

ELIZABETH II



1982 CHAPTER xxvi

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Lerwick Harbour. [22nd December 1982]

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 1982. Short title.

SCHEDULE

LERWICK HARBOUR

Provisional Order to authorise the Trustees of the port and harbour of Lerwick to construct a new work in connection with the improvement of the harbour; to acquire lands; to provide for the Trustees to be a local lighthouse authority; to confer powers on the Trustees with respect to the control of wrecks; and for other purposes.

1877 c. cxciv.

Whereas by the Lerwick Harbour Improvements Act 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 work hereinafter described for the improvement of the harbour, and to acquire the lands referred to in this Order:

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:—

	£
For purchase of lands and servitudes	180,000
For the construction of the work	388,600

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

And whereas it is expedient that the Trustees should be authorised to acquire lands:

And whereas it is expedient that the Trustees should within the harbour be a local lighthouse authority for the purposes of the Merchant Shipping Act 1894:

1894 c. 60.

And whereas it is expedient that powers should be conferred upon the Trustees with respect to the control of wrecks:

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. 1982.

(2) This Order and the Lerwick Harbour Acts 1877 to 1979 may be cited together as the Lerwick Harbour Acts 1877 to 1982 (hereinafter referred to as “the Harbour Acts”).

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

“deposited plan sections and book of reference” means the plan sections and book of reference 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 work;

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

“Order of 1971” means the Lerwick Harbour Order 1971; 1971 c. xxxix.

“Order of 1973” means the Lerwick Harbour Order 1973; 1973 c. vii.

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

3. The Lands Clauses Acts, except sections 120 to 124 and section 127 of the Lands Clauses Consolidation (Scotland) Act 1845, so far as the same are applicable for the purposes and are not inconsistent with, or varied by, the provisions of this Order, are incorporated with and form part of this Order, and this Order shall be deemed to be the special Act for the purposes of the said Act. Incorporation of general Acts. 1845 c. 19.

PART II

WORK

4.—(1) Subject to the provisions of this Order 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 Power to construct work.

PART II
—cont.

the work hereinafter described, together with all necessary and proper works and conveniences connected therewith or incidental thereto, that is to say:—

An embankment formed of stone commencing at a point 69 metres or thereby from the north-east corner of Shell Jetty and thence proceeding in a north-north-westerly direction for a distance of 63 metres or thereby and thence in a west-north-westerly direction for a distance of 107 metres or thereby and thence in a west-south-westerly direction for a distance of 35 metres or thereby and terminating at the point where the North of Scotland Hydro-Electric Board south boundary fence meets the foreshore.

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

Power to
reclaim lands.

5.—(1) The Trustees may by means of the work authorised by this Order reclaim so much of the foreshore or bed of the sea lying to the west of and enclosed by the said work and shown upon the deposited plan as the 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 the lands reclaimed under the provisions of this section and may demolish or surface over the derelict pier within the area to be reclaimed as shown on the deposited plan.

Work to
form part of
undertaking.

6. The work 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.

Incorporation
of provisions
of Order of
1971.

7.—(1) 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—

- (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”, and in each of the said sections for the words

“ one hundred pounds ” there shall be substituted the words
“ the statutory maximum ”.

PART II
—cont.

(2) In this section “ statutory maximum ” means the prescribed sum as defined in section 289B of the Criminal Procedure (Scotland) Act 1975.

1975 c. 21.

8. For the protection of the North of Scotland Hydro-Electric 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 context requires otherwise—

“ apparatus ” means electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to, used by, or maintained by the Board and includes any building, structure or works constructed for the lodging therein of apparatus;

1882 c. 56.

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

“ generating station ” means the Lerwick ‘A’ and the Lerwick ‘B’ electricity generating stations operated by the Board or either of them and any addition to or extension of either of them and includes any of the associated intake and outfall works situated on the foreshore and bed of the sea and apparatus and operational land;

“ operational land ” has the same meaning as in section 211 of the Town and Country Planning (Scotland) Act 1972;

1972 c. 52.

“ plan ” includes section and description.

(2) Before commencing the work the Trustees shall give to the Board not less than twenty-eight days’ notice in writing of their intention to commence the work and shall with such notice submit to the Board plans and particulars of the work including, without prejudice to the generality of the foregoing, the method and sequence of working, and shall thereafter afford to the Board reasonable facilities for consultation and reasonable access for inspection during the construction of the work.

(3) (a) In the exercise of the powers of this Order the Trustees shall not unnecessarily interfere with, damage or injuriously affect the generating station or the Board.

(b) If under the powers of this Order it is necessary to interfere with, damage or injuriously affect the generating station or the Board the Trustees shall pay to the Board the cost reasonably incurred by them in the execution of such works as are thereby rendered reasonably necessary to maintain the efficient operation of the generating station and shall make good any such damage or injury to the Board provided that no claim may be made by the Board under this paragraph after the expiration of ten years from the completion of the work as certified by the Trustees’ engineer.

PART II
—cont.

- (4) Without prejudice to subsection (3) of this section, the Trustees in executing the work shall take such steps as the Board may reasonably require to endeavour to prevent damage or injury to the generating station and apparatus or a reduction in the efficiency of the operation thereof.
- (5) 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 Sheriff Principal of Grampian, Highland and Islands.

PART III

LANDS

Power to
acquire 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 plan and described in the deposited book of reference which they may require for the purposes of the work or for any purpose connected with or ancillary to their undertaking.

Period for
compulsory
purchase.

10. The powers of the Trustees for the compulsory purchase of lands under this Order shall cease on the 31st December, 1987.

Incorporation
of provisions
of Order of
1973.

11. The following provisions of the Order of 1973 are incorporated with and form part of this Part of this Order:—

- Section 11 (Correction of errors in deposited plans and book of reference);
- Section 12 (Servitudes, etc., by agreement);
- Section 14 (Power to enter, survey, etc., lands);
- Section 15 (Further powers of entry);
- Section 17 (Powers relating to land).

PART IV

MISCELLANEOUS

Trustees to
be local
lighthouse
authority.
1894 c. 60.

12. The Trustees shall within the harbour be a local lighthouse authority for the purposes of the Merchant Shipping Act 1894.

Protection
of wrecks.

13.—(1) The Trustees may make byelaws for restricting or prohibiting—

- (a) works or operations which are likely to disturb or otherwise affect any wreck or part thereof within the meaning of Part IX of the Merchant Shipping Act 1894 within the harbour; or
- (b) the removal of any article or thing from any such wreck or part thereof.

(2) Byelaws made under this section may provide that any such works or operations or removal shall be subject to the consent of the Trustees which may be given either unconditionally or subject to conditions, including payment of such reasonable fee as the trustees may prescribe to cover the expense of the Trustees in dealing with applications for consents.

(3) Byelaws made by the Trustees under this section shall not come into operation until they have been confirmed by the Secretary of State.

14. 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 Harbours Act 1964. 1964 c. 40.

15. 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 Coast Protection Act 1949. 1949 c. 74.

16. Nothing in this Order shall affect the operation of the Dumping at Sea Act 1974. Saving for Dumping at Sea Act 1974. 1974 c. 20.

17. Nothing in this Order shall affect the operation of the Protection of Wrecks Act 1973. Saving for Protection of Wrecks Act 1973. 1973 c. 33.

18.—(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 1981 (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. S.I. 1981/830 (S. 86).

PART IV
—cont.
Crown rights.

19.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority 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, enter upon or in any manner interfere with any land or interest in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

(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; 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.

(2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

**Costs of
 Order.**

20. 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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Lerwick Harbour Order Confirmation Act 1982

CHAPTER xxvi

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LERWICK HARBOUR

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