

**2002 No. 2730**

**HARBOURS, DOCKS, PIERS AND FERRIES,  
ENGLAND**

**The Dart Harbour and Navigation Harbour Revision  
(Constitution) Order 2002**

*Made* - - - - - *1st November 2002*

*Coming into force* - - *4th November 2002*

**ARRANGEMENT OF ARTICLES**

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Whereas the Dart Harbour and Navigation Authority have applied for a harbour revision order under section 14 of the Harbours Act 1964(a):

And whereas no objections to the application have been made pursuant to paragraph 10(2)(f) 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 Dart Harbour and Navigation Harbour Revision (Constitution) Order 2002 and shall come into force on 4th November 2002.

(2) The Dart Harbour and Navigation Authority Act 1975 (e) and this Order may be cited together as the Dart Harbour and Navigation Act and Order 1975 and 2002.

### **Incorporation of section 60 of Commissioners Clauses Act 1847**

2. Section 60 of the Commissioners Clauses Act 1847 (f) shall be incorporated with this Order.

### **Interpretation**

3. In this Order—

“the 1975 Act” means the Dart Harbour and Navigation Authority Act 1975;

“the Authority” means the Dart Harbour and Navigation Authority;

“member” means a member of the Authority;

“the new constitution date” means 11th November 2002.

### **Constitution of Authority**

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

- (a) not less than seven and not more than nine members appointed by the Authority;
- (b) the Chief Executive for the time being of the Authority; and
- (c) the Harbour Master for the time being of the Authority (if a different person from the Chief Executive).

(2) Each member appointed under paragraph (1)(a) above shall be a person who appears to the Authority to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Authority 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) industrial and commercial activities;
- (b) marketing and communications;
- (c) tourism and leisure interests;
- (d) the law relating to harbours or property;
- (e) environmental matters;
- (f) personnel and health and safety;
- (g) finance;
- (h) any other skills and matters considered relevant from time to time by the Authority in order for it to discharge its 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 the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445).

(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) 1975 c.xxii.

(f) 1847 c. 16.

and the Authority shall secure, so far as reasonably practicable, that the members 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 9(1) below, the Authority 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 members**

5.—(1) The first appointments under article 4(1)(a) above shall be made on or before, 11th November 2002.

- (2) Of the first members appointed by the Authority under article 4(1)(a)—
- (a) three shall hold office from the new constitution date until 31st December 2002;
  - (b) three shall hold office from the new constitution date until 31st December 2003; and
  - (c) the remainder shall hold office from the new constitution date until 31st December 2004;

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

- (3) The first members of the Authority appointed under article 4(1)(a) shall include—
- (a) the person who, immediately before the new constitution date, was the chairman of the Authority (“the former chairman”); and
  - (b) at least one other person who, immediately before the new constitution date, was a member of the Authority;

and, accordingly, if the first members of the Authority referred to in article 4(1) above do not include the former chairman and one such person as is mentioned in sub-paragraph (b) those members shall under article 7 below co-opt the former chairman and one such person to be members of the Board for a period of three years.

#### **Terms of office of subsequent members**

6. A member appointed under article 4(1)(a) above (other than a first member referred to in article 5 above) shall, unless appointed to fill a casual vacancy and subject to articles 8 and 10 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.

#### **Power to co-opt additional members**

7.—(1) The members of the Authority referred to in article 4(1) above may at any time co-opt not more than two persons to serve as members.

(2) Except in the case of a member co-opted as mentioned in article 5(3) above, a co-opted member shall serve as a member for such period not exceeding twelve months as the co-opting members may specify at the time of co-option.

#### **Declaration to be made by members**

8. No person shall act as a member 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 member if he fails to make that declaration within three months of the date of his appointment.

#### **Casual vacancies**

9.—(1) A casual vacancy arising in the office of a member appointed by the Authority shall, unless it is not reasonably practicable to do so, be filled by the appointment of a member by the Authority and any such appointment shall be made in accordance with the requirements of article 4(2) and (3) above.

(2) A member appointed to fill a casual vacancy under this article shall hold office (unless he previously dies or otherwise ceases to be a member) during the remainder of the term for which the member whom he replaces was appointed.

### **Disqualification of members**

- 10.** If the Authority are satisfied that a member—
- (a) has without the permission of the Authority been absent from the meetings of the Authority—
    - (i) for a period during which three such meetings have been held; or
    - (ii) for a period of three consecutive months, whichever of those 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 member; or
  - (d) is otherwise unable, unwilling or unfit to discharge the functions of a member;
- the Authority may declare his office as a member to be vacant and thereupon his office shall become vacant.

### **Indemnity insurance for members**

**11.** The Authority may enter into, and pay premiums for, a contract of insurance to indemnify the members jointly or severally against personal liability arising from any act or omission of the members or of any of them; not being an act or omission which the member or members 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 Authority**

**12.** On and after the new constitution date the provisions of Schedule 2 to this Order shall have effect with respect to the Authority.

### **Publication of Authority's annual statement of accounts**

- 13.** As soon as reasonably practicable after their annual statement of accounts is prepared, the Authority shall—
- (a) make available a copy of the statement for a period of three months at the offices of the Authority 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 South Hams District Council.

### **Advisory bodies**

**14.—(1)** The Authority shall consult any accredited advisory body or bodies on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and its navigation.

(2) The Authority shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by an accredited advisory body whether or not the accredited advisory body has been consulted by the Authority on the matter, recommendation or representation so referred or made.

(3) In this paragraph “accredited advisory body” means any body which appears to the Authority—

- (a) to represent interests concerned with the harbour; and
- (b) to comply with such standards of openness and accountability as the Authority may from time to time prescribe.

### **Borrowing powers**

**15.** In section 65(1)(a) of the 1975 Act (which specifies the limit for the general borrowing powers of the Authority) for the words “one million pounds” there shall be substituted the words “five million pounds (or that sum as adjusted in accordance with article 17 of the Dart Harbour and Navigation Harbour Revision (Constitution) Order 2002)”.

### **Temporary borrowing powers**

**16.** In section 66(2) of the 1975 Act (which specifies the limit for the temporary borrowing powers of the Authority) for the words “two hundred thousand pounds” there shall be substituted the words “five hundred thousand pounds (or that sum as adjusted in accordance with article 17 of the Dart Harbour and Navigation Harbour Revision (Constitution) Order 2002)”.

### **RPI adjustment of borrowing limits**

**17.—(1)** On each anniversary of the new constitution date, the sums mentioned in sections 65(1)(a) and 66(2) of the 1975 Act shall be adjusted 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 referred to in paragraph (1) above shall be recorded in the next following annual statement of accounts prepared by the Authority.

(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.

### **Consequential amendment of the 1975 Act**

**18.—(1)** In section 2(1) of the 1975 Act (interpretation), for the definition of “the harbour master” there shall be substituted—

““the harbour master” means the Harbour Master of the Authority, and includes the authorised deputies and assistants of the Harbour Master and any person authorised by the Authority to act in those capacities;”.

(2) In section 41(1) of the 1975 Act (confirmation of byelaws and fines thereunder), for the word “Clerk” there shall be substituted the words “Chief Executive of the Authority”.

### **Repeals**

**19.** On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 to this Order 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, Local Government and the Regions

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

1st November 2002

SCHEDULES

SCHEDULE 1

Article 8

FORM OF DECLARATION BY MEMBERS

DART HARBOUR AND NAVIGATION AUTHORITY

DART HARBOUR AND NAVIGATION ACT AND ORDER 1975 AND 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 member of the Dart Harbour and Navigation Authority by virtue of the Dart Harbour and Navigation Act and Order 1975 and 2002;

(2) that I have read and understood the notes entitled "Note for Guidance of Authority Members on the Disclosure of Financial and Other Interests" and "Duties of Members" and that I will comply with the requirements as to the disclosure of such interests, laid down by paragraph 16 of Schedule 2 to the Dart Harbour and Navigation 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 Dartmouth in the County  
of Devon, on the .....  
day of ..... } .....  
(signature)

Witnessed by the Chief Executive  
.....  
as a member of the Dart Harbour and Navigation Authority } .....  
(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".*

## INCIDENTAL PROVISIONS RELATING TO AUTHORITY

*Appointment of chairman and vice-chairman of Authority*

1. Subject to paragraph 2 below, there shall be a chairman of the Authority who shall be appointed by those of the members who are appointed under article 4(1)(a) or 9 above from among their number.
2. The first chairman of the Authority shall be the person who, immediately before the new constitution date, was the chairman of the Authority and, subject to paragraph 7 below, he shall, unless he resigns his office as chairman or ceases to be a member, continue in office as chairman until his initial term of office as a member 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 member, hold office for a period of three years.
4. There shall be a vice-chairman of the Authority who shall be appointed by those of the members who are appointed under article 4(1)(a) or 9 above from among their number.
5. The first vice-chairman holding office after the new constitution date shall be appointed at the first meeting of the Authority referred to in paragraph 9 below and, subject to paragraph 7 below, shall, unless he resigns his office as vice-chairman or ceases to be a member, continue in office as vice-chairman until his initial term of office as a member 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 member, hold office for a period of three years.
7. If those of the members who are appointed under article 4(1)(a) or 9 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 member to be 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 Authority, the vacancy shall be filled by those of the members who are appointed under article 4(1)(a) or 9 above at a meeting held as soon as practicable after the vacancy occurs.  
(2) A member 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 member, hold that office during the remainder of the term for which the chairman or vice-chairman whom he replaces was appointed.

*Meetings of Authority*

- 9.—(1) The first meeting of the Authority 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 members.  
(2) The Authority shall meet at least once in every two months.

*Vacation of office by members*

10. A member (other than the Chief Executive) may resign his office at any time by notice in writing given to the chairman of the Authority or, if that member is the chairman, the vice-chairman.

*Reappointment of members*

- 11.—(1) Subject to the provisions of this Schedule, a vacating member shall be eligible for reappointment as a member unless he has been disqualified from office under article 10 above.  
(2) A vacating appointed member shall not be eligible for reappointment as a member where, immediately before the date in question, he has held office for three consecutive terms unless he is the chairman of the Authority.  
(3) A chairman of the Authority who is an appointed member shall not be eligible for reappointment as a member where, immediately before the date in question, he has held office as a member for four consecutive terms.

- (4) For the purposes of this paragraph, “term” does not include—
- (a) a term referred to in article 5(2)(a) or (b) above;
  - (b) the remainder of a term during which the member was appointed to fill a casual vacancy under article 9 above; or
  - (c) any term served by the member prior to the new constitution date.
- (5) In this paragraph “appointed member” means a member appointed under article 4(1)(a) above.

#### *Reappointment of chairman*

**12.—(1)** A chairman of the Authority shall not be eligible for reappointment as 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 member as chairman under paragraph 2 above where that term is less than 3 years;
  - (b) the remainder of a term during which the member was appointed to fill a casual vacancy in the office of chairman under paragraph 8 above; or
  - (c) any term served by the member as chairman prior to the new constitution date.

#### *Committees*

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

#### *Proceedings of Authority and committees*

**14.** The acts and proceedings of the Authority, or of any committee of the Authority, 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 member, or as chairman or vice-chairman, of the Authority or committee.

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

**16.** If a member has any interest, direct or indirect—

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

he shall declare that interest.

(2) If a member is present at a meeting of the Authority or of any committee of the Authority 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 members 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 member has in respect of the payment to the Authority 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 member 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

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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.

(d) which the members 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 functions of the chairman.

**18.** If at any meeting of the Authority neither the chairman nor the vice-chairman are present the members 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 Authority or of a committee of the Authority shall be decided by a majority vote of the members present and voting.

(2) If at any meeting of the Authority or of a committee of the Authority 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 Authority shall be served on each member of the Authority 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 Authority shall be authenticated by the signature of the chairman of the Authority or some other member authorised by the Authority to authenticate the application of the seal, and of the Chief Executive of the Authority or some person authorised by the Authority to act in his place in that behalf.

(2) The Authority 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 Authority shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the Chief Executive of the Authority or a duly authorised officer of the Authority.

#### *General and miscellaneous*

**22.** Subject to the provisions of this Schedule, the procedure and business of the Authority and of any committee of the Authority shall be regulated in such manner as the Authority may from time to time determine.

**23.** The Authority may pay to the chairman and other members of the Authority such fees and allowances as the Authority think fit.

**24.** The Authority shall employ 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 shall pay to them such remuneration as the Authority think fit.

SCHEDULE 3

Article 19

REPEALS

<i>Chapter number</i>	<i>Short title</i>	<i>Extent of repeal</i>
1975 c.xxii.	The Dart Harbour and Navigation Authority Act 1975.	In section 2(1), the definitions of “the Clerk”, “the commercial fishing member”, “the commercial passenger member”, “the cargo member” and “the boating members”. Sections 5 to 19. Schedules 1 and 2.

## **EXPLANATORY NOTE**

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

This Order reconstitutes the Dart Harbour and Navigation Authority as from 1st November 2002 or on the date on which this Order comes into force whichever is the later. It provides for the Authority to consist of a body of not less than eight and not more than eleven members with experience in relevant matters. Not less than seven and not more than nine members will be appointed by the Authority. The Chief Executive and, if a different person from the Chief Executive, the Harbour Master, will also hold office as a member of the Authority. Under the terms of the Order the appointed members will retire in rotation. The Order provides that those members may co-opt not more than two persons to serve as additional members for such period not exceeding twelve months as the co-opting members may specify. The Authority will consult any advisory body accredited by them as representing interests concerning the harbour and complying with standards of openness and accountability to be prescribed to the Authority.

The Order also includes other provisions with respect to the Authority's constitution including provisions for the protection of members from personal liability in the discharge of their functions. The Order increases the Authority's borrowing powers, amends existing statutory requirements as to the Authority's accounts and repeals certain statutory provisions.

**2002 No. 2730**

**HARBOURS, DOCKS, PIERS AND FERRIES,  
ENGLAND**

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