

2014 No. XX

HARBOURS, DOCKS, PIERS AND FERRIES

**The Great Yarmouth Port Authority (Constitution) Harbour
Revision Order 2014**

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| <i>Made</i> | - - - - | *** |
| <i>Laid before Parliament</i> | - | *** |
| <i>Coming into force</i> | - - | *** |

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The Great Yarmouth Port Authority has applied under section 14(2)(a) of the Harbours Act 1964(a) (“the Act”) for a harbour revision order under section 14.

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an order(b) made under section 42A of the Act(c) delegated the functions of the appropriate Minister under section 14(d) of the Act to the Marine Management Organisation(e).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) of the Act and in exercise of the powers conferred by section 14(1) and (3) makes the following Order.

Citation and commencement

1.—(1) This Order may be cited as The Great Yarmouth Port Authority (Constitution) Harbour Revision Order 2014 and comes into force on [] 201X.

(2) The Great Yarmouth Port Authority Acts and Orders 1866 to 2005 and this Order may be cited as the Great Yarmouth Port Authority Acts and Orders 1866 to [201X].

Interpretation

2. In this Order—

“the board” means the board of the Port Authority;

“the Chairperson” means the chairperson of the Port Authority;

“the clerk” means the administrative officer of the Port Authority;

“the harbour master” means any person appointed as such for the time being by the Port Authority;

“Member” means a member of the board;

“the new constitution date” means the first day of the fourth month after the expiry of the month current at the commencement of this Order;

“the Port Authority” means the Great Yarmouth Port Authority;

“the port” means the port of Great Yarmouth, being the area within which the Port Authority exercises jurisdiction as harbour authority;

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).

(b) S.I. 2010/674.

(c) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).

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

(e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

“the selection panel” means the panel constituted under article 5.

Incorporation of Commissioners Clauses Act 1847

3.—(1) Sections 2 to 4, 41, 45, 47, 53, 56, 58 to 64 and 99 to 101 of the Commissioners Clauses Act 1847(a) are incorporated with, and form part of, this Order except where the same are inconsistent with, or are varied by, this Order.

(2) The provisions so incorporated have effect as follows—

- (a) references to Commissioners are to be construed as references to Members, or to the Port Authority, as the case may require;
- (b) references to monthly meetings are to be construed as references to the meetings held in accordance with paragraph 4(2) of Schedule 2;
- (c) sections 60, 62 and 63 apply to officers and employees of the Port Authority as they apply to Members.

(3) Except as provided in this article, the provisions of the Commissioners Clauses Act 1847 are not incorporated in this Order.

Constitution and membership of the Port Authority

4. Subject to article 6 and to any casual vacancies, and to the transitional provisions referred to in article 8, the Members of the Port Authority are as follows—

- (a) five persons appointed by the selection panel;
- (b) the harbour master; and
- (c) the clerk.

Selection panel

5.—(1) The selection panel consists of the Chairperson and two persons (who must not be Members or officers of the Port Authority) who are appointed by the board.

(2) The board must take steps to secure that the persons appointed to the selection panel have appropriate experience including (but not limited to) current knowledge and experience of the port and in particular experience in the commercial, maritime, fishing, cargo handling, environmental or other interests in the port.

(3) The clerk must provide the selection panel with such administrative assistance and advice as it may require in connection with the discharge of its functions.

(4) Before making any appointment the selection panel must consult the board.

(a) 1847 c.16.

Members' Declaration

6. No person may act as a Member until that person has made the declaration set out in Schedule 1, and a person who fails to make that declaration within three months of appointment ceases to be a Member.

Procedural provisions applying to Port Authority

7. Schedule 2 has effect.

Transitional provisions

8. Schedule 3 has effect.

Selection of Members

9.—(1) Each Member appointed by the selection panel must be a person who appears to the selection panel to have skills, competencies, knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Port Authority of its functions including (but not limited to) knowledge and qualifications, experience or ability in one or more of the following matters—

- (a) management of ports and/or pilotage;
- (b) shipping and marine transport;
- (c) legal, financial or property matters;
- (d) marine safety and environmental matters;
- (e) management of water related leisure activities;
- (f) any other skills and abilities the selection panel considers to be relevant to the functions of the board;

and the selection panel must secure, so far as reasonably practicable, that the Members so appointed, have between them special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by the board of its functions.

(2) In making an appointment, the selection panel 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 of Members and terms of office

10.—(1) The selection panel must make the appointment of every Member who is to hold office under article 4(a) not later than two months before the date on which the Member is to take office.

(2) The harbour master holds office as a Member so long as that person remains harbour master.

(3) The clerk holds office as a Member so long as that person remains clerk.

(4) Subject to Schedule 3 each Member appointed under article 4(a) (unless such Member dies, resigns or is disqualified) holds office for a term of three years from 1 March following the date on which that Member was appointed.

(5) Each Member appointed under article 4(a) is eligible for reappointment unless such Member has held office for three consecutive terms.

Casual vacancies

11.—(1) A casual vacancy arising in the office of a Member appointed by the selection panel must, unless it is not reasonably practicable to do so, be filled by the appointment of a Member by the selection panel in accordance with article 10.

(2) A Member appointed to fill a casual vacancy under this article, subject to article 6 and paragraphs 7 and 8 of Schedule 2, holds office during the remainder of the term for which the immediate predecessor Member was appointed.

(3) This article does not apply to the harbour master or clerk.

Revocations and Repeal

12. On the new constitution date—

- (a) the Great Yarmouth Port and Haven (Constitution) Revision Order 1984(a) is revoked;
- (b) articles 4 (Reconstitution of the Port Authority), 6 (Appointment of Members and tenure of office) and 8 (Amendment of the 1984 Order) of the Great Yarmouth Port Authority Harbour Revision Order 1989(b) are revoked; and
- (c) section 35(2) of the Great Yarmouth Port and Haven Act 1911(c) is repealed.

Signed by authority of the Marine Management Organisation

Date Chief Executive Officer
An authorised employee of the Marine Management Organisation

(a) S.I. 1984/1067.
(b) S.I. 1989/1737.
(c) 1911 c. xcix.

SCHEDULE 1

Article 6

FORM OF DECLARATION BY MEMBERS OF THE PORT AUTHORITY

DECLARATION

I [FULL NAME] do solemnly declare that

- 1) 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 Member of the Great Yarmouth Port Authority by virtue of the Great Yarmouth Port and Haven Acts and Orders 1866 to 201x.
- 2) I have read and understood the notes entitled “Notes for Guidance of Members on the Disclosure of Financial and Other Interests” and “Duties of Members” and that I will comply with the requirements as to the disclosure of interests laid down by paragraph 5 of Schedule 2 to the Great Yarmouth Port Authority (Constitution) Harbour Revision Order 2014 and
 - (a) I have disclosed to the clerk/chairperson* details of every financial or other interest such as is mentioned in those notes;
 - (b) I will in future notify the clerk/chairperson* of any alteration in those interests, or any new interest such as mentioned in those notes, which I may acquire.

Made and signed at)
 Great Yarmouth, on the)
 day of))
 (signature)

Witnessed by)
 (signature)

*Where the declaration is made by the clerk any notification/disclsoure required of the clerk is made to the chairperson.

SCHEDULE 2

Article 3

PROVISIONS APPLYING TO THE PORT AUTHORITY

Chairperson and Vice-Chairperson

1.—(1) At the annual meeting the Members present at the meeting must, before proceeding to any other business, choose two of their number to act respectively as chairperson and vice-chairperson.

(2) A Member appointed as chairperson or vice-chairperson, (unless that person resigns as chairperson or vice-chairperson, or ceases to be a Member), holds office as chairperson or vice-chairperson, from and including the meeting at which that person is chosen until the next appointment of a chairperson or vice-chairperson.

(3) On a casual vacancy occurring in the office of chairperson or of vice-chairperson the vacancy, must be filled from among those of the Members who have been appointed under article 4(a) at a meeting held as soon as practicable after the vacancy occurs.

(4) A Member appointed above to fill a casual vacancy in the office of chairperson or vice-person, unless that Member resigns that office or ceases to be a Member, holds that office until,

(a) the date of expiry of the term for which the former chairperson or vice-chairperson was appointed; or

(b) the date upon which that Member ceases to be a Member

whichever is the earlier.

(5) A vice-chairperson appointed under sub-paragraph (3) has and may exercise all the functions of the chairperson.

(6) If at any meeting of the board neither the chairperson nor the vice-chairperson is present the Members present at the meeting must choose one of their number to be the chairperson of the meeting.

(7) The clerk and the harbour master may not serve as chairperson or vice-chairperson of the Port Authority, but such persons may chair the meetings.

Vacancies and irregularities not to invalidate acts of board

2. The acts and proceedings of the board, or of any committee of the board, are not invalidated by any vacancy or by any defect in the appointment, or the qualification for appointment, of any person as a Member, or as chairperson or vice-chairperson, of the board or committee.

Committees

3. The board 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 board.

Meetings and procedure

4.—(1) The board must hold an annual meeting in March in every year.

(2) The board must hold ordinary meetings in July and November in every year, and may hold such other meetings as may be required.

(3) The quorum required for a meeting of the board is three.

(4) If at any meeting of the board or of a committee of the board there is an equality of votes on any question the chairperson of the meeting has a second or casting vote which such chairperson of the meeting may exercise for or against the status quo.

(5) Subject to the provisions of this Order the procedure and business of the board and of any committee of the board is regulated in such manner as the Port Authority may from time to time determine.

Declaration of interests

5.—(1) If a Member has any interest, direct or indirect—

- (a) in any contract or proposed contract to which the Port Authority is 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 Port Authority is concerned,

such Member must declare that interest.

(2) If a Member is present at a meeting of the board or of any committee of the board at which a contract or other matter in which such Member has an interest is to be considered that Member must—

- (a) so soon as is practicable after the commencement of that meeting disclose the interest;
- (b) not vote on any question with respect to that contract or matter; and
- (c) withdraw from the meeting—
 - (i) at any time, if the board present by resolution requires such Member so to do; and
 - (ii) while a decision on that contract or matter is being made.

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

- (3) This paragraph does not apply to any interest which—
- (a) a Member has in respect of the payment to the Port Authority of dues;
 - (b) arises in respect of the provision of port services or facilities affecting the trading community in general;
 - (c) a Member has as an employee of a public utility undertaking or as a shareholder, not being a director of a company, unless such Member possesses more than five per cent of the issued share capital of that company; or
 - (d) the Members present at the meeting by resolution declare to be too remote.

Register of interests

6. The Port Authority must maintain and regularly update a register of interests declared by Members, and must make the register available for inspection by Members of the public at all times during usual office hours.

Resignation of Members

7.—(1) A Member (other than the clerk) may resign at any time by notice in writing given to the clerk.

(2) The clerk may resign at any time by notice in writing given to the chairperson.

Disqualification of Members

8.—(1) If the board is satisfied that any Member, including the chairperson or vice-chairperson—

- (a) has been absent from meetings of the board for eight consecutive months or more without the permission of the board;
- (b) has become bankrupt or has made an arrangement with that Member's creditors;
- (c) is incapacitated by physical or mental illness from discharging the functions of a Member;
- (d) has knowingly failed in a material respect to act in that Member's capacity as a Member independently of any particular interest;
- (e) has been convicted of a criminal offence;
- (f) has failed to declare a conflict of interest or otherwise acted improperly; or
- (g) persistently acts in a manner calculated seriously to impeded or prejudice the carrying on of the business of the Port Authority; or

- (h) appears to a majority of the board to be unable, unfit or unwilling adequately to discharge that Member's functions as a Member;

the board may by resolution declare that Member's office as a Member to be vacant, and the office becomes vacant.

(2) For the purposes of sub-paragraph (1)(a) above the attendance of a Member at a meeting of any committee of the board of which that Members is a Member is to be treated as attendance at a meeting of the board.

(3) If the disqualified Member referred to in sub-paragraph (1) is the chairperson or vice-chairperson then the Members must elect a new chairperson or vice-chairperson in accordance with sub-paragraph (1) of paragraph 1 for the remainder of the term for which the chairperson or vice-chairperson was appointed.

Provisions as to resolutions

9. A resolution under paragraph 8 proposing the removal of a Member—

- (a) is extraordinary business for the purpose of section 43 of the Commissioners Clauses Act 1847; and
- (b) is not effective unless passed by a majority of the whole number of the Members.

Appointment of clerk

10.—(1) The Port Authority must appoint a clerk and may appoint such other officers and employees as from time to time it thinks necessary or desirable for and incidental to the performance of its functions and pay to them such remuneration as the board think fit.

(2) The board may authorise any other officer to discharge any function of the clerk, other than that office holder's functions as a Member.

Payments to Members

11. The Port Authority may pay to the chairperson, vice-chairperson and other Members appointed by the selection panel such salary, allowance and expenses as the board may from time to time determine.

SCHEDULE 3

Article 8

TRANSITIONAL PROVISIONS

Existing Members to continue in office

1. In this Schedule “the relevant date” means 1 March in the year after the year current at the new constitution date.

2. Notwithstanding any provisions of the Great Yarmouth Port Authority Acts and Orders 1866 to 2005 or any other provision of this Order the Members who hold office at the date of the coming into force of this Order continue in office until the new constitution date.

Composition of board following new constitution date

3.—(1) On the new constitution date the board, subject to any casual vacancies, consists of the following Members (“the first nominees”)—

- (a) the chairperson who held office immediately before the new constitution date; and
- (b) one Member not being the chairperson who holds office as a Member immediately before the new constitution date and who has been elected by the Members of the board before the new constitution date; and
- (c) three persons appointed by the selection panel;
- (d) the harbour master; and
- (e) the clerk.

(2) The Member holding office under sub-paragraph 1(b) is vice-chairperson until that first annual meeting of the board following the new constitution date.

Appointment of certain Members

4. The selection panel must meet as soon as practicable after the date on which this Order comes into force and select three persons to serve as Members in accordance with paragraph 3(1)(c).

Terms of office of transitional Members of board

5. Members who are appointed as first nominees under paragraph 3(1)(a) to (c) hold office as follows—

- (a) in the case of the chairperson, until the second anniversary of the relevant date;
- (b) in the case of a Member elected in accordance with paragraph 3(1)(b), until the second anniversary of the relevant date;

(c) in the case of a Member appointed by the selection panel, until the third anniversary of the relevant date;

unless any such Member dies, resigns or becomes disqualified from holding office.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Great Yarmouth Port Authority.

It provides for the Great Yarmouth Port Authority to consist of seven Members. Five Members are to be appointed by a selection panel. The harbour master and the clerk serve by virtue of their office. Provision is made for the revocation and repeal of certain statutory provisions.

STATUTORY INSTRUMENTS

2014 No. XX

HARBOURS, DOCKS, PIERS AND FERRIES

The Great Yarmouth Port Authority (Constitution) Harbour
Revision Order 2014

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