# 2002 No. 2586

# HARBOURS, DOCKS, PIERS AND FERRIES

## The Lymington Harbour Revision (Constitution) Order 2002

*Made - - - - -* *11th October 2002*

*Coming into force - -* *15th October 2002*

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**[DfT 12927]**

Whereas the Commissioners for the Harbour of Lymington 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, Local Government and the Regions (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:

**Citation and commencement**

**1.**—(1) This Order may be cited as the Lymington Harbour Revision (Constitution) Order 2002 and shall come into force on 15th October 2002.

(2) The Pier and Harbour Order (Lymington) Confirmation Act 1951(**e**), the Lymington Harbour Revision Order 1976(**f**) and this Order may be cited together as the Lymington Harbour Act and Orders 1951 to 2002.

**Interpretation**

**2.** In this Order—

"the Commissioners" means the Lymington Harbour Commissioners;

"the new constitution date" means 1st November 2002.

**Constitution of Commissioners**

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

(a) nine persons appointed by the Commissioners; and

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

(2) Each Commissioner appointed under paragraph (1)(a) above shall be a person who appears to the Commissioners 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 water related activities and experience of recreational boating;

(b) ferry operations;

(c) commercial fishing;

(d) the laws relating to England;

(e) safety or personnel management;

(f) financial management or information technology;

(g) environmental matters affecting harbours; and

(h) 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.

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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 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 and S.I. 2001/2568.
(**e**) 1951 c. xxv.
(**f**) S.I. 1977/607.

(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 on, or as soon as reasonably practicable after, 15th October 2002.

(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 of such appointed Commissioners and he shall hold office as a Commissioner from the new constitution date until 31st October 2005; and on and after the new constitution date shall be the chairman of the Commissioners.

(3) Of the remaining first such appointed Commissioners—

(a) three shall hold office from the new constitution date until 31st October 2003;

(b) three shall hold office from the new constitution date until 31st October 2004;

(c) two shall hold office from the new constitution date until 31st October 2005;

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 that sub-paragraph) shall, unless appointed to fill a casual vacancy and subject to articles 7 and 9 of, and paragraph 10 of Schedule 2 to, this Order, hold office for the period of three years from 1st November next following his appointment.

**Power to co-opt additional Commissioners**

**6.** 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 twelve months as the co-opting Commissioners may specify at the time of co-option.

**Declaration to be made by Commissioners**

**7.** 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.

**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 7 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 without the permission of the Commissioners been absent from meetings of the Commissioners—

(i) for a period during which three such meetings have been held; or

(ii) for a period of three consecutive months;

whichever of these periods is the longer; 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 indemnify 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 and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the Commissioners.

**Chief Executive of Commissioners**

**12.** The clerk of the Commissioners shall on and after the coming into force of this Order be known as the Chief Executive of the Commissioners.

**Publication of Commissioners' annual statement of accounts**

**13.** As soon as reasonably praticable after their annual statement of accounts is prepared, the Commissioners shall—

(a) make available a copy of the statement for a 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 Hampshire County Council.

**Temporary borrowing powers**

**14.** The Commissioners may borrow temporarily, by way of overdraft or otherwise, such sums of money as the Commissioners may require but the total amount outstanding at any one time of money so borrowed shall not exceed two hundred thousand pounds.

**RPI adjustment of borrowing limits**

**15.**—(1) On each anniversary of the new constitution date the Commissioners shall adjust the sum mentioned in article 14 above in line with any movement (calculated to one decimal place) in RPI which occurred during the year ended on 31st December immediately preceding the anniversary in question.

(2) Any adjustment made under paragraph (1) above, shall be recorded in the next following annual statement of accounts prepared by the Commissioners.

(3) In paragraph (1) above, "RPI" means the general index of retail prices for all items published in the monthly publication of the Office for National Statistics known as "Monthly Digest of Statistics", or any successor from time to time of that index.

**Advisory bodies**

**16.**—(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 make arrangements for every such advisory body to meet not less than twice a year.

(3) 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.

(4) 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.

(5) 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 and the scheme 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.

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

(7) 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.

(8) 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.

(9) 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.

(10) In this article "the harbour" has the meaning given in section 3 of the Order in the Schedule to the Pier and Harbour Order (Lymington) Confirmation Act 1951(**a**).

**Repeals**

**17.** On the new constitution date sections 9, 12 and 14 of the Commissioners Clauses Act 1847(**b**) shall cease to be incorporated in the Pier and Harbour Order (Lymington) Confirmation Act 1951 and 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 authority of the Secretary of State for Transport,
Local Government and the Regions

*Stephen Reeves*
Head of Ports Division,
Department for Transport

11th October 2002

(**a**) 1951 c. xxv.
(**b**) 1847 c. 16.

# SCHEDULES

## SCHEDULE 1

Article 7

### FORM OF DECLARATION BY COMMISSIONERS

**LYMINGTON HARBOUR COMMISSIONERS**

**LYMINGTON HARBOUR ACT AND ORDERS 1951 TO 2002**

**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 Lymington Harbour Commissioner by virtue of the Lymington Harbour Act and Orders 1951 to 2002;

(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 16 of Schedule 2 to the Lymington Harbour Revision (Constitution) Order 2002, 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 Lymington, Hampshire, on the

..... day of .....

.....

.....
(signature)

Witnessed by the
Chief Executive .....
as a Lymington 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 vice-chairman of Commissioners*

**1.** There shall be a chairman of the Commissioners who shall be appointed by those of the Commissioners who are appointed under article 3(1)(a) or 8 above from among their number.

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

**5.** The first vice-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 vice-chairman or ceases to be a Commissioner, continue in office as vice-chairman until his term of office as a Commissioner has expired.

**6.** Subject to paragraph 7 below, every vice-chairman subsequently appointed under paragraph 4 above shall, unless he resigns his office as vice-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 above 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 the chairman or vice-chairman during the remainder of the term for which the former chairman or vice-chairman was appointed.

**8.**—(1) On a casual vacancy occurring in the office of chairman or vice-chairman of the Commissioners, the vacancy shall be filled by the Commissioners who are appointed under article 3(1)(a) or 8 above 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 vice-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 vice-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 six times in every year.

*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 vice-chairman.

*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(3)(a) or (b) above;

(b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 8 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) 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) a term served by the Commissioner as a chairman under paragraph 2 above where that term is less than 3 years;

(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; or

(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 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.

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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.

*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 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.

(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 of the Commissioners or a duly authorised officer of the Commissioners.

*General*

**21.** 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.

**22.** The Commissioners shall appoint a Chief Executive and such other 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 17

### REPEALS

| Chapter or number | Short title | Extent of repeal |
|---|---|---|
| 1951 c. xxv | Pier and Harbour Order (Lymington) Confirmation Act 1951. | In section 3 of the Lymington River and Harbour Order 1951, the definitions of "Commercial user of the harbour" and "Yacht-owner".<br>In section 7(1), the words "not exceeding fourteen in number as in this Order provided".<br>Sections 9 to 17, 46(3), 54, 55, 58 and 59. |

## EXPLANATORY NOTE

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

This Order reconstitutes the Lymington Harbour Commissioners as from 1st November 2002. It provides for the Commissioners to consist of a body of ten Commissioners with experience in relevant matters. Nine persons will be appointed by the Commissioners. The Chief Executive will also hold office as a Commissioner. Under the terms of the Order the appointed Commissioners will retire in rotation.

The Order also includes other provisions with respect to the Commissioners' constitution including provisions for the co-option of up to two additional Commissioners and for the protection of the Commissioners from personal liability in the discharge of their functions. The Order confers on the Commissioners power to make temporary borrowings, amends existing statutory requirements as to the Commissioners' accounts and repeals certain statutory provisions.

STATUTORY INSTRUMENTS

# 2002 No. 2586

# HARBOURS, DOCKS, PIERS AND FERRIES

## The Lymington Harbour Revision (Constitution) Order 2002

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