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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 54**

**The Wick Harbour Revision Order 2017**

**PART 2**

**THE WORKS**

**Power to construct works**

**3.—(1)** The Authority may, in the lines and situations and upon the lands delineated on the deposited plan and within the limits of deviation shown on it, construct, operate and maintain the following works along with all necessary works and conveniences connected with them:

Work No. 1 – Demolition of any structures including slipways, plant, walls and fences together with associated infrastructure and other berthing structures in the area shown on the deposited plan.

Work No. 2 – Increase the height of existing quay wall located beneath the existing slipway in the area shown on the deposited plan to the height of the adjoining quay walls.

Work No. 3 – a service yard and storage area including a waste disposal area, a fuel header tank, telecommunications equipment and container storage area and stockpiling area for cranes and other quayside infrastructure, to be created by infilling and re-levelling the area shown on the deposited plan to the level of the adjoining quayside.

Work No. 4 - Pontoons to be constructed in the north west corner of the inner harbour supported by piled foundations of steel connected to the quayside by linkspans and linked by walkways in the area shown on the deposited plan.

Work No. 5 – Associated security infrastructure within the limits of deviation.

Work No. 6 – Berth and associated harbour infrastructure including training ladders and cranes within the limits of deviation.

(2) So much of the bed of the harbour and of the foreshore as may be reclaimed for the purposes of paragraph (1) shall be deemed to be operational land within the meaning of section 215 of the Town and Country Planning (Scotland) Act 1997<sup>(1)</sup>.

**Power to deviate**

**4.** In carrying out the works authorised by article 3 (power to construct works) the Authority may deviate laterally from the lines or situations of those works as shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works to any extent not exceeding 2.5 metres upwards and 2.5 metres downwards.

**Subsidiary works**

**5.** The Authority may from time to time within the limits of deviation construct, maintain and operate, whether temporarily or permanently, such other works as may be necessary or convenient for

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(1) 1997 c.8.

the purposes of the works, or in connection with or in consequence of the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels;
- (b) works to construct, maintain, use, alter or relocate any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989) in or adjoining the harbour;
- (c) works to remove, demolish or decommission the works as the Authority deems appropriate;
- (d) carrying out and maintaining works for the benefit or protection of persons or premises affected by any of the works; and
- (e) landscaping and constructing such other works as the Authority may deem necessary or desirable to mitigate any adverse effects of the construction, maintenance or operation of the works.

### **Obstruction of works**

6. Any person who intentionally—

- (a) obstructs any person acting under the authority of the Authority in constructing, using or maintaining the works; or
- (b) interferes with, moves or removes any plant or equipment used in the construction, maintenance or use of the works,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Works to be deemed part of undertaking**

7. The works shall be deemed for all purposes to be part of the undertaking and all byelaws, directions, rules and regulations of the Authority for the time being in force relating to the undertaking shall apply to the works and may be enforced by the Authority accordingly.

### **Tidal works not to be executed without approval of the Scottish Ministers**

8.—(1) Tidal work shall not be demolished, constructed, renewed, reconstructed or altered except in accordance with plans and sections approved by the Ministers and subject to any conditions and restrictions imposed by the Ministers before the work is begun or while work is still in progress.

(2) If a tidal work is demolished, constructed, renewed, reconstructed or altered in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Ministers may by notice in writing require the Authority at their own expense to remove, alter or reconstruct the tidal work, or any part of it, or otherwise restore the site of the tidal work to its former condition; and if on the expiry of one month beginning with the date the notice was served upon the Authority they have failed to comply with the requirements of the notice, the Ministers may execute the works specified in the notice; or
- (b) if it appears to the Ministers urgently necessary to do so, they may themselves remove, alter or reconstruct the tidal work, or any part of it, or otherwise restore the site to its former condition.

(3) Any expenditure incurred by the Ministers under paragraph (2) shall be recoverable from the Authority.

(4) Paragraph (1) shall not apply to any work authorised by article 3 (power to construct works) and any related works authorised by article 5 (subsidiary works).

### **Survey of tidal works**

9. The Ministers may at any time if they deem it necessary or expedient order a survey and examination of a tidal work or a site upon which it is proposed to construct such a work and any expense incurred by them in such a survey and examination shall be recoverable from the Authority.

### **Provision against danger to navigation**

10.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof, the Authority shall as soon as practicable notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Authority fails to comply in any respect with the provisions of this article, the Authority shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Abatement of works abandoned or decayed**

11.—(1) Where a tidal work is abandoned or falls into decay the Ministers may by notice in writing require the Authority at the Authority's own expense to repair and restore the work, or any part of it, or to remove the work and restore the site of the work to its former condition, to such an extent and within such limits as the Ministers think appropriate.

(2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or allowed to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Ministers may include that part of the work, or any portion of it, in any notice under this article.

(3) If, on the expiry of one month from the date when a notice under this article is served upon the Authority, they have failed to comply with the requirements of the notice, the Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Authority.

### **Lights on tidal works during construction**

12.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Authority shall at the outer extremity thereof every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Authority fails to comply in any respect with a direction given under this article the Authority shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Permanent lights on tidal works**

13.—(1) After completion of a tidal work the Authority shall at the outer extremity thereof every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Authority fails to comply in any respect with a direction given under this article the Authority shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Period for completion of works**

14.—(1) If the works are not completed within 5 years from the coming into force of this Order or within such extended period as the Ministers may on the application of the Authority allow by consent in writing, the powers granted to the Authority under this Order for making and maintaining the works shall cease to have effect, unless the works have been substantially commenced.

(2) As soon as reasonably practicable after any consent is given under paragraph (1), the Authority shall arrange for a notice to be published in the Edinburgh Gazette and in a local newspaper circulating in the area where the harbour is situated and the notice shall contain a summary of the effect of that consent.

(3) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (2), the Authority shall keep a copy of the consent referred to in that notice open to public inspection at their principal office at all reasonable hours, without payment.

(4) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 1 has been carried out as is necessary to enable the other works to be constructed, maintained and managed as a harbour for the efficient and economic transport of goods or passengers by sea.

(5) Paragraph (1) does not apply to any works carried out under article 5 (subsidiary works).

### **Delegation of functions**

15.—(1) The Authority may, consistently with its powers and duties and subject to such conditions and for such periods of time as it thinks fit, delegate the performance of any of its functions or duties for the purposes of this Order to—

- (a) BOWL; or
- (b) with the consent of the Scottish Ministers, to the successors, assignees or permitted sub-tenants of BOWL,

but in each case the delegatee must agree to the relevant delegation.

(2) Nothing in this article authorises the delegation of the performance of any of the functions of the Authority contrary to paragraph 9B of schedule 2 of the Harbours Act 1964.

(3) In this article, “permitted” means allowed in accordance with the terms of any lease between the Authority and BOWL.

### *Miscellaneous*

### **Power to grant exclusive rights**

16.—(1) In addition to powers under section 35 of the Wick and Pulteney Harbours Act 1899, the Authority may make arrangements to lease or otherwise grant the exclusive, partial or preferential use of, or occupation of, or any right or interest in or over any part of the undertaking shown within the limits of deviation on the deposited plan for such period, and at such rents and other considerations and on such terms and conditions as they think fit.

(2) Any arrangements made under paragraph (1) are, and in their terms must be expressly declared to be, entirely without prejudice to the functions and statutory duties of the Authority as harbour authority for the undertaking.

(3) Nothing in this section authorises the Authority to sell or otherwise permanently dispose of any part of the undertaking that is required for the purposes of the harbour.

## **Crown rights**

17.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Authority or any other person to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate, without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

(3) In this article, “government department” includes any part of, or any member of the staff of, the Scottish Administration (which shall have the same meaning as in section 126(6) of the Scotland Act 1998<sup>(2)</sup>).

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(2) 1998 c.48.