

2017 No. 54

HARBOURS, DOCKS, PIERS AND FERRIES

The Wick Harbour Revision Order 2017

Made - - - - *24th February 2017*

Coming into force - - - *25th February 2017*

The Scottish Ministers (“the Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (3) of the Harbours Act 1964(a) and all other powers enabling them 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 of that Act(b).

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

- (a) this Order is made following a written application to the Ministers by the Wick Harbour Authority (“the applicant”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) the 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 paragraph 5 of schedule 3 of that Act(c), the Ministers have informed the applicant in writing that the application relates to a project which falls within Annex II to Directive 2011/92/EU of the European Parliament and of the Council(d), on the assessment of the effects of certain public and private projects on the environment and have published notice of that determination on 11th April 2013. They prepared an environmental statement and published notice of it on 11th April 2013.

(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 5 of schedule 3 was substituted by S.I. 1999/3445.

(d) O.J. L 26, 28.1.2012, p.1. Directive 2011/92/EU repealed and recast the provisions contained in Council Directive 85/337/EEC, O.J. L 175, 5.7.1985, p.40, as amended by Council Directive 97/11/EC, O.J. L 73, 14.3.1997, p.5, Directive 2003/35/EC of the European Parliament and of the Council O.J. L 156, 25.6.2003, p.17, and Directive 2009/31/EC of the European Parliament and of the Council, O.J. L 140, 5.6.2009, p.114.

Notice has been published by the applicant in accordance with the requirements of paragraph 10 of that schedule(a).

The provisions of paragraph 17 of that schedule(b) have been satisfied. No objections to the application have been made.

In accordance with paragraph 19(1) of that schedule(c), Ministers have considered the result of the consultations under paragraph 15 of that schedule.

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

PART 1 PRELIMINARY

Citation and Commencement

1.—(1) This Order may be cited as the Wick Harbour Revision Order 2017 and shall come into force on the day after the day on which it is made.

(2) The Pulteney Harbour Act 1879, the Wick and Pulteney Harbour Order 1883, the Pulteney Harbours Act 1899, the Wick Burgh Extension Order 1902, the Wick and Pulteney Harbours Order Confirmation Act 1903, the Wick Harbour Confirmation Act 1914, the Public Works Facilities Scheme (Wick Harbour) Confirmation Act 1931, the Wick Harbour Revision (Constitution) Order 2005 and this Order may be cited together as the Wick and Pulteney Harbour Acts and Orders 1879 to 2017.

Interpretation

2.—(1) In this Order—

“the Authority” means the Wick Harbour Authority as constituted under and for the purposes of the Wick and Pulteney Harbour Acts and Orders 1879 to 2017;

“BOWL” means Beatrice Offshore Windfarm Limited, a company incorporated in Scotland and registered under company number SC350248;

“Commissioners of Northern Lighthouses” means the general lighthouse authority for Scotland, a body corporate constituted by section 193 and schedule 8 of the Merchant Shipping Act 1995(d);

“deposited plan” means the plan which is signed in duplicate with reference to this Order and marked “The Wick Harbour Revision Order 2017 Plan”, one copy of which is deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh, EH6 6QQ and the other copy of which is deposited at the offices of the Authority, Harbour Office, Wick, Caithness, KW1 5HA;

“harbour” means the harbour of Wick as defined in the Pulteney Harbour Act 1879, the Wick and Pulteney Harbour Order 1883, the Pulteney Harbours Act 1899, the Wick Burgh

(a) 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).

(b) 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).

(c) 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).

(d) 1995 c.21. Schedule 8 was amended by section 55 of the Scotland Act 2016 (c.11).

Extension Order 1902, the Wick and Pulteney Harbours Order Confirmation Act 1903, the Wick Harbour Confirmation Act 1914, the Public Works Facilities Scheme (Wick Harbour) Confirmation Act 1931 and the Wick Harbour Revision (Constitution) Order 2005 and includes 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 plan;

“undertaking” means the harbour undertaking of the Authority in terms of the Wick and Pulteney Harbour Acts and Orders 1879 to 2017;

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

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

(2) In this Order all areas, directions, distances, lengths, widths, heights and grid references 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, height or grid reference and any reference in a description of works to a point shall be a reference to that point as shown on the deposited plan.

(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.

PART 2 THE WORKS

Power to construct works

3.—(1) The Authority may, in the lines and situations and upon the lands delineated on the deposited plan and within the limits of deviation shown on it, construct, operate and maintain the following works along with all necessary works and conveniences connected with them:

Work No. 1 – Demolition of any structures including slipways, plant, walls and fences together with associated infrastructure and other berthing structures in the area shown on the deposited plan.

Work No. 2 – Increase the height of existing quay wall located beneath the existing slipway in the area shown on the deposited plan to the height of the adjoining quay walls.

Work No. 3 – a service yard and storage area including a waste disposal area, a fuel header tank, telecommunications equipment and container storage area and stockpiling area for cranes and other quayside infrastructure, to be created by infilling and re-levelling the area shown on the deposited plan to the level of the adjoining quayside.

Work No. 4 - Pontoons to be constructed in the north west corner of the inner harbour supported by piled foundations of steel connected to the quayside by linkspans and linked by walkways in the area shown on the deposited plan.

Work No. 5 – Associated security infrastructure within the limits of deviation.

Work No. 6 – Berth and associated harbour infrastructure including training ladders and cranes within the limits of deviation.

(2) So much of the bed of the harbour and of the foreshore as may be reclaimed for the purposes of paragraph (1) shall be deemed to be operational land within the meaning of section 215 of the Town and Country Planning (Scotland) Act 1997(a).

(a) 1997 c.8.

Power to deviate

4. 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 plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works to any extent not exceeding 2.5 metres upwards and 2.5 metres downwards.

Subsidiary works

5. 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 of the works, or in connection with or in consequence of the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels;
- (b) works to construct, maintain, use, alter or relocate any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989) in or adjoining the harbour;
- (c) works to remove, demolish or decommission the works as the Authority deems appropriate;
- (d) carrying out and maintaining works for the benefit or protection of persons or premises affected by any of the works; and
- (e) landscaping and constructing such other works as the Authority may deem necessary or desirable to mitigate any adverse effects of the construction, maintenance or operation of the works.

Obstruction of works

6. Any person who intentionally—

- (a) obstructs any person acting under the authority of the Authority in constructing, using or maintaining the works; or
- (b) interferes with, moves or removes any plant or equipment used in the construction, maintenance or use of the works,

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

7. 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

8.—(1) Tidal work shall not be demolished, constructed, renewed, reconstructed or altered except in accordance with plans and sections approved by the Ministers and subject to any conditions and restrictions imposed by the 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 Ministers may by notice in writing require the Authority at their own expense to remove, alter or reconstruct the tidal work, or any part of it, or otherwise restore the site of the tidal work to its former condition; and if on the expiry of one month beginning with the date the notice was served upon the Authority they have failed to comply with the requirements of the notice, the Ministers may execute the works specified in the notice; or

(b) if it appears to the Ministers urgently necessary to do so, they may themselves remove, alter or reconstruct the tidal work, or any part of it, or otherwise restore the site to its former condition.

(3) Any expenditure incurred by the Ministers under paragraph (2) shall be recoverable from the Authority.

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

Survey of tidal works

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

Provision against danger to navigation

10.—(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 fails to comply in any respect with the provisions of this article, the Authority 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

11.—(1) Where a tidal work is abandoned or falls into decay the Ministers may by notice in writing require the Authority at the Authority's own expense to repair and restore the work, or any part of it, or to remove the work and restore the site of the work to its former condition, to such an extent and within such limits as the Ministers think appropriate.

(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 allowed 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 Ministers may include that part of the work, or any portion of it, in any notice under this article.

(3) If, on the expiry of one month 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 Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Authority.

Lights on tidal works during construction

12.—(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 fails to comply in any respect with a direction given under this article the Authority 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

13.—(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 fails to comply in any respect with a direction given under this article the Authority 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

14.—(1) If the works are not completed within 5 years from the coming into force of this Order or within such extended period as the Ministers may on the application of the Authority allow by consent in writing, the powers granted to the Authority under this Order for making and maintaining the works shall cease to have effect, unless the works have been substantially commenced.

(2) As soon as reasonably practicable after any consent is given under paragraph (1), the Authority 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 summary of the effect of that consent.

(3) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (2), the Authority shall keep a copy of the consent referred to in that notice open to public inspection at their principal office at all reasonable hours, without payment.

(4) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 1 has been carried out as is necessary to enable the other works to be constructed, maintained and managed as a harbour for the efficient and economic transport of goods or passengers by sea.

(5) Paragraph (1) does not apply to any works carried out under article 5 (subsidiary works).

Delegation of functions

15.—(1) The Authority may, consistently with its powers and duties and subject to such conditions and for such periods of time as it thinks fit, delegate the performance of any of its functions or duties for the purposes of this Order to—

- (a) BOWL; or
- (b) with the consent of the Scottish Ministers, to the successors, assignees or permitted sub-tenants of BOWL,

but in each case the delegatee must agree to the relevant delegation.

(2) Nothing in this article authorises the delegation of the performance of any of the functions of the Authority contrary to paragraph 9B of schedule 2 of the Harbours Act 1964.

(3) In this article, “permitted” means allowed in accordance with the terms of any lease between the Authority and BOWL.

Miscellaneous

Power to grant exclusive rights

16.—(1) In addition to powers under section 35 of the Wick and Pulteney Harbours Act 1899, the Authority may make arrangements to lease or otherwise grant the exclusive, partial or preferential use of, or occupation of, or any right or interest in or over any part of the undertaking shown within the limits of deviation on the deposited plan for such period, and at such rents and other considerations and on such terms and conditions as they think fit.

(2) Any arrangements made under paragraph (1) are, and in their terms must be expressly declared to be, entirely without prejudice to the functions and statutory duties of the Authority as harbour authority for the undertaking.

(3) Nothing in this section authorises the Authority to sell or otherwise permanently dispose of any part of the undertaking that is required for the purposes of the harbour.

Crown rights

17.—(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 Authority or any other person 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 forming part 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.

(3) In this article, “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)).

JOHN NICHOLLS

A member of the staff of the Scottish Ministers

St Andrew's House,
Edinburgh
24th February 2017

(a) 1998 c.48.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers Wick Harbour Authority (the “Authority”) to construct and maintain works at Wick Harbour and to delegate certain functions, or grant certain rights, in respect of those works to Beatrice Offshore Windfarm Limited or, with the consent of the Scottish Ministers, to certain other parties. The works will consist of removal of a slipway and associated works to the quay wall, construction of pontoons, a new berth, a service yard, a storage area and security infrastructure, along with ancillary works.

In addition, the Order authorises the Authority to lease or otherwise grant rights over the works for such period and on such terms as it considers appropriate, subject to certain restrictions.

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£6.00

S201702285 03/2017 19585

<http://www.legislation.gov.uk/id/ssi/2017/54>

ISBN 978-0-11-103481-1



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