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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 447**

**The Fraserburgh Harbour Revision Order 2011**

**PART 2**

**WORKS**

**Power to construct works**

**3.—(1)** The Commissioners 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 or deposited elevations, construct and maintain the following works—

**Work No. 1** – The reclamation and infilling of the existing entrance to North Harbour from Outer Harbour to be retained on the seaward limits by a solid faced quay wall with a rock armoured revetment and on the landward limits by a solid faced quay wall and extending between the existing North Pier and West Pier and including the levelling of that area; the location of which is shown on sheet 2 and the section of which is shown on sheet 5.

**Work No. 2** – Resurfacing of part of the existing North Pier; the location of which is shown on sheet 2 and the section of which is shown on sheet 5.

**Work No. 3** – A three storey building to be constructed on the existing North Pier the location of which is shown on sheet 2 and the plans and elevations of which are shown on sheet 8, comprising a marine traffic control room, offices, staff welfare facilities, storage and workshop areas and a plant room.

**Work No. 4** – Demolition of part of the existing North Pier to form a mechanically operated storm gated entrance to North Harbour the location of which is shown on sheet 2 and the section of which is shown on sheet 5, giving access from Balaclava Outer Harbour through North Harbour to South Harbour and Faithlie Harbour: to be retained by solid faced quay walls incorporating pits and recesses to house storm gates and operating machinery; also to include a single storey plant room building.

**Work No. 5** – A mechanically operated opening bridge spanning Work No. 4 and providing access along North Pier to Work Nos. 2 and 3, the location of which is shown on sheet 2 and the section of which is shown in sheet 5.

**Work No. 6** – The re-facing and underpinning of the southern face of the existing North Pier with a solid faced quay wall; the location of which is shown on sheet 3 and the section of which is shown on sheet 6.

**Work No. 7** – The re-facing and underpinning of a length of the northern face of the existing West Pier with a solid faced quay wall; the location of which is shown on sheet 3 and the section of which is shown on sheet 6.

**Work No. 8** – The re-facing and underpinning of the northern face of the existing Middle Jetty with a solid faced quay wall; the location of which is shown on sheet 3 and the section of which is shown on sheet 6.

**Work No. 9** – The reclamation and infilling of an area of North Harbour to be retained on the seaward limits by a solid faced quay wall or an open piled quay structure, in either case

extending between the existing North Pier and Middle Jetty and including the levelling of that area to form an area of 0.14 hectares and providing for the berthing of vessels and support activities; the location of which is shown on sheet 3 and the section of which is shown on sheet 6.

**Work No. 10** – The re-facing and underpinning of a length of the southern face of the existing Provost Anderson’s Jetty with a solid faced quay wall; the location of which is shown on sheet 4 and the section of which is shown on sheet 7.

**Work No. 11** – The re-facing and underpinning of a length of the northern face of the existing North Pier with a solid faced quay wall; the location of which is shown on sheet 4 and the section of which is shown on sheet 7.

**Work No. 12** – A deepening by means of excavation, including blasting, to a depth of 5 metres below Chart Datum of that part of the Balaclava Outer Harbour shown cross hatched red on sheets 2, 3 and 4 and the section of which is shown on sheet 7.

**Work No. 13** – A deepening by means of excavation, including blasting, to a depth of 5 metres below Chart Datum of that part of the North Harbour shown cross hatched red on sheets 2, 3 and 4 and the section of which is shown on sheet 7.

(2) The Commissioners 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 harbour 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 Commissioners; and so much of the bed of the harbour 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<sup>(1)</sup>.

(3) The Commissioners may, within the limits of deviation, reconstruct, extend, enlarge, replace, relay or otherwise alter temporarily or permanently the works authorised by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

### **Power to deviate**

4. In carrying out the works authorised by this Order the Commissioners 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 or deposited elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

### **Subsidiary works**

5. The Commissioners, 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.

### **Period for commencement of works**

6.—(1) Subject to paragraph (3), if the works are not substantially commenced within five years from the date of coming into force of this Order or such extended time as the Scottish Ministers may on the application of the Commissioners allow by consent in writing, then on the expiration of that period or such extended time (as the case may be) the powers granted by this Order to the Commissioners for making and maintaining the works shall cease.

(2) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) if Work No. 13 shall have commenced.

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(1) 1997 c.8.

(3) 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).

(4) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions.

(5) As soon as reasonably practicable after a consent is given under paragraph (1), the Commissioners 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 concise summary of that consent.

(6) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (5), a copy of the consent referred to in that notice shall be kept by the Commissioners at the offices of the Commissioners situated at the harbour and shall at reasonable hours be open to public inspection without payment.

### **Power to dredge**

7.—(1) Without prejudice to any other powers which may be exercisable by the Commissioners within the harbour the Commissioners may, for the purposes of constructing the works deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the harbour as lie within the limits of the harbour and within the approaches and the channels leading to those limits and may use, appropriate or dispose of the materials (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995(2)), from time to time dredged by them from the harbour.

(2) No material referred to in this article 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.

### **Fine for obstructing works**

8. Any person who intentionally obstructs any person acting under the authority of the Commissioners in setting out the lines of the works, or who 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 Commissioners as a debt any expenses incurred by it in making good any damage resulting from such obstruction, moving or removal.

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

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

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

10.—(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.

(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—

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(2) 1995 c.21, see section 255(1).

- (a) the Scottish Ministers may by notice in writing require the Commissioners 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 served upon the Commissioners 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 Commissioners as a debt.

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

### **Survey of tidal works**

11. 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 Commissioners as a debt.

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

12.—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof, the Commissioners 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 Commissioners 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**

13.—(1) Where a tidal work is abandoned or suffered to fall into decay the Scottish Ministers may by notice in writing require the Commissioners 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 Commissioners 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 Commissioners as a debt.

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

14.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Commissioners 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 Commissioners 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**

**15.**—(1) After completion of a tidal work, the Commissioners 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 Commissioners 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.

#### **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.

#### **Minimising risk to marine mammals**

**17.**—(1) In constructing the works, the Commissioners shall act in accordance with—

- (a) the statutory nature conservation agency protocol for minimising the risk of disturbance and injury to marine mammals from piling noise dated 2010 **(3)**; and
- (b) the JNCC guidelines for minimising the risk of injury to marine mammals from using explosives dated August 2010**(4)**,

both issued by the Joint Nature Conservation Committee**(5)**.

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**(3)** [http://jncc.defra.gov.uk/pdf/JNCC\\_Guidelines\\_Piling%20protocol\\_August%202010.pdf](http://jncc.defra.gov.uk/pdf/JNCC_Guidelines_Piling%20protocol_August%202010.pdf).

**(4)** [http://www.jncc.gov.uk/pdf/JNCC\\_guidelines\\_explosives%20guidelines\\_august%202010.pdf](http://www.jncc.gov.uk/pdf/JNCC_guidelines_explosives%20guidelines_august%202010.pdf).

**(5)** The Joint Nature Conservation Committee is reconstituted by section 31 of and Schedule 4 to the Natural and Rural Communities Act 2006.