



Lerwick Harbour Order Confirmation Act 1976

CHAPTER xii

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. Power to reclaim lands.
5. Works to form part of undertaking.
6. Incorporation of provisions of Order of 1971.
7. Works in harbour.
8. Saving for Harbours Act.
9. Saving for Coast Protection Act.
10. Saving for Dumping at Sea Act 1974.
11. For protection of North of Scotland Hydro-Electric Board.
12. For further protection of North of Scotland Hydro-Electric Board.

PART III

MISCELLANEOUS

Section

- 13. Licensing of stevedoring.
- 14. Power to invest in securities of bodies corporate.
- 15. Saving for Town and Country Planning Acts.
- 16. Crown rights.
- 17. Costs of Order.

ELIZABETH II



1976 CHAPTER xii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Lerwick Harbour. [22nd July 1976]

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 1976. Short title.

SCHEDULE

LERWICK HARBOUR

Provisional Order to authorise the Trustees of the port and harbour of Lerwick to construct new works in connection with the improvement of the harbour; to confer further powers on the Trustees with respect to the licensing of stevedores; to authorise the Trustees to invest in securities of bodies corporate; 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 construction of the work authorised by this Order and such estimates are as follows:—

	£
Laying out and levelling of land including demolition of existing jetties and buildings, re-draining and providing access to new jetty works	125,000
Work No. 1 Berthing face of openwork construction with reinforced concrete deck	2,000,000
Work No. 2 Bund or embankment of rubble mound construction and reclamation by infilling of area bounded by both works and part decking in asphalt surfacing	500,000
	£2,625,000:
	£2,625,000:

And whereas a plan and sections showing the lines, situations and levels of the work to be constructed under the powers of this Order have been deposited with the sheriff clerk of Grampian Highland and Islands, with the sheriff clerk of the Sheriff Court district of Lerwick and with the clerk to the Shetland Islands Council and such plan and sections are in this Order respectively called the deposited plan and sections:

And whereas it is expedient that further powers as in this Order provided should be conferred on the Trustees with regard to the licensing of stevedores within the port and harbour:

And whereas it is expedient to authorise the Trustees to invest in securities of bodies corporate:

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. 1976.

(2) This Order and the Lerwick Harbour Acts 1877 to 1975 may be cited together as the Lerwick Harbour Acts 1877 to 1976 (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 plan and sections” means the plan 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;

“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 plan;

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

“Order of 1973” means the Lerwick Harbour Order 1973;

“Order of 1974” means the Lerwick Harbour Order 1974;

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

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

(2) 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 and without prejudice to the powers conferred on them by the Order of 1973 and the Order of 1974 the Trustees may in the parish of Lerwick in the Shetland Islands Area in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plan and sections construct and maintain the works hereinafter described (being in lieu of part of Work No. 1 authorised by the Order of 1974) together with all necessary and proper works and conveniences connected therewith or incidental thereto, that is to say:—

Work No. 1 A berthing face of openwork construction with reinforced concrete deck commencing by a junction with the termination of the sea wall (Work No. 1 authorised by the Order of 1974) so far as already constructed (such termination being at a point 47 metres (154 feet) south-east of the south side of the ferry pier at its southmost junction with the sea wall), thence proceeding in a south-easterly direction for a distance of 237 metres (777 feet) or thereabouts and terminating at a point 74 metres (243 feet) or thereabouts east-north-east of the point of commencement of Work No. 2 hereinafter described.

Work No. 2 A bund or embankment of rubble mound construction commencing at a point on the level of high water 54 metres (177 feet) or thereabouts measured in a south-south-easterly direction along the level of high water from the south-east face of the existing stone and timber jetty (such jetty being situated east-north-east of Sea View Cottage), thence proceeding in a north-easterly direction for a distance of 73 metres (240 feet) or thereabouts and terminating at a point on the seaward side of the berthing face Work No. 1 hereinbefore described 20 metres (66 feet) or thereabouts from the point of termination of that work.

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

(3) The description of Work No. 8 in the Order of 1973 shall be read and have effect as if in lieu of references therein to Work No. 4 (which were by the Order of 1974 altered to references to Work No. 1 of the Order of 1974) there were substituted a reference to Work No. 1 authorised by this section of this Order.

Power to
reclaim lands.

4.—(1) The Trustees may reclaim so much of the foreshore or bed of the sea (so far as not already reclaimed) as lies between the existing shore line shown on the deposited plan and the lines of Works Nos. 1 and 2 as described in this Order such area being shown on the deposited plan as an area 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 lands reclaimed under the provisions of this

section or the placing of a reinforced concrete deck over concrete piles and may demolish or surface over all existing piers and jetties within the area to be reclaimed.

PART II
—cont.

(3) The powers of reclamation conferred on the Trustees by this section shall be in addition to and not in derogation of the powers of reclamation conferred on them by the Order of 1973 and the Order of 1974.

5. The works shall for all purposes form part of the undertaking and shall be deemed for all purposes to be within the parish of Lerwick in the Shetland Islands Area.

Works to form part of undertaking.

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

Incorporation of provisions of Order of 1971.

- 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—

- (i) in subsections (1) and (2) of section 7 of the Order of 1971 after the word “constructed” there shall be added the word “reconstructed”;
- (ii) in section 11 (1) after the word “construction” there shall be added the word “reconstruction”;
- (iii) at the end of sections 9, 11 and 12 of the Order of 1971 there shall be added the words “and on conviction on indictment to a fine”;
- (iv) section 11 shall also apply during the demolition of all existing piers and jetties referred to in section 4 (Power to reclaim lands) of this Order.

7.—(1) For the purposes of improving, maintaining or managing the harbour the Trustees may from time to time execute, lay down, maintain and operate in and over the area of the harbour as that area is defined in the Harbour Acts such works and equipment as they deem necessary.

Works in harbour.

(2) The Trustees may from time to time maintain, renew, enlarge and alter temporarily or permanently all works in the harbour now or hereafter executed or acquired by them:

PART II
—cont.

Provided that nothing in this subsection shall—

- (i) authorise the Trustees to deviate laterally or vertically beyond the limits of deviation prescribed by any enactment authorising the execution of those works; or
- (ii) relieve the Trustees from the obligation to obtain the consent of any other authority, body or person to the execution of works which consent they would, apart from this subsection, have been required to obtain.

Saving for
Harbours Act.
1964 c. 40.

8. Nothing in this Order shall exempt the Trustees or any other person from the provisions of sections 9 and 10 of the Harbours Act 1964.

Saving for
Coast
Protection Act.
1949 c. 74.

9. Nothing in this Order shall exempt the Trustees or any other person from the provisions of Part I of the Coast Protection Act 1949.

Saving for
Dumping at
Sea Act 1974.
1974 c. 20.

10. Nothing in this Order shall affect the operation of the Dumping at Sea Act 1974.

For protection
of North of
Scotland
Hydro-Electric
Board.

11. The provisions of the sections of the Order of 1973 the marginal notes of which are “For protection of North of Scotland Hydro-Electric Board” and “For further protection of North of Scotland Hydro-Electric Board” so far as relating by virtue of the Order of 1974 to Work No. 1 authorised by that Order and any agreement or undertaking made or given with respect thereto shall so far as applicable have effect as if Work No. 1 authorised by this Order had been included in the Order of 1973 in lieu of part of the said Work No. 1.

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

12. For the protection of the North of Scotland Hydro-Electric Board (hereinafter referred to as “the board”) the following provisions shall, unless otherwise agreed in writing between the Trustees and the board, apply and have effect:—

- (1) (a) Before executing any work at, over, under or near to any apparatus the Trustees shall submit to the board particulars of the proposed work and furnish the board with such particulars with respect thereto as the board may reasonably require and, in any case in which the board so require, such work shall only be executed subject to such conditions as may be reasonably necessary to safeguard the apparatus, including, without prejudice to the foregoing generality, conditions empowering the board from time to time to inspect the work and to take any steps necessary to prevent damage to the apparatus and to recover from the Trustees the reasonable cost of any works carried out by the board for that purpose;
- (b) If the board do not signify their requirements with respect to the proposed work within twenty-eight days after the submission of the particulars thereof they shall be deemed to have approved the same:

(2) In the event of a dispute or difference between the Trustees and the board under this section the matter shall be referred to arbitration:

PART II
—cont.

(3) In this section—

“apparatus” means electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the board and in particular the board’s submarine link with Bressay and the board’s inlet to their Gremista Power Station at Holmsgarth; 1882 c. 56.

“work” means any work or thing done under the powers conferred by section 7 of this Order.

PART III

MISCELLANEOUS

13.—(1) The Trustees may from time to time appoint a sufficient number of persons to engage in the business of stevedoring within the harbour and remove, suspend and replace such persons. Licensing of stevedoring.

(2) The Trustees may upon such terms and conditions as they think fit grant to any person a licence to engage in the business of stevedoring within the harbour and may refuse to grant such a licence if in their opinion there is already a sufficient number of such persons licensed under this section to meet the needs of the harbour.

(3) For the purposes of this section stevedoring includes the business of loading and unloading of cargo in or from vessels in the harbour and the employment of other persons for the purpose of said business and for the avoidance of doubt it is declared that persons licensed under this section shall not be stevedores within the meaning of section 23 of the Order of 1973.

(4) Every licence granted under this section shall remain in force for one year only from the date of such licence or such lesser period as the Trustees may specify in the licence.

(5) A person shall not carry on within the harbour the business of stevedoring unless he has been licensed to do so by the Trustees.

(6) Any person—

(a) who contravenes the provisions of this section; or

(b) being the holder of a licence granted under this section contravenes or permits a contravention of any condition to which such licence is subject;

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(7) Application for a licence under this section shall be made in writing to the Trustees and shall state—

(a) the name and address of the applicant and his trade or calling during the six months preceding the application;

PART III
—cont.

(b) such other information as the Trustees may reasonably require.

(8) The Trustees may charge a fee not exceeding twenty pounds for the granting of a licence under this section.

(9) If within one month from the date of the making of an application under subsection (7) of this section the Trustees do not grant the application they shall be deemed to have refused it.

(10) Any applicant for a licence under this section who is aggrieved by—

(a) the refusal of the Trustees to grant the licence;

(b) any terms or conditions upon which the licence is granted;

may, within twenty-eight days from the date upon which the Trustees notify the applicant of their decision or the date on which the Trustees are under subsection (9) of this section deemed to have refused the application, appeal to the Secretary of State whose decision shall be binding upon the parties.

(11) (a) The Trustees may suspend, revoke or refuse to renew any licence granted under this section and where they do so suspend, revoke or refuse to renew any such licence they shall give the applicant notice of the grounds upon which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal.

(b) Any applicant aggrieved by the decision of the Trustees under this subsection may appeal within twenty-eight days of the decision to the Secretary of State.

(12) A person who appeals to the Secretary of State under this section shall give to the Trustees notice of his appeal accompanied by a copy of his statement of appeal and the Trustees shall within twenty-eight days from the receipt of such notice be entitled to furnish the Secretary of State with their observations on the appeal.

(13) (a) On an appeal under this section the Secretary of State may—

(i) dismiss the appeal; or

(ii) require the Trustees to grant the licence upon such terms and conditions as the Secretary of State may determine.

(b) The Trustees shall give effect to any requirement made by the Secretary of State under paragraph (a) of this subsection.

14. In order to provide or facilitate the provision of funds for—

(a) the establishment, carrying on or extension by any body corporate of warehouses, factories or works at or near the harbour;

(b) the establishment or carrying on by any body corporate of an undertaking or business (including an undertaking or business concerned with the transport or handling of goods) connected with or ancillary to the carrying on of the undertaking;

Power to invest in securities of bodies corporate.

(c) the carrying on by any body corporate of any other undertaking or business which appears to the Trustees to be advantageous or convenient for, or in connection with, the functions of the Trustees;

PART III
—cont.

and, to the extent requisite therefor, the Trustees may subscribe for, purchase, take up and hold or dispose of any shares, stock, mortgages, debentures or debenture stock of such body corporate and may in respect of any such shares, stock, mortgages, debentures, or debenture stock for the time being held by them exercise either by themselves or through some person nominated by them for the purpose all or any of the rights exercisable by an individual holder of such shares, stock, mortgages, debentures or debenture stock.

15.—(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 Country Planning (Scotland) Act 1972 and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this Order.

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

(2) In their application to development authorised by this Order, article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1975 (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 ten years after the passing of the Act confirming this Order.

(3) In this section the reference to article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1975 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.

16. 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 or any licensee of 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—

Crown rights.

(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

PART III
—cont.

(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.

Costs of Order. 17. 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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Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament