

2012 No. 1984

HARBOURS, DOCKS, PIERS AND FERRIES

**The Caernarfon Harbour Trust (Constitution) Harbour Revision
Order 2012**

<i>Made</i> - - - -	<i>27th July 2012</i>
<i>Laid before Parliament</i>	<i>2nd August 2012</i>
<i>Coming into force</i> - -	<i>25th August 2012</i>

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The Trustees of the Caernarfon Harbour Trust have applied under section 14(2)(a) of the Harbours Act 1964(a) for a harbour revision order under section 14.

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

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

PART 1
PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Caernarfon Harbour Trust (Constitution) Harbour Revision Order 2012 and shall come into force on 25th August 2012.

(2) The Caernarfon Harbour Acts and Orders 1793 to 1989 and this Order may be cited together as the Caernarfon Harbour Acts and Orders 1793 to 2012.

Interpretation

2.—(1) In this Order—

“the 1989 Order” means the Caernarfon Harbour Revision Order 1989(f);

“the Trust” means the Caernarfon Harbour Trust established by the Caernarfon Harbour Acts and Orders 1793 to 2012;

“Caernarfon Harbour” means the existing harbour area and the additional area;

“the existing harbour area” means the area below the level of mean high water spring tides bounded by a line drawn from a point 53 degrees 09.603’N, 4 degrees 25.740’W through a point 53 degrees 04.560’N, 4 degrees 32.172’W to a point 53 degrees 0.632’N, 4 degrees 23.535’W and a line drawn between points 53 degrees 13.030’N, 4 degrees 11.235’W and 53 degrees 12.904’N, 4 degrees 11.060’W (based on the WGS 84 datum);

“the additional area” means the area below the level of mean high water spring tides bounded by a line drawn between points 53 degrees 13.030’N, 4 degrees 11.235’W and 53 degrees 12.904’N, 4 degrees 11.060’W and a line drawn between points 53 degrees 13.272’N, 4

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2 to 4(1) and 14 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c.29), Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), Schedule 21, paragraph 3(2).

(b) S.I. 2010/674.

(c) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), Schedule 21, paragraphs 1 and 3(1).

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

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

(f) S.I. 1989/2493.

degrees 09.855'W and 53 degrees 13.152'N, 4 degrees 09.737'W (based on the WGS 84 datum);

“appointing body” means a Council referred to in article 3(1)(a), (b) or (c) or the existing Trustees or the Trustees appointed under this Order with the power to appoint trustees conferred by article 3(1)(d);

“the existing Trustees” means the trustees of the Trust in office immediately before the new constitution date;

“the Trustees” means the trustees of the Trust appointed to act as trustees, under article 3 initially or under that article subsequently or under article 5 to fill a casual vacancy or co-opted to act as trustees under article 6;

“the Harbour Master” means the person appointed as such by the existing Trustees or the Trustees appointed under this Order;

“the new constitution date” means 1st November 2012; and

“the WGS 84” means the World Geodetic System, revised in 1984 and further revised in 2004.

(2) References in the Caernarfon Harbour Acts and Orders 1793 to 1989 to “the Trustees” are to be taken on and after the new constitution date as references to the Trustees appointed under this Order.

(3) In construing the provisions of the Harbours, Docks and Piers Clauses Act 1847(a) incorporated by article 3 of the 1989 Order the expression “the special Act” means the 1989 Order and this Order.

PART 2

THE TRUSTEES OF THE TRUST

Constitution of the Trust

3.—(1) Subject to article 6, on and after the new constitution date the Trust shall consist of no more than ten trustees able to act as trustees of the Trust (in accordance with article 7) as follows—

- (a) one trustee appointed by Gwynedd Council;
- (b) one trustee appointed by Ynys Mon Council;
- (c) one trustee appointed by the Council of the Royal Town of Caernarfon;
- (d) six trustees appointed initially by the existing Trustees and subsequently by the Trustees appointed under this Order; and
- (e) the Harbour Master,

but the Trust shall be properly constituted at any time if there are no fewer than seven trustees (in office under this paragraph or article 5 or co-opted under article 6) able to act as trustees of the Trust.

(2) A person must not be appointed under paragraph (1)(a) to (d) or article 5 or co-opted under article 6 to act as a trustee unless he has special knowledge, experience or ability appropriate to the efficient, effective and economic discharge of a trustee’s 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—

- (a) management of harbours;
- (b) shipping or other modes of transport;

(a) 1847 c.27.

- (c) appropriate commercial or industrial experience;
- (d) financial expertise;
- (e) administration;
- (f) organisation of workers;
- (g) sport and recreational uses of harbours;
- (h) environmental issues;
- (i) specific knowledge of, or interest in, the local community and the wider community or the economic and social context within which the Trust operates;
- (j) tourism and leisure;
- (k) health and safety;
- (l) legal expertise; and
- (m) any other skills and abilities considered from time to time by the appointing bodies to be relevant to the discharge by the Trustees of their functions.

(3) In making an appointment under paragraph (1) or article 5 the appointing body, or in co-opting a person under article 6 the Trustees, must have regard to any guidance issued by the Secretary of State from time to time with respect to the exercise of such functions.

(4) An existing Trustee shall be eligible for appointment or co-option to act as a trustee of the Trust on and after the new constitution date.

Appointment and terms of office

4.—(1) The initial appointments under article 3(1)(a) to (d) must be made as soon as practicable after the coming into force of this Order so that the persons appointed are able to act as trustees of the Trust on and after the new constitution date in accordance with paragraph (2).

(2) Of the trustees appointed initially under article 3(1)(a) to (d)—

- (a) one must be appointed by Gwynedd Council and two must be appointed by the existing Trustees to hold office for a term of one year starting on the new constitution date;
- (b) one must be appointed by Ynys Mon Council and two must be appointed by the existing Trustees to hold office for a term of two years starting on the new constitution date; and
- (c) one must be appointed by the Council of the Royal Town of Caernarfon and two must be appointed by the existing Trustees to hold office for a term of three years starting on the new constitution date.

(3) Subsequent appointments in any year under article 3(1)(a) to (d) shall be for a term of three years starting on the 1st November following the expiry of a previous term of office, and must be made so that the persons appointed are able to act as trustees of the Trust on and after that date.

Casual vacancies

5.—(1) A casual vacancy arising in the office of a trustee appointed under article 3(1)(a) to (d) must, unless it is not reasonably practical to do so, be filled, by the appointment, in accordance with articles 3(2) and (3) and 4, of a trustee as a replacement by the appointing body with power to appoint the trustee to be replaced.

(2) A trustee appointed to fill a casual vacancy under this article shall, subject to articles 7 and 8 and paragraph 10 of Schedule 2, hold office during the remainder of the term for which the replaced trustee was appointed.

Power to co-opt trustees

6. The Trustees may co-opt not more than two persons to act as additional trustees for such period not exceeding a term of twelve months as the Trustees may specify at the time of the co-option.

Declaration to be made by a person appointed as a trustee

7.—(1) A person is able to act as a trustee of the Trust on or after the new constitution date or on or after any subsequent 1st November when he has made a declaration (whether before or after such date) substantially in the form set out in Schedule 1.

(2) A person who fails to make such a declaration within three months of the date of his appointment ceases to be a trustee.

Disqualification

8. If the Trustees are satisfied that a trustee—

- (a) has without the permission of the Trustees been absent from duly convened meetings of the Trust—
 - (i) for a period during which three such meetings have been held, or
 - (ii) for a period of three months,whichever of these periods is the longer; or
- (b) has become bankrupt or has entered into an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a trustee; or
- (d) is otherwise unable, unwilling or unfit to discharge the functions of a trustee,

the Trustees may declare the office of that trustee to be vacant with effect from the date of that declaration.

Further provisions relating to trustees

9. Schedule 2 has effect.

PART 3

MISCELLANEOUS AND GENERAL

Indemnity insurance for trustees

10. The Trust may enter into, and pay premiums for, a contract of insurance to indemnify the Trustees jointly and severally against personal liability arising from any act or omission of the Trustees or any of them, not being an act or omission which the Trustees or, as the case may be, the trustee knew to be a breach of duty or, concerning which the Trustees or, as the case may be, the trustee was reckless as to whether it was such a breach.

Power to carry on trade or business

11.—(1) The Trust may carry on a trade or business of any kind that conduces to the efficient and economical performance by the Trust of its functions in respect of Caernarfon Harbour, including, without prejudice to the generality of the foregoing, a trade or business carried on in conjunction with another person.

(2) The powers of the Trust under this article are additional to the powers of the Trust under section 37 of the Docks and Harbours Act 1966(a).

(a) 1966 c.28; section 37(3) was repealed by the Transport and Works Act 1992 (c.42), Schedule 4 (Part II).

Revocation

12. On the new constitution date articles 3(2), 4 to 8, 9(1), (2) and (3), 13 and 14 of the 1989 Order are revoked.

Extension of limits of jurisdiction

13. The limits within which the Trust has jurisdiction shall include the additional area.

Cesser of existing Trustees

14. On the new constitution date the existing Trustees cease to be trustees of the Trust.

Advisory Committee

15.—(1) The Trustees must establish an Advisory Committee which they must consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of Caernarfon Harbour.

(2) The Trustees must make arrangements for the Advisory Committee to meet not less than twice a year.

(3) The Trustees must take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by the Advisory Committee whether or not the Advisory Committee has been consulted by the Trustees on the matter, recommendation or representation.

(4) The Trustees must appoint the following members of the Advisory Committee—

- (a) one nominated by the Welsh Yachting Association;
- (b) three nominated by sailing clubs or yachting clubs using Caernarfon Harbour, no club being entitled to make more than one nomination;
- (c) one nominated by the Countryside Council for Wales;
- (d) one nominated by the Menai Strait Users Association;
- (e) one nominated by the Environment Agency Wales;
- (f) one nominated by the Welsh Government Fisheries Unit;
- (g) one nominated by Plas Menai National Watersports Centre; and
- (h) one nominated by the operators of Portdiorwic Marina,

and they may appoint up to four members chosen by them to represent persons interested in Caernarfon Harbour other than those mentioned in the preceding sub-paragraphs, but the committee shall be properly constituted at any time if there are no fewer than eight members appointed.

(5) If it appears to the Trustees in the case of any of the nominations referred to in paragraph (4) that the body by which the nomination is to be made has refused or failed to nominate a person for appointment as a member within a reasonable time of being requested by the Trustees to do so, or if the body by which any of nominations is to be made has ceased to have an identifiable existence, the appointment must be made by the Trustees after consultation with the Advisory Committee and the persons (if any) appearing to the Trustees to be representative of the interests represented or formerly represented by the nominating body.

(6) The Chairman of the Trustees, or his representative, and the Harbour Master, or his representative, shall be entitled to attend any meeting of the Advisory Committee.

(7) The Advisory Committee may determine its quorum and procedure and must appoint one of its members to chair the committee with a casting vote.

(8) A member of the Advisory Committee may, on giving notice in writing to the chairman of the committee, send a representative to any meeting of the committee.

(9) A member of the Advisory Committee shall hold office for a term of three years from the date of his appointment and at the end of that term shall be eligible for reappointment.

(10) A member of the Advisory Committee may resign his office at any time by notice in writing to the Chairman of the Trustees.

(11) If a member of the Advisory Committee resigns his office or if his term of office is terminated by the Trustees because, in the opinion of the Trustees, he is no longer able to perform his functions as a member or if for any other reason he ceases to be a member, the Trustees may appoint a person as a member in his place for the remainder of his term of office, after consultation with the persons (if any) appearing to the Trustees to be representative of the interests represented by the former member.

Signed by authority of the Marine Management Organisation

J. Cross
Chief Executive Officer

27th July 2012

An authorised employee of the Marine Management Organisation

SCHEDULE 1

Article 7

FORM OF DECLARATION BY PERSONS APPOINTED TRUSTEES

I, []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 trustee of the Caernarfon Harbour Trust by virtue of the Caernarfon Harbour Acts and Orders 1793 to 2012;

(2) that I have read and understood the provisions of paragraph 16 (disclosure of financial and other interests) of Schedule 2 to the Caernarfon Harbour Trust (Constitution) Harbour Revision Order 2012 and that I will comply with the requirements of that paragraph, and in particular that:

(a) I have disclosed to the Chairman of the Trustees details of every such financial or other interest, and

(b) I will in future notify the Chairman of any alteration in those interests, or any new financial or other interest which I may acquire.

Made and signed on the

.....day of

.....

signature

Witnessed by the Chairman of the Trustees of the

Caernarfon Harbour Trust

signature

SCHEDULE 2

Article 9

FURTHER PROVISIONS RELATING TO TRUSTEES

Appointment of a Chairman and Vice-Chairman of the Trustees

1. The Trustees must appoint a Chairman of the Trustees from among the trustees appointed under articles 3(1)(a) to (d) or 5.

2. The first Chairman holding office after the new constitution date must be appointed at the first meeting of the Trustees after that date and, subject to paragraph 7, shall, unless he resigns his office of Chairman or ceases to be a trustee, continue in office as Chairman until his initial term of office as a trustee has expired.

3. Subject to paragraph 7, every Chairman subsequently appointed under paragraph 1 shall, unless he resigns his office of Chairman or ceases to be a trustee, hold office for a term of three years.

4. The Trustees must appoint a Vice-Chairman of the Trustees from among the trustees appointed under articles 3(1)(a) to (d) or 5.

5. The first Vice-Chairman holding office after the new constitution date must be appointed at the first meeting of the Trustees after that date and, subject to paragraph 7, shall, unless he resigns his office of Vice-Chairman or ceases to be a trustee, continue in office as Vice-Chairman until his initial term of office as a trustee has expired.

6. Subject to paragraph 7, every Vice-Chairman subsequently appointed under paragraph 4 shall, unless he resigns his office of Vice-Chairman or ceases to be a trustee, hold office for a term of three years.

7. If the Trustees are satisfied that the person who is Chairman or Vice-Chairman should cease to hold office as such, they may terminate his office as such and appoint another trustee 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, the vacancy must be filled by the Trustees from among the trustees appointed under articles 3(1)(a) to (d) or 5 at a meeting held as soon as possible after the vacancy occurs.

(2) Subject to paragraph 7, a trustee appointed under this paragraph to fill a casual vacancy in the office of Chairman or Vice-Chairman shall, unless he resigns his office or ceases to be a trustee, hold that office during the remainder of the term for which the former Chairman or Vice-Chairman was appointed.

Meetings of the Trustees

9.—(1) The Trustees must meet at least six times in each year, each meeting to be convened by the Harbour Master on the date fixed by him.

(2) The Harbour Master must make arrangements for notice of each meeting to be given to each of the other trustees.

(3) The Harbour Master must convene the first meeting of the Trustees after the new constitution date as soon as practicable.

Vacation of office by Trustees

10. A trustee (other than the Harbour Master) may resign his office at any time by notice in writing to the Chairman of the Trustees or if that trustee is the Chairman, to the Vice-Chairman.

Reappointment of Trustees

11.—(1) Subject to the provisions of this paragraph, a vacating trustee is eligible for reappointment as a trustee unless disqualified from office under article 8.

(2) A vacating trustee who is not the Chairman but who has held office for three consecutive terms immediately before the date in question, is not eligible for reappointment as a trustee.

(3) A vacating trustee who is the Chairman but who has held office as a trustee for four consecutive terms immediately before the date in question is not eligible for reappointment as a trustee.

(4) In this paragraph “term” does not include—

- (a) a term referred to in article 4(2)(a) or (b),
- (b) the remainder of a term during which the trustee was appointed to fill a casual vacancy under article 5,
- (c) the term of a trustee co-opted under article 6, or
- (d) any term served by the trustee prior to the new constitution date.

Reappointment of a Chairman

12.—(1) A Chairman is not eligible for reappointment as the Chairman of the Trustees where, immediately before the date in question, he has served as Chairman for three consecutive terms.

(2) In this paragraph “term” does not include—

- (a) a term served by a trustee as Chairman under paragraph 2 where that term is shorter than three years;
- (b) the remainder of a term during which the trustee was appointed to fill a casual vacancy in the office of Chairman under paragraph 8; or
- (c) any term served by the trustee as Chairman prior to the new constitution date.

Committees

13. The Trustees 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 paragraph 9B(a) to (f) of Schedule 2 to the Harbours Act 1964(a) to a committee of the Trustees.

Proceedings of the Trustees and Committees and Declaration of Interests

14. The acts and proceedings of the Trustees, or of any committee of the Trustees, are not invalidated by any defect in the appointment, or the qualification for appointment, of any person as a trustee, or as Chairman or Vice-Chairman of the Trustees or as a member of a committee of the Trustees.

15. The quorum required for a meeting of the Trustees is five.

16.—(1) If a trustee has any financial or other interest, direct or indirect—

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

that trustee must declare such interest.

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

(2) A trustee who is present at a meeting of the Trustees or of any committee of the Trustees at which a contract, proposed contract or other matter in which he has such an interest is to be considered must—

- (a) as soon as is practicable after the commencement of that meeting disclose that interest;
- (b) not vote on any question with respect to that contract, proposed contract or matter; and
- (c) withdraw from the meeting—
 - (i) while a decision on that contract, proposed contract or matter is being made, and
 - (ii) at any other time if required by a resolution of the Trustees.

(3) This paragraph does not apply to any interest—

- (a) which a trustee has in respect of the payment to the Trust of harbour dues; or
- (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general; or
- (c) which a trustee has as an employee of a public utility undertaking or as a shareholder, not being a director, of a company, unless that trustee possesses more than five per cent of the issued share capital of that company; or
- (d) which the Trustees present at the meeting by resolution declare to be too remote.

17. In the absence or incapacity of the Chairman the person for the time being holding office as the Vice-Chairman of the Trustees has and may exercise all the functions of the Chairman.

18. If at any meeting of the Trustees neither the Chairman nor the Vice-Chairman are present the trustees present at that meeting must choose one of their number to chair the meeting.

19.—(1) Subject to article 12 of the 1989 Order, every question at a meeting of the Trustees or of a committee of the Trustees shall be decided by a majority vote of the trustees present and voting.

(2) At any meeting of the Trustees or of a committee of the Trustees where there is an equality of votes on any question the chairman of that meeting has a second or casting vote.

Authentication of the Seal and other Documents

20.—(1) The application of the seal of the Trustees must be authenticated by the signature of—

- (a) the Chairman of the Trustees or another trustee authorised by the Trustees to authenticate the application of the seal; and
- (b) the Harbour Master or a person authorised by the Trustees to act instead of the Harbour Master for that purpose.

(2) The Trustees may authorise a person to act instead of the Harbour Master under this paragraph whether or not the Harbour Master is absent or incapable of acting.

(3) Any notice, licence or other document given or issued by the Trustees is, unless the contrary intention is expressed, sufficiently authorised if signed by the Harbour Master or a duly authorised officer of the Trustees.

Remuneration of Trustees

21. The Trustees may pay to the Chairman and other trustees such salary, allowances and expenses as the Trustees from time to time determine.

General

22. Subject to the provisions of this Order and the 1989 Order, the Trustees may regulate their procedure and business in such manner as they determine.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reconstitutes the Caernarfon Harbour Trust. It also specifies the limits of Caernarfon Harbour (defined in article 2(1)) to include the existing harbour area (so defined) and an additional area (so defined), being that part of the Menai Strait known as “The Swellies”, (articles 2 and 13).

The Order provides in article 3 for the Trust to consist of a body of no more than ten trustees with experience in relevant matters and able to act as trustees of the Trust in accordance with article 7 (declaration to be made by a trustee as to financial or other interests), although no fewer than seven trustees able to act as trustees of the Trust will suffice. Three trustees are to be appointed by local authorities and six initially by the existing Trustees (so defined) and subsequently by the Trustees appointed under this Order, to act as trustees on and after the new constitution date (so defined). The Harbour Master (so defined) will also be a trustee. Not more than two additional trustees may be co-opted from time to time for a period of office not exceeding twelve months (article 6).

The Order provides rules governing the administration of the Trust (article 9 and Schedule 2), provides for indemnity insurance for the Trustees jointly and severally (article 10) and enables the Trust to carry on trades or businesses which conduce to the efficient and economical performance of its functions (article 11).

The Order revokes certain provisions of the Caernarfon Harbour Revision Order 1989 (S.I. 1989/2493) concerned with the composition of the Trust and the appointment, procedure and remuneration of trustees (article 12).

The Order provides for the establishment of an Advisory Committee to be consulted by the Trustees on the management, maintenance, improvement, conservation, protection or regulation of Caernarfon Harbour (article 15).

A full impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

2012 No. 1984

HARBOURS, DOCKS, PIERS AND FERRIES

The Caernarfon Harbour Trust (Constitution) Harbour Revision
Order 2012

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