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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 447**

**The Fraserburgh Harbour Revision Order 2011**

**PART 5**

**MISCELLANEOUS**

**Defence of due diligence**

**28.**—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for the Commissioners 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 12 (provision against danger to navigation);
- article 14 (lights on tidal works during construction); and
- article 15 (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 Commissioners 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.

**Borrowing powers**

**29.** For article 16 sub-paragraphs (1), to (3) inclusive (Borrowing powers) of the 2001 Order there shall be substituted the following—

“(16) The Commissioners may from time to time borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions; and where moneys are borrowed by the Commissioners under this article, the Commissioners may, if they see fit, borrow those moneys upon the security of their assets for the time being or of their revenues or of both their assets and their revenues.”.

**Saving for Commissioners of Northern Lighthouses**

**30.** 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.**

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

### **Crown rights**

**32.**—(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 Commissioners or any licensee 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 under the management 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.

### **Amendments**

**33.** For the definition of “Commissioners” in section 2 of the Fraserburgh Harbour Order 1985 there shall be substituted—

““Commissioners” means the Fraserburgh Harbour Commissioners holding office under the authority of the Fraserburgh Harbour Order 1990, the Fraserburgh Harbour Revision (Constitution) Order 2001 or the Fraserburgh Harbour Revision Order 2011.”.

### **Revocations**

**34.** Article 17 (Annual increase in borrowing limit) of the 2001 Order is revoked.