

2010 No. 471

HARBOURS, DOCKS, PIERS AND FERRIES

The Lerwick Harbour Revision Order 2010

Made - - - - 30th December 2010

Coming into force - - 31st December 2010

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The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), 14(2) and 14(2A) of the Harbours Act 1964(a) and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act(b).

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to Ministers by Lerwick Port Authority being the authority engaged in improving, maintaining or managing the harbour; and
- (b) except in so far as this Order is made for achieving objects mentioned in section 14(2A) of the Act, Ministers are satisfied that the making of this order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and of facilitating the efficient and economic transport of goods or passengers by sea.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour and consolidating any statutory provisions of local application affecting the harbour.

In accordance with paragraph 4 of Schedule 3 to that Act(c), Ministers have decided that the application relates to a project which falls within Annex II to Council Directive 85/337/EEC(d) as relevantly amended by Council Directive 97/11/EC(e) and Council Directive 2003/35/EC(f) on the assessment of the effects of certain public and private projects on the environment and, taking into account the criteria set out in Annex III to that Directive, that the project is a relevant project.

In accordance with paragraph 6 of that Schedule(g), Ministers have—

- (a) informed the applicant of that decision, and the reasons for it; and
- (b) given an opinion to the applicant about the extent of the information referred to in Annex IV to that Directive which the applicant would be required to supply in the environmental statement and—
 - (i) in giving that opinion Ministers have taken into account the matters in sub-paragraph (3) of that paragraph; and
 - (ii) before giving that opinion Ministers have consulted the applicant and such bodies with environmental responsibilities as Ministers thought appropriate.

(a) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See section 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(c) Paragraph 4 of Schedule 3 was substituted by S.I. 1999/3445.

(d) O.J. L 175, 5.7.1985 p.40.

(e) O.J. L 73, 14.3.1997, p.5.

(f) O.J. L 156, 25.6.2003, p.17.

(g) Paragraph 6 of Schedule 3 was substituted by S.I. 1999/3445.

In accordance with paragraph 8 of that Schedule(a), Ministers have directed the applicant to supply them with an environmental statement and as required by paragraph 9 of that Schedule(b) the applicant has complied with that direction.

Notices have been published by the applicant in accordance with the requirements of paragraphs 10, and 10A of that Schedule(c).

In accordance with paragraph 15 of that Schedule(d), Ministers have—

- (a) consulted; and
- (b) sent the environmental statement, and any further information falling within paragraph 10A(2) of that Schedule, to,

such bodies who were likely to have an interest in the project by reason of their environmental responsibilities as Ministers thought appropriate.

The provisions of paragraph 17 of that Schedule(e) have been satisfied. All objections to the application have been withdrawn.

In accordance with paragraph 19(1) of that Schedule(f), Ministers have considered—

- (a) the environmental statement;
- (b) the result of the consultations under paragraph 15 of that Schedule; and
- (c) any representations made under paragraph 10(2)(f) of that Schedule.

In accordance with paragraph 19(2) of that Schedule(g), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the order.

PART I PRELIMINARY

Citation, commencement and extent

1.—(1) This Order may be cited as the Lerwick Harbour Revision Order 2010 and comes into force on the day after the day on which it was made.

(2) This Order and the Lerwick Harbour Acts and Orders 1877 to 2007 may be cited together as the Lerwick Harbour Acts and Orders 1877 to 2010 (hereinafter referred to as “the Harbour Acts and Orders”).

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- (a) Paragraph 8 of Schedule 3 was substituted by S.I. 1999/3445.
 - (b) Paragraph 9 of Schedule 3 was substituted by S.I. 1999/3445.
 - (c) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c). Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).
 - (d) Paragraph 15 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(e).
 - (e) Paragraph 17 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(g).
 - (f) Paragraph 19(1) of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(i).
 - (g) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

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 Lerwick Port Authority;

“deposited plans, sections and elevations” means the plans, sections and elevations which are bound together and signed in duplicate with reference to this Order and marked the “Lerwick Harbour Revision Order 2010 plans, sections and elevations” and which are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh, EH6 6QQ, and at the offices of the Authority situated at Albert Building, Esplanade, Lerwick, Shetland, ZE1 0LL; and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations;

“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(a);

“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, sections and elevations;

“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; and

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

(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

WORKS

Power to construct works

3. The Authority may in the lines and situations and within the limits of deviation and according to the levels shown on the deposited plans, sections and elevations construct and maintain the following works—

Work No. 1 – The construction at Greenhead Base of a concrete suspended deck quay on steel bearing piles and rock armour revetment slope extending south from existing quay structures thence turning in an easterly direction and having an overall length of 185 metres followed by a rock armour revetment slope extending in an easterly direction for 16 metres then turning in a southerly direction for 71 metres before returning in a south westerly direction for 84 metres to meet the existing shore comprising a total area of 1.185 hectares; the location of which is shown on Sheets Nos. 1 and 2 and the sections and elevations are shown on Sheets Nos. 3 and 4;

Work No. 2 – The reclamation and infilling of seabed at Point of Scattland to be retained on the seaward limits by a rock armoured revetment slope extending from Work No. 1 in

(a) 1998 c.46.

a southerly direction for 130 metres then turning in a south westerly direction for 160 metres to meet with the foreshore at the root of an existing quay of Gremista comprising a total area of 0.3750 hectares; the location of which is shown on Sheets Nos. 1 and 5 and the sections and elevations are shown on Sheet No. 6;

Work No. 3 – The construction at Mairs Yard of a steel sheet pile quay wall with concrete cope commencing at the root of the existing Holmsgarth jetty and extending in a north westerly direction for 151 metres before turning 90 degrees for 25 metres with stop end and reclamation with rock armour revetment slope extending from the quay wall in a south westerly direction for 122 metres to meet the existing foreshore, comprising a total area of 1.450 hectares; the location of which is shown on Sheets Nos. 1 and 7 and sections and elevations are shown on Sheet No. 8;

Work No. 4 – The construction of a sheet pile quay wall and jetty with concrete cope incorporating and extending the existing Holmsgarth Jetty commencing at the root of Holmsgarth Jetty and extending and continuing the existing Jetty line in a north easterly direction for 142 metres then turning in a northerly direction for 144 metres, then turning in an easterly direction for 20 metres, then turning in a southerly direction for 235 metres before returning in a south westerly direction for 129 metres to meet the existing quay structure comprising a total area of 1.310 hectares; the location of which is shown on Sheets Nos. 1 and 9 and sections and elevations are shown on Sheet Nos. 10 and 11.

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 authorised by Article 3 of this Order.

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

Subsidiary works

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

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 or constructing 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.

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

8.—(1) A tidal work shall not be constructed, executed, renewed, replaced, altered or demolished except in accordance with plans, sections and elevations 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, altered or demolished in contravention of this Article or of any condition or restriction under 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 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 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.

(3) Paragraph (1) shall not apply to any work authorised by Article 3 (power to construct works) and any related works authorised by Article 6 (subsidiary works).

(4) Subject to paragraph (3), the works referred to in paragraph (1) shall be deemed to be “harbour works” within the meaning and for the purposes of the Marine Works (Environmental Impact Assessment) Regulations 2007(a).

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 of that work 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 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 as a debt.

Provision against danger to navigation

12.—(1) In case of injury to or destruction or decay of a tidal work or any part of it the Authority shall as soon as reasonably 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.

(a) S.I. 2007/1518; “harbour works” is defined in regulation 2(1).

(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 has fallen 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 of it, or to remove the work and restore the site of it 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 has fallen 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 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 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.

Period for completion of works

14.—(1) If the works authorised by Article 3 (Power to construct 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 by consent given in writing, 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) As soon as reasonably practicable after a consent is given under paragraph (1), the Authority shall arrange for a notice to be published in the Edinburgh Gazette and in the local newspaper circulating in the areas where the port is situated and the notice shall contain a concise summary of that consent.

PART III

MISCELLANEOUS AND GENERAL

Defence of due diligence

15.—(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 it 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—

- (a) Article 9 (lights on tidal works during construction);
- (b) Article 10 (permanent lights on tidal works); and
- (c) Article 12 (provision against danger to navigation).

(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, it has 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 its possession.

Environmental requirements

16.—(1) No works shall be commenced until the Scottish Ministers have, following consultation with the Scottish Environment Protection Agency, approved an environmental management plan for the works.

(2) Subject to paragraph (3), in constructing the works, the Authority shall act in accordance with—

- (a) the commitments given in the Environmental Statement being the Environmental Statement dated 12th October 2009 together with the Non-technical Summary and the Appendices (lettered A to J) to the Environmental Statement, a copy of which was submitted with the application made for this Order to the Scottish Ministers and a further copy which has been deposited at the principal office of the Authority situated at the port; and
- (b) the approved environmental management plan for the works.

(3) Nothing in paragraph (2) shall exempt the Authority from fulfilling any requirement imposed on the Authority by any rule of law or which arises from any commitment which is binding on the Authority.

Amendment of The Lerwick Harbour Confirmation Order Act 1974

17. Section 10(4)(b) of the Lerwick Harbour Confirmation Act 1974(a) shall be amended by the deletion of the words “three months” occurring in the first line thereof and the substitution therefore of the words “six months”.

Amendment of The Lerwick Harbour Revision (Constitution) Order 2003

18. Article 5(2) of the Lerwick Harbour Revision (Constitution) Order 2003(b) shall be amended as follows—

- (a) in the first line thereof by the insertion after the word “shall” of a comma and the deletion of the word “meet”;
- (b) in the second line of said Article the word “to” shall be deleted.

Partial repeal of The Lerwick Harbour Revision (Constitution) Order 2003

19. Article 9(4) of the Lerwick Harbour Revision (Constitution) Order 2003 shall cease to have effect.

Saving for Commissioners of Northern Lighthouses

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

Saving for other consents etc.

21. The carrying out of any works or operations pursuant to this Order is subject to the Authority obtaining any consent, permission or licence required under any other enactment.

Crown Rights

22.—(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 that generality nothing contained in the Order shall authorise the Authority to take, use, enter upon or in any

(a) 1974 c.xx.
(b) S.S.I. 2003/211.

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 the 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 Ministers

St Andrew's House,
Edinburgh
30th December 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made following an application by Lerwick Port Authority (the “Authority”) authorises the Authority to extend the existing Greenhead south quay to reclaim land at Point of Scattland, to construct a new quay at Mairs Yard and to extend the existing north Holmsgarth jetty all situated within the harbour being the Port and Harbour of Lerwick.

Part I makes preliminary provision including provision as to interpretation (Article 2), and the citation, commencement and extent of the Order.

Part II makes provision as to works.

Article 3 authorises the Authority to construct works. The main works to be carried out are described in the Article.

Article 4 gives the Authority power to renew, etc, the works subject to the provisions of the Order.

Article 5 provides the limits of deviation for the works and Article 6 authorises subsidiary works as may be necessary or convenient for or in connection with the works authorised under Article 3.

Article 7 makes provision for fines for obstructing works, etc.

Articles 8 to 13 make provision for the control and regulation of tidal works.

Article 14 makes provision as to the time limit for completing the works under Article 3.

Part III makes miscellaneous and general provisions.

Article 15 provides the Authority with a defence of due diligence against the commission of offences under the Order.

Article 16 makes provision for an Environmental Management Plan to be submitted to Scottish Ministers before commencement of any works. It also makes provision as to compliance by the Authority with commitments given in the Environmental Statement accompanying its application for the Order.

Copies of the Environmental Statement for the project and the deposited plans and sections can be inspected, free of charge, at the offices of the Scottish Ministers at Victoria Quay, Edinburgh, EH6 6QQ between 09:00 and 16:30 (Monday to Friday, excluding public holidays).

The deposited plans and sections may also be inspected free of charge at the offices of the Authority at the Port between 09:00 and 16:00 (Monday to Friday, excluding public holidays).

Article 17 amends section 10(4)(b) of the Lerwick Harbour Order Confirmation Act 1974 by extending the period within which the Authority is required to decide an application for a Works Licence within the harbour from three to six months.

Article 18 amends Article 5(2) of the Lerwick Harbour Revision (Constitution) Order 2003 by streamlining the procedure for consideration by the appointing body of applications made under Article 4 of the Order.

Article 19 repeals Article 9(4) of the Lerwick Harbour Revision (Constitution) Order 2003 and removes the age limit beyond which a person will not be qualified to be nominated as a Member of the Authority.

Articles 20 to 22 make saving provisions including making it clear that in carrying out any works or operations pursuant to this Order the Authority must obtain any other consent required for those works or operations under the terms of any other enactment.

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The Lerwick Harbour Revision Order 2010