

2003 No. 2724

HARBOURS, DOCKS, PIERS AND FERRIES

**The Lancaster Port Commission Harbour Revision
(Constitution) Order 2003**

Made - - - - - *22nd October 2003*

Coming into force - - *29th October 2003*

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Whereas the Lancaster Port Commission have applied for a harbour revision order under section 14 of the Harbours Act 1964(a):

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

And whereas no objections to the application have been made pursuant to paragraph 10(2)(f) of Schedule 3(a) to the said Act:

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(b)) in exercise of the powers conferred by that section and now vested in him(c), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1.—(1) This Order shall be cited as the Lancaster Port Commission Harbour Revision (Constitution) Order 2003 and shall come into force on 29th October 2003.

(2) The Lancaster Port Commission Harbour Revision Orders 1967 to 1994 and this Order may be cited together as the Lancaster Port Commission Harbour Revision Orders 1967 to 2003.

Incorporation of section 60 of the Commissioners Clauses Act 1847

2. Section 60 of the Commissioners Clauses Act 1847(d) shall be incorporated with this Order.

Interpretation

3. In this Order—

“the Commission” means the Lancaster Port Commission and “the Commissioners” means the members for the time being of the Commission;

“the new constitution date” means 1st January 2004.

Constitution of Commission

4.—(1) Subject to article 7 below, on and after the new constitution date the Commission shall consist of—

- (a) not less than six and not more than eight members appointed by the Commissioners; and
- (b) the Chief Executive for the time being of the Commissioners.

(2) Each Commissioner appointed under paragraph (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 or more of the following matters—

- (a) the ports industry;
- (b) shipping or other forms of transport;
- (c) financial management;
- (d) the laws relating to England;
- (e) industrial or public relations;
- (f) safety or personnel management;
- (g) real property;
- (h) commercial marketing or information technology;
- (i) environmental matters affecting harbours;
- (j) water-related leisure activities;

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.

(a) Schedule 3 was substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999 No. 3445).

(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.

(3) In making an appointment under paragraph (1)(a) above or article 9 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 first Commissioners

5.—(1) The first appointments under article 4(1)(a) above shall be made on, or as soon as reasonably practicable after, 1st December 2003.

(2) The Commissioners shall appoint the person who is, at the date when they make the first appointment under 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 31st December 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 31st December 2004;
- (b) one or two shall hold office from the new constitution date until 31st December 2005; and
- (c) the remainder shall hold office from the new constitution date until 31st December 2006;

as the Commissioners shall specify when they make each of those appointments.

Terms of office of subsequent Commissioners

6. A Commissioner appointed under article 4(1)(a) above (other than a first appointed Commissioner referred to in article 5 above) shall, unless appointed to fill a casual vacancy and subject to articles 8 and 10 of, and paragraph 10 of Schedule 2 to, this Order, hold office for the period of three years from 1st January next following his appointment.

Power to co-opt additional Commissioners

7.—(1) The Commissioners referred to in article 4(1) above 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.

(2) If the Commissioners exercise the power under paragraph (1) above to co-opt any person or persons to serve as Commissioners, at least one of those persons shall be a person who is, at the time of his appointment, resident or employed in the vicinity of the Port of Lancaster and who appears to the Commissioners to have special knowledge, experience or ability in one or more of the following matters—

- (a) management of harbours;
- (b) industry, commerce or finance;
- (c) administration;
- (d) navigation;
- (e) other matters such as local knowledge which are considered relevant from time to time by the Commissioners to the discharge by them of their functions.

Declaration to be made by Commissioners

8. 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 that declaration within three months of the date of his appointment.

Casual Vacancies

9.—(1) A casual vacancy arising in the office of a Commissioner appointed by the Commissioners 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 article 4(2) or (3) above.

(2) A Commissioner appointed to fill a casual vacancy under this article shall, subject to articles 8 and 10 of, and paragraph 10 of Schedule 2 to, this Order hold office during the remainder of the term for which the Commissioner whom he 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 meetings of the Commissioners—
 - (i) for a period during which three such meetings have been held; or
 - (ii) for a period of six consecutive months,whichever of those 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) 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

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 any of them; not being an act or omission which the Commissioner or Commissioners in question knew to be a breach of his or their duty or, concerning which, he or they were 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 to this Order shall have effect with respect to the Commissioners.

Publication of Commissioners' annual statement of accounts

- 13.** 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 shall, subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests to be supplied a copy; and
 - (b) send a copy of the statement to the Lancashire County Council.

RPI adjustment of borrowing limits

14.—(1) On each anniversary of the new constitution date the sums mentioned in articles 24 and 27 of the Lancaster Port Commission Revision Order 1967 (which respectively authorise the Commissioners to borrow up to one million pounds for capital purposes and up to one hundred thousand pounds temporarily)(a) shall be adjusted in line with any movement (calculated to one decimal place) in RPI which occurred during the year ended 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, “RPI” means the general index of retail 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.

(a) S.I. 1968/532. Articles 24 and 27 were substituted by the Lancaster Port Commission Revision Order 1985 (S.I. 1985/1449), articles 3 and 4.

Revocations

15. On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order (which include spent enactments) shall be revoked to the extent specified in the third Column of that Schedule.

Signed by authority of the Secretary of State for Transport

22nd October 2003

Phil Carey
Head of Ports Division
Department for Transport

SCHEDULES

SCHEDULE 1

Article 8

FORM OF DECLARATION BY COMMISSIONERS

LANCASTER PORT COMMISSION

LANCASTER PORT COMMISSION HARBOUR REVISION ORDERS 1967 TO 2003

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 Lancaster Port Commissioner by virtue of the Lancaster Port Commission Harbour Revision Orders 1967 to 2003;
- (2) that I have read and understood the notes entitled "Note 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 Lancaster Port Commission Harbour Revision (Constitution) Order 2003, and in particular that:
 - (a) I have disclosed to the Chief Executive details of every financial or other interest such as is mentioned in those notes;
 - (b) I will in future notify the Chief Executive 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 Lancaster, County of Lancashire, on the day of } (signature)

Witnessed by the Chief Executive } (signature)
as a Lancaster Port Commissioner

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 are substituted references to "the Chairman".

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 by those of the Commissioners who are appointed under article 4(1)(a) or 9 above from among their number.
2. The first chairman appointed under article 5(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 three 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 4(1)(a) or 9 above from among their number.
5. The first vice-chairman holding office after the new constitution date shall be appointed at the first meeting of the Commissioners referred to in paragraph 9 below 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 three years.

7. If those of the Commissioners who are appointed under article 4(1)(a) or 9 above are satisfied that the chairman or vice-chairman should cease to hold office as such, they may terminate his office as such and appoint another Commissioner to be 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 those of the Commissioners who are appointed under article 4(1)(a) or 9 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 replaces was appointed.

Meetings of Commissioners

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

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

Vacation of office by Commissioners

10. A Commissioner (other than the Chief Executive) may resign his office 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 following 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 10 above.

(2) A vacating appointed Commissioner shall not be eligible for reappointment as a Commissioner where, immediately before his appointment, he has held office for three consecutive terms unless he is the chairman of the Commissioners.

(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 four consecutive terms.

(4) For the purposes of this paragraph “term” does not include—

- (a) a term referred to in article 5(3)(a) or (b) above;
- (b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 9 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.

Reappointment of chairman

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

(2) For the purposes of this paragraph “term” does not include—

- (a) a term served by the Commissioner as chairman under paragraph 2 above;
- (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 above; or
- (c) any term served by the Commissioner as a 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 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

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 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 shall be four.

16. 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 with 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—

(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 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 he 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.

17. The person for the time being holding office as vice-chairman shall have and may exercise in the absence or incapacity of the chairman all the functions of the chairman.

18. If at any meeting of the Commissioners neither the chairman nor the vice-chairman are present the Commissioners present at the meeting shall 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 shall 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 shall have a second or casting vote which he may exercise for or against the status quo.

Authentication of seal and other documents

20.—(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.

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

Officers and servants

21. The Commissioners shall appoint a Chief Executive, a harbour master and such other officers and servants as they may think necessary or expedient, on such terms and conditions as they think fit; and references in any provision of the Lancaster Port Commission Harbour Revision Orders 1967 to 1994 to the Clerk to the Commissioners shall be construed as references to the Chief Executive.

Remuneration of the Commissioners

22. The Commissioners may pay to the chairman and other Commissioners such salary, allowances and expenses as the Commissioners from time to time determine.

General

23. 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.

**SCHEDULE 3
REVOCATIONS**

Article 15

<i>Number</i>	<i>Short title</i>	<i>Extent of revocation</i>
S.I. 1968/532	Lancaster Port Commission Revision Order 1967	Articles 5 to 14. Article 34. Schedules 1 and 2. In Schedule 3, paragraph 1(2) and paragraphs 2 to 9.
S.I. 1985/1504	Harbour Authorities (Constitution) Order 1985	Article 6.
S.I. 1994/1647	Lancaster Port Commission Harbour Revision Order 1994	Article 3.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Lancaster Port Commission (“the Commissioners”) as from 1st January 2004. It provides for the Commissioners to consist of a body of not less than seven and not more than nine Commissioners with experience in relevant matters. Not less than six and not more than eight Commissioners will be appointed by the Commissioners. The Chief Executive will also hold office as a member of the Commissioners. 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 Commissioners from personal liability in the discharge of their functions. The Order amends existing statutory requirements as to the Commissioners’ accounts, makes provision to index link the existing limits on the Commissioners’ borrowing powers and revokes certain statutory provisions.

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