

ELIZABETH II



1973 CHAPTER vii

An Act to confirm a Provisional Order under the Private
Legislation Procedure (Scotland) Act 1936, relating to
Lerwick Harbour. [23rd May 1973]

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 Short title
Confirmation Act 1973.

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; to acquire lands 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 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:—

	£
For the purchase of lands and servitudes	185,000
For the laying out and levelling of land and demolition of existing jetties and buildings	30,500
For the construction of the works	1,844,500
For dredging	10,000
	£2,070,000

And whereas plans and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order with a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands and other property required or which may be taken for the purposes or under the powers of this Order have been deposited with the sheriff clerk of the county of Zetland and such plans, sections and book of reference are in this Order respectively called the deposited plans, sections and book^o of reference:

And whereas it is expedient that the Trustees should be authorised to acquire lands and that section 31 of the Lerwick Harbour Improvements Act 1877, section 5 of the Lerwick Harbour Order 1927 and section 8 of the Lerwick Harbour Order 1952 should be repealed:

And whereas it is expedient that the Trustees should be authorised to borrow money for the purposes of the Order:

And whereas it is expedient that the further provisions contained in this Order should be enacted:

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 Short title. 1973.

(2) The Lerwick Harbour Acts 1877 to 1971 and this Order may be cited together as the Lerwick Harbour Acts 1877 to 1973 (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:—

Interpretation.

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

“lands” includes houses and buildings;

“Lands Clauses Acts” means the Lands Clauses Acts as amended by the Land Compensation (Scotland) Act 1963;

1963 c. 51.

“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;

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

“Order of 1927” means the Lerwick Harbour Order 1927;

“Order of 1952” means the Lerwick Harbour Order 1952;

“Order of 1971” means the Lerwick Harbour Order 1971;

“the sheriff” means the Sheriff Principal of Caithness, Sutherland, Orkney and Zetland and includes the Sheriff at Lerwick;

“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 tribunal” means the Lands Tribunal for Scotland;

“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;

PART I
—*cont.*

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

1889 c. 63.

(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.

Incorporation
of Acts.

3. The following Acts and parts of Acts so far as the same respectively are applicable for the purposes of and are not inconsistent with or varied by the provisions of this Order are hereby incorporated with and form part of this Order (that is to say):—

1847 c. 16.

the following sections of the Commissioners Clauses Act 1847: 56 to 63, 65, 67 to 74, 89 to 91, 96 to 102, 104, 105 and 108 to 111 and the word “ Commissioners ” in the said sections shall mean the Trustees;

the Lands Clauses Acts except so much thereof as relates to the purchase and taking of lands otherwise than by agreement and to the entry upon lands by the Trustees and with the exception of sections 120 to 126 of the Lands Clauses Consolidation (Scotland) Act 1845 relating to the sale of superfluous lands;

1845 c. 19.

and this Order shall be deemed to be a special Act within the meaning of those Acts.

PART II

WORKS

Power to
construct
works.

4.—(1) Subject to the provisions of this Order the Trustees may in the burgh and parish of Lerwick in the county of Zetland 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 A retaining sea wall mainly of steel sheet piling commencing at a point on the existing sea wall 60 feet or thereby north-westward in a straight line from the north-most point of the Noust of Holmsgarth thence proceeding in a north-easterly direction for a distance of 255 feet or thereby thence proceeding in a south-easterly direction for a distance of 470 feet or thereby to a point on a line in prolongation of and 5 feet or thereby south-eastward from the south-east face of an existing stone and timber jetty thence proceeding south-westward for a distance of 110 feet or thereby and terminating at a point 5 feet or thereby south-eastward of the south-east face of the said jetty and 55 feet or thereby south-westward of the north-east corner thereof.

Work No. 2 A jetty of openwork construction with pre-stressed and reinforced concrete deck supported on reinforced concrete columns with timber fendering commencing by a junction with the retaining sea wall Work No. 1 hereinbefore described at a point 30 feet or thereby south-eastward of the point where the said retaining sea wall Work No. 1 changes to a south-easterly direction thence extending seaward in a north-easterly direction for a distance of 225 feet or thereby and there terminating.

Work No. 4 A retaining sea wall mainly of steel sheet piling commencing at the termination of and by a junction with the retaining sea wall Work No. 1 hereinbefore described thence proceeding south-eastward in a straight line for a distance of 1,275 feet or thereby and terminating by a junction with the existing stone and timber jetty situate east-north-east of Seaview Cottage as shown on the deposited plans at a point 50 feet or thereby west-north-westward of the north-east corner of the said jetty together with the demolition of the existing timber jetty situated north-east of the said Seaview Cottage so far as such jetty lies within the limits of deviation.

Work No. 5 A jetty of openwork construction with pre-stressed and reinforced concrete deck supported on reinforced concrete columns with timber fendering to provide inter alia a berthing face for any ship using the adjustable steel link ramp Work No. 7 hereinafter described commencing by a junction with the retaining sea wall Work No. 4 hereinbefore described at a point 520 feet or thereby south-eastward of the commencement of the said Work No. 4 thence extending seaward in a north-easterly direction for a distance of 410 feet or thereby and there terminating together at its shoreward end with all necessary marshalling areas and lanes, terminal buildings and covered areas for freight handling.

Work No. 6 Fixed structures for guiding the adjustable end of the adjustable steel link ramp Work No. 7 hereinafter described and supporting the hydraulic machinery for lifting and lowering the said link ramp consisting of two rectangular dolphins of solid construction commencing at a point 4 feet or thereby south-east of the south-east face of the jetty Work No. 5 hereinbefore described and 87 feet or thereby north-east of the retaining sea wall Work No. 4 hereinbefore described and terminating at a point 45 feet or thereby from the point of commencement and 87 feet or thereby north-east of the said retaining sea wall Work No. 4.

Work No. 7 An adjustable steel link ramp 20 feet or thereby in width commencing by a hinged connection with the retaining sea wall Work No. 4 hereinbefore described at a point 55 feet or thereby south-eastward of the commencement of the jetty Work No. 5 hereinbefore described and extending north-eastward for a distance of 100 feet or thereby and there terminating to form a link between any ferry ship berth on the south-west face of the said jetty Work No. 5 and the shore including all machinery for lifting and lowering the end adjoining the ferry ship.

PART II
—cont.

Work No. 8 A jetty of openwork construction with pre-stressed and reinforced concrete deck supported on reinforced concrete columns with timber fendering commencing by a junction with the retaining sea wall Work No. 4 hereinbefore described at a point 365 feet or thereby north-westward of the termination of the said Work No. 4 thence extending seaward in a north-easterly direction for a distance of 340 feet or thereby and there terminating.

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

Power to
reclaim lands.

5.—(1) The Trustees may by means of Works Nos. 1 and 4 authorised by this Order reclaim so much of the foreshore or bed of the sea lying between the said Works Nos. 1 and 4 and the existing sea walls shown upon the deposited plans as areas of land to be reclaimed.

(2) In connection with the provisions of the foregoing subsection the Trustees may carry out works including granular infilling for the purpose of levelling up the lands reclaimed under the provisions of this section and may demolish or surface over all existing piers and jetties within the area to be reclaimed as shown on the deposited plans.

Works to
form part of
undertaking
and application
of byelaws.

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

(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 burgh and parish of Lerwick in the county of Zetland.

incorporation
of provisions
of Order of
1971.

7. The following provisions of the Order of 1971 are incorporated with and form part of this Part of this Order:—

Section 4 (Subsidiary works);

Section 5 (Power to deviate);

Section 6 (Fine for obstructing work);

Section 7 (Tidal works not to be executed without approval of Secretary of State);

Section 8 (Survey of tidal works);

Section 9 (Provision against danger to navigation);

Section 10 (Abatement of works abandoned or decayed);

Section 11 (Lights on tidal works during construction);

Section 12 (Permanent lights on tidal works):

Provided that—

(1) in subsections (1) and (2) of section 7 after the word “constructed” there shall be added the word “reconstructed”;

- (2) in section 11 (1) after the word "construction" there shall be added the word "reconstruction";
- (3) at the end of sections 9, 11 and 12 there shall be added the words "and on conviction on indictment to a fine"; and
- (4) section 11 shall also apply during the demolition of all existing piers and jetties referred to in section 5 (Power to reclaim lands) of this Order.

PART II
—cont.

8. In addition to the powers of dredging conferred upon the Trustees by section 9 (b) of the Harbours, Piers and Ferries (Scotland) Act 1937 the Trustees may for the purposes of their undertaking dredge, scour and deepen the sea bed and foreshore within the limits of dredging shown on the deposited plans and in connection therewith may excavate the Holmsgarth Baa Rock shown on the deposited plans to a depth level with the sea bed: Power to dredge.
1937 c. 28.

Provided that no materials raised under the powers of this section shall be deposited below the level of high water except in such position as the Secretary of State may approve and subject to such conditions and restrictions as he may impose.

PART III LANDS

9. Subject to the provisions of this Order, the Trustees may enter upon, take and use all or any of the lands shown on the deposited plans and described in the deposited book of reference which they may require for the purposes of the works or for any purpose connected with or ancillary to their undertaking. Power to acquire lands.

10. The powers of the Trustees for the compulsory purchase of lands under this Order shall cease on the 31st December, 1977. Period for compulsory purchase.

11.—(1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, the Trustees, after giving ten days' notice to the owner, lessee and occupier of the land in question may apply to the sheriff for the correction thereof. Correction of errors in deposited plans and book of reference.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake, he shall certify the fact accordingly and he shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, with the sheriff-clerk of the county of Zetland, and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Trustees to take the land and execute the works in accordance with the certificate.

(4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

PART III
—*cont.*

Servitudes,
etc., by
agreement.

12. Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and of this Order, grant to the Trustees any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for the purposes of this Order in, over or affecting any such lands and the provisions of the said Acts with respect to lands and rentcharges or feu duties so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

Set-off of
betterment
against
compensation.

13. In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

- (a) he has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the execution of the works authorised by this Order or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money:

Provided that any such enhancement in value of an interest in land shall be estimated on the assumption that planning permission in respect of that land would be granted under the Town and Country Planning (Scotland) Act 1947 for the operations or uses specified in Schedule 3 to that Act but not for any other development.

1947 c. 53.

Power to
enter, survey,
etc., lands.

14.—(1) The Trustees and their surveyors and officers may at all reasonable times in the day upon giving on the first occasion not less than twenty-eight days' and on subsequent occasions not less than three days' previous notice in writing to the occupier enter upon, examine and lay open the lands authorised by this Order to be taken and used or any of them for the purpose of surveying, measuring, taking levels, examining works and valuing the said lands or any other purpose ancillary to the powers conferred by this Order.

(2) In exercising the powers conferred by the preceding subsection the Trustees and their surveyors and officers shall cause as little detriment or inconvenience to any person as circumstances allow, and the Trustees shall, subject to the provisions of this Order, make compensation to the owners and occupiers of any lands injuriously affected by the exercise of these powers.

Further powers
of entry.

15. At any time after notice to treat has been served for any land which the Trustees are authorised by this Order to purchase compulsorily the Trustees may, after giving to the owner and occupier of the land not less than three months' notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act 1845 but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

1845 c. 19.

16. In settling any question of disputed purchase money or compensation payable under this Order by the Trustees the tribunal shall not award any sum of money for or in respect of any improvement, alteration or building made for or in respect of any interest in the lands created after the 20th March, 1972, if in the opinion of the tribunal the improvement, alteration or building or the creation of the interest in respect of which the claim is made was not reasonably necessary and was made or created with a view to obtaining or increasing purchase money or compensation under this Order.

PART III
—cont.

Compensation
in case of
recently
altered
buildings.

17.—(1) The Trustees may for the purposes of the undertaking, acquire land by agreement, whether by way of purchase, exchange, feu, lease or otherwise.

Powers relating
to land.

(2) The Trustees may dispose of land belonging to them in such manner whether by way of sale, exchange, feu, lease, the creation of any servitude, right or privilege or otherwise, for such period, upon such conditions and for such consideration as they think fit.

(3) The Trustees—

(a) may for the purposes of the undertaking, manage, use or develop land belonging to them as they think fit; and

(b) in addition may with a view to selling or otherwise disposing of any right or interest in the land after the development is carried out—

(i) retain any part of land belonging to them which is not required for the purposes of the undertaking and develop it or procure its development for use by other persons; or

(ii) where the use of land belonging to them for the purposes of the undertaking can be combined with its use for other purposes, develop the land or procure its development for use wholly or partly by other persons.

(4) Where the Trustees intend to develop or procure the development of land belonging to them for purposes other than the purposes of the undertaking, and are of opinion that the land cannot by itself be developed satisfactorily, they may acquire adjoining land by agreement, whether by way of purchase, exchange, feu, lease or otherwise for the purpose of developing it or of procuring its development together with the other land.

18. The Trustees may enter into and carry into effect agreements with the owners of, or other persons interested in, any land which may be acquired under the provisions of this Order, or which may be in the neighbourhood of any of the works, with respect to the reinstatement of such owners or other persons and with respect to the exchange of lands for that purpose and the Trustees may pay or receive money for equality of exchange.

Power to
reinstale
owners of
property.

19. Section 31 (Lands for extraordinary purposes) of the Lerwick Harbour Act 1877, section 5 (Power to take lands by agreement) of the Order of 1927, subsection (3) of section 4 (Incorporation of Acts) and section 8 (Land for extraordinary purposes) of the Order of 1952 are hereby repealed.

Repeals.
1877 c. cxciv.

PART IV

BORROWING

Power to
borrow.

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

1947 c. 43.

(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.

Further
incorporation
of provisions
of Order of
1971.

21. The following provisions of the Order of 1971 are hereby incorporated with and form part of this Part of this Order:—

- Section 15 (Periods for repayment of borrowed money);
- Section 16 (Application of moneys borrowed);
- Section 17 (Mode of repayment of moneys borrowed on mortgage);
- Section 18 (Sinking fund);
- Section 19 (Investment of sinking fund);
- Section 20 (Return to Secretary of State);
- Section 21 (Saving for powers of Treasury).

Power to
borrow on
cash credit.

22. The Trustees may accept and take from any bank or banking company credit on a cash account to be opened and kept with such bank or banking company in the name of the Trustees, according to the usage of bankers in Scotland, to the extent of the sums which the Trustees are by this Order authorised to borrow, or any part thereof:

Provided that the whole principal sums due and owing by the Trustees on such cash account, and for money borrowed by them on standard security, shall not when taken together exceed the amount which the Trustees are authorised to borrow under this Order; and all drafts or orders on the cash account shall be signed by any two of the Trustees, and countersigned by the clerk:

Provided further, that no Trustee shall by his subscription of any draft or order, or of any security as aforesaid, be held to have rendered himself personally liable for the payment of any money so borrowed or drawn, or any interest thereon.

PART V

MISCELLANEOUS

23.—(1) The Trustees may from time to time license and appoint a sufficient number of persons to act as stevedores at the harbour and fix the rates to be paid to any such persons and remove, suspend and replace them at pleasure.

Appointment
of stevedores,
etc.

(2) The Trustees may make such rules and regulations and impose such penalties to secure the exclusive employment of such stevedores as they may from time to time think proper.

24. For the protection of the board the provisions of this section shall, unless otherwise agreed in writing between the Trustees and the board, apply and have effect:—

For protection
of North of
Scotland
Hydro-Electric
Board.

(1) In this section unless the subject or context otherwise requires—

“adequate alternative apparatus” means alternative apparatus adequate to enable the board to fulfil their statutory functions in a manner not less efficient and not more costly than previously;

“apparatus” means electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the board; 1882 c. 56.

“the board” means the North of Scotland Hydro-Electric Board;

“in” in a context referring to apparatus includes under, over, across, along or upon;

“land” includes any pier or pipeline;

“plan” includes a section and description;

“position” includes depth;

“specified work” means any work or thing done under the powers of this Order (not being a work or thing to which section 26 of the Public Utilities Street Works Act 1950 applies). 1950 c. 39.

(2) Notwithstanding anything in this Order or shown on the deposited plans, the Trustees shall not under the powers of this Order acquire any apparatus otherwise than by agreement.

(3) The powers conferred on the Trustees by section 4 (Subsidiary works) of the Order of 1971 incorporated by section 7 (Incorporation of provisions of Order of 1971) of this Order in relation to apparatus shall not be exercised otherwise than in accordance with the provisions of this section.

(4) If the Trustees in the exercise of the powers of this Order acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed nor shall any right of the board to use, maintain, repair, renew, extend or

PART V
—cont.

inspect any apparatus in that land be extinguished until adequate alternative apparatus has been laid or constructed and is in operation to the reasonable satisfaction of the board.

- (5) (a) If the Trustees, for the purpose of the execution of any specified work, require the removal of any apparatus, they shall give to the board written notice of such requirement with a plan of the proposed work and, if it is agreed between the Trustees and the board, or in default of agreement determined by arbitration, that the removal of the apparatus is reasonably required and that it should be removed, the following provisions of this paragraph shall have effect;
- (b) If it is so agreed or determined that any apparatus should be removed, or if in consequence of the execution of any specified work the board shall reasonably require to remove any apparatus, the Trustees shall, to the reasonable satisfaction of the board, afford to the board the necessary facilities and rights for the laying or construction of adequate alternative apparatus in other lands of the Trustees and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that if the alternative apparatus or any part thereof is to be laid or constructed elsewhere than in other lands of the Trustees and the Trustees are unable to afford such facilities and rights as aforesaid the board shall, on receipt of a written notice to that effect from the Trustees, forthwith use their best endeavours to assist the Trustees to obtain the necessary facilities and rights.

- (6) (a) Any alternative apparatus to be laid or constructed in lands of the Trustees in pursuance of paragraph (5) of this section shall be laid or constructed in such manner and in such line or situation as may be agreed between the board and the Trustees or, in default of agreement, settled by arbitration;
- (b) The board shall, after the manner of laying or construction and the line and situation of any alternative apparatus has been agreed, or settled by arbitration as aforesaid, and after the board have obtained any such facilities and rights as are referred to in paragraph (5) of this section, proceed with all reasonable dispatch to lay or construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required to be removed under the provisions of this section.
- (7) Where in accordance with the provisions of this section the Trustees afford to the board facilities and rights for the laying or construction, maintenance, repair, renewal and inspection in lands of the Trustees of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Trustees and the board or, in default of agreement, determined by arbitration:

Provided that—

PART V
—cont.

(a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be laid or constructed across or through a specified work the arbiter shall—

(i) give effect to all reasonable requirements of the Trustees for ensuring the safety and efficient operation of the specified work and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such work; and

(ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus laid or constructed through the lands of the Trustees for which the alternative apparatus is to be substituted;

(b) if the facilities and rights to be afforded by the Trustees in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are in the opinion of the arbiter, less favourable on the whole to the board than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbiter shall make such provision for payment of compensation by the Trustees to the board in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case.

- (8) (a) Not less than twenty-eight days before commencing to execute any specified work which is near to, or is likely to affect, any apparatus the removal of which has not been required by the Trustees under paragraph (5) of this section or the maintenance of any such apparatus the Trustees shall submit to the board a plan of the work to be executed;
- (b) Such work shall be executed only in accordance with the plan submitted as aforesaid and in accordance with such reasonable requirements as may be made by the board for the alteration or otherwise for the protection of the apparatus or for securing access thereto, and the board shall be entitled by their officer to watch and inspect the execution of such work:

Provided that—

(i) if the board within fourteen days after the submission to them of any such plan, shall, in consequence of the work proposed by the Trustees reasonably require the removal of any apparatus and give written notice to the Trustees of such requirement, the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required under paragraph (5) thereof; and

(ii) nothing in this sub-paragraph shall preclude the Trustees from submitting at any time, or from time to time,

PART V
—cont.

but in no case less than twenty-eight days before commencing the execution of any such work, a new plan in lieu of the plan previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan;

- (c) The Trustees shall not be required to comply with subparagraph (a) of this paragraph in a case of emergency but, in such a case, they shall give to the board notice as soon as reasonably practicable and a plan of the work as soon as reasonably practicable thereafter and shall comply with subparagraph (b) of this paragraph so far as is reasonably practicable in the circumstances.
- (9) If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed, the Trustees shall provide an alternative means of access to such apparatus.
- (10) The Trustees shall repay to the board the reasonable costs, charges and expenses incurred by the board in or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and laying or construction of any new apparatus under any of the provisions of this section;
 - (b) the cutting off of any apparatus from any other apparatus; and
 - (c) any other work or thing reasonably necessary in consequence of any such operations as are referred to in this paragraph:
- Provided that where other apparatus is provided and laid or placed in lieu of any existing apparatus in accordance with the provisions of paragraphs (4) and (5) of this section the Trustees shall not be required to make any payment to the board for any such existing apparatus which has been rendered derelict, useless or unnecessary and such last-mentioned apparatus shall, so soon as the new apparatus has been laid, become the property of the Trustees.
- (11) (a) Any difference which may arise between the Trustees and the board under this section shall be referred to and determined by an arbiter to be mutually agreed upon between the Trustees and the board or failing agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers;
- (b) In settling any difference under this section the arbiter shall have regard to any duties or obligations which the board may be under in respect of any apparatus and may if he thinks fit require the Trustees to execute any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

25.—(1) The Trustees shall not under the powers of this Order enter upon, take and use the lands shown and numbered 5 on the deposited plans forming part of the jetty at Holmsgarth and owned by the board nor enter upon, take, use, demolish, interfere with or obstruct free access to any part of such jetty until such time as equivalent alternative facilities for the board's apparatus and berthing of tankers supplying oil for the board's storage tanks have been provided at Work No. 5 to the reasonable satisfaction of the board.

PART V
—cont.

For further protection of the North of Scotland Hydro-Electric Board.

(2) After the completion of Work No. 5—

- (a) the right of berthing of tankers supplying oil to the board's storage tanks shall as respects the north side of Work No. 5 have priority over all other users of the said work provided that such tankers shall be discharged with all due expedition;
- (b) the use by the board of the facilities provided at Work No. 5 shall be limited to the operational requirements of the board for their power station at Lerwick, including the supply of oil which use shall be exempt from rates and duties;
- (c) the supply of oil from tankers to the board's power station shall be exempt from rates and duties.

(3) Any difference arising between the Trustees and the board under this section (other than a difference as to the meaning or construction of this section) shall be settled by arbitration.

(4) In this section "the board" means the North of Scotland Hydro-Electric Board.

26. 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.

27.—(1) Section 274 of the Town and Country Planning (Scotland) Act 1972 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the Session of Parliament held during the regnal years 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this Order as if it had been passed during that Session; and accordingly the Town and

Saving for Town and Country Planning Acts. 1972 c. 52.

PART V
—cont.
1972 c. 52.

Country Planning (Scotland) Act 1972 and Orders, Regulations, Rules, Schemes and Directions made or given thereunder shall apply to development authorised by this Order.

(2) In their application to development authorised by this Order, article 3 of, and Class XI in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1950 (which permit development authorised by any local or private Act or by any Order approved by both Houses of Parliament, being an Act or Order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Order were limited to development begun within five years after the passing of the Act confirming this Order.

(3) In this section the reference to article 3 of, and Class XI in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1950 includes a reference to corresponding provisions of any general order superseding that Order made under section 21 of the Town and Country Planning (Scotland) Act 1972 or any corresponding provision of an Act repealing that section.

Application of
section 27
to Order of
1971.

28. Section 27 (Saving for Town and Country Planning Acts) of this Order shall apply to the Order of 1971 as if it had been enacted in that Order in lieu of section 28 thereof.

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.

PRINTED IN ENGLAND BY OYEZ PRESS LTD.

FOR C. H. BAYLIS, C.B.

Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

13½p net

SBN 10 510773 5



Lerwick Harbour Order Confirmation Act 1973

CHAPTER vii

ARRANGEMENT OF SECTIONS

Section

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

SCHEDULE

LERWICK HARBOUR

PART I

PRELIMINARY

1. Short title.
2. Interpretation.
3. Incorporation of Acts.

c. vii *Lerwick Harbour Order Confirmation
Act 1973*

PART II

WORKS

Section

4. Power to construct works.
5. Power to reclaim lands.
6. Works to form part of undertaking and application of byelaws.
7. Incorporation of provisions of Order of 1971.
8. Power to dredge.

PART III

LANDS

9. Power to acquire lands.
10. Period for compulsory purchase.
11. Correction of errors in deposited plans and book of reference.
12. Servitudes, etc., by agreement.
13. Set-off of betterment against compensation.
14. Power to enter, survey, etc., lands.
15. Further powers of entry.
16. Compensation in case of recently altered buildings.
17. Powers relating to land.
18. Power to reinstate owners of property.
19. Repeals.

PART IV

BORROWING

20. Power to borrow.
21. Further incorporation of provisions of Order of 1971.
22. Power to borrow on cash credit.

PART V

MISCELLANEOUS

23. Appointment of stevedores, etc.
24. For protection of North of Scotland Hydro-Electric Board.
25. For further protection of the North of Scotland Hydro-Electric Board.
26. Crown rights.
27. Saving for Town and Country Planning Acts.
28. Application of section 27 to Order of 1971.
29. Costs of Order.