

ELIZABETH II



1985 CHAPTER iv

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Lerwick Harbour. [4th April 1985]

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 1985. Short title.

SCHEDULE

LERWICK HARBOUR

Provisional Order to confer powers on the Trustees of the port and harbour of Lerwick as to lands; to authorise the Trustees to construct new works for the improvement of the harbour and the facilities thereat; to make provision with respect to dangerous goods; to confer powers on the Trustees and the harbour master to give directions to vessels in the port and harbour; to provide for an increase in the Trustees' powers 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 construction of the works authorised by this Order and such estimates are as follows:—

	£
Purchase of land and permanent rights	20,000
Construction of pier walls and berthing face in steel sheet piling; the construction of a reinforced concrete deck slab and the provision of service ducting, mooring facilities and ancillary work	3,100,000
Reclamation and filling with rock fill the areas impounded by the pier walls	700,000
Dredging	10,000
Total	<u>£3,830,000</u>

And whereas a plan and sections showing the lines, situations and levels of the work to be constructed under the powers of this Order were on or before 20th November 1983 deposited with the sheriff

clerk of the Sheriff Court district of Lerwick and with the Chief Executive of the Shetland Islands Council:

And whereas a new plan ("the signed plan") has been substituted for the deposited plan:

And whereas it is expedient to authorise the Trustees to increase their powers to borrow money:

And whereas it is expedient that further powers with respect to dangerous goods and the giving of directions to vessels in the port and harbour should be conferred upon the Trustees:

And whereas it is expedient that certain provisions of the Lerwick Harbour (Miscellaneous Provisions) Order 1975 should be repealed: 1975 c. xxv.

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:—

1.—(1) This Order may be cited as the Lerwick Harbour Order 1985. Short title.

(2) This Order and the Lerwick Harbour Acts 1877 to 1982 may be cited together as the Lerwick Harbour Acts 1877 to 1985 (hereinafter referred to as "the Harbour Acts"). Interpretation.

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

"dangerous goods" means any goods defined as dangerous goods by regulations for the time being in force under section 21 of the Merchant Shipping Act 1979; 1979 c. 39.

"deposited sections" means the sections deposited in connection with this Order;

"general direction" means a direction authorised by section 6 (General directions) of this Order or by subsection (1) of section 8 (Directions to vessels at port premises) of 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 harbour master" means the harbour master appointed by the Trustees and includes his authorised deputies and assistants and any person authorised by the Trustees to act in that capacity;

"level of high water" means the level of mean high-water springs;

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

1971 c. xxxix.

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

1975 c. xxv.

“Order of 1975” means the Lerwick Harbour (Miscellaneous Provisions) Order 1975;

S.I. 1983/125.

“Order of 1982” means the Lerwick Harbour Revision Order 1982;

“port premises” means the piers, wharves, quays, berths, roads, railways, bridges, sheds and other works and conveniences, and the lands, buildings and property of every description and of whatever nature which are for the time being vested in or occupied by the Trustees, and “port premises” shall be construed accordingly;

1936 c. 52.

“the signed plan” means the plan signed in quadruplicate by Gavin Douglas Q.C., Senior Counsel to the Secretary of State for the purposes of the Private Legislation Procedure (Scotland) Act 1936, and deposited within one month of the commencement of this Order, as follows, that is to say, one copy at the office of the Secretary of State in Edinburgh, one at the Department of Transport, one with the sheriff clerk of the Sheriff Court district and one with the Chief Executive of the Shetlands Islands Council;

“special direction” means a direction authorised by section 7 (Special directions) of this Order or by subsections (2) or (3) of section 8 (Directions to vessels at port premises) of this Order;

1975 c. 21.

“standard scale” has the meaning assigned to it in section 289G of the Criminal Procedure (Scotland) Act 1975;

“statutory maximum” means the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975;

“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;

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

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

“vessel” means every description of vessel, however propelled or moved, and includes—

(a) any thing constructed or used to carry persons or goods by water;

(b) any rig, platform or other man-made structure on or in navigable water;

(c) a seaplane on or in the water, a hovercraft and a hydrofoil vessel;

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

3.—(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 provided that all liabilities and obligations appertaining to any such land shall continue to apply.

(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.—(1) Subject to the provisions of this Order the Trustees may in the Shetland Islands Area in the situations and lines and within the limits of deviation and according to the levels shown on the signed plan and deposited 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:— Power to construct works.

A pier of mainly rock filling material, (but also of steel piling) with concrete surfacing, commencing at a point approximately 120 metres to the north-east of the mouth of the Burn of Kebister and proceeding in a north-westerly direction into Dales Voe for a distance of 105 metres or thereabouts, thence proceeding in a north-easterly direction for a distance of 100 metres or thereabouts, thereafter south-easterly for a distance of 93 metres or thereabouts to the termination point.

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

5. The following provisions of the Order of 1971 are incorporated with and form 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 for the purposes of this Order—

- (a) in subsections (1) and (2) of section 7 of the Order of 1971 after the word “constructed” there shall be added the word “reconstructed”;
- (b) in section 11 (1) after the word “construction” there shall be added the word “reconstruction”;
- (c) at the end of sections 9, 11 and 12 of the Order of 1971 there shall be deleted the words “one hundred pounds” and there shall be added the words “the statutory maximum and on conviction on indictment to a fine”.

General
 directions.

6.—(1) The Trustees may after consultation with the General Council of British Shipping give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) for designating areas, routes or channels in the harbour which vessels are to use or refrain from using for movement or mooring;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for prohibiting—
- (i) entry into or movement in the harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke; and
 - (ii) entry into the harbour by a vessel which for any reason would be, or be likely to become, a danger to other vessels in the harbour;
- (d) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master in order to effect the objects of this subsection.

(2) Directions given under subsection (1) of this section may apply—

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction;
- (b) to the whole of the harbour or to a part designated, or the designation of which is provided for, in the direction; and
- (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction made under this section shall specify the extent of its application in relation to the matters referred to in paragraphs (a), (b) and (c) of this subsection.

(3) The Trustees may, after such consultation as aforesaid, revoke or amend directions given under this section.

7.—(1) A direction under this section may be given for any of the purposes set out in subsection (2) of this section by the harbour master to a vessel anywhere in the harbour and to a vessel prior to its entering the harbour. Special directions.

(2) A direction under this section may be given for any of the following purposes:—

- (a) regulating or requiring for the ease, convenience or safety of navigation the movement, mooring or unmooring of a vessel;
- (b) regulating for the safety of navigation the manner in which a vessel takes in or discharges cargo, fuel, water or ship's stores.

8.—(1) The Trustees may give directions applicable to all vessels, or to a specified class of vessels, at the port premises for the purpose of ensuring the safety of vessels at the port premises, preventing injury to persons at, or to property at, or forming part of, the port premises or of securing the efficient conduct of the business carried on at the port premises and, without prejudice to the generality of the foregoing, such directions may relate to— Directions to vessels at port premises.

- (a) the movement, berthing or mooring of a vessel, the dispatch of its business at the port premises, the disposition or use of its appurtenances or equipment, or the use of its motive power;
- (b) the embarking or landing of passengers;
- (c) the loading or discharging of cargo, fuel, water or ship's stores;
- (d) the use of ballast.

(2) The harbour master may give a direction requiring the removal from the port premises of a vessel if—

- (a) it is on fire;
- (b) it is in a condition where it is liable to become immobilised or waterlogged, or to sink;
- (c) it is making an unlawful or improper use of the port premises;
- (d) it is interfering with the use of the port premises by other vessels, or is otherwise interfering with the proper use of the port premises or the dispatch of business therein;
- (e) the removal is necessary to enable maintenance or repair work to be carried out to the port premises or to an adjacent part thereof.

(3) The harbour master may give a direction to a vessel at the port premises for any of the purposes referred to in subsection (1) of this section.

9. Notice of the giving of a general direction and of any amendment or revocation of a general direction shall be published by Publication of general directions.

the Trustees once in Lloyd's List and Shipping Gazette newspaper or some other newspaper specialising in shipping news, and, if the notice relates to the giving or amendment of a general direction, shall state a place at which copies of the direction may be inspected and bought and the price thereof.

Manner of giving special directions.

10. A special direction may be given in any manner considered appropriate.

Master's responsibility to be unaffected.

11. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property.

Failure to comply with directions.

12.—(1) The master of a vessel who fails to comply with a general or special direction shall be liable to a fine not exceeding level 3 on the standard scale.

(2) It shall be a defence to the master of a vessel charged with an offence under subsection (1) of this section to prove that he had reasonable grounds for supposing that compliance with the direction in question would be likely to imperil his vessel or any person for whom he is responsible or that in the circumstances compliance was impracticable.

Enforcement of directions.

13.—(1) Without prejudice to any other remedy available to the Trustees, if a special direction is not complied with within a reasonable time, the harbour master may, where practicable, put persons aboard the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board a vessel to attend to a special direction, the harbour master may proceed as if the direction had been given and not complied with:

Provided that the powers of this subsection shall not be exercised—

(a) in relation to a vessel other than a lighter, unless after reasonable inquiry has been made the master cannot be found; or

(b) in relation to a lighter, unless it is obstructing the access to or exit from port premises or otherwise interfering with navigation.

(3) Expenses incurred by the Trustees in the exercise of the powers conferred by subsection (1) of this section shall be recoverable by the Trustees from the owner of the vessel.

Obstruction of harbour master and others.

14. Any person who obstructs or interferes with the harbour master or with any officer or servant of the Trustees in the exercise of his powers or the performance of his duties under this Act shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Dangerous goods.

15.—(1) The Trustees may—

(a) refuse entry into the port premises of any goods which in their

opinion would endanger or be liable to endanger persons or property; or

(b) permit the entry of any such goods subject to compliance with such terms and conditions (including the part or parts of the port premises where such entry is permitted) as they think fit.

(2) The Trustees shall publish a schedule of such goods—

(a) entry of which is forbidden by them; and

(b) entry of which is permitted by them only upon terms and conditions specified in the schedule.

(3) A person who after publication of the schedule referred to in subsection (2) of this section—

(a) brings or causes or permits to be brought into the port premises any goods the entry of which is forbidden; or

(b) fails in relation to any goods brought into the port premises to comply with any terms or conditions imposed by the Trustees under subsection (1) of this section;

shall—

(i) be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine; and

(ii) indemnify the Trustees against all claims, demands, proceedings, costs, damages and expenses which may be made against or recovered from or incurred by the Trustees in consequence of the commission of the offence;

and the Trustees may remove the goods in question and may recover from the owner or offender the costs of such removal and of placing or storing the goods elsewhere.

16.—(1) Except in case of emergency, the owner or master of a vessel—

(a) which it is intended to bring into the harbour carrying dangerous goods; or

(b) which is within the harbour and on which it is intended to place dangerous goods;

shall, not less than twenty-four hours before that vessel enters the harbour or before the dangerous goods are placed on board, as the case may be, give notice to the harbour master of the nature and quantity of the dangerous goods in question and, if such notice is not given, both the owner and the master of the vessel shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(2) Where the owner or master of a vessel is charged with an offence under subsection (1) of this section it shall be a defence to prove that he did not know and could not with reasonable diligence have ascertained the nature of the goods in respect of which the proceedings are taken.

(3) This section does not apply to dangerous goods to which byelaws made by the Trustees under the Explosives Act 1875, or the Petroleum (Consolidation) Act 1928, for the time being apply.

Notice before entry of dangerous goods.

1875 c. 17.
1928 c. 32.

Power to
survey goods.

17.—(1) The Trustees may survey and examine—

- (a) goods at the port premises; and
- (b) goods on board a vessel at the port premises when those goods are to be or have been handled by the Trustees or when the master of the vessel asks for a survey or examination to be made by the Trustees.

(2) The Trustees may make a reasonable charge for survey and examination carried out under this section.

Power to
remove goods.

18.—(1) The Trustees may remove to another part of the port premises or to a place of storage elsewhere goods—

- (a) which are obstructing or interfering with the use of the port premises; or
- (b) which remain at a place used for the deposit or storage of goods for a longer time than that specified in relation to that place in a schedule of charges published by the Trustees;

and such removal and storage shall be carried out at the risk and expense of the owner.

(2) Notwithstanding such removal or placing in store, such goods shall be liable to a general lien for the cost of removal, and for any charges payable to the Trustees by the owner.

Liability for
safety of
goods.

19. The Trustees shall not be responsible for the safety of any goods deposited in any part of the port premises not specifically set apart by them for the purpose of warehousing.

Byelaws.

20. Subject to the provisions of this Order, the Trustees may make byelaws for all or any of the following purposes:—

- (a) for regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, quays, piers, jetties, staiths, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings) in the harbour;
- (b) for regulating the admission to, movement and berthing within, and the departure of vessels from, the harbour, or the removal of vessels, and for the good order and government of vessels whilst within the harbour;
- (c) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the limits of the harbour, and at the port premises;
- (d) for regulating the navigation, berthing and mooring of vessels within the harbour and their speed and manner of navigation, and the use of tugs within the harbour;
- (e) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour, or on the port premises;
- (f) for regulating the conduct of all persons in the harbour, not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
- (g) for regulating the placing and maintenance of moorings;

- (h) for preventing and removing obstructions or impediments within the harbour;
- (i) for prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour;
- (j) for regulating the use of ferries within the harbour;
- (k) for regulating the use of yachts, sailing boats, rowing boats, pleasure craft and other small craft and the holding of regattas and other public events within the harbour;
- (l) for regulating the launching of vessels within the harbour;
- (m) for prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
- (n) for regulating or preventing the use of fires and lights within the harbour and at the port premises, and within any vessel within the harbour;
- (o) for regulating the movement, speed and parking of vehicles within the harbour;
- (p) for regulating the exercise of the powers vested in the harbour master.

21. The Trustees may contract from time to time with the police authority for the Northern Constabulary for the execution by constables of the police force maintained for that area of police duty within the harbour or any part thereof on such terms and conditions and for such payment or consideration as the Trustees shall think proper and as shall be agreed between them and the said police authority.

Trustees
may contract
for police.

22. 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.

23. 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.

24. 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.

25. As from the coming into operation of this Order, the Order of 1982 shall have effect as if in section 3 (1) (a) for the words "ten million pounds" there were substituted the words "twenty million pounds".

Amendment of
Order of 1982.

26. The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions of 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.

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

Crown rights.

27.—(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.

28. 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 1985

CHAPTER iv

ARRANGEMENT OF SECTIONS

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LERWICK HARBOUR

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