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## SCHEDULE

### PETERHEAD HARBOURS

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- 3 Incorporation of Harbours, Docks, and Piers Clauses Act 1847.

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*Provisional Order to consolidate with additions and amendments the Acts and Orders relating to the harbours of Peterhead; to make new provision with respect to the constitution, qualification, election and appointment of the trustees of the said harbours; to redefine the limits of the harbours; to make further and better provision for the maintenance and administration of the harbours; and for connected purposes.*

#### WHEREAS—

- (1) By virtue of the Peterhead Harbours Acts and Orders 1873 to 1985 the harbour undertaking at Peterhead is vested in the trustees of the harbours of Peterhead acting for the time being under the said Acts and Orders:
- (2) It is expedient to consolidate with additions and amendments the enactments in force with respect to the harbours of Peterhead as in this Order provided:
- (3) It is expedient to make new provision with respect to the constitution, qualification, election and appointment of the said trustees:
- (4) It is expedient to redefine the limits of the said harbours:
- (5) It is expedient to make further and better provision for the maintenance and administration of the said harbours and that the other provisions hereinafter contained should be enacted:
- (6) The purposes aforesaid cannot be effected without an Order confirmed by Parliament under the Private Legislation Procedure (Scotland) Act 1936:

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

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## PART I

### PRELIMINARY

#### 1 Short title and citation

- (1) This Order may be cited as the Peterhead Harbours Order 1992.
- (2) The Peterhead Harbours (South Bay Development) Order 1985 and this Order may be cited together as the Peterhead Harbours Orders 1985 to 1992.

#### 2 Interpretation

In this Order, unless the subject or context otherwise requires—

- “Act of 1847” means the Harbours, Docks, and Piers Clauses Act 1847;
- “appointed day” means 1st January 1993;
- “chief executive” means the chief executive for the time being appointed by the trustees;
- “district” means the Banff and Buchan district;
- “district council” means the Banff and Buchan district council;
- “existing trustees” means the trustees acting under the authority of the Peterhead Harbours Acts and Orders 1873 to 1985;
- “harbours” means the harbours of Peterhead as defined in section 32 (Limits of harbours) of this Order;
- “harbour limits map” means the map marked “Peterhead Harbours —Limits of Harbours” deposited in connection with this Order;
- “Order of 1985” means the Peterhead Harbours (South Bay Development) Order 1985;
- “Peterhead harbours electoral area” means the area shown edged red on the Peterhead harbours electoral map;
- “Peterhead harbours electoral map” means the map marked “Peterhead harbours electoral area” deposited in connection with this Order;
- “region” means the Grampian region;
- “regional council” means the Grampian regional council;
- “register of electors” means the register of electors for the time being last published by the electoral registration officer for the Grampian region;
- “sheriff” means the sheriff principal of the sheriffdom of Grampian, Highlands and Islands and includes any sheriff sitting in the sheriff court district of Peterhead;
- “tidal work” means any work in tidal waters authorised by the Peterhead Harbours Acts and Orders 1873 to 1980;
- “trustees” means the existing trustees and the trustees of the harbours acting for the time being under the authority of this Order or either such body of trustees, as the case may require;
- “valuation roll” means the roll kept and maintained by the regional council under the Valuation Acts (as defined by subsection (1) of section 26 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987) for the purpose (inter alia) of assessing and levying rates under sections 1 and 7 respectively of the Local Government (Scotland) Act 1975;

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“vessel” means a ship, boat or craft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968 or any other amphibious vehicle or a seaplane.

### 3 **Incorporation of Harbours, Docks, and Piers Clauses Act 1847**

The Act of 1847 (except sections 6 to 13, 16 to 19, 22, 25, 26, 48, 79 to 82, 83, 95, 97, 98 and 101 to 103), so far as applicable for the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with and forms part of this Order:

Provided that in construing the provisions so incorporated the expression “the special Act” shall mean this Order, and—

- (a) the expressions “the Promoters of the undertaking” and “the undertakers” shall mean the trustees;
- (b) the expression “the harbour, dock and pier” shall mean the harbours;
- (c) the meaning of the word “vessel” as defined in section 2 (Interpretation) of this Order shall be substituted for the meaning assigned to that word by section 3 of the Act of 1847;
- (d) section 21 shall be read and have effect as if after the words “for the Accommodation of Goods shipped or unshipped within the Harbour” there were added the words “or otherwise for the purposes of their undertaking”;
- (e) section 23 shall be read and have effect as if the words “Provided that no such lease be granted for a longer term than three years” were omitted and there were added the words “provided that as from the commencement of any lease of a tidal work made under this section the lessee shall during the continuance of his lease be subject to all the liabilities and obligations to which the undertakers are subject and shall perform all the duties of the undertakers under the special Act in respect of that work”;
- (f) section 63 shall be read and have effect as if for the words from “to a penalty” to the end of the section there were substituted the words “on summary conviction to a fine not exceeding level 2 on the standard scale”;
- (g) section 69 shall be read and have effect as if for the words from “forfeit” to the end of the section there were substituted the words “be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;
- (h) section 84 shall be read and have effect as if for the words “five pounds” there were substituted the words “level 2 on the standard scale”.

## PART II

### CONSTITUTION, QUALIFICATION, ELECTION AND APPOINTMENT OF TRUSTEES

#### 4 **Constitution of trustees**

On and after the appointed day—

- (1) The trustees of the harbours of Peterhead shall consist of—
  - (a) the master of the Company of Merchants of the City of Edinburgh;
  - (b) one person to be appointed by the regional council from their own members;
  - (c) one person to be appointed by the district council from their own members;

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- (d) three persons to be elected by persons appearing in the register of electors as hereinafter provided from among their own number;
  - (e) three persons to be elected by persons appearing in the valuation roll as ratepayers in respect of non-domestic property within the Peterhead harbours electoral area from among their own number;
  - (f) eight persons to be elected by shipowners of Peterhead as hereinafter provided from their own number.
- (2) The trustees shall continue to be a body corporate under the name of “The trustees of the habours of Peterhead”.

#### **5 Existing trustees to act in first instance**

- (1) The existing trustees shall remain in office until the appointed day and shall then go out of office:
- Provided that any such trustee going out of office may, if qualified, be elected or appointed under the provisions of this Order.
- (2) On and after the passing of the Act confirming this Order and until the appointed day the power and duty of carrying into effect the provisions of this Order shall be vested in and performed by the existing trustees.
- (3) On and after the appointed day the power and duty of carrying into effect the provisions of this Order shall be vested in and performed by the trustees.

#### **6 Appointment of trustees by regional and district councils**

- (1) During the month of November 1992 the regional council and the district council shall each appoint one member of their council to take office as a trustee on the appointed day and, subject to the provisions of this Order, the persons so appointed shall hold office for one year.
- (2) Subsequent appointments of trustees by the regional council and the district council shall take place in the month of December each year and the persons so appointed shall, subject to the provisions of this Order, hold office for the following calendar year.
- (3) A trustee appointed by the regional council or the district council under subsections (1) and (2) of this section shall cease to be a trustee when he retires at the end of his term of office as a councillor in terms of section 4(3) of the Local Government (Scotland) Act 1973 or otherwise ceases to be a councillor unless, in the case of a councillor retiring on the day of the ordinary election of councillors, he be re-elected as a councillor at the said election.
- (4) Subject to the provisions of this Order, trustees appointed under the provisions of subsections (1) and (2) of this section may be re-appointed for a further term of office.

#### **7 Election of trustees from register of electors**

- (1) The three persons to be elected trustees from the register of electors shall be qualified and elected as hereinafter provided.
- (2) The first election of such trustees shall take place during the period 1st November to 31st December 1992 and the trustees so elected shall take office on the appointed day.

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- (3) Of the trustees so elected, the trustee who shall have received the smallest number of votes shall go out of office on 31st December 1993, the trustee who shall have received the next smallest number of votes shall go out of office on 31st December 1994 and the remaining trustee shall go out of office on 31st December 1995.
- (4) Between 1st November and 31st December in each year after the first election, the said electors shall elect one person to fill the place of the trustee elected by them next going out of office and the trustee so to be elected shall take office on the following 1st January and shall hold office for a period of three years.
- (5) Any trustee elected as aforesaid may, if qualified, be re-elected.

## 8 **Qualification of trustees from register of electors**

Every person whose place of residence, as recorded in the register of electors on or before 31st August preceding an election, is within the Peterhead harbours electoral area shall be qualified to be elected a trustee and to be an elector and to vote at the election of trustees by persons appearing in the register of electors.

## 9 **Election of trustees from valuation roll**

- (1) The three persons to be elected trustees from the valuation roll shall be qualified and elected as hereinafter provided.
- (2) The first election of such trustees shall take place during the period 1st November to 31st December 1992 and the trustees so elected shall take office on the appointed day.
- (3) Of the trustees so elected the trustee who shall have received the smallest number of votes shall go out of office on 31st December 1993, the trustee who shall have received the next smallest number of votes shall go out of office on 31st December 1994 and the remaining trustee shall go out of office on 31st December 1995.
- (4) Between 1st November and 31st December in each year after the first election the said electors shall elect one person to fill the place of the trustee elected by them next going out of office and the trustee so to be elected shall take office on the following 1st January and shall hold office for a period of three years.
- (5) Any trustee elected as aforesaid may, if qualified, be re-elected.

## 10 **Qualification of trustees from valuation roll**

- (1) Every person whose name appears in the valuation roll on 31st August preceding an election as a ratepayer in respect of non-domestic property within the Peterhead harbours electoral area shall be qualified to be elected a trustee and to be an elector and to vote at the election of trustees by persons appearing in the valuation roll.
- (2) Where a firm consisting of two or more partners or a company appears in the valuation roll as hereinbefore provided as a ratepayer in respect of non-domestic property within the Peterhead harbours electoral area, the said firm or company or the manager or other principal officer of such firm or company may on or before 15th September in each year intimate in writing to the trustees or to the chief executive the name of the partner of such firm or shareholder or director of such company who shall be qualified to be elected a trustee and to be an elector under the provisions of this section.

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- (3) Where two or more persons appear jointly in the valuation roll as hereinbefore provided as ratepayers in respect of non-domestic property within the Peterhead harbours electoral area, only one of them may be elected a trustee and be an elector in respect of that property and they may, on or before 15th September in each year, intimate in writing to the trustees or to the chief executive which of them shall be qualified so to be elected and to be an elector under the provisions of this section, failing which the person whose name first appears in the valuation roll in respect of that property shall be taken to be the person so qualified.

## 11 Election of trustees by shipowners

- (1) The eight persons to be elected trustees by the shipowners of Peterhead shall be qualified and elected as hereinafter provided.
- (2) The first election of such trustees shall take place during the period 1st November to 31st December 1992 and the trustees so elected shall take office on the appointed day.
- (3) Of the trustees so elected the two trustees who shall have received the smallest number of votes shall go out of office on 31st December 1993, the two trustees who shall have received the next smallest number of votes shall go out of office on 31st December 1994, the two trustees who shall have received the next smallest number of votes shall go out of office on 31st December 1995 and the remaining two trustees shall go out of office on 31st December 1996.
- (4) Between 1st November and 31st December in each year after the first election the said electors shall elect two persons to fill the places of the trustees elected by them next going out of office and the trustees so to be elected shall take office on the following 1st January and shall hold office for a period of four years.
- (5) Any trustee elected as aforesaid may, if qualified, be re-elected.

## 12 Qualification of shipowners

- (1) Every person—
- (a) whose name shall appear on 1st September preceding the election in the register of shipping under Part I of the Merchant Shipping Act 1894 or in the register of British fishing vessels under Part II of the Merchant Shipping Act 1988 as owner, or part owner to the extent of at least four sixty-fourth shares, of a ship or vessel of not less than 35 feet overall length, and
- (b) who for the 12 calendar months prior to 1st September preceding the election shall have been recorded in the register of electors as a person resident within the Peterhead harbours electoral area, or in the valuation roll as a ratepayer in respect of non-domestic property within the said area,

shall be qualified to be elected a trustee and to be an elector and to vote at the elections of trustees by shipowners of Peterhead:

Provided that, however many vessels or shares in a vessel any such person may own, he may vote only once at any such election.

- (2) Where a firm consisting of two or more partners or a company is registered in either the said register of shipping or the said register of British fishing vessels as the owner or part owner of any such ship or vessel and is recorded in the valuation roll as a ratepayer in respect of non-domestic property, the said firm or company or the manager or other



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principal officer of such firm or company may on or before 1st September in each year intimate in writing to the trustees or to the chief executive the name of a partner of such firm or shareholder or director of such company who shall be qualified to be elected a trustee and to be an elector under the provisions of this section.

### 13 **List of electors to be made up and published**

- (1) In the month of September in every year the chief executive shall make up or provide a list of persons qualified to elect and be elected trustees and shall certify the same.
- (2) On or before 30th September in each year the chief executive shall cause the said list to be made available for inspection at the harbour office.
- (a) (a)

Any person considering himself qualified to be elected a trustee or to be an elector, whose name is not included in the said list may within 21 days of the date of publication of the list apply to the chief executive who, if he sees fit, may add the name of such person to the list and, if the chief executive refuses or neglects to add the name to the list, such person may petition the sheriff within three days after intimation of such refusal and the sheriff shall forthwith hear and decide the petition in a summary manner without written record or pleadings.

- (b) The decision of the sheriff shall be final and the sheriff may order the list of electors to be amended in conformity with his decision and may make such order as to the expenses of the petition as he thinks fit.

### 14 **Provisions as to election of trustees**

The provisions of Schedule 1 to this Order shall have effect with respect to the elections of trustees.

### 15 **Sheriff may vary date, etc., for elections**

In the event of circumstances arising in connection with any election authorised by this Order which may render it necessary or expedient to fix, postpone, alter, vary or dispense with any date or procedure prescribed by or in pursuance of the provisions of this Order or any other matter arising thereunder, the sheriff may on a petition by the trustees or the chief executive forthwith fix, postpone, alter, vary or dispense with any such date, procedure or other matter in such manner as may in his judgment be best fitted to meet the circumstances of the case and the sheriff's determination thereof and of the procedure following upon such determination shall be final.

### 16 **Disqualification of trustees**

- (1) A person shall be disqualified from being nominated, appointed or elected and from being or continuing to be a trustee if and while he—
  - (a) is not an elector or does not appear as such on the appropriate register of electors;
  - (b) being a trustee fails to attend any meeting of the trustees for a period of six consecutive months without leave of absence from the trustees;
  - (c) is an adjudged bankrupt under the Bankruptcy (Scotland) Act 1985;

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- (d) holds any office employment or place of profit in the gift or disposal of the trustees;
  - (e) has directly or indirectly by himself or his partner any share or interest in any contract or employment with, by, or on behalf of, the trustees provided that a person shall not be so disqualified or be deemed to have any share or interest in such a contract or employment by reason only of his having any share or interest in—
    - (i) any agreement for the loan of money or any security for the payment of money only;
    - (ii) any newspaper in which any advertisement relating to the affairs of the trustees is inserted;
    - (iii) any annual contract with the trustees at their published rates for contract work; or
    - (iv) any company.
- (2) In the event of any disqualified person being elected a trustee or in the event of any trustee after being duly elected becoming disqualified in accordance with the provisions of this section his office shall be vacated and he shall not be entitled to vote or in any way act as a trustee.

## 17 Election offences

Any person who shall personate any elector at any election of trustees in pursuance of this Order or falsely act in the name or on behalf of any person entitled to vote, or who shall give more than one vote in the election of any of the several classes of trustees, or who shall vote without being duly qualified according to the provisions of this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

## 18 Occasional vacancies

- (1) If an elected trustee dies, resigns or becomes disqualified or declines or refuses or becomes incompetent to act, or otherwise ceases to be a trustee from any cause other than that of going out of office in regular course, as aforesaid, the vacancy thereby created shall be filled in manner following, that is to say, the remaining trustees may elect a person duly qualified in his stead, and in every case the trustee so substituted shall be of the class of electors to which the elector in whose stead he shall be so elected shall belong or have belonged, and shall continue in office for the period that the person in whose place he is elected would in the ordinary course have continued, and at the expiration thereof he shall go out of office, but shall be eligible for re-election.
- (2) If an appointed trustee dies, resigns or becomes disqualified or declines or refuses or becomes incompetent to act, or otherwise ceases to be a trustee from any cause other than that of going out of office in regular course, as aforesaid, the vacancy hereby created shall be filled in manner following, that is to say, the council who appointed such trustee shall, with due regard to the provisions of section 6 (Appointment of trustees by regional and district councils) of this Order, appoint in his stead one of themselves and in every case the trustee so substituted shall continue in office for the period that the person in whose place he is appointed would in the ordinary course have continued in office and at the expiration thereof he shall go out of office but shall, subject to the provisions of section 6 (3) of this Order be eligible for re-appointment.

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**19 Acts of trustee not invalidated by vacancies or non-election**

No act or proceeding of the trustees, or of any committee of trustees to be appointed as hereinafter mentioned, shall be invalidated or be illegal in consequence only of there being a vacancy in the number of trustees at the time of such act or proceeding, or of the non-election of any trustee by any class of electors authorised by this Order to elect trustees.

**20 Informalities in election of trustees not to invalidate proceedings**

All acts and proceedings of the trustees, or of any committee of the trustees, shall, notwithstanding it be afterwards discovered that there was some defect in the election of any such trustees or persons acting as trustees, or that they or any of them were or had become disqualified, or in the appointment of any such committee, be valid as if every such person had been duly elected and was qualified to be a trustee or as if every such committee had been duly appointed.

**21 Chairman of trustees and meetings**

- (1) The master of the Company of Merchants of the City of Edinburgh shall be ex officio chairman of the trustees.
- (2) In addition to the ex officio chairman there shall be a chairman and vice-chairman who shall be elected annually by the trustees at their first meeting in each year and at all meetings of the trustees the ex officio chairman, and in his absence the chairman, whom failing the vice-chairman, shall preside.
- (3) In the event of neither the ex officio chairman, the chairman nor the vice-chairman being present, a trustee shall be chosen by the meeting as chairman of that meeting.
- (4) In case of an equality of votes at any meeting of the trustees, the chairman presiding at such meeting shall, in addition to his own vote, have a second or casting vote.

**22 Meetings of trustees**

The trustees shall hold a meeting once in every month, or more or less often as the trustees shall think fit, on such day, at such hour and at such place in Peterhead as they shall from time to time appoint.

**23 Quorum of trustees and adjournment on failure of meeting**

At all meetings of the trustees seven shall be a quorum and no business shall be transacted at any meeting of the trustees unless a quorum shall be present at such meeting and every meeting of the trustees may be adjourned from time to time whether a quorum shall be present or not.

**24 Extraordinary meetings**

The trustees may hold extraordinary meetings which may be called by either—

- (a) the chairman or vice-chairman;
- (b) any two trustees; or
- (c) the chief executive.

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## 25 **How meetings to be called**

All meetings to be held under the authority of this Order shall be called or announced by an intimation of an agenda specifying the business to be transacted thereat, and the day, hour and place when and where the same are to be held, which shall be delivered to each of the trustees, or left at his usual place of abode, or place of business, or posted to him by ordinary first-class post not less than 48 hours before such meeting.

## 26 **Power to appoint committees**

The trustees may from time to time appoint committees for such purposes as, in their opinion, would be better regulated and managed by means of such committees and the trustees shall fix the quorum of such committees and may continue, alter, or discontinue such committees.

## 27 **Meetings of committees**

Every committee so appointed may meet from time to time as they may think proper, for carrying into effect the purposes of their appointment and shall at each meeting, in the absence of the chairman named by the trustees, appoint one of their number to be the chairman thereof, and all questions shall be determined by a majority of the votes of the members present, and in case of equality, the chairman of the meeting shall have a casting vote in addition to his vote as a member of the committee.

### **PART III**

#### **TIDAL WORKS**

## 28 **Survey of tidal works**

The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the trustees.

## 29 **Provision against danger to navigation**

- (1) In case of injury to or destruction or decay of a tidal work or any part thereof, the trustees shall forthwith notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.
- (2) If the trustees fail to comply in any respect with the provisions of this section, they shall 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.

## 30 **Abatement of works abandoned or decayed**

- (1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the trustees either to repair and restore the work or any part thereof or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

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- (2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work or any portion thereof, in any notice under this section.
- (3) If, on the expiration of 30 days from the date when a notice under this section is served upon the trustees, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable by him from the trustees.

### 31 Permanent lights on works

- (1) The trustees shall at the outer extremity of every tidal work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.
- (2) If the trustees fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## PART IV

### LIMITS OF HARBOURS, ETC.

### 32 Limits of harbours

- (1) The harbours of Peterhead shall include—
  - (a) so much of the waterways, water channels, bridges, quays, piers, jetties, basins, breakwaters and other such adjacent works, lands, buildings, wharves and erections and so much of the area of sea below the level of mean high-water springs as are situate within the area shown edged red on the harbour limits map; and
  - (b) any lands and heritable properties adjacent thereto which may be acquired or occupied by the trustees under the authority of this Order.
- (2) Within one month after the commencement of this Order copies of the harbour limits map shall be deposited as follows, that is to say, one copy at the office of the Secretary of State in Edinburgh, one copy at the office of the chief executive of the regional council, one copy at the office of the chief executive of the district council, one copy with the Department of Transport and one copy with the sheriff clerk of the sheriff court district of Peterhead.

### 33 Application of existing enactments, etc., to harbours

- (1) Subject as hereinafter provided, all enactments conferring rights, powers, privileges and immunities or imposing duties, obligations and liabilities on the trustees including

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provisions for the protection of any person and all byelaws and regulations made by the trustees shall have effect in the harbours.

- (2) Subject to the provisions of section 3 (Incorporation of Harbours, Docks, and Piers Clauses Act 1847) of this Order, nothing in this Order shall affect the operation within the harbours of such of the provisions of the Act of 1847 as were operative immediately before the coming into operation of this Order and, subject as hereinafter provided, the said provisions shall apply to the harbours.

## PART V

### MAINTENANCE AND ADMINISTRATION OF HARBOURS

#### 34 Power to maintain harbours

Subject to the provisions of this Order, the Trustees may from time to time on lands belonging to them or to be acquired by them and within the harbours—

- (a) carry out, whether temporarily or permanently, all such works of maintenance as may from time to time be requisite or expedient;
- (b) alter, dredge, scour, deepen, widen, straighten, improve and maintain the entrance and navigation channels and whole waterways and water channels of the harbours.

#### 35 Rates on goods, etc., landed or loaded outside harbours

- (1) When any goods shall be landed from or out of any vessel outside the harbours, but upon or within any part of the sea-shore in the parish of Peterhead, or upon any quay, pier, jetty or other abutment adjacent thereto, between the point latitude 57° 30.23'N, longitude 01° 47.235' W and the point latitude 57° 30.68'N, longitude 01° 46.48' W, or when any vessel lying outside the harbours shall be loaded with any goods from any part of the sea-shore beforementioned or from any such quay, pier, jetty or other abutment it shall be lawful for the trustees, and for such person or persons as they shall from time to time appoint, to demand, levy, collect, receive, and take for all such goods the rates and dues which would have been leviabie if such goods had been landed or loaded within the harbours; and all such rates and dues shall be paid by the owner or consignee of such goods.
- (2) In exercising the powers conferred upon them by this section the trustees shall not, without the consent of the Peterhead Bay Authority, demand, levy, collect, receive or take any rates or dues in respect of any goods landed from or loaded onto a vessel within the Peterhead Bay Harbour in respect of which the said authority has levied or intends to levy any rates or dues.

#### 36 Power to provide dredgers and other plant

The trustees may, for the purposes of this Order, from time to time purchase, lease, provide, or hire such dredgers, cramage, vessels, diving gear, lighters, fire-engines, weighbridges, tools, plant or other materials, as they think fit, and may from time to time, as they think fit, sell and dispose of, or let such dredgers, cramage, vessels, diving gear, lighters, fire-engines, weighbridges, tools, plant and materials aforesaid.

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**37 Payment of charges for weighing and measuring goods**

The charges or other remuneration to be paid for the weighing and measuring of goods at the harbours shall be of such amounts as the trustees shall from time to time fix and determine, and also any other necessary and proper charges and expenses connected with metering and weighing.

**38 Power to take lands by agreement**

For the purposes of this Order the trustees may by agreement purchase, exchange, feu or lease and hold and use any land and foreshore.

**39 Power to appropriate and lease or sell parts of harbours**

The trustees may appropriate and adopt such parts as they think fit of the lands and other harbour property heritable or moveable vested in them under the provisions of this Order, for manufacturing, trading or commercial purposes and they may lease or grant the occupation of such lands and other harbour property and any rights of fishing which may be vested in them for such periods and upon such terms, and for such rent or other consideration as they think fit, or may absolutely sell, feu or dispose of the same.

**40 Company formation**

The trustees may for the purposes of their undertaking purchase shares in a company registered under the provisions of the Companies Act 1985 and subject to the provisions of that Act they may subscribe their names to a memorandum of association and otherwise comply with the requirements of the said Act in respect of the formation of a company limited by shares or guarantee.

**41 Byelaws to remain in force**

The byelaws and regulations, which are in force at the appointed day, shall, until altered, continue in force.

**42 General byelaws**

- (1) The trustees may from time to time make such byelaws as they shall think fit for all or any of the following purposes (that is to say):—
- (a) regulating the use, operation and superintendence of the harbours and the docks, berths, wharves, quays, piers, jetties, staiths, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings) of the harbours;
  - (b) regulating the admission to, and the movement within, and the departure of vessels from the harbours, or the removal of vessels, and for the good order and government of vessels whilst within the harbours;
  - (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbours;
  - (d) regulating the navigation, berthing and mooring of vessels within the harbours and their speed and manner of navigation, and use of tugs within the harbours;

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- (e) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or person within the harbours;
  - (f) regulating the conduct of all persons in the harbours not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
  - (g) regulating the placing and maintenance of moorings within the harbours;
  - (h) preventing and removing obstructions or impediments within the harbours;
  - (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbours;
  - (j) regulating the use of ferries within the harbours;
  - (k) regulating in the harbours the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
  - (l) regulating the holding of regattas and other public events in the harbours;
  - (m) regulating or prohibiting the activities in the harbours of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in paragraph (k) above;
  - (n) regulating the launching of vessels within the harbours;
  - (o) prohibiting persons working or employed in or entering the harbours, or any part thereof, from smoking therein;
  - (p) regulating or preventing the use of fires and lights within the harbours, and within any vessel within the harbours;
  - (q) regulating the movement, speed and parking of vehicles within the harbours;
  - (r) regulating the use of any fish market provided by the trustees and the conduct of persons working therein or resorting thereto, and for preventing nuisance or annoyance thereat;
  - (s) making the carrying out of specified harbour operations, or the conduct of persons in the harbours, subject to the approval (with or without conditions), control or direction of the harbourmaster, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction.
- (2) Byelaws made under this section may—
- (a) relate to the whole of the harbours or any part thereof; and
  - (b) make different provisions for different parts of the harbours or in relation to different classes of vessels.
- (3) The provisions of subsections (4), (5), (6), (7), (8), (10), (11) and (12) of section 202, and 204, of the Local Government (Scotland) Act 1973 shall apply to all byelaws made by the trustees under or by virtue of this Order as if the trustees were a local authority and in the application of the provisions of the said Act of 1973 the Secretary of State shall be the confirming authority.
- (4) A person who fails to comply with any byelaw made by the existing trustees or any byelaw to be made by the trustees under this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### 43 **Books to be evidence**

All books, and other documents whatsoever by this Order authorised or directed to be kept, and thereby made evidence, shall be admitted as evidence in all courts of law or elsewhere.



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**44 Execution of deeds**

All deeds, contracts, assignments, writings and other documents shall be validly executed by the trustees by being sealed with their common seal and signed by two trustees and the chief executive at a meeting of the trustees.

**45 Appointment, etc., of staff**

- (1) Subject to the provisions of this Order, the trustees may appoint such officers and employ such staff as they think necessary for the proper discharge by the trustees of their functions.
- (2) An officer or employee appointed under subsection (1) above shall hold office on such terms and conditions, including conditions as to remuneration, as the trustees think fit.
- (3) Where an action has been brought against an officer or employee of the trustees in respect of an act done by him in the execution or purported execution of any provision of this Order and the circumstances are such that he is not legally entitled to require the trustees to indemnify him, the trustees may nevertheless at their absolute discretion indemnify him against the whole or a part of any damages or expenses which he may have been ordered to pay or may have incurred if they are satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty under this Order required or entitled him to do it.

**PART VI**

**FISH MARKET**

**46 Power to provide, operate and maintain fish market**

The trustees may provide, operate and maintain a fish market for the sale of fish anywhere within the harbours with all such appliances and fittings as they may deem necessary and suitable for the purposes thereof and they may divide or allocate any parts or part thereof into stalls or other defined or limited places and make provision for the cleansing and general management thereof and may provide and operate in connection with the fish market such services and facilities as may be requisite or expedient and they shall have the sole operation, superintendence and management thereof and they may fix and regulate the hours during which the said fish market or any part thereof shall be open.

**47 Power to make charges**

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

**48 Officer for fish market**

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

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**49 Power to lease fish market and enter into agreements**

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

**PART VII**

SUPPLY OF WATER, GAS AND ELECTRICITY, ETC.

**50 Trustees may contract for supply of water, gas, oil and electricity, etc**

The trustees may contract with any body of commissioners, local or other authority, corporation, company or person for the supply of water to vessels within the harbours, and for the extinction of fires in such vessels, and also for the supply of gas, oil, electricity or other source of energy for the use of the harbours, and the streets, buildings, property and vessels within the limits thereof.

**51 Rate for water, etc., supplied to vessels**

The trustees may charge the owner, master, agent, manager or other person in charge of any vessel for such supply of water, gas, oil, electricity or other source of energy at such rate or rates as shall from time to time seem to the trustees to be just and reasonable:

Provided—

- (a) that in the case of the supply of gas the rate to be charged by the trustees shall not exceed the maximum price for the time being fixed by the Director General of Gas Supply in accordance with the provisions of section 37 of the Gas Act 1986 as being the maximum price at which gas supplied by a public gas supplier may be resold; and
- (b) that in the case of the supply of electricity the rate to be charged by the trustees shall not exceed the maximum price which may from time to time be fixed by the North of Scotland Hydro-Electric Board or their successor in accordance with the provisions of section 23 of the Electricity (Scotland) Act 1979 as being the maximum price at which electricity supplied to them may be resold.

**PART VIII**

TUGS

**52 Trustees may provide and license tugs**

For the better navigation of the harbours and for the use and accommodation of vessels frequenting the same, the trustees may from time to time build, purchase, contract for or hire and may maintain, use and let tugs and may also from time to time license such number of tugs belonging to any person, and for such period, and on such terms and conditions, as they may think fit.

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**53 Trustees to fix charges for tugs**

The trustees may from time to time fix reasonable charges for and in respect of the use of the tugs maintained, used and let or licensed by them and such charges shall be paid by the owner, master, agent, manager or other person having charge of the vessel obtaining the assistance of such tugs to the trustees or to their lessee, or to the person with whom they may contract, or to the owner of such tugs, if licensed by them, as the case may be and such charges shall be due and payable whether such tugs shall be actually employed or not, provided the assistance thereof shall have been required, and shall, in consequence of such requisition, have been tendered by the master or other person having the command of such tugs.

**54 Penalty for using or employing tugs without licence**

Every person who, without the licence of the trustees shall use or employ any tug for towing vessels within the harbours, except such as shall be provided or employed by the trustees, or by their licensed contractor or other person having their authority, and except also any tug which is being employed in towing a vessel from any other port or harbour to the harbours, or from the harbours to any other port or harbour, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**PART IX**

FINANCIAL

**55 Accounting and auditing**

- (1) The trustees shall keep proper accounts and proper records in relation to those accounts and shall prepare proper statements of account in respect of each financial year of the trustees and the accounts of the trustees for each such year shall be audited by an auditor appointed by the trustees for that year who is qualified under subsection (2) below.
- (2) An auditor is qualified for the purpose of subsection (1) above if he is a member of one or more of the following bodies, that is to say:—
  - The Institute of Chartered Accountants of Scotland;
  - The Institute of Chartered Accountants in England and Wales;
  - The Chartered Association of Certified Accountants;
  - The Institute of Chartered Accountants in Ireland;
  - Any body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 389 (1) (a) of the Companies Act 1985 by the Secretary of State;and a Scottish firm may be so appointed if each of the partners is qualified to be so appointed.
- (3) Within six months after the date on which the accounts of the trustees for any financial year of the trustees have been audited the trustees shall transmit to the Secretary of State three copies of their statements of account and the auditor's report for that year and copies shall be made and kept available at the harbour office for inspection by the public without charge during reasonable hours and for supply on demand upon payment of such reasonable charge in respect of each copy as the trustees may determine.

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- (4) Where the auditor's report includes any recommendation with respect to the keeping of the trustees' accounts or records of the preparation of their annual statement of account, the Secretary of State may direct the trustees to give effect to that recommendation subject to such modifications, if any, as he may specify in his direction and the trustees shall comply with that direction.
- (5) In this section the expression "financial year" means the year ending 31st December or ending on such other date as the trustees may from time to time determine.

## 56 Sinking fund

- (1) The trustees may if they think fit provide a sinking fund by setting aside such money as they think reasonable and investing the same and the resulting income thereof in statutory securities until the money and the resulting income so invested amounts to the sum of £10,000,000.
- (2) The sinking fund provided under this section may be applied—
  - (a) to answer any deficiency at any time happening in the income of the trustees; or
  - (b) to meet any extraordinary claim or demand at any time arising against the trustees; or
  - (c) in payment of the cost of renewing, improving or extending any works or of the provision of new works;

and so that if the fund be at any time reduced it may thereafter be again restored to the said sum and so from time to time as often as such reduction happens:

Provided that resort may be had to the sinking fund though the fund may not at the time have reached or may have been reduced below the sum of £10,000,000.

## 57 Investment of sinking fund

- (1) The trustees may deposit any moneys including such portion of any sinking fund established in accordance with the provisions of section 56 (Sinking fund) of this Order as may not at the time have been applied in manner hereinbefore provided, in any bank or banks in Scotland incorporated under Act of Parliament or by royal charter or under the Companies Act 1985 or invest the same in the public or government funds of the United Kingdom or on heritable security or in securities in which trustees in Scotland may lawfully invest money.
- (2) The trustees shall carry and credit to the sinking fund each year all dividends and interest arising out of the investment of the sinking fund.

## 58 Power to borrow

- (1) The trustees may from time to time borrow upon the security of the assets for the time being and of the revenues of the trustees, by any methods they see fit—
  - (a) such sums of money as they think necessary not exceeding in the aggregate £10,000,000; and
  - (b) with the consent of the Secretary of State such further sums of money as they may require.
- (2) Moneys borrowed by the trustees under this section shall be applied only to purposes to which capital money is properly applicable.

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- (3) For the purpose of the last foregoing subsection, but without prejudice to the generality thereof, purposes to which capital money is properly applicable shall be deemed to include—
- (a) the payment of any interest falling due within five years immediately following the date of the borrowing on any sum of money borrowed by the trustees under this section; and
  - (b) the repayment within 12 months from the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.
- (4) A person lending money to the trustees on any form of security or taking or holding any such security shall not be bound to inquire whether the borrowing of the money is or was legal or regular or whether the money raised was properly applied and shall not be prejudiced by any illegality or irregularity in the matters aforesaid or by the misapplication or non-application of any such money.

## PART X

### MISCELLANEOUS

#### 59 **Partial cesser of Peterhead Bay Harbour Trust and Transfer Order 1983**

The Peterhead Bay Harbour Trust and Transfer Order 1983 (which confers powers on the Peterhead Bay Authority in relation to the harbour known as the Peterhead Bay Harbour) shall cease to have effect within the area hatched black on the harbour limits map.

#### 60 **Saving for town and country planning**

The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised by this Order.

#### 61 **Saving for Health and Safety at Work etc. Act 1974**

Subsection (1) of section 80 of the Health and Safety at Work etc. Act 1974 (repeal or modification of certain provisions by regulations) shall apply to any provision of this Order and to any byelaw made under this Order as that subsection applies to any provisions mentioned in subsection (2) of that section and nothing in this Order shall prejudice or affect the operation of any of the relevant statutory provisions as defined in subsection (1) of section 53 of that Act.

#### 62 **Saving for certain enactments**

Nothing in this Order shall—

- (a) affect the operation of Part II of the Food and Environment Protection Act 1985; or

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- (b) exempt the trustees from the provisions of Part I of the Coast Protection Act 1949.

## 63 Repeals

The enactments referred to in the first and second columns of Schedule 2 to this Order are hereby repealed to the extent specified in the third column of that Schedule.

# SCHEDULES

## SCHEDULE 1

Section 14.

### PROVISIONS AS TO ELECTION OF TRUSTEES

- 1 (1) Not less than 10 clear days prior to the date for the election of trustees in each year the chief executive shall by notice posted on a board outside the harbour office and published by insertion at least once in a newspaper circulating in the district, intimate:—
  - (a) the names of the retiring trustees;
  - (b) the date and times by which nominations and the withdrawal of nominations must be lodged with the chief executive;
  - (c) that nominations must be on separate papers and be signed by two electors and be accompanied by the written consent of the candidate; and
  - (d) the date, time and place of the election in the event of a poll being necessary.
- (2) Should a poll be necessary it shall be taken on such date and at the harbour office or such other place as has been intimated as aforesaid.
- 2 Any person qualified as an elector in a class of the elected trustees as provided for under this Order may nominate in writing for election as a trustee any other person of that class qualified to be elected which nomination shall be seconded by another elector so qualified. The nomination paper shall be signed by the elector making the nomination and by the elector seconding the same and also by the candidate and shall be lodged with the chief executive not later than such date and time as may be fixed by the chief executive in each year.
- 3 If more candidates are nominated for election in any class than the number to be elected in the class, the chief executive shall immediately after the expiry of the time fixed for lodging nominations as hereinbefore provided forthwith give notice in writing to each person nominated for election (which notice may be delivered or sent by post to his residence or to his place of business).
- 4 In the event of a poll not being required in any of the classes of electors hereinbefore mentioned by reason of the withdrawal of any candidate or candidates for election as hereinbefore provided or of no more candidates being originally nominated than the number to be elected in the aforesaid classes of electors, the chief executive shall, immediately after the time hereinbefore fixed for the withdrawal of candidates, sign a declaration of election which declaration shall be conclusive evidence thereof; and as soon as practicable he shall publish a copy of such declaration of election in a newspaper published or circulating in the district.

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- 5 If, after the lapse of the time hereinbefore appointed for receiving a notice of withdrawal by a candidate, more candidates remain nominated than the number to be elected in any of the classes of electors hereinbefore mentioned, the election shall be carried out by a poll which shall be taken in manner hereinafter provided and the chief executive shall forthwith give notice of the poll by publishing the same in manner similar to the notice referred to in paragraph 1 of this Schedule.
- 6 When a poll is required the same shall be taken by ballot in the manner of a Parliamentary election or in such manner as may be determined by the chief executive.
- 7 Upon the completion of the poll the persons who, being not more than the number of elected trustees to be elected at any election under this Order, shall be found to have the greater number of votes at such election shall, if duly qualified according to this Order, be deemed to be elected trustees, and the chief executive shall prepare and sign a certificate of election which certificate shall be final and conclusive as to the result of the poll and the trustees elected at such election and he shall also publish a copy of such certificate as soon as practicable in a newspaper circulating within the district.
- 8 The certificate of election aforesaid shall as soon as practicable and at latest within 24 hours from the completion of the counting of the votes be transmitted to the trustees by the returning officer who shall be the chief executive. In case of an equality in the number of votes after a recount, the chief executive shall determine by lot which of the persons having such equality of votes shall be the trustee or trustees.
- 9 In the event of the chief executive not receiving a nomination or nominations as hereinbefore provided of the name or names of persons proposed for election sufficient to supply the vacancy or vacancies in any class or classes of electors aforesaid or in the event of any such vacancy or vacancies not being supplied by reason of the requisite number of trustees not being elected from any cause whatsoever then in either of these events the trustees may fill up such vacancies.

## SCHEDULE 2

Section 63.

### ACTS AND ORDERS REPEALED

Chapter (1)	Short title (2)	Extent of repeal (3)
36 & 37 Vict. c. clvii.	Peterhead Harbours Act 1873.	The whole Act.
39 & 40 Vict. c. clxxiv.	Peterhead Harbours Amendment Act 1876.	The whole Act.
44 & 45 Vict. c. civ.	Pier and Harbour Orders Confirmation Act 1881.	The Peterhead Harbours Order 1881.
57 & 58 Vict. c. clxx.	Peterhead Harbours Act 1894.	The whole Act.
9 & 10 Geo. 5 c. xcvi.	Peterhead Harbours Order Confirmation Act 1919.	The whole Act and the Order scheduled thereto.
11 & 12 Geo. 5 c. xcvi.	Peterhead Harbours Order Confirmation Act 1921.	The whole Act and the Order scheduled thereto.

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Chapter (1)	Short title (2)	Extent of repeal (3)
<a href="#">1981 c. v.</a>	Peterhead Harbours Order Confirmation Act 1981.	The whole Act and the Peterhead Harbours Order 1980 scheduled thereto.”

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