

**2003 No. 2679**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Newport (South Wales) Harbour Revision  
(Constitution) Order 2003**

*Made* - - - - - *14th October 2003*

*Coming into force* - - *21st October 2003*

**ARRANGEMENT OF ARTICLES**

1. Citation and commencement
2. Interpretation
3. Constitution of Commissioners
4. Appointment and terms of office of first Commissioners
5. Terms of office of subsequent Commissioners
6. Power to co-opt additional Commissioners
7. Casual vacancies
8. Declaration to be made by Commissioners
9. Disqualification of Commissioners
10. Indemnity insurance for Commissioners
11. Incidental provisions relating to Commissioners
12. Advisory bodies
13. Repeals
14. Amendments

**SCHEDULES**

1. Form of declaration by Commissioners
2. Incidental provisions relating to the Commissioners
3. Repeals

Whereas the Newport (South Wales) Harbour Commissioners have applied for a harbour revision order under Section 14 of the Harbours Act 1964(a);

And whereas no objection to the application has been made pursuant to a notice published pursuant to paragraph 10(1) of Schedule 3(b) to the said Act:

Now, therefore, the Secretary of State for Transport, (being the appropriate Minister under sub-section (7) of the said section 14(c)), in exercise of the powers conferred by that section and now vested in him(d), 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 Newport (South Wales) Harbour Revision (Constitution) Order 2003, and shall come into force on 21st October 2003.

(2) The Newport (South Wales) Harbour Acts and Orders 1836 to 1991 and this Order may be cited together as the Newport (South Wales) Harbour Acts and Orders 1836 to 2003.

### **Interpretation**

2. In this Order—

“the Act of 1890” means the Newport (Monmouthshire) Harbour Act 1890(e);

“the Commissioners” means the Newport (South Wales) Harbour Commissioners;

“The Clerk” means the Clerk to the Commissioners as defined in section 6 of the Newport (Monmouthshire) Harbour Act 1890(e) and section 3 of the Commissioners Clauses Act 1847(f);

“the Harbour” means the Port or Harbour of Newport as defined in section 5 of the Act of 1890, that is those parts of the Bristol Channel and Rivers Usk and Ebbw which lie between an imaginary line drawn in a S.79°W. true direction from Goldcliff until it meets the shore of the Bristol Channel eastward of the Peterstone Wentlooge Church and the bridge over the River Usk at Newbridge and the bridge carrying the South Wales Railway of the Great Western Railway Company over the River Ebbw and the banks and shores of such parts of the said channel and rivers and any works on such banks and shores and all streams pools creeks havens bays and inlets within those limits;

“the new constitution date” means 1st November 2003.

### **Constitution of Commissioners**

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

- (a) five members appointed by the Commissioners;
- (b) two members nominated by the Newport City Council and appointed by the Commissioners; and
- (c) an officer employed by the Commissioners.

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

- (a) management of harbours;
- (b) shipping or other forms of transport;
- (c) appropriate commercial or industrial experience;
- (d) financial management;

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(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.

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

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

(d) S.I. 1981/238.

(e) 1890 c.cxliv.

(f) 1847 c. 16.

- (e) administration and organisation of workers;
- (f) sport and recreational use of the harbour;
- (g) environmental matters affecting harbours;
- (h) specific knowledge of or interest in the local community and wider community in the economic and social context within which the Commissioners operate;
- (i) tourism and leisure; and
- (j) any other skills and abilities considered from time to time by the Commissioners to be relevant to the discharge by them of their functions;

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

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

4. The first appointments under article 3(1)(a) or (b) above shall be made on, or as soon as reasonably practicable after 21st October 2003, and of the Commissioners so appointed—

- (a) three shall hold office for a period of two years from the new constitution date;
- (b) two, one of whom shall be appointed as the Chairman, shall hold office for a period of three years from the new constitution date;
- (c) two shall hold office for a period of four years from the new constitution date.

#### **Terms of office of subsequent Commissioners**

5. A Commissioner appointed under article 3(1)(a) or (b) above (other than a Commissioner appointed under article 4 above) shall, unless appointed to fill a casual vacancy and subject to articles 8 and 9 of, and paragraph 10 of Schedule 2 to, this Order hold office for a term of three years from the date of his appointment.

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

6. The Commissioners referred to in article 3(1) above may at any time co-opt one additional person to serve as a Commissioner for such period not exceeding twelve months as the co-opting Commissioners may specify at the time of co-option.

#### **Casual vacancies**

7.—(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 3(2) and (3) above.

(2) A Commissioner appointed to fill a casual vacancy under this article shall, subject to articles 8 and 9 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.

#### **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.

#### **Disqualification of Commissioners**

- 9.—(1) If the Commissioners are satisfied that a Commissioner—
- (a) has been absent from meetings of the Commissioners for a period of three consecutive months without the permission of the Commissioners; or
  - (b) has become bankrupt or has 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 the office shall become vacant.

(2) For the purposes of paragraph (1)(a) of this Article the attendance of a Commissioner at a meeting of any committee of the Commissioners of which he is a member may be treated as attendance at a meeting of the Commissioners.

#### **Indemnity insurance for Commissioners**

10. 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 applying to 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.

#### **Advisory Bodies**

12.—(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.

(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 such an advisory body whether or not that advisory body has been consulted by the Commissioners on the matter, recommendation or representation so referred or made.

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

(4) Appointments to an advisory body established under this article shall be made by the Commissioners in accordance with a scheme prepared by them for that 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) Any such advisory body may determine its own quorum and procedure and shall appoint a Chairman, who shall make arrangements for that advisory body to meet not less than twice a year.

(6) An individual member of any such 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 such an advisory body shall hold office for the period of three years from that date of his appointment and at the end of that period shall be eligible for reappointment.

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

#### **Repeals**

13. On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order shall be repealed or revoked to the extent specified in the third column of that Schedule.

## Amendments

**14.**—(1) Section 4 of the Act of 1890 shall have effect as if the following were substituted for the words “the Commissioners Clauses Act 1847 except section 16 and 54 of that Act”

“The Commissioners Clauses Act 1847 except sections 6 to 10, 12, 14, 16 to 39, 48, 49 to 52, 54, 57, 66, 67, 68, 70 to 74, 84, 89 to 91, 92, 94, 95, 101, 110, 111 and Schedule (A) of that Act.”

(2) References in the Commissioners Clauses Act 1847(a) as so incorporated to monthly meetings shall be construed as references to the meetings held in accordance with paragraph 9(2), Schedule 2 to this Order.

(3) Section 3 of the Newport (Monmouthshire) Harbour Act 1869(b) shall have effect as if the following were substituted for the words “and the provisions of” The Commissioners Clauses Act 1847 “with respect to the mortgages to be executed by the Commissioners”.

“and the provisions of ‘The Commissioners Clauses Act 1847’ with respect to the mortgages to be executed by the commissioners except Section 84 of that Act”

(4) Section 3 of the Newport (Monmouthshire) Harbour Act 1869 shall have effect as if the following were substituted for the words “The Harbours, Docks and Piers Clauses Act, 1847,”

“The Harbours Docks, and Piers Clauses Act 1847 except sections 50, 97 and 98”.

Signed by authority of the Secretary of State for Transport

14th October 2003

*Phil Cavey*  
Head of Ports Division  
Department for Transport

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(a) 1847 c. 16.  
(b) 1869 c.cxviii



8. If the Commissioners are satisfied that the chairman or vice-chairman should cease to hold his office as such, they may terminate his office as such and appoint another Commissioner to be chairman or vice-chairman during the remainder of the term for which the former chairman or vice-chairman 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 Clerk for such date as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to the Commissioners.

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

#### *Vacation of Office by Commissioners*

10. A Commissioner (except a Commissioner appointed under Article 3(1)(c) above) may resign his office at any time by notice in writing given to the Clerk.

#### *Reappointment of Commissioners*

11.—(1) Subject to the provisions of this Schedule, a vacating Commissioner shall be eligible for reappointment as a Commissioner unless he has been disqualified from office under Article 9 above.

(2) A vacating appointed Commissioner shall not be eligible for reappointment as a Commissioner where, immediately before the date in question, he has held office for 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 4(a) above;
- (b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 7 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 3(1)(a) or (b) 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 a chairman for three consecutive terms.

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

- (a) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy in the office of chairman under paragraph 7 above; or
- (b) 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.

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

*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 five.

**16.—(1)** If a Commissioner has any interest, direct or indirect—

(a) in any contract or proposed contract to which the Commissioners are or would be a party or is a director of a company or body with which the contract or proposed contract is made or proposed to be made; or

(b) in any other matter 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 powers 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 any officer of the Commissioners authorised by the Commissioners to act in his place in that behalf.

(2) 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 a duly authorised officer of the Commissioners.

*Remuneration of the Commissioners and Chairman*

**21.—(1)** The Commissioners may pay to each Commissioner such expenses as the Commissioners may from time to time determine.

(2) The Commissioners may pay the Chairman such reasonable remuneration as they may 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 shall appoint such 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 13

**REPEALS**

<b>Chapter</b>	<b>Short Title</b>	<b>Extent of Repeal</b>
1836 c.ixvi	Newport (Monmouthshire) Harbour Act 1836	Section 100
1869.cxviii	Newport (Monmouthshire) Harbour Act 1869	Section 17 Sections 24 to 34 Section 40 Section 49 Section 50
1889 c.cliii	Newport (Monmouthshire) Corporation Act 1889	Sections 62 to 67 and 69
1890 c.cxliv	Newport (Monmouthshire) Harbour Act 1890	Sections 16 to 28 Sections 30 to 32 Sections 33 to 36 Section 38 Section 42 in part namely the words "or an officer or servant of the Commissioners" Section 46 in part namely the words " or by means of a sinking fund" Sections 47 to 49 Section 54 in part namely the words "and in providing the requisite sinking fund with reference to moneys borrowed by the Commissioners" in the fourth paragraph Sections 55 and 57 to 69 Sections 78 and 79 Section 82 Section 84 Section 85 in part namely from the words "Provided that the Commissioners shall not without the consent in writing of the Corporation ..." to the end of section 85 Sections 101 and 102 Section 104 Section 107
1906 c.lxii	Newport Harbour Act 1906	Sections 5 to 7
1954 c.lii	Newport Corporation Act 1954	Section 61





## EXPLANATORY NOTE

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

This order reconstitutes Newport South Wales Harbour Commissioners as from 1st November 2003. It provides for the Commissioners to consist of a body of eight Commissioners with experience in relevant matters. Seven Commissioners have been appointed by an appointments procedure. The remaining Commissioner will be an officer employed by the Commissioners.

The order also includes other provisions with respect to the selection and terms of appointment of the Commissioners, the manner in which they are to conduct their business, the establishment of an advisory body or bodies and for the protection of the Commissioners from personal liability in the discharge of their functions. The Order repeals or revokes certain ancient legislation.

£2.50

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E1310 10/2003 131310 19585

ISBN 0-11-048003-1



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