
STATUTORY INSTRUMENTS

[2015] No. []

HARBOURS, DOCKS, PIERS AND FERRIES

The Dover Harbour Revision (Constitution) Order [2015]

Made - - - - []
Laid before Parliament []
Coming into force - - []

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SCHEDULES

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The Dover Harbour Board has applied in accordance with section 14(2)(a) of the Harbours Act 1964(a) (“the Act”) for a harbour revision order under section 14.

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 14(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).

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

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) 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 Dover Harbour Revision (Constitution) Order [2015] and shall come into force on [] 2015.

(2) The Dover Harbour Acts and Orders 1954 to 2014 and this Order may together be cited as the Dover Harbour Acts and Orders 1954 to [2015].

Interpretation

2. In this Order—

“the Board” means the Dover Harbour Board;

“director” means member of the Board;

“the Dover Port Users Group” means the body referred to in article 9(1)(b);

“harbour” means Dover Harbour and has the meaning given by section 4 of the 1954 Act;

“the new constitution date” means [] 2015; and

“the Port & Community Forum” means the body referred to in article 9(1)(a).

New constitution

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

(a) one person appointed by the Secretary of State who shall be appointed chair following consultation with, and taking into account the views of, the Board;

(b) six persons appointed by the Board ;

(c) the chief executive of the Board; and

(d) one other senior officer employed by the Board as is specified by the directors appointed under subparagraphs (a), (b) and (c) following consultation with, and taking into account the views of, the chief executive.

(2) No director appointed under paragraph (1)(a) or (b) shall be an employee of the Board.

(3) Two of the directors appointed under paragraph (1)(b) shall be persons who appear to the Board to have special knowledge or experience of the position of the port within the local community and local economy.

(4) Before any person is appointed to be a director under paragraph (3) he or she shall be interviewed by, and the Board shall consult with, a panel comprising a committee of the Board to be known as the Nomination Committee, the chair of the Port User Group, the chair of the Port & Community Forum, one elected member of the Dover District Council, one elected member of Dover Town Council, the Member of Parliament for Dover and Deal and the chair of the South East Local Enterprise Partnership.

(5) If any of the bodies mentioned above ceases to exist, the requirements for a person to be interviewed by, and the Board to consult with, the body shall cease except that the requirements

(a) S.I. 2010/674.

(b) 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).

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

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

shall apply as respects any body that the Board consider to be a successor to the prior mentioned body.

(6) Each of the other directors appointed under paragraph (1)(a) or (b) shall be a person who appears to the appointing person or body to have special knowledge, experience or ability appropriate to discharge the fiduciary duties of directors and contribute to the efficient, effective and economic discharge by the Board of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge or experience of, or ability in, one or more of the following matters—

- (a) the ports industry;
- (b) shipping or other forms of transport;
- (c) navigation or marine operations;
- (d) industrial, commercial or financial management;
- (e) administration;
- (f) safety and personnel management
- (g) environmental matters affecting harbours
- (h) strategic planning; or
- (i) any other skills and abilities considered from time to time by the Secretary of State or, as the case may be, the Board to be relevant to the discharge of the Board's functions.

(7) In making an appointment under paragraph (1)(b) or article 6, the Board shall act in accordance with any guidance issued by the Secretary of State from time to time with respect to the exercise of their functions.

Appointment and terms of office of first directors

4.—(1) Subject to paragraphs (2) and (3) below, the first appointments under article 3(1)(a) and (b) shall be made on, or as reasonably practicable after, [] 2015.

(2) The Secretary of State shall appoint the person who is, at the date when he makes his first appointment under article 3(1)(a), the Chairman of the Board and on and after the new constitution date he shall be the chair of the Board.

(3) The Board shall appoint the persons who, at the date when they make their first appointment under 3(1)(b), are respectively—

- (a) the director appointed to hold office until 23 May 2016;
- (b) the director appointed to hold office until 30 September 2016; and
- (c) the two directors appointed to hold office until 12 June 2018.

(4) A director appointed under paragraph (2) or (3) shall hold office from the new constitution date until the date on which his existing period of office would have expired but for the making of this Order.

(5) The two new directors shall be the first directors appointed pursuant to article 3(3) and shall hold office for a period of three years following their appointment.

(6) The senior officer appointed under article 3(1)(d) shall hold office as a director for such period as the Board may specify.

Terms of office of subsequent directors

5. A director appointed under article 3(1)(a) or (b) (other than a director appointed under article 4 above) shall, unless appointed to fill a casual vacancy, hold office for a period of three years following his appointment or for such lesser period, exceeding 12 months, as the Secretary of State or the Board (as the case may be) may specify.

Casual vacancies

6.—(1) A casual vacancy arising in the office of a chair appointed under article 3(1)(a) or a director appointed by the Board under article 3(1)(b) shall, unless it is not reasonably practicable to do so, be filled by the appointment of a director by the Secretary of State or the Board in accordance with article 3(2) to (6).

(2) The Secretary of State may fill a casual vacancy in the office of chair by appointing as chair a person who is already a director of the Board appointed under article 3(1)(b) and, if the Secretary of State does so, the appointment shall be deemed to create a casual vacancy in the office of the director who is appointed as chair.

(3) A director appointed to fill a casual vacancy under this article shall, subject to paragraph 4 of Schedule 2 to this Order, hold office during the remainder of the term for which the director whom he replaces was appointed or such other period (not exceeding three years) as the appointing person or body may specify.

Appointment of chief executive

7. For and incidental to the performance of their functions, the Board shall appoint a chief executive.

Undertaking and declaration by directors

8. A director appointed by the Secretary of State or the Board must, before his appointment takes effect, sign an undertaking as to the discharge of the duties of a director and the declaration of interests in a form to be determined by the Board from time to time.

Advisory bodies

9.—(1) The Board has facilitated the establishment of the independent advisory bodies set out in paragraph (2) and must consult those bodies on matters which in the Board's opinion could significantly affect the operation of the harbour but the Board is not required to consult on matters which in the Board's opinion are confidential or commercially sensitive or where it is not reasonably practicable to do so having regard to the urgency of the matter.

(2) The bodies referred to in paragraph (1) are—

- (a) an advisory body known as the Port & Community Forum ("PCF") consisting of persons who, in the opinion of the Board and (after the PCF has been established) of the other members of the PCF, are representative of persons having an interest in the functioning of the harbour in the context of the local community and local economy; and
- (b) an advisory body known as the Dover Port Users Group ("Dover PUG") consisting of persons who, in the opinion of the Board and (after the Dover PUG has been established) of the other members of the Dover PUG, are representative of port users, borders agencies, the Board's operational tenants, and other persons having an interest in the commercial and operational functioning of the harbour.

(3) The Board must facilitate the arrangements for the PCF and the Dover PUG to meet regularly as required by the chair of the advisory body concerned.

(4) The Board must take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by each advisory body whether or not that advisory body has been consulted by the Board.

(5) The initial appointments to the PCF and the Dover PUG have been made by the Board in accordance with the scheme prepared by the Board for the PCF or, as the case may be, the Dover PUG and subsequent appointments shall be made in the manner provided for by the relevant scheme.

(6) An advisory body may determine its own quorum and procedure and must appoint a chair.

(7) A member of an advisory body may resign his office at any time by notice in writing given to the chair of the Board and to the chair of that body.

(8) The Board shall provide administrative support and use all reasonable endeavours to facilitate the continued existence of the advisory bodies but if the members of either the PCF or the Dover PUG decide that the body concerned shall cease to exist, this article shall cease to have effect as respects that body.

(9) In this article “advisory body” means the PCF or the Dover PUG.

Incidental provisions relating to Board

10. On and after the new constitution date the provisions of Schedule 1 to this Order shall have effect with respect to the Board.

Revocation

11. On the new constitution date the enactment mentioned in the first and second columns of Schedule 2 to this Order shall be revoked to the extent specified in the third column of that Schedule.

Signed by authority of the Marine Management Organisation

[Date]

[Name]
Chief Executive Officer
An authorised employee of the
Marine Management Organisation

SCHEDULES

SCHEDULE 1

Article 10

INCIDENTAL PROVISIONS RELATING TO BOARD

1. The first meeting of the Board after the new constitution date shall be convened by the chair of the Board for such date and at such place as he may fix and the chair shall make arrangements for notice of that meeting to be sent to each of the other directors.

2.—(1) The Board shall at their first meeting after the new constitution date appoint one of their number to be deputy chair and the deputy chair shall, unless he or she resigns his or her office or ceases to be a director, continue in office until 31 December 2015.

(2) The Board shall appoint one of their number to be deputy chair for each subsequent calendar year who shall continue in office until the end of that calendar year unless he or she resigns his or her office or ceases to be a director.

3. Directors will be appointed on such terms as the person or body appointing them determine and as soon as practicable after a director has been appointed, his or her appointment and the terms of the appointment shall be confirmed in writing by a person duly authorised to do so on behalf of the Board.

4.—(1) A director may resign his or her directorship by sending a notice in writing to the Register of the Board, and by sending a copy of that notice to the authority which appointed him or her.

(2) If the chief executive or the director appointed under article 3(1)(d) ceases to be a full-time employee of the Board, he or she shall thereupon cease to be a director.

5.—(1) This paragraph applies where a director—

- (a) has been absent from meetings of the Board for six consecutive months or more without the permission of the Board; 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 director; or
- (d) has knowingly failed in a material respect to act in his capacity as a director 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) appears to the chair or to a majority of the directors to be otherwise unable, unfit or unwilling to discharge the functions of a director.

(2) If the Secretary of State is (in the case of a director appointed by the Secretary of State) or the Board are (in the case of a director appointed by them) satisfied that this paragraph applies to any such director, and that the director should be disqualified from office in consequence, the Secretary of State, or as the case may be the Board, may by resolution declare the director's office as a director to be vacated and thereupon the office shall become vacant.

(3) For the purposes of sub-paragraph (1)(a) the attendance of a director at a meeting of any committee of the Board of which he or she is a member shall be treated as attendance at a meeting of the Board.

6. On a casual vacancy occurring in the office of deputy chair of the Board, the vacancy shall be filled by the appointment by the Board of one of their number at a meeting held as soon as practicable after the vacancy occurs, and the person so appointed shall hold office until the end of the calendar year in which the vacancy occurs.

7.—(1) Subject to subparagraph (2), the Board shall meet at least six times in each year.

(2) In addition to the meetings held under subparagraph (1), the Board shall hold an annual consultative meeting to which members of the public shall be admitted.

8. At meetings of the Board the quorum shall be four.

9.—(1) Meetings of the Board may be held and conducted in such a way that directors who are not present together at the same place may by electronic means attend and speak and vote at it; and any director attending a meeting by electronic means shall be counted in the quorum for that meeting.

(2) For the purposes of subparagraph (1) electronic means has the same meaning as it has for the purposes of section 360A of the Companies Act 2006(a).

10. Any person who has held office as a director shall be eligible for re-appointment in accordance with any guidance issued by the Secretary of State from time to time.

11. Subject to the provisions of this Schedule, the procedure of the Board shall be regulated in such manner as the Board may from time to time determine.

SCHEDULE 2

Article 11

REVOCATION

Number	Short title	Extent of revocation
S.I. 1975/568	Dover Harbour Revision Order 1975	The whole Order.

(a) 2006 c.46

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Dover Harbour Board as from []. It provides for the Board to consist of a body of nine members with experience in relevant matters. One member will be appointed by the Secretary of State and that member will be appointed as chair. Six members will be appointed by the Board, two of whom will be appointed as having particular knowledge or experience of, or ability in, the position of the port within the local community and local economy. The remaining two members will be the chief executive and one other senior officer of the Board. Provision is also made for the Board to consult the two advisory bodies known as the Port & Community Forum and the Dover Port Users Group.

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