

**2008 No. 331**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Peterhead Port Authority Harbour Revision Order 2008**

*Made* - - - - *2nd October 2008*

*Coming into force* - - *3rd October 2008*

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Peterhead Port Authority have applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

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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, 3, 4(1) and 14, and by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 2.

The Scottish Ministers<sup>(a)</sup> having, in pursuance of paragraph 4 of Schedule 3 to that Act<sup>(b)</sup>, determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC<sup>(c)</sup> on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, have directed the Authority to supply them with the information referred to in Annex IV to the Directive;

Notices have been published by the Authority in accordance with paragraph 10 of that Schedule;

The Scottish Ministers have in accordance with paragraph 15 of that Schedule, furnished bodies appearing to them to have environmental responsibilities with the information supplied to them under paragraph 8 of that Schedule and have consulted such bodies;

The Scottish Ministers have considered the information supplied under paragraph 4 of that Schedule, the environmental statement supplied under paragraph 8(1), the result of consultations under paragraph 15 of that Schedule, the objection made and not withdrawn and the written representations submitted by the applicant and objector in elaboration of the application or objection and are satisfied as mentioned in section 14(2)(b) of that Act;

The Scottish Ministers in exercise of the powers conferred by section 14 of that Act hereby make the following Order:—

#### **Citation and commencement**

1. This Order may be cited as the Peterhead Port Authority Harbour Revision Order 2008 and shall come into force on 3rd October 2008.

#### **Interpretation**

2.—(1) In this Order, except where the context otherwise requires—

“the Authority” means Peterhead Port Authority;

“deposited plans” and “deposited sections” mean respectively the plans and sections which have been deposited in connection with this Order, two copies of which have been deposited at the Scottish Executive, Transport Directorate, APF & C Division, Victoria Quay, Edinburgh EH6 6QQ and one copy of which has been deposited at the offices of the Authority, Harbour Office, West Pier, Peterhead, Aberdeenshire AB42 1DW;

“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;

“port” means the Port of Peterhead;

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

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

“works” means the works authorised by this Order, or as the case may require, any part thereof and includes any work constructed pursuant to article 3 (power to construct works) or article 5 (subsidiary works).

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(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 S.I. 1999/3445 as amended by S.I. 2000/2391; paragraph 18 was amended by the Transport (Scotland) Act 2005 (asp 12), section 46.

(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), and by Council Directive 2003/35/EC (O.J. No. L 156, 25.6.2003, p.17).

(2) All areas, directions, distances, lengths, widths and heights as stated in any description of works, powers or lands other than article 4 (power to deviate) shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width and height and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

(3) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

### **Power to construct works**

3.—(1) Subject to the provisions of this Order, the Authority may in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown on them and according to the levels shown on the deposited sections, construct and maintain in Aberdeenshire the following works, with all necessary works and conveniences connected with them—

Work No. 1 – A breakwater commencing at the western end of Albert Quay at a point at NK413442845578 and terminating at a point at NK413273845627 and incorporating a wave wall on the crest of the breakwater.

Work No. 2 – An open piled jetty comprising a deck supported on piles commencing at the western end of Albert Quay at a point at NK413403845584 and terminating at a point at NK413313845626.

Work No. 3 – Reclamation by infilling an area of 9100 square metres of land to the north of Work No. 4 adjoining Smith Embankment on the northerly and easterly sides and having revetted slopes on the southern and western sides.

Work No. 4 – An open piled jetty comprising a deck supported on piles commencing on the western end of Merchants Quay at a point at NK413416845771, extending for a distance of 127 metres, having a width of 30 metres and terminating at a point at NK413289845768.

(2) Subject to the provisions of this Order, the Authority may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the bed of the port and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking of the Authority; and so much of the bed of the port and of the foreshore as may be reclaimed shall be deemed to be operational land within the meaning of section 215 of the Town and Country Planning (Scotland) Act 1997(a).

(3) Subject to the provisions of this Order, the Authority may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

### **Power to deviate**

4. Subject to the provisions of this Order, 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 plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

### **Subsidiary works**

5.—(1) Subject to paragraph (2) and to the other provisions of this Order, 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 the purposes,

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(a) 1997 c.8.

or in connection with or in consequence, of the construction, maintenance or use of the works or the Authority's undertaking; including works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and landing of passengers.

(2) Nothing in paragraph (1) shall exempt the Authority from supplying environmental information to a decision maker who requires to take that information into account before deciding whether to give for that work—

- (a) planning permission under the Town and Country Planning (Scotland) Act 1997(a); or
- (b) a consent under the Marine Works (Environmental Impact Assessment) Regulations 2007(b);

and, in this subparagraph, “decision maker” means either Aberdeenshire Council or the Scottish Ministers.

### **Power to dredge**

6.—(1) Without prejudice to any other powers which may be exercisable by the Authority within the port the Authority may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the port as lie within the limits of the port and within the approaches and the channels leading to those limits and may blast any rock in the area so described and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(c)), from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

### **Obstruction of work**

7. Any person who intentionally obstructs any person acting under the authority of the Authority in setting out the lines of or in constructing the works, or who interferes with, 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.

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

8. 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**

9.—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed 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 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 Scottish Ministers may by notice in writing require the Authority at their own expense to remove the tidal work or any part of it and restore the site of the tidal work to its former condition; and if on the expiration of 30 days from the date when the notice is

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(a) 1997 c.8.

(b) S.I. 2007/1518.

(c) 1995 c.21, see section 255(1).

served upon the Authority they have 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.

### **Survey of tidal works**

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

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

11.—(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 fail to comply in any respect with the provisions of this article, they 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**

12.—(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 their own expense either to repair and restore the work or any part of it, 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 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 of it, 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 they have 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.

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

13.—(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 fail to comply in any respect with a direction given under this article they 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**

14.—(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 fail to comply in any respect with a direction given under this article they 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**

**15.**—(1) Subject to paragraph (2), if the works are not completed within five years from the coming into force of this Order or such extended time as the Scottish Ministers may on the application of the Authority allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Authority for making and maintaining the works shall cease except as to so much of those works as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 3 (power to construct works) or article 5 (subsidiary works).

### **Works to be within area of Aberdeenshire Council**

**16.** The works shall, to the extent that they lie outwith the area of the Aberdeenshire Council, be annexed to and incorporated within that area.

### **Defence of due diligence**

**17.**—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for the Authority to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

article 11 (provision against danger to navigation);

article 13 (lights on tidal works during construction); and

article 14 (permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Authority shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

### **Saving for Commissioners of Northern Lighthouses**

**18.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

### **Crown rights**

**19.**—(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 the generality of the foregoing, nothing in this Order authorises the Authority or any licensee to take, use, enter upon or in any manner interfere with any land or interests 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.

### **Environmental measures for cetaceans**

20.—(1) For 30 minutes prior to the commencement of any piling or blasting operations which are required for the construction of any of the works, the Authority shall employ and use their reasonable endeavours to have available at any requisite time a person having experience of cetacean monitoring and equipped with a suitable acoustic device to watch for cetaceans and, if that person reports that any cetaceans are swimming within a 500 metre radius of the site of that proposed piling or blasting operation, the Authority shall secure that the proposed piling or blasting operation shall be delayed until that person reports that he or she is reasonably satisfied that there are no cetaceans within that radius.

(2) The Authority shall use their reasonable endeavours to ensure that any piling or blasting operations which are required for the construction of any of the works shall not take place during any period when cetaceans are observed within the vicinity of the proposed piling or blasting operation where they are likely to be killed or injured, and appropriate scaring measures shall be used to allow those cetaceans to vacate that vicinity.

*ALASTAIR WILSON*

A member of the staff of the Scottish Executive

St Andrew's House,  
Edinburgh  
2nd October 2008

## **EXPLANATORY NOTE**

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

This Order empowers Peterhead Port Authority to construct and maintain works and other port facilities at the Port of Peterhead, Aberdeenshire. The works will consist of the construction of a breakwater and an open piled jetty being an extension at the western end of Albert Quay, the reclamation of an area of tidal waters at Smith Embankment and an open piled jetty being an extension at the western end of Merchants Quay.

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