

2001 No. 2820

HARBOURS, DOCKS, PIERS AND FERRIES

The Poole Harbour Revision Order 2001

Made - - - - - *3rd August 2001*

Coming into force - - - - - *25th August 2001*

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Whereas the Poole Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

And whereas objections to the application made pursuant to paragraph 3(2)(a) of Schedule 3 to the said Act have been withdrawn;

Now, therefore, the Secretary of State for Transport, Local Government and the Regions (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:—

PART I

PRELIMINARY

Citation and commencement

- 1.—(1) This Order may be cited as the Poole Harbour Revision Order 2001.
- (2) The Poole Harbour Acts and Orders 1756 to 1999 and this Order may be cited together as the Poole Harbour Acts and Orders 1756 to 2001.
- (3) Subject to paragraph (4) below this Order shall come into force on 25th August 2001.
- (4) Article 13 of this Order shall come into force on 1st January 2002.

Interpretation

2. In this Order—

- “the 1847 Act” means the Commissioners’ Clauses Act 1847(d);
- “appointing authority” means any of the persons by whom Commissioners are, or are to be, appointed in accordance with article 4 below and includes the selection panel;
- “the Chairman” means the Chairman of the Commissioners;
- “the Chief Executive” means the Chief Executive of the Commissioners;
- “the Commissioners” means the Poole Harbour Commissioners;
- “first appointments” means the first appointments to be made after the coming into force of this Order;
- “the harbour” means the area as defined in sections 3 and 4 of Poole Harbour Act 1914(e);
- “the new constitution date” means 1st November 2001;
- “the selection panel” means the panel constituted under article 5 below.

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

(c) S.I. 1981/238 and S.I. 1997/2971.

(d) 1847 c. 16.

(e) 1914 c. clv.

Incorporation of the Commissioners' Clauses Act 1847

3.—(1) Sections 13 to 16, 37, 41 to 50, 52, 53, 60, 99 to 101, and 103 of the 1847 Act are hereby incorporated with, and form part of, this Order.

(2) The 1847 Act as so incorporated shall have effect as if for references to the clerk there were substituted references to the Chief Executive.

(3) References in the 1847 Act as so incorporated to monthly meetings shall be construed as references to the meetings held in accordance with paragraph 4 of Schedule 1 to this Order.

(4) Section 16 of the 1847 Act as so incorporated shall have effect as if the words "or who for six months in succession is absent from all meetings of the Commissioners" were omitted.

(5) Section 60 of the 1847 Act as so incorporated shall apply to officers and employees of the Commissioners as it applies to individual Commissioners.

(6) So much of the Poole Harbour Acts and Orders 1756 to 1999 as incorporates any provision of the 1847 Act other than those referred to in paragraph (1) above shall cease to have effect.

PART II

CONSTITUTION

Constitution of Commissioners

4.—(1) On and after the new constitution date the Commissioners shall, subject to articles 8 and 9 below, consist of—

- (a) the Chief Executive;
- (b) an officer of the Commissioners, not being the Chief Executive, appointed by the Chairman after consultation with the Chief Executive; and
- (c) ten other Commissioners appointed as provided by paragraph (2) below.

(2) The Commissioners appointed under this paragraph shall be as follows—

- (a) one Commissioner appointed by the Transport and General Workers Union or, should they fail to make an appointment, by the selection panel;
- (b) three Commissioners appointed jointly by Dorset County Council, Poole Borough Council and Purbeck District Council or, should they fail to make all or any of those appointments, by the selection panel; and
- (c) six additional Commissioners appointed by the selection panel.

Selection panel

5.—(1) The Chairman shall appoint two persons, not being Commissioners, to act with him as the selection panel whenever any appointment is to be made by the panel under this Order.

(2) The selection panel shall make—

- (a) the appointments to be made under article 4(2)(c) above; and
- (b) the appointments to be made under article 4(2)(a) or (b) above if the Transport and General Workers Union or the local authorities mentioned in article 4(2)(b) (as the case may be) fail to make any such appointment,

having regard to the advice of the Chief Executive.

(3) For the purposes of paragraph (2) (b) above an appointing authority shall be deemed to have failed to make an appointment if the appointment has not been made by the date referred to in or determined under article 7(1) below.

(4) The selection panel shall consult the Commissioners for the time being before making any appointment.

Selection of Commissioners

6.—(1) Each appointing authority shall make the appointments provided for by article 4 above on merit, in accordance with a published recruitment policy and having had regard to equal opportunities.

(2) A person shall not be appointed as a Commissioner if he would reach the age of seventy years in his first term of office.

(3) Each Commissioner shall be a person who appears to the body appointing him to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Commissioners of their functions.

(4) Without prejudice to the generality of paragraph (3) above, the objective of the appointing authorities shall be to ensure, so far as reasonably practicable, that the Commissioners include persons having special knowledge, experience or ability in the following matters—

- (a) management of harbours;
- (b) shipping;
- (c) industrial, commercial or financial matters;
- (d) water related leisure activities;
- (e) administration;
- (f) local governance; and
- (g) environmental matters.

(5) Before appointing a Commissioner each appointing authority shall consult with the other appointing authorities with a view to achieving, so far as reasonably practicable, the objective mentioned in paragraph (4) above.

Appointment of Commissioners and terms of office

7.—(1) Each appointing authority shall make the appointments provided for by this Order—

- (a) in the case of first appointments, not later than 4th October 2001; and
- (b) in the case of subsequent appointments which fall to be made in any year, by not later than 1st October in that year;
- (c) in the case of casual vacancies, within 56 days of the vacancy occurring;
- (d) in the case of appointments to be made by the selection panel in the event of any other appointing authority failing to make an appointment, within 28 days of the date by which the other authority should have made the appointment.

(2) The Chief Executive shall hold office as a Commissioner so long as he remains Chief Executive.

(3) The officer appointed under article 4(1)(b) above shall hold office as a Commissioner for a term of three years unless he shall previously cease to hold the office held by him at the time of his appointment, and he shall be eligible for reappointment for as long as he continues to be an officer of the Commissioners.

(4) Subject to article 8 of, and paragraphs 7 and 8 of Schedule 2 to this Order, each of the Commissioners appointed under article 4(1)(c) shall hold office for a term of three years commencing on 1st November in the year in which he is appointed.

(5) Subject to paragraph (6) below, upon ceasing to hold office, each Commissioner appointed under article 4(2) above shall be eligible for reappointment unless—

- (a) he has already held office for three terms;
- (b) he has already held office for two terms and there are no exceptional reasons for his reappointment; or
- (c) he has reached the age of seventy years, or would do so within his next term of office.

(6) A Commissioner who:

- (a) has already held office for three terms;
- (b) has been Chairman for no more than two terms; and

(c) was Chairman immediately before the end of his third term, shall be eligible for reappointment as a Commissioner for a fourth term, but shall cease to hold office as a Commissioner during his fourth term if he is not elected Chairman or ceases to hold office as Chairman.

(7) The appointments made under article 4(1)(b) and (c) above shall be notified in writing to the Chief Executive.

Transitional provisions

8.—(1) Notwithstanding any provision of the Poole Harbour Acts and Orders 1756 to 2001, and subject to paragraphs 7 to 9 of Schedule 2 to this Order—

(a) the Chairman who holds office at the date of the coming into force of this Order (“the existing Chairman”) shall continue as Chairman until 31st October 2002; and

(b) every other Commissioner appointed or elected under article 3(2) of the Poole Harbour Order 1981 who holds office at the date of the coming into force of this Order shall continue in office until the new constitution date,

(2) The first Commissioner appointed under article 4(2)(a) above shall hold office until 31st October 2004.

(3) The first Commissioners appointed under article 4(2)(b) above shall hold office until 31st October 2005.

(4) Of the first appointments to be made under article 4(2)(c) above—

(a) three shall be re-appointments, for a term expiring on 31st October 2003, of Commissioners (none of them being the Chairman) holding office immediately before the new constitution date; and

(b) two shall be new appointments for a term expiring on 31st October 2004.

(5) For so long as the existing Chairman continues in office in accordance with paragraph (1)(a) above, the number of appointments to be made under article 4(2)(c) above shall be reduced from six to five.

(6) As soon as may be after 31st October 2002 or (if earlier) the date upon which the existing Chairman ceases to hold office as a Commissioner, the selection panel shall appoint a Commissioner who, subject to paragraphs 7 and 8 of Schedule 2 to this Order, shall hold office for so long as the other Commissioners first appointed under article 4(2)(c) and paragraph (4)(b) above are to remain in office.

(7) If the existing Chairman ceases to hold office as Chairman before 31st October 2002 the Commissioners shall elect one of their number to hold office as Chairman until that date.

Additional Commissioners

9. Notwithstanding article 4 above the Commissioners if they see fit may at any time appoint up to two additional Commissioners at any time for a fixed term of up to twelve months.

Casual vacancies

10.—(1) If a casual vacancy occurs in the office of a Commissioner, the appointing authority shall appoint another person to fill the vacancy.

(2) A person appointed to fill a casual vacancy shall, subject to article 8 of, and paragraphs 7 and 8 of Schedule 2 to, this Order, hold office during the remainder of the term for which the person in whose place he has been appointed was appointed.

(3) This article does not apply to additional Commissioners appointed under article 9 above.

Declaration to be made by Commissioners

11. 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.

Provisions applying to Commissioners

12. The provisions set out in Schedule 2 to this Order shall have effect with respect to the Commissioners.

PART III

MISCELLANEOUS PROVISIONS

Accounting provisions

13.—(1) In section 33 of the Poole Harbour Act 1895 (Accounts), for “the first day of June” there shall be substituted “the first day of August”.

(2) In subsection (3) of section 10 of the Poole Harbour Act 1925(a) (Annual account to be sent to Minister of Transport), for “the twenty-fifth day of March” there shall be substituted “the thirty-first day of March or any other such other date as the Commissioners may determine”.

Repeal and revocation of enactments

14. On the new constitution date—

- (a) the Acts referred to in columns (1) and (2) of Part I of Schedule 3 to this Order shall be repealed to the extent specified in column (3) of that Part; and
- (b) the Order referred to in columns (1) and (2) of Part II of Schedule 3 to this Order shall be revoked to the extent specified in column (3) of that Part.

Signed by authority of the Secretary of State for Transport,
Local Government and the Regions.

Stephen Reeves
Head of Ports Division,
Department of Transport,
Local Government and the Regions

3rd August 2001

(a) 1925 c. lix.

SCHEDULES

SCHEDULE 1

Article 11

FORM OF DECLARATION BY COMMISSIONERS

POOLE HARBOUR COMMISSIONERS

POOLE HARBOUR ACTS AND ORDERS 1756 TO 2001

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 Poole Harbour Commissioner by virtue of the Poole Harbour Acts and Orders 1756 to 2001;

(2) that I have read and understood the notes entitled "Notes 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 5 of Schedule 2 to the Poole Harbour Revision Order 2001, 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 mentioned in those notes, which I may acquire.

Made and signed in Poole, on the

..... day of

..... (signature)

Witnessed by the Chief Executive

.....

As a Poole Harbour Commissioner (signature)

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

PROVISIONS APPLYING TO THE COMMISSIONERS

Temporary Chairman

1.—(1) If at any meeting of the Commissioners the Chairman is not present the Commissioners present at the meeting shall choose one of their number ("the Temporary Chairman") to be chairman of the meeting.

(2) The Temporary Chairman if so authorised by resolution of the Commissioners may exercise any function of the Chairman under any enactment.

Vacancies and irregularities not to invalidate acts of Commissioners

2. The Commissioners may act notwithstanding a vacancy in their number and no act of the Commissioners shall be deemed to be invalid by reason of any irregularity in the appointment of any Commissioner, or by reason of any person irregularly acting as a Commissioner.

Committees

3. The Commissioners may, subject to such conditions as they think fit, delegate any of their functions to a committee of the Commissioners other than the functions set out in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964(a).

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

Meetings and procedure

- 4.—(1) The Commissioners shall meet no fewer than ten times in each calendar year and at intervals of not more than nine weeks.
- (2) The Commissioners shall hold an annual meeting on 18th November in each year or on such other day as they may from time to time appoint.
- (3) The quorum required for a meeting of the Commissioners shall be five.
- (4) 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.
- (5) Subject to the provisions of this Order the procedure and business of the Commissioners shall be regulated in such manner as the Commissioners may from time to time determine.

Declaration of interests

- 5.—(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) so 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 public 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.

Register of interests

6. The Commissioners shall maintain and regularly update a register of interests declared by Commissioners, and shall make the register available for inspection by members of the public at all times during usual office hours.

Resignation of Commissioners

7. A Commissioner may at any time while he is in office resign his office by notice in writing to the Chief Executive and also to the appointing authority by whom he was appointed.

Disqualification of Commissioners

- 8.—(1) This paragraph applies where a Commissioner—
- (a) has been absent from meetings of the Commissioners for three consecutive months or more without the permission of the Commissioners;
 - (b) has become bankrupt or has made an arrangement with his creditors;
 - (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner;
 - (d) has knowingly failed in a material respect to act in his capacity as a Commissioner 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 a majority of the Commissioners to be unable, unfit or unwilling adequately to discharge his functions as a Commissioner.

(2) If the Commissioners are satisfied that this paragraph applies to any of their number, and that the Commissioner should be disqualified from office in consequence, the Commissioners may by resolution declare his office as a Commissioner to be vacant, and thereupon the office shall become vacant.

(3) For the purposes of sub-paragraph (1)(a) of this paragraph the attendance of a Commissioner at a meeting of any committee of the Commissioners of which he is a member shall be treated as attendance at a meeting of the Commissioners.

Removal of Chairman

9.—(1) The Commissioners may by resolution remove the Chairman from his position as such.

(2) A resolution under this paragraph shall not have the effect of removing the Chairman from his office as a Commissioner; but this sub-paragraph is without prejudice to any resolution under paragraph 8 of this Schedule declaring his office as a Commissioner to be vacant.

(3) Following the removal of the Chairman under this paragraph the Commissioners shall elect a new Chairman in accordance with section 37 of the 1847 Act.

Provisions as to resolutions

10. A resolution under paragraph 8 of this Schedule proposing the removal of a Commissioner and a resolution under paragraph 9 of this Schedule proposing the removal of the Chairman—

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

Appointment of officers

11.—(1) The Commissioners shall appoint a Chief Executive, a harbour master and such other officers and employees as they may think necessary or expedient on such terms and conditions as they think fit.

(2) The Commissioners may authorise any other officer to discharge any function of the Chief Executive, other than his functions as a Commissioner.

Payments to Commissioners

12. The Commissioners may pay to their Chairman or any other of their number such reasonable remuneration, allowance and expenses as they may determine.

SCHEDULE 3

Article 14

REPEALS AND REVOCATIONS

PART I—ACTS OF PARLIAMENT

<i>(1)</i> Chapter	<i>(2)</i> Short title	<i>(3)</i> Extent of repeal
1895 c. lxx	Poole Harbour Act 1895	Sections 2, 17 to 24, 26, 27, 28 29, 32 and 36 and the Schedule.
1914 c. clv	Poole Harbour Act 1914	Section 50.

PART II—ORDER

<i>(1)</i> Chapter	<i>(2)</i> Short title	<i>(3)</i> Extent of revocation
S.I. 1981/1097	Poole Harbour Revision Order 1981	The whole Order

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Poole Harbour Commissioners as from 1st November 2001. It provides for the Commissioners to consist of a body with experience in relevant matters.

One Commissioner will be appointed by the Transport and General Workers Union and three jointly by Dorset County Council, Poole Borough Council and Purbeck District Council. Six Commissioners will be appointed by a selection panel constituted under the Order. The Chief Executive and one other officer will also hold office as Commissioners while provision is also made for the co-operation of up to two additional Commissioners. The Commissioners as so reconstituted will thus consist of a body of between twelve and fourteen members.

The Order also includes other provisions with respect to the Commissioners' constitution, amends existing statutory requirements as to the Commissioners' accounts and repeals or revokes certain statutory provisions.

2001 No. 2820

HARBOURS, DOCKS, PIERS AND FERRIES

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