2004 No. 148

HARBOURS, DOCKS, PIERS AND FERRIES

The Blyth Harbour Revision (Constitution) Order 2004

Made - - - - - *26th January 2004*

Coming into force - - *2nd February 2004*

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[DfT 13220]

SCHEDULES

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Whereas the Blyth 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 paragraph 10(2)(f) of Schedule 3(**b**) to the said Act:

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (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:—

PART I

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Blyth Harbour Revision (Constitution) Order 2004 and shall come into force on 2nd February 2004.

(2) The Blyth Harbour Acts and Orders 1858 to 1989 and this Order may be cited together as the Blyth Harbour Acts and Orders 1858 to 2004.

Interpretation

2. In this Order—

"the Commissioners" mean the Blyth Harbour Commissioners;

"the new constitution date" means 1st July 2004;

"general direction" means a direction authorised by article 14 below;

"the harbour" has the same meaning as in the Blyth Harbour Act 1986(**e**);

"the harbour master" means the harbour master of the Commissioners and includes his authorised deputies and assistants and any person authorised by the Commissioners to act in that capacity;

"special direction" means a direction authorised by article 16 below or by section 52 of the Harbours, Docks and Piers Clauses Act 1847(**f**);

"vessel" means every description of vessel, however propelled or moved, and includes hovercraft, any floating manufactured article, anything constructed or used to carry persons or goods by water, and, except for the purpose of levying rates, a seaplane on or in the water;

PART II

New Constitution

Constitution of Commissioners

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

(a) not fewer than six and not more than eight members appointed by the Commissioners; and

(b) the Chief Executive for the time being of the Commissioners.

(**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 S.I. 1999/3445, as 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, S.I. 1997/2971, S.I. 2001/2568 and S.I.2002/2626

(**e**) 1986 c. xxi.

(**f**) 1847 c. 27.

(2) Each Commissioner appointed under paragraph (1)(a) above shall be a person who appears 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

(k) 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) above or article 8 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.—(1) The first appointments under article 3(1)(a) above shall be made before 1st July 2004.

(2) The Commissioners shall appoint the person who is, at the date when they make the first appointments referred to in paragraph (1) above, the chairman of the Commissioners to be one of the first such appointed Commissioners and he shall hold office as a Commissioner from the new constitution date until 31st December 2006; 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 3lst December 2005;

(b) not fewer than one nor more than two shall hold office from the new constitution date until 3lst December 2006;

(c) not fewer than two nor more than four shall hold office from the new constitution date until 3lst December 2007;

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

Terms of office of subsequent Commissioners

5. A Commissioner appointed under article 3(1)(a) above (other than any first Commissioner appointed under article 4 above) shall, unless appointed to fill a casual vacancy and subject to articles 6 and 9 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.

Declaration to be made by Commissioners

6. 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.

Power to co-opt additional Commissioners

7. The Commissioners referred to in article 3(1)(a) above may at any time co-opt not more than two persons to serve as Commissioners for such period not exceeding one year as the co-opting Commissioners may specify at the time of co-option.

Casual vacancies

8.—(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 the requirements of article 3(2) and (3) above.

(2) A Commissioner appointed to fill a casual vacancy under this article shall, subject to articles 6 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.

Disqualification of Commissioners

9. If the Commissioners are satisfied that a Commissioner—

(a) has been absent from meetings of the Commissioners for six consecutive months or more without the permission of the Commissioners; 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

10. The Commissioners may enter into, and pay premiums for, a contract of insurance to indemnity the Commissioners jointly or severally against personal liability arising from any act or omission of the Commissioners or of 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

11. On or 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

12. 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 the 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 with a copy; and

(b) send a copy of the statement to the Northumberland County Council.

Advisory bodies

13.—(1) The Commissioners shall establish one or more advisory body or bodies which the Commissioners shall consult (except in a case of special urgency or where it would be seriously detrimental to the commercial interests of the Commissioners to do so) 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 being persons who, in the opinion of the Commissioners, are representative of persons having an interest in the functioning of the harbour.

(4) The Commissioners shall make arrangements for any such advisory body to meet not less than twice a year.

(5) Any such advisory body may determine its own quorum and procedure and shall appoint a chairman.

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

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

PART III

Management of the Harbour

General directions to vessels

14.—(1) The Commissioners may, after consultation with the Chamber of Shipping in each case of an exercise of the powers (except in cases of emergency), give directions for the purposes of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes—

(a) for designating areas, routes or channels in the harbour which vessels are to use, or refrain from using, for movement or mooring;

(b) for securing that vessels move only at certain times or during certain periods;

(c) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for the purposes of this paragraph.

(2) Directions given under paragraph (1) above may apply—

(a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and

(b) to the whole of the harbour, or to a part designated, or the designation of which is provided for, in the direction; and

(c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction given under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) above.

(3) The Commissioners may, after consultation with the Chamber of Shipping, revoke or amend directions given under this article.

Publication of general directions

15.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Commissioners as soon as practicable once in Lloyd's List or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice shall state a place at which copies thereof may be inspected and bought, and the price thereof.

(2) In an emergency, notice of the giving of a general direction or of any amendment or revocation of a general direction may be given in any manner the Commissioners consider appropriate.

Special directions to vessels

16.—(1) In addition to the directions which he may give under section 52 of the Harbours, Docks, and Piers Clauses Act 1847 the harbour master may give a direction under this article—

(a) requiring any vessel anywhere within the harbour to comply with a requirement made in or under a general direction;

(b) prohibiting the mooring of vessels in any particular part or parts of the harbour;

(c) regulating or requiring the movement, mooring or unmooring of a vessel; and

(d) regulating the manner in which a vessel takes in or discharges cargo, fuel, water or ship's stores otherwise than at a dock or pier.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

Master's responsibility to be unaffected

17. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property.

Failure to comply with directions

18. The master of a vessel who fails without reasonable excuse to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Enforcement of directions

19.—(1) Without prejudice to any other remedy available to the Commissioners, if a special direction is not complied with within a reasonable time the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but he shall not do so unless, after reasonable inquiry has been made, the master cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Commissioners from the owner of the vessel as if they were a charge of the Commissioners in respect of the vessel.

PART IV

Supplementary

Repeals and revocation

20. 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 repealed to the extent specified in the third column of that Schedule.

Signed by the authority of the
Secretary of State for Transport

26th January 2004

Phil Garey
Head of Ports Division
Department for Transport

SCHEDULES

SCHEDULE 1

Article 6

FORM OF DECLARATION BY COMMISSIONERS

BLYTH HARBOUR COMMISSIONERS

BLYTH HARBOUR ACTS AND ORDERS 1858 TO 2004

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 Blyth Harbour Commissioner by virtue of the Blyth Harbour Acts and Orders 1858 to 2004;

(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 Blyth Harbour Revision (Constitution) Order 2004, 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 Blyth, County of Northumberland, on the ..... day of	)	..... (signature)
Witnessed by the Chief Executive..... as a Blyth 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 11

INCIDENTAL PROVISIONS RELATING TO COMMISSIONERS

Appointment of chairman and deputy-chairman of Commissioners

1. There shall be a chairman of the Commissioners who (except in the case of the chairman described in paragraph 2 below) shall be appointed by those of the Commissioners who are appointed under article 3(1)(a) or 8 of this Order from among their number.

2. The first chairman referred to in article 4(2) of this Order 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 deputy-chairman of the Commissioners who shall be appointed by those of the Commissioners who are appointed under article 3(1)(a) or 8 of this Order from among their number.

5. The first deputy-chairman holding office after the new constitution date shall be appointed as soon as practicable after that date and, subject to paragraph 7 below, shall unless he resigns his office as deputy-chairman or ceases to be a Commissioner, continue in office as deputy-chairman until his initial term of office as a Commissioner has expired.

6. Subject to paragraph 7 below, every deputy-chairman subsequently appointed under paragraph 4 above shall, unless he resigns his office as deputy-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 3(1)(a) or 8 of this Order are satisfied that the chairman or deputy-chairman should cease to hold his office as such, they may terminate his office as such and appoint another Commissioner to be the chairman or deputy-chairman during the remainder of the term for which the former chairman or deputy-chairman was appointed.

8.—(1) On a casual vacancy occurring in the office of chairman or deputy-chairman of the Commissioners, the vacancy shall be filled by the Commissioners who are appointed under article 3(1)(a) or 8 of this Order 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 deputy-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 deputy-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 once in every two months.

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 deputy-chairman.

Reappointment of Commissioners

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

(2) Subject to sub-paragraph (3) below, an appointed Commissioner vacating office shall not be eligible for reappointment as a Commissioner where, immediately before the date in question, he has held office for three consecutive terms.

(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(3)(a) or (b) of this Order;

(b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 8 of this Order; 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) of this Order.

Reappointment of chairman

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

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

(a) a term served by the Commissioner as a 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.

(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 subparagraphs (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 deputy-chairman, of the Commissioners or committee.

15. The quorum required for a meeting of the Commissioners shall be four.

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 deputy-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 deputy-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.

20. Written notice of any meeting of the Commissioners shall be served on each member of the Commissioners not less than seven clear days before the date of the meeting specifying the time, date and place of the meeting.

Authentication of seal and other documents

21.—(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.

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

(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 or a duly authorised officer of the Commissioners.

Officers and servants

22. 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 the Blyth Harbour Acts and Orders 1858 to 1989 to the Clerk to the Commissioners shall be construed as references to such person as the Commissioners may designate for that purpose.

Remuneration of the Commissioners

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

General

24. 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

Article 20

REPEALS AND REVOCATION

Chapter or S.I. no	Short title	Extent of repeal
1986 c.xxi.	Blyth Harbour Act 1986	In section 2, the definition of "the reconstitution date". Sections 3 to 9. Schedule 1.
S.I. 1995/2645.	Blyth Harbour Act 1986 (Amendment) Order 1995	The whole Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Blyth Harbour Commissioners ("the Commissioners") as from 1st July 2004. It provides for the Commissioners to consist of a body of seven to nine Commissioners. Six to eight Commissioners will be appointed by the Commissioners and will have experience in relevant matters. 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 includes other provisions with respect to the Commissioners' constitution including provisions for the co-option of up to two additional Commissioners. The Order amends existing statutory requirements as to the Commissioners' accounts, provides for the establishment of advisory bodies and repeals or revokes certain statutory provisions.

The Order also confers on the Commissioners powers to give general and special directions to vessels in the harbour.

STATUTORY INSTRUMENTS

2004 No. 148

HARBOURS, DOCKS, PIERS AND FERRIES

The Blyth Harbour Revision (Constitution) Order 2004

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