



Lerwick Harbour Order Confirmation Act 1971

CHAPTER xxxix

ARRANGEMENT OF SECTIONS

Section

1. Confirmation of Order in schedule.
2. Short title.

SCHEDULE

LERWICK HARBOUR

PART I

PRELIMINARY

1. Short title.
2. Interpretation.

PART II

WORKS

3. Power to construct works.
4. Subsidiary works.
5. Power to deviate.
6. Fine for obstructing work.
7. Tidal works not to be executed without approval of Secretary of State.

c. xxxix *Lerwick Harbour Order Confirmation
Act 1971*

Section

8. Survey of tidal works.
9. Provision against danger to navigation.
10. Abatement of works abandoned or decayed.
11. Lights on tidal works during construction.
12. Permanent lights on tidal works.
13. Works to form part of undertaking and application of byelaws.

PART III

BORROWING

14. Power to borrow.
15. Periods for repayment of borrowed money.
16. Application of moneys borrowed.
17. Mode of repayment of moneys borrowed on mortgage.
18. Sinking fund.
19. Investment of sinking fund.
20. Return to Secretary of State.
21. Saving for powers of Treasury.

PART IV

MISCELLANEOUS

22. Power to provide, operate and maintain fish market.
23. Power to make charges.
24. Byelaws.
25. Officer for fish market.
26. Power to lease fish market and enter into agreements.
27. Crown rights.
28. Saving for town and country planning.
29. Costs of Order.

ELIZABETH II



1971 CHAPTER xxxix

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Lerwick Harbour.

[27th July 1971]

WHEREAS the Provisional Order set forth in the schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said 1936 c. 52. Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the schedule hereunto annexed is hereby confirmed. Confirmation
of Order in
schedule.
2. This Act may be cited as the Lerwick Harbour Order Confirmation Act 1971. Short title.

SCHEDULE

LERWICK HARBOUR

Provisional Order to authorise the Trustees of the Port and Harbour of Lerwick to carry out works for the improvement of the harbour and to borrow money; and for other purposes.

1877 c. cxciv.

Whereas by the Lerwick Harbour Improvements Act 1877 (hereinafter referred to as "the Act of 1877") the Trustees of the Port and Harbour of Lerwick (hereinafter referred to as "the Trustees") were constituted for the purposes of the management, maintenance and regulation of the port and harbour of Lerwick:

And whereas it is expedient that the Trustees should be authorised to carry out the works hereinafter described for the improvement of the harbour and to borrow money for the purposes of the said works and of the harbour undertaking:

And whereas it is expedient that the Trustees should be authorised to provide, operate and maintain a fish market at or adjacent to the harbour:

And whereas it is expedient that the further powers mentioned in this Order should be conferred on the Trustees:

And whereas estimates have been prepared by the Trustees in relation to the following purposes in respect of which they are to be authorised to borrow money and such estimates are as follows:—

Demolition of existing timber pier, regrading the existing adjoining quay and the construction of a quay with reinforced concrete deck and reclamation of the harbour bed ...	£33,850·00
A new wharf on reinforced concrete columns with reinforced concrete deck and construction of a fish-market and net store ...	£87,250·00
A new pier in open construction on reinforced concrete columns	£127,700·00

And whereas plans and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order were duly deposited with the sheriff clerk of the county of Zetland and such plans and sections are respectively called the deposited plans and the deposited sections:

And whereas the purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

1936 c. 52.

Now therefore in pursuance of the powers contained in the last mentioned Act the Secretary of State orders as follows:—

PART I

PRELIMINARY

1.—(1) This Order may be cited as the Lerwick Harbour Order 1971. Short title.

(2) The Lerwick Harbour Acts 1877 to 1952 and this Order may be cited together as the Lerwick Harbour Acts 1877 to 1971 (hereinafter referred to as “the Harbour Acts”).

2.—(1) In this Order, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively:—

“commencement of this Order” means the date of the Act confirming this Order;

“deposited plans and sections” means the plans and sections deposited in connection with this Order;

“the fish market” means the fish market authorised by this Order;

“the harbour” means the port and harbour of Lerwick as defined by the Harbour Acts and shall also include the works authorised by this Order;

“the level of high water” means the level of mean high water springs;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“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;

“the Trustees” means the Trustees of the harbour for the time being acting under the Harbour Acts;

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

“the undertaking” means the undertaking of the Trustees as for the time being authorised.

(2) The Interpretation Act 1889 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(3) Unless the context otherwise requires, any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by any subsequent enactment, including this Order.

PART II

WORKS

Power to
construct
works.

3.—(1) Subject to the provisions of this Order the Trustees may in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans and sections construct and maintain the works hereinafter described, together with all necessary and proper works and conveniences connected therewith or incidental thereto, that is to say:—

Work No. 1 The demolition of the existing timber pier at the fishing station, a regrading of the existing and adjoining quay and the construction of a quay as a solid structure commencing at a point 25 feet (7.63 metres) south-eastwards of the south-east face of the existing Malakoff Pier 68 feet (20.72 metres) or thereabouts south-west of its east-most point and terminating at a point 96 feet (29.45 metres) north-westwards of the north-west face of Alexandra Wharf 23 feet (7.01 metres) or thereabouts south-west of its north-most point and the construction over part thereof of a public convenience, together with a reclamation of the harbour bed by infilling and levelling and surfacing with a deck in the area comprised within the following boundary, that is to say, commencing at a point on the south face of the existing Malakoff Pier 28 feet (8.53 metres) or thereby eastwards from the root of the said pier, thence extending southwards for a distance of 21 feet (6.40 metres) or thereabouts thence extending eastwards for a distance of 55 feet (16.76 metres) or thereabouts thence extending southwards for a distance of 225 feet (68.58 metres) or thereabouts thence extending south-westwards to the east-most point of the existing Gas Pier thence following the line of mean high water springs to the point of commencement.

Work No. 2 A new wharf of open work construction 223 feet (67.97 metres) or thereby in length commencing by a junction with the eastern face of Work No. 1 hereinbefore described and extending eastwards and in prolongation of the north and south faces thereof for a distance of 42 feet (12.80 metres) or thereabouts and there terminating, together with the construction over part thereof of a new fish market and net store building.

Work No. 3 A new pier of open work construction 50 feet (15.24 metres) or thereabouts in width commencing at a point 25 feet (7.62 metres) south of the north-most corner of the existing Alexandra Wharf and extending in a north-easterly direction in continuation of the existing north-west face of the said wharf for a distance of 240 feet (73.15 metres) or thereabouts from the point of commencement and there terminating.

(2) The Trustees may within the limits of deviation renew, enlarge and alter temporarily or permanently the works.

PART II
—cont.

4.—(1) Subject to the provisions of this Order the Trustees in connection with the works may within the limits of deviation construct or place and maintain and use all such permanent or temporary quays, wharves, stairs, dolphins, piles, transit sheds, silos, warehouses, buildings, offices, refreshment and other rooms, washrooms, sanitary conveniences, dock yards, cranes, transporters, elevators, conveyors, lifts, gantries, weighing facilities, lighting and other masts, approaches, roads, road junctions, railways, tramways, sidings, viaducts, bridges, storage places, parking places, caissons, gates, wind, sand and other screens, sewers, drains, culverts, sluicing apparatus, pumping arrangements, tanks, mains, pipes, cables, wires, electricity substations, fences, boundary, river and other walls and embankments, staithe, jetties, stages, slips, graving docks, pontoons, floating and other fenders, booms, moorings, mooring and other chains, shipping-places, landing-places, buoys, beacons, land marks, lights, radio and radar stations and other works and conveniences as may be expedient or desirable. Subsidiary works.

(2) Any electrical works or equipment constructed or placed and maintained and used pursuant to the powers conferred by this section shall be so constructed or placed and so maintained and used as to prevent interference with any telegraphic line belonging to or used by the Post Office or with telecommunication by means of any such line.

5. Subject to the provisions of this Order, in constructing the works the Trustees may deviate laterally from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 10 feet upwards and to such extent downwards as may be found necessary or convenient. Power deviate.

6.—(1) Any person who wilfully obstructs any person acting under the authority of the Trustees in setting out the lines of 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 for every such offence be liable to a fine not exceeding five pounds. Fine for obstructing work.

(2) Proceedings for any offence under this section or for the recovery of any fine thereunder may be brought in any court of summary jurisdiction.

7.—(1) A tidal work shall not be constructed, renewed, enlarged or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun. Tidal works not to be executed without approval of Secretary of State.

(2) If a tidal work is constructed, renewed, enlarged or altered in contravention of this section or of any condition or restriction imposed under this section—

(a) the Secretary of State may by notice in writing require the Trustees at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if on the expiration of thirty days from the date when the notice is served upon the Trustees they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

PART II
—cont.

(b) if it appears to the Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Survey of
tidal works.

8. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work constructed by the Trustees or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in any such survey and examination shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Provision
against danger
to navigation.

9.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Trustees shall forthwith 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 Trustees fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds.

Abatement of
works
abandoned or
decayed.

10.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Trustees at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks 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 Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.

(3) If, on the expiration of thirty days from the date when a notice under this section is served upon the Trustees, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Lights on
tidal works
during
construction.

11.—(1) The Trustees shall at or near a tidal work during the whole time of the construction, renewal, enlargement or alteration thereof exhibit, every night from sunset to sunrise, such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Trustees fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds.

PART II
---cont.

12.—(1) After the completion of a tidal work the Trustees shall at the outer extremity thereof exhibit every night from sunset to sunrise 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.

Permanent
lights on tidal
works.

(2) If the Trustees fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds.

13.—(1) The works shall for all purposes form part of the undertaking.

Works to form
part of
undertaking
and application
of byelaws.

(2) All byelaws and regulations of the Trustees for the time being in force relating to the undertaking shall as far as applicable apply to the works and may be enforced by the Trustees accordingly.

(3) The works shall be deemed for all purposes to be within the parish of Lerwick in the county of Zetland.

PART III

BORROWING

14.—(1) The Trustees may in addition to the sums already borrowed or authorised to be borrowed by them from time to time borrow—

Power to
borrow.

(a) for the purposes of the undertaking and this Order such sum or sums of money as may be required for those purposes not exceeding in the whole one hundred and fifty thousand pounds;

(b) with the sanction of the Secretary of State such further sum or sums as may from time to time be required for the purposes of the undertaking; and

(c) for paying the costs, charges and expenses of this Order, the sum requisite for that purpose.

(2) The Secretary of State shall have and may exercise in relation to any such sanction as aforesaid all the powers of section 355 of the Local Government (Scotland) Act 1947, and such sanction shall be subject to such conditions (if any) as the Secretary of State may consider proper.

1947 c. 43.

15. All moneys borrowed by the Trustees under this Order shall be repaid within the respective periods following, that is to say:—

Periods for
repayment of
borrowed
money.

(a) as to moneys borrowed under paragraph (a) of subsection (1) of section 14 (Power to borrow) of this Order, within thirty years from the date or dates of borrowing the same;

PART III
—cont.

(b) as to moneys borrowed under paragraph (b) of the said subsection, within such period from the date or dates of borrowing the same and by such method as the Secretary of State may prescribe;

(c) as to moneys borrowed under paragraph (c) of the said subsection, within five years from the commencement of this Order.

Application of moneys borrowed.

16. All moneys borrowed by the Trustees under this Order shall be applied only to the purposes for which such sums are authorised to be borrowed and to which capital is properly applicable.

Mode of repayment of moneys borrowed on mortgage.

17. The Trustees shall pay off all moneys borrowed by them on mortgage under this Order, either by means of a sinking fund formed under the provisions of this Order or by equal yearly or half-yearly instalments of principal or of principal and interest combined, or partly by one of those methods and partly by another or others of them, and the first payment to the sinking fund or the payment of the first instalment shall be made within twelve months or (when the money is repayable by half-yearly instalments) within six months from the date of borrowing.

Sinking fund.

18. If the Trustees determine to repay by means of a sinking fund any moneys borrowed on mortgage under the powers of this Order, such sinking fund shall be formed and maintained either—

(a) by payment to the fund throughout the period fixed for the repayment of the sum borrowed (in this section referred to as “the fixed period”) of such equal annual sums as will be sufficient to pay off within that period the sum for the repayment of which the sinking fund is formed; or

(b) by payment to the fund throughout the fixed period of such equal annual sums as, with accumulations at a rate not exceeding such rate as the Secretary of State may approve, will be sufficient to pay off within that period the sum for the repayment of which such sinking fund is formed.

Investment of sinking fund.

19.—(1) The Trustees may deposit any moneys, including such portion of any sinking fund established in accordance with the provisions of section 18 (Sinking fund) of this Order as may not at the time have been applied in manner hereinbefore provided, in any bank or banks in Scotland incorporated under Act of Parliament or by royal charter, or invest the same in the public or government funds of Great Britain and Ireland or on heritable security or in securities in which trustees in Scotland may lawfully invest money.

(2) The Trustees shall carry and credit to the sinking fund each year all dividends and interest arising out of the investment of the sinking fund.

Return to Secretary of State.

20.—(1) The Trustees shall, within four months after the expiration of each financial year, transmit to the Secretary of State a return made up in relation to that year showing the provision made by the Trustees for the repayment of moneys borrowed under the authority of this Order.

(2) The return shall show such particulars and shall be in such form as the Secretary of State may require, shall be certified by the clerk to

the Trustees and shall, if so required by the Secretary of State, be verified by statutory declaration made by such clerk.

PART III
—cont.

(3) If it appears to the Secretary of State from any return made under this section or otherwise that the Trustees—

- (a) have failed to pay any instalment or annual payment required to be paid; or
- (b) have failed to appropriate to the discharge of any loan any sum required to be so appropriated; or
- (c) have failed to set apart any sum required for a sinking fund; or
- (d) have applied any portion of a sinking fund to a purpose other than those authorised;

the Secretary of State may by order direct that such sum as is specified in the order, not exceeding the amount in respect of which default has been made, shall be paid or applied in the manner and by the date set out in the order, and the Trustees shall notify the Secretary of State as soon as the order has been complied with.

(4) An order made under the last foregoing subsection may be enforced at the instance of the Secretary of State by decree of the Inner House of the Court of Session pronounced in an application presented for that purpose.

(5) If a return required to be made under this section is not made within the time specified in subsection (1) of this section, the Trustees shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds, and, notwithstanding the recovery of any such fine, the making of the return may be enforced at the instance of the Secretary of State by decree of either division of the Inner House of the Court of Session pronounced in a summary application presented for that purpose.

21. It shall not be lawful to exercise the powers of borrowing conferred by this Order other than the power of borrowing to pay the costs, charges and expenses of this Order except in compliance with the provisions of any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946.

Saving for powers of Treasury.

1946 c. 58.

PART IV

MISCELLANEOUS

22. The Trustees may in connection with the undertaking provide, operate and maintain a fish market for the sale of fish either within the buildings of the new fish market to be constructed under the powers of this Order or at any convenient place in or adjacent to the harbour and on any lands belonging to the Trustees or which they may acquire by agreement with all such appliances and fittings as they may deem necessary and suitable for the purposes thereof and they may divide or allocate any parts or part thereof into stalls or other defined or limited places and make provision for the cleansing and general management thereof, and may provide and operate in connection with the fish market such services and facilities as may be requisite or expedient and they shall have the sole operation, superintendence and management thereof and they may fix and regulate the hours during which the said fish market or any part thereof shall be open.

Power to provide, operate and maintain fish market.

PART IV
—cont.Power to
make charges.

Byelaws.

1847 c. 27.

1937 c. 28.

23. The Trustees may demand, take and recover such reasonable charges, rates and dues as they think fit for the use of the fish market and for services and facilities provided by them in relation thereto.

24. The purposes for which byelaws may be made under section 83 of the Harbours, Docks and Piers Clauses Act 1847 as applied to the undertaking, being a marine work, by section 10 of the Harbours, Piers and Ferries (Scotland) Act 1937, shall extend to any of the following:—

- (a) for regulating the use of the fish market and the stalls and offices therein;
- (b) for regulating the conduct of persons working in the fish market or resorting thereto;
- (c) for preventing nuisance at the fish market.

Officer for
fish market.

25. The Trustees may appoint such person or persons as they think fit to superintend the traffic within the fish market and to carry out the regulations, byelaws and orders of the Trustees thereat.

Power to lease
fish market
and enter into
agreements.

26. The Trustees may for such consideration and upon such terms and conditions and subject to such restrictions and for such period as they think fit sell, feu, lease, excamb or otherwise dispose of the whole or any part of the lands which from time to time form the fish market and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

Crown rights.

27. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing herein contained shall authorise the Trustees to take, use or in any way interfere with any portion of the shore or bed of the sea or any river, channel, creek, bay, or estuary or any land, heritages, subjects or rights of whatsoever description—

- (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 on behalf of Her Majesty first had and obtained for that purpose; 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.

Saving for
town and
country
planning.

28. The provisions of the Town and Country Planning (Scotland) Acts 1947 to 1969, and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

Costs of
Order.

29. All costs, charges and expenses of and incidental to the preparing and obtaining of this Order and otherwise incurred in reference thereto shall be paid by the Trustees.

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