimal place) in the CPI which occurred during the year ended on 31st December immediately preceding the anniversary in question.

(2) Any adjustment calculated under paragraph (1) must be recorded in the next following annual statement of accounts prepared by the Authority.

(3) In paragraph (1), “CPI” means the general index of consumer prices for all items 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 Authority must establish one or more advisory body or bodies which the Authority must consult on all matters substantially affecting the management, maintenance, improvement, conservation or regulation of the harbour and its navigation.

(2) The Authority must make arrangements for every such advisory body to meet not less than twice a year provided that there is sufficient business to be transacted.

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

(4) The advisory body or bodies established pursuant to this article shall consist of such number or numbers of persons appointed by the Authority as the Authority from time to time considers appropriate being persons whom the Authority considers to be representative of stakeholder interests in the harbour.

(5) The chair of the Authority shall also be the chair of any such advisory body but subject to that the advisory body may determine its own quorum and procedure.

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

(7) Subject to paragraph (8), a member of such an advisory body holds office for the period of three years from the date of appointment and at the end of that period shall be eligible for reappointment.

(8) A member of such an advisory body may resign from office at any time by notice in writing given to the clerk and, in the case of a member appointed as representative of a particular stakeholder interest, may also be replaced at any time by notice in writing given by that interest to the clerk.

### **General powers**

18.—(1) Subject to the Neath Harbour Acts and Orders 1843 to 2009, the Authority may take such steps from time to time as it considers necessary or desirable for the maintenance, operation 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) but subject to the Neath Harbour Acts and Orders 1843 to 2009, the Authority may—

- (a) do any other thing (including the provision of facilities or the carrying on of any business) which the Authority considers to be in the interests of the proper carrying on or development of the harbour or can advantageously be undertaken by the Authority by virtue of its activities in relation to the harbour; and

- (b) turn the Authority's resources to account so far as not required for the purposes of the harbour undertaking.

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

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

(2) The Authority 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 Authority 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 in that list.

#### **Repeals**

**20.** On the new constitution date, the instruments mentioned in the first and second columns of Schedule 3 are repealed to the extent specified in the third column of that Schedule.

Signed by authority of the Secretary of State for Transport

14th August 2009

*R C Bennett*  
Head of Ports Division  
Department for Transport

## SCHEDULES

### SCHEDULE 1

Article 5

#### NEATH PORT AUTHORITY ("THE AUTHORITY")

I, [FULL NAME] .....

of .....

do solemnly declare—

- (a) 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 Neath Port Authority by virtue of the Neath Harbour Acts and Orders 1843 to 2009;
- (b) that I will be guided in the performance of my functions as one of the members of the Authority by the guidance for the time being issued by the Authority concerning the conduct of its members and in particular that—
  - (i) I will disclose to the chair and the Operations Manager details of every financial or other interest such as is mentioned in paragraph 17 of Schedule 2 to the Neath Harbour Revision (Constitution) Order 2009; and
  - (ii) I will in future notify the chair and the Operations Manager of any alteration in those interests, and of any new interest, as may acquire.

Date this                      day of

Signature of member:

Witnessed:

Chair:

### SCHEDULE 2

Article 6 and 12

#### INCIDENTAL PROVISIONS APPLYING TO MEMBERS

##### *Appointment of chair and vice-chair of Authority*

1. There shall be a chair of the Authority who, subject to article 6(4) shall be appointed by the members from among the members holding office under article 3(1).

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2. Subject to paragraph 7, the person appointed under article 6(4) as the first chair shall, unless that person resigns as chair or ceases to be a member, continue in office until 30th September 2013.

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

4. There shall be a vice-chair of the Authority who shall be appointed by the members from among the members holding office under article 3(1).

5. The first vice-chair shall be appointed at the first meeting of the Authority referred to in paragraph 10 or as soon as practicable thereafter and, subject to paragraph 7 the person so appointed shall, unless that person resigns as vice-chair or ceases to be a member, continue in office for the period of one year.

6. Subject to paragraph 7, every person appointed under paragraph 4 shall, unless that person resigns as vice-chair or ceases to be a member, hold office for a period of two or three years.

7. If at least eight of the members appointed under articles 3(1) and 8 are satisfied that the chair or vice-chair should cease to hold office as such, they may terminate that office and appoint another member to be the chair or vice-chair during the remainder of the term for which the former chair or vice-chair was appointed.

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

(2) Subject to paragraph 7, a member appointed under this paragraph to fill a casual vacancy in the office of chair or vice-chair shall, unless that member resigns that office or ceases to be a member, hold that office during the remainder of the term for which the chair or vice-chair whom that person replaces was appointed.

9. A chair or vice-chair is eligible for reappointment to that office but may not hold office for more than five consecutive terms.

#### *Meetings of Authority*

10.—(1) The first meeting of the Authority after the new constitution date must be convened as soon as practicable by the chair appointed under article 6(4) for such date and such place as the chair may fix; and the chair must make arrangements for notice of that meeting to be sent by post to each of the other members.

(2) The members must meet at least four times in each year starting on the new constitution date and each anniversary of that date and at intervals of not more than four months.

#### *Vacation of office by members*

11.—(1) Subject to sub-paragraph (2), a member may resign as a member at any time by notice in writing given to the chair of the Authority or, if that member is the chair, the vice-chair.

(2) If the Operations Manager resigns as a member, that person must also resign from the post of Operations Manager.

#### *Reappointment of members*

12.—(1) Subject to the provisions of this Schedule, a vacating member is eligible for reappointment as a member.



(2) Subject to sub-paragraphs (3) and (4), a vacating member who has held office for three consecutive terms is not be eligible for reappointment as a member where that member has held office for three consecutive terms.

(3) A chair of the Authority may hold office as chair for not more than five consecutive terms notwithstanding that that person may have previously held office as a member (including holding the office of vice-chair) for up to three consecutive terms immediately preceding their appointment as chair.

(4) A vice-chair of the Authority may hold office as vice-chair for not more than five consecutive terms notwithstanding that that person may have previously held office as a member for up to three consecutive terms preceding their appointment as vice-chair.

### *Committees*

**13.** The Authority may, subject to such conditions as it considers fit, delegate any of its 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 Authority.

### *Proceedings of Authority and committees*

**14.** The acts and proceedings of the Authority, or of any committee of the Authority, and not invalidated by any vacancy in the membership of the Authority or by any defect in the appointment, or the qualification for appointment, of any person as a member, or as chair or vice-chair, of the Authority or committee.

**15.** The quorum required for a meeting of the Authority is four.

**16.—(1)** A member who has any interest, direct or indirect—

- (a) in any contract or proposed contract to which the Authority is or would be a party; or
- (b) in any other matter with which the Authority is concerned,

must declare that interest.

(2) A member who is present at a meeting of the Authority or of any committee of the Authority at which a contract or other matter in which that member has an interest is to be considered must—

- (a) as 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 other members of the Authority present by resolution so require; 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 member has in respect of the payment to the Authority 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 member has as an employee of a public utility undertaking or as a shareholder, not being a director of a company, unless the member possesses more than five per cent of the issued share capital of that company; or
- (d) which the other members of the Authority present at the meeting by resolution declare to be too remote.

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(4) The Authority must maintain and regularly update a register of interests declared by each member and make the register available for inspection by members of the public at all times during usual office hours.

17. The person for the time being holding office as vice-chair has, and may exercise in the absence or incapacity of the chair, all the powers and functions of the chair.

18. If at any meeting of the members neither the chair nor the vice-chair is present, the members present at the meeting must choose one of their number to be the chair of the meeting.

19. If at any meeting of the Authority or of a committee of the Authority there is an equality of votes on any question the chair of the meeting has a second or casting vote.

#### *Authentication of seal*

20. The application of the seal of the Authority must be authenticated by the signature of the chair of the Authority or some other member authorised by the Authority to authenticate the application of the seal.

#### *General*

21. Subject to the provisions of this Schedule, the procedure and business of the Authority and of any committee of the Authority shall be regulated in such manner as the Authority from time to time determines.

### SCHEDULE 3

Article 20

#### REPEALS

(1)	(2)	(3)
<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1843 c. lxxi	Neath Harbour Act 1843	Sections 15 to 17, 19, 21, 23, 25 to 27, 29 and 31.
1884 c. cxcvi	Neath Harbour Act 1884	Sections 6 to 16 and the First and Second Schedules.
1886 c. lv	Neath Harbour Act 1886	Sections 5, 7, 8 and 12 to 27.
1891 c. cxvi	Neath Harbour Act 1891	Section 4.
1901 c. xvi	Neath Harbour Act 1901	Section 6.

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## EXPLANATORY NOTE

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

This Order reconstitutes the Neath Harbour Commissioners (“the Commissioners”) with effect from 1st October 2009. The new constitution provides for the Commissioners to be known as the Neath Port Authority (“the Authority”).

It provides for the Authority to consist of a body of ten members, seven of whom will be appointed by the Authority, and two by the Neath Port Talbot County Borough Council from persons with experience in relevant matters. The remaining member is to be the Operations Manager.

The Order also includes other provisions with respect to the Authority’s constitution including provisions for the co-option of up to two additional members. The Order lays down procedures for Authority meetings and transitional arrangements and increases the Authority’s borrowing powers.

The Order also repeals certain provisions of existing local legislation.