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SCOTTISH STATUTORY INSTRUMENTS

2007 No. 284

HARBOURS, DOCKS, PIERS AND FERRIES

The Lerwick Harbour Revision Order 2007

Made - - - - *27th April 2007*

Coming into force - - *28th April 2007*

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Whereas Lerwick Port Authority has applied in writing for a harbour revision order under section 14 of the Harbours Act 1964(a):

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c.42), section 63 and Schedule 3, paragraph 1.

And whereas the Scottish Ministers^(a) have, in pursuance of paragraph 4(b) of Schedule 3 to the said Act^(b), determined that the application for this Harbour Revision Order is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC^(c) on the assessment of the effects of certain public and private projects on the environment and whereas the Scottish Ministers have complied with the requirements of paragraph 15 of Schedule 3 to the said Act and whereas the Scottish Ministers have directed the applicant to supply them with an Environmental Statement in terms of paragraph 8 of Schedule 3 to the said Act;

And whereas the making of this Order is not opposed:

And whereas the Scottish Ministers are satisfied as required by subsection (2)(b) of the said section 14:

Now therefore, the Scottish Ministers, in exercise of the powers conferred by section 14 of the said Act and of all other powers enabling them in that behalf, hereby make the following Order:

PART I

Citation, commencement and extent

1.—(1) This Order may be cited as the Lerwick Harbour Revision Order 2007 and shall come into force on 28th April 2007.

(2) This Order and the Lerwick Harbour Acts and Orders 1877 to 2003 may be cited together as the Lerwick Harbour Acts and Orders 1877 to 2007 (hereinafter referred to as “the Harbour Acts and Orders”).

Interpretation

2.—(1) In this Order the words and expressions assigned meanings by Acts wholly or partly incorporated within this Order shall have those meanings in this Order, and—

“the Authority” means the Lerwick Port Authority;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections signed on behalf of the Scottish Ministers and marked “Plans and sections referred to in the Lerwick Harbour Revision Order 2007”, of which copies are deposited with the Scottish Ministers at the Scottish Executive, Victoria Quay, Edinburgh, EH6 6QQ, and with Lerwick Port Authority at their principal office at Albert Building, Esplanade, Lerwick, Shetland, ZE1 0LL;

“harbour” means the Port and Harbour of Lerwick as defined by the Harbour Acts and Orders and shall include the works authorised by this Order;

“level of high water” means the level of mean high-water springs;

“limits of deviation” means the limits of deviation shown on the deposited plans;

“tidal work” means so much of any works authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“undertaking” means the undertaking of the Authority as for the time being authorised; and

(a) The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Schedule 3 was substituted by regulation 15(4) of the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445).

(c) O.J. No. L 175, 5.7.85, p.40; Council Directive 85/337/EEC was amended by Council Directive 97/11/EC (O.J. No. L 73, 14.3.1997, p.5).

“works” means the works authorised by this Order or, as the case may require, any part thereof;

(2) All areas, dimensions, directions, distances, lengths, points, situations and other measurements stated in any plan or description of the works, powers or lands shall be construed as if the words “or thereby” were inserted after each such area, dimension, direction, distance, length, point, situation and other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

PART II

Power to construct works

3. Subject to the provisions of this Order, the Authority may in the Shetland Islands Area(a) in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans and the deposited sections construct, execute and maintain the following works together with incidental works and conveniences connected therewith:–

Work No. 1

A reclamation of an area of seabed being an area shown coloured blue on the deposited plan of Work No. 1 being an area enclosed by an imaginary line commencing at a **Point A (1143177N, 446670E)** where the new works meet the toe of the existing breakwater enclosing part of the Gremista Marina, and travelling a distance of 174 metres in a generally east north east direction to **Point B (1143245N, 446830E)**, then 60 metres in a generally north north west direction to **Point C (1143298N, 446802E)**, then 45 metres in a generally north north east direction to terminate at **Point D (1143343N, 4468010E)**, where the new works meet the shoreline at Gremista.

The area will be infilled using non-selected dredged material consisting of sand, cobbles, boulders and blasted dredged rock with particle sizes varying from 0.1 millimetres to 500 millimetres. The south and east face of the reclamation between Points A, B, C and D will be protected using imported rock armour stones with a size of generally 1.0 tonne.

The top level of the completed works shall be +3.5 metres above Admiralty Chart Datum, (+2.3 metres above Ordnance Datum (Local)).

Work No. 2

A reclamation of an area of seabed being an area shown coloured blue on the deposited plan of Work No. 2 being an area enclosed by an imaginary line commencing at a **Point E (1144569N, 447192E)** where the new works meet the toe of the existing revetment at the north east corner of the Greenhead Base and travelling a distance of 43 metres in a generally north north east direction to **Point F (1144607N, 447213E)**, then 298 metres in a generally north by east direction to **Point G (1144899N, 447269E)**, then 78 metres in a generally west north west direction to terminate at **Point H (1144935N, 447200E)**, where the new works meets the shoreline at Greenhead.

The area will be infilled using non-selected dredged material consisting of sand, cobbles, boulders and blasted dredged rock with particle sizes varying from 0.1 millimetres to 500 millimetres. All exposed faces of the reclamation from **Point E** to **Point H** shall be protected using imported rock armour stones with a size generally 2.0 - 4.0 tonnes.

The top level of the completed works shall be +4.0 metres above Admiralty Chart Datum, (+2.8 metres above Ordnance Datum (Local)).

(a) Local Government etc. (Scotland) Act 1994, section 1(2) and column 1 of part 1 of Schedule 1.

Power to renew, etc. works

4. Subject to the provisions of this Order the Authority may, within the limits of deviation, renew, replace or otherwise alter temporarily or permanently the works.

Power to deviate

5. Subject to the provisions of this Order, in the construction or execution of the works the Authority may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be necessary or convenient.

Subsidiary works

6. Subject to the provisions of this Order the Authority, for the purposes of or in connection with the works, may within the limits of deviation construct, execute and maintain all such subsidiary or incidental works and conveniences as may be necessary or expedient for or in connection with the works.

Fine for obstructing works

7. Any person who intentionally obstructs any person acting under the authority of the Authority in setting out the lines of the works or who damages, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and shall in addition be liable to repay to the Authority as a debt any expenses incurred by them in making good any damage resulting from such obstruction, damage, moving or removal.

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

8.—(1) A tidal work shall not be constructed, executed, renewed, replaced or altered except in accordance with plans and sections approved by the Scottish Ministers and subject to any conditions and restrictions imposed by the Scottish Ministers before the work is begun.

(2) If a tidal work is constructed, executed, renewed, replaced or altered in contravention of this article—

- (a) the Scottish Ministers may by notice in writing require the Authority at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon Authority it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice; or
- (b) if it appears to the Scottish Ministers urgently necessary to do so, they may themselves remove the tidal work or part of it and restore the site to its former condition.

and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from the Authority as a debt.

Lights on tidal works during construction

9.—(1) During the whole time of demolition, construction, renewal or alteration of any 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 paragraph (1) it 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

10.—(1) After the completion of a tidal work the Authority shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such 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 a direction given under this article it 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.

Survey of tidal works

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

Provision against danger to navigation

12.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Authority shall forthwith 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 with the provisions of this article it 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 and decayed

13.—(1) Where a tidal work is abandoned or suffered to fall into decay the Scottish Ministers may by notice in writing require the Authority at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Scottish Ministers think proper.

(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 suffered to fall into decay and that part of the work on or over the 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 Scottish Ministers may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Authority it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Authority as a debt.

Crown Rights

14.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing herein contained shall authorise the Authority to take, use, enter upon or in any manner interfere with any land or interest in 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 Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) 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.

ALASTAIR WILSON

A member of the staff of the Scottish Executive

Victoria Quay,
Edinburgh
27th April 2007

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers Lerwick Port Authority to reclaim with dredged material land to the south-east of the existing fishery harbour facility and also land to the north of the existing oil rig service facility at Greenhead (article 3).

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The Lerwick Harbour Revision Order 2007

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