

# Lerwick Harbour Order Confirmation Act, 1952

15 & 16 GEO. 6 & 1 ELIZ. 2 Ch. llii

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**CHAPTER liii**

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 relating to Lerwick Harbour. [30th October 1952.]

**W**HEREAS 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 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 1952. Short title.

## SCHEDULE

## LERWICK HARBOUR

*Provisional Order to authorise the Trustees of the Port and Harbour of Lerwick to construct new works to redefine and amend the harbour limits to amend existing and grant new powers to the Trustees as to the levying and collection of rates and charges to borrow money and for other purposes.*

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 incorporated and were authorised to construct the harbour and other works therein described and to borrow money for those purposes:

And whereas by the Act of 1877 the Lerwick Harbour Order of 1903 the Lerwick Harbour Order of 1911 the Lerwick Harbour Order of 1927 and the Lerwick Harbour Order of 1939 (hereinafter respectively referred to as "the Order of 1903" "the Order of 1911" "the Order of 1927" and "the Order of 1939" and collectively referred to as "the recited Acts and Orders") the Trustees were authorised to administer the Port and Harbour of Lerwick (hereinafter referred to as "the harbour") and to construct works and to borrow money for those purposes and to demand and take the rates and charges specified in and authorised by the recited Acts and Orders:

And whereas in order to afford the necessary facilities for vessels engaged in the fishing industry and general trade at the harbour and to improve and increase the accommodation and to effect improvements for the benefit of the trade and shipping at the harbour it is expedient to authorise the Trustees to construct and maintain the works hereinafter described in this Order:

And whereas it is expedient for the Trustees to borrow money for the aforesaid purposes as hereinafter provided in this Order:

And whereas it is expedient that the harbour limits be redefined and amended as hereinafter provided in this Order:

And whereas certain of the provisions of the recited Acts and Orders are now obsolete or have been superseded by subsequent legislation and ought to be amended or repealed:

And whereas it is expedient that the powers as to the levying and collection of dues rates and charges contained in this Order should be enacted:

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

And whereas plans and sections showing the lines situations and levels of the works authorised by this Order have been deposited with the sheriff clerk of the county of Zetland:

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:

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

PART I

PRELIMINARY

1. This Order may be cited as the Lerwick Harbour Order 1952 and this Order and the Lerwick Harbour Acts 1877 to 1927 may be cited as the Lerwick Harbour Acts 1877 to 1952. Short title and citation.

2. This Order shall commence and have effect on and from the date of the passing of the Act confirming the same which date is hereinafter referred to as the commencement of this Order. Commencement of Order.

3. In this Order unless there be something in the subject or context inconsistent with or repugnant to such construction— Interpretation.

(a) the several words and expressions to which meanings are assigned by the Harbour Acts or by the Acts wholly or partially incorporated herewith shall subject to the provisions of this Order have the same respective meanings; and

(b) the following words and expressions shall have the meanings assigned to them in this section (that is to say):—

“high-water mark” means high-water mark of ordinary spring tides;

“the Act of 1877” means the Lerwick Harbour Improvements Act 1877;

“the Act of 1937” means the Harbours Piers and Ferries (Scotland) Act 1937;

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

“the Harbour Acts” means the Act of 1877 the Orders of 1911 and 1927 and this Order;

“the Lerwick Harbour Acts 1877 to 1927” means the Act of 1877 and the Orders of 1911 and 1927;

“the Minister” means the Minister of Transport;

“the Order of 1903” means the Lerwick Harbour Order 1903;

“the Order of 1911” means the Lerwick Harbour Order 1911;

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

“the Order of 1939” means the Lerwick Harbour Order 1939;

“Secretary of State” means the Secretary of State for Scotland;

“the sheriff” means the sheriff of Caithness Sutherland Orkney and Zetland and does not include his substitutes;

PART I  
—cont.

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

“vessel” includes a seaplane on the surface of the water;

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

Incorporation  
of Acts.

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

The following sections of the Commissioners Clauses Act 1847 56 to 65 both inclusive 67 to 74 both inclusive 89 90 91 96 to 102 both inclusive 104 105 and 108 to 111 both inclusive and the word “Commissioners” in the said sections shall mean the Trustees;

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

(2) For the purposes of the incorporation of the said Acts the expression “the Special Act” in those Acts respectively shall mean this Order the expression “undertakers” shall mean the Trustees and the expressions used in the Harbours Docks and Piers Clauses Act 1847 to which meanings are assigned by section 4 (Incorporation of Acts) of the Order of 1927 shall have the same respective meanings.

(3) For the removal of doubt the harbour shall be deemed to be a marine work to which Part III of the Act of 1937 shall apply.

(4) Section 22 of Part IV of the Act of 1937 shall apply to all moneys borrowed under the Harbour Acts and in the application of the said section the words “this Act” shall mean the Harbour Acts.

(5) Notwithstanding anything contained in the Act of 1937 sections 25 and 26 of the Harbours Docks and Piers Clauses Act 1847 shall not apply to the works.

## PART II

## LANDS

Power to take  
lands by  
agreement.

5. For the purposes of the works the Trustees may purchase by agreement and use all or such parts of the lands shown on the plans deposited for the purposes of this Order as they may think requisite for the purposes of those works.

Power to grant  
servitudes etc.

6.—(1) Any person empowered by the Lands Clauses Acts to sell and convey or release lands may if he thinks fit subject to the provisions of those Acts grant to the Trustees any servitude right or privilege required for the purposes of this Order in or affecting any such lands (not being a servitude or right of water in which some person other than the grantor has an interest).

(2) The provisions of the said Acts with respect to lands and feu duties or ground annuals so far as such provisions are applicable shall extend and apply to any such grant and to any such servitude right or privilege as aforesaid.

PART II  
—cont.

7.—(1) The Trustees may—

Power to retain  
and sell lands.

- (a) retain and hold and use for such time as they think fit any land or interest in land acquired by them under this Order ;
- (b) sell feu lease excamb or otherwise dispose of any such land or interest no longer required for the purpose of the undertaking in such manner and for such consideration and on such terms and conditions as they think fit (whether in consideration of the execution of works or of the payment of a gross sum or of an annual feu-duty or rent or of payment in any other form) ;
- (c) sell excamb or dispose of any feu-duties created or rents reserved on the sale feu lease excambion or other disposition of any such land or interest ;
- (d) make do and execute any deed act or thing proper for effectuating any such sale feu lease excambion or other disposition ;
- (e) on any such excambion pay or receive money for equality of exchange :

Provided that the Trustees shall not without the consent of the Secretary of State sell feu lease excamb or otherwise dispose of any such land or any interest therein except at the best price or upon the best terms which can be obtained for such land or interest but a purchaser feuar or lessee shall not be concerned to inquire whether the consent of the Secretary of State is necessary or has been obtained.

(2) Nothing in this section shall release the Trustees or any person purchasing or acquiring any land or interest in land from them under this section from any feu-duties ground annuals rents obligations restrictions reservations terms or conditions made payable by or contained in any conveyance lease or other deed or instrument by which the land or interest has been conveyed or leased to or otherwise acquired by the Trustees or any persons from or through whom the Trustees have derived title to such land or interest.

(3) The proceeds of sale of any lands by the Trustees shall only be applied to the purposes of the undertaking to which capital is properly applicable including the redemption of debt.

8.—(1) In addition to the other lands which the Trustees are by this Order authorised to purchase and acquire they may purchase take on lease or acquire by agreement and may hold for the purposes of the Harbour Acts any land not exceeding five acres.

Land for  
extraordinary  
purposes.

(2) Nothing in this section shall exonerate the Trustees from any interdict action or other proceeding for nuisance in the event of any nuisance being caused or permitted by them on any lands acquired by them under this section.

## PART III

## NEW WORKS

Construction  
of works.

9. Subject to the provisions of this Order the Trustees may make and maintain in the lines and according to the levels shown on the deposited plans and sections the works hereinafter described or one of them or some part or parts thereof together with all necessary works and conveniences connected therewith (that is to say):—

Work No. 1 The widening of the Victoria Pier as a solid structure commencing at a point on the face of the Albert Wharf ninety feet from the junction of the Albert Wharf with the north-west face of the Victoria Pier and extending in a north-easterly direction for a distance of three hundred and fifty-five feet or thereabouts from the point of commencement thence south-easterly to meet the extremity of the existing pier ;

Work No. 2 The extension of the Victoria Pier as an open work structure commencing at the termination of Work No. 1 and extending in a north-easterly direction for a distance of one hundred and two feet or thereabouts from the point of commencement ;

Work No. 3 An extension of the breakwater as a solid structure commencing at a point on the north-east face thereof two hundred and twenty feet from the south-east corner and extending seawards in a north-easterly direction for a distance of one hundred and seventy-five feet or thereabouts from the point of commencement ;

Work No. 4 The widening of the North Esplanade as a solid structure commencing at the face of the spur wall at the south end of the Alexandra Wharf and extending in a southerly direction for a distance of four hundred feet or thereabouts to meet the commencement of Work No. 1 ;

Work No. 5 A solid wall or breastwork commencing at a point on the sea bed two feet six inches or thereabouts south-east of the south-eastern extremity of the Victoria Pier and extending thence parallel to the south face of the pier in a south-westerly direction and terminating at a point three hundred and sixty feet or thereabouts from the point of commencement ;

Work No. 6 A solid wall or breastwork commencing at a point on the sea bed two feet six inches or thereabouts from the north-eastern extremity of the Alexandra Wharf and extending thence parallel to the north face of the said wharf in a westerly direction and terminating at a point one hundred and fifty feet or thereabouts from the point of commencement ;

all of which works will be situated in the parish of Lerwick in the county of Zetland and on the foreshore and bed of the sea adjacent thereto.

Powers of  
deviation.

10. In the execution of the works authorised by this Order the Trustees may deviate laterally from the lines of such works within the limits of lateral deviation shown on the deposited plans and may



deviate vertically from the levels of the said works as shown on the deposited sections to any extent not exceeding five feet upwards and to any extent downwards:

PART III  
—cont.

Provided that deviation either lateral or vertical below high-water mark shall not be made without the consent in writing of the Minister.

11. The sections of the Harbour Acts of which the numbers and marginal notes are as follows shall apply and have effect as if the respective expressions "this Act" or "this Order" therein mean this Order and the expression "the harbour" means the harbour as defined by this Order and for the expression "Board of Trade" wheresoever the same occurs there shall be substituted "the Minister".

Application of  
Harbour Acts  
with reference  
to works etc.

In the Act of 1877—

Section 36 (Saving rights of owners etc. of private piers);

Section 37 (Defining undertaking of Trustees);

Section 40 (Meters and weighers);

Section 67 (Trustees and corporation of Lerwick may enter into arrangements as to police purposes):

In the Order of 1911—

Section 18 (Works below high-water mark not to be commenced without consent of Board of Trade):

Section 19 (Lights on works during construction);

Section 20 (Permanent lights on works);

Section 21 (Survey of works by Board of Trade);

Section 22 (Abatement of work abandoned or decayed);

Section 23 (Exemption of lifeboat crew);

Section 25 (Life-saving apparatus may be attached to works):

Section 26 (Lifebuoys to be kept).

12.—(1) Subject to the provisions of this Order the Trustees may within the harbour limits rebuild maintain repair renew widen alter improve restore reconstruct and extend the harbour undertaking and may from time to time erect construct and maintain whether temporarily or permanently all necessary works apparatus cranes and conveniences and may also from time to time lay down and maintain rails tramways and turntables.

Power to  
maintain and  
improve the  
harbour  
undertaking.

(2) A line of rails or tramway constructed under the powers of this Order shall not be used for the public conveyance of passengers unless and until it has been certified by the Minister to be fit for that purpose.

(3) Any electric light and power or other apparatus constructed and maintained under this Order shall be so constructed used and maintained as to prevent any interference with any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General or with telegraphic communication by means of any such line.

13. Any person who wilfully obstructs any person acting under the authority of the Trustees in setting out the lines of the works or who pulls up or removes any poles or stakes driven into the ground for the purpose of such setting out shall be guilty of an

Penalty for  
obstructing  
works.

PART III  
—cont.

offence and shall be liable on summary conviction to a penalty not exceeding five pounds and shall in addition be liable to repay to the Trustees any expenses incurred by them in making good such damage.

Powers to cease  
in certain events.

14.—(1) If the works are not substantially commenced within two years from the commencement of this Order or such extended time as the Minister may in the circumstances by order direct the said powers shall cease.

(2) If the execution of the works after having been substantially commenced is virtually suspended for twelve consecutive months the said powers shall cease except as to so much of the works as is then completed unless the Minister by order direct that the said powers continue and remain in force but subject to the foregoing provision as to completion the said powers shall cease in any event within ten years from the commencement of this Order.

(3) A certificate of the Minister to the effect that the works have not been substantially commenced or that they have been virtually suspended for twelve consecutive months shall for the purposes of this section be conclusive evidence of the facts stated in such certificate.

Power to  
purchase  
dredgers etc.

15.—(1) The Trustees may provide purchase take on lease hire and use such steam or other dredgers eroders engines lighters or other vessels machinery and apparatus as they may think necessary for effecting the purposes of this Order and may let the same on hire for such sums and upon and subject to such terms and conditions as they may think fit or may sell and dispose of the same.

(2) All sums received in respect of any such letting on hire shall be deemed to form part of the revenue of the harbour and all moneys realised by any such sale shall be applied towards carrying into effect any of the purposes of this Order to which capital is properly applicable.

Saving for  
Crown rights in  
relation to  
power to dredge.

16. The powers of the Trustees under paragraph (b) of section 9 of the Act of 1937 shall be exercisable subject to the provisions of the section of this Order of which the marginal note is "Crown rights" and in particular and without prejudice to that general limitation any consent given to the exercise of such powers by the Commissioners of Crown Lands on behalf of Her Majesty may be given subject to such restrictions and conditions including the payment by the Trustees to the Commissioners of Crown Lands of royalties rents or sums of money in respect of materials raised from any place below high-water mark or in respect of any place below high-water mark upon which materials may be deposited as may be fixed by the Commissioners of Crown Lands.

Works to be  
deemed part of  
harbour  
undertaking.

17. The works shall subject to the provisions of this Order for all purposes be and be deemed to be part of the harbour and harbour undertaking authorised by the Harbour Acts and all bye-laws rules and regulations of the Trustees for the time being in force relating to the harbour and harbour undertaking shall be applicable and apply to the works and shall and may be enforced by the Trustees accordingly.

Works to be in  
parish of  
Lerwick.

18. The works shall be deemed to be for all purposes within the parish of Lerwick and in the county of Zetland.

PART IV

HARBOUR LIMITS

19.—(1) The limits of the harbour shall for the purposes of the jurisdiction of the Trustees over the sea and for conservancy purposes comprise extend to and include the area comprised within the following boundary that is to say A boundary commencing at high-water mark on the south-east corner of the breakwater which point is fifty feet or thereby east of the south-east corner of the Old Tolbooth thence proceeding southward along high-water mark passing along the east shore of the South Ness to the southern extremity at high-water mark of Nab Point in the mainland of Zetland thence proceeding in a straight line in a south-easterly direction across Bressay Sound or Lerwick Harbour or the sea and foreshores of the same to the north-west extremity at high-water mark of the Head or Taing of Ham in the Island of Bressay thence northward along high-water mark on the west coast of the Island of Bressay to the east side of the entrance to Leiraness Voe thence in a straight line across the said entrance to the southern extremity at high-water mark of Leira Ness in the said Island of Bressay thence following high-water mark northward passing Gardie and Cruster to the south-west extremity at high-water mark of the Point of Hogan in the said Island of Bressay thence proceeding in a straight line in a westerly direction across Sound of Bressay or Lerwick Harbour or the sea and foreshores of the same to the easternmost extremity at high-water mark of the Point of Scotland in the mainland of Zetland thence southward along high-water mark on the east side of the mainland of Zetland passing Gremista and Holmsgarth thence proceeding southward and eastward along high-water mark passing the piers and docks at Garthspool and the docks and piers at Freefield near the Northness belonging to Messrs. Hay & Company (Lerwick) Limited and passing the Northness to the north-east extremity of the property of the feuars and heritors of Lerwick thence westward along the northern boundary of the said property to the road to Northness thence southward along the building line on the east side of the said road and Commercial Road to the wall on the east side of Commercial Road opposite Fort Charlotte thence along the said wall to the northern boundary of the property belonging to Messrs. J. & J. Tod & Sons Limited thence eastward along the said property belonging to Messrs. J. & J. Tod & Sons Limited and thereafter southward following the building line on the west side of the North Esplanade and including the property belonging to James Stout esquire thence continuing southward passing along the west side of the Harbour Trust Offices and the building line on the west side of the South Esplanade to the point of commencement.

Lerwick  
Harbour limits.

(2) The limits within which the powers of the Trustees to levy rates with respect to the harbour undertaking may be exercised shall comprise the Lerwick Harbour limits.

(3) A map showing the Lerwick Harbour limits of which five copies have been signed by Ian F. Henderson A.M.I.C.E. M.Cons.E. Aberdeen shall within one month after the commencement of this Order be deposited as follows that is to say two copies at the

PART IV  
—cont.

office of the Minister one copy with the sheriff clerk of the county at his office one copy at the office of the town clerk of the burgh and one copy at the office of the county clerk of the county of Zetland.

## PART V

## RATES

Power to  
compound rates.

20.—(1) The Trustees may agree with the master or owner of any vessel using the harbour or works or conveniences of the Trustees for the purposes of business or pleasure for a payment of a fixed sum payable in advance as a composition by the year or other shorter or longer period for all or any of the rates payable by or in respect of such vessel.

(2) If the Trustees at any time make any such agreement by way of composition as aforesaid the masters or owners of all other vessels of the same description using the harbour and works and conveniences of the Trustees in like manner and in similar circumstances shall be entitled to compound for the rates payable by them respectively upon the like terms as are contained in such agreement and the Trustees shall accept such composition accordingly.

Additional  
powers to  
compound rates.

21. The Trustees may from time to time in such manner as they may think expedient compound the rates or any of them respectively in respect of all vessels trading solely between the harbour and any other ports or places in the Shetland Islands:

Provided that the rates are at all times charged equally to all persons in respect of vessels performing a voyage between the harbour and the same ports and places and in respect of the same description of goods.

Trustees may act  
as warehouse-  
keepers.

22. The Trustees may set apart and use by themselves or others any of their sheds yards or buildings and may provide and erect sheds yards or buildings at the harbour for the purpose of warehousing goods and fit up the same with all necessary appliances and plant including refrigerating machinery appliances and other equipment for the processing or preserving of fish and may as warehouse-keepers wharfingers and storekeepers on such terms and conditions as may be prescribed by them render such services as are usually rendered by such persons on payment by the owners of the goods warehoused or the persons in charge of such goods of such reasonable charges as shall be fixed by the Trustees.

Trustees'  
liability and  
lien on goods.

23.—(1) The Trustees shall not have any responsibility for or in regard to the safety of any goods deposited in their sheds yards buildings quays or other premises except goods warehoused by the Trustees in any shed yard or building specifically set apart by the Trustees for the purpose of so warehousing (in this Part of this Order referred to as "warehouse") and goods except goods so warehoused shall not be deemed to be in their custody so as to be attachable by arrestment or otherwise:

Provided always that the Trustees shall have a lien over all goods deposited in premises belonging to the Trustees whether for the purpose of warehousing or otherwise for all rents rates and

charges payable to them for or in respect of such goods in priority to any claim or lien for freight or other claims or liens of the owner or master of the vessel discharging such goods or any other person interested in such goods or in the freight of the same or entitled to or claiming the benefit of any claim or lien to which such goods were subject while on board such vessel before being deposited as aforesaid.

(2) Except as otherwise provided in this section nothing contained in this section shall prejudice any claim or lien for freight or other claims or liens whatsoever competent to a shipowner claiming lien for freight or other charges in terms of section 494 of the Merchant Shipping Act 1894.

24. The Trustees may if they think fit at the request of any person warehousing any goods at or in a warehouse of the Trustees or entitled to any goods so warehoused issue and deliver to him a certificate or warrant of such goods having been so warehoused on payment of such reasonable charges for each certificate or warrant as the Trustees think fit. Trustees may issue certificates of warehoused goods.

25. All certificates and other documents relating to goods warehoused at or in a warehouse of the Trustees if signed and properly issued by any officer duly authorised by them in that behalf shall be effectual in law and binding on the Trustees and on all other parties interested without any other signature and without any seal. Certificates may be signed by officers.

26.—(1) The owner or person having the charge of any goods warehoused at or in a warehouse of the Trustees shall before the removal of such goods from any warehouse of the Trustees and at such date or dates as shall be fixed by the Trustees pay such rates and charges as are then due and payable on such goods. As to payment of rates on warehoused goods.

(2) If such owner or person fails or neglects to pay such rates and charges the Trustees or such person as may be appointed by them shall have the same powers for recovery thereof as are conferred upon the Trustees for the recovery of rates on goods by the Harbours Docks and Piers Clauses Act 1847.

27. The Trustees in order to control traffic on the quays and piers of the harbour on occasions when there may be an assembly of people may erect such barricades or crush barriers as they deem necessary to prevent obstruction or may barricade off any area which they consider should be kept clear. Power to erect barricades.

## PART VI

### FINANCE

28.—(1) The Trustees may in addition to the sums already borrowed or authorised to be borrowed by them from time to time borrow— Power to borrow.

(a) for the purposes of the harbour undertaking and this Order such sum or sums of money as may be required for those purposes not exceeding in the whole one hundred and fifty thousand pounds ;

PART VI  
—cont.

(b) with the sanction of the Secretary of State such further sum or sums as may from time to time be required for the purposes of the harbour undertaking ; and

(c) for paying the costs charges and expenses of this Order the sum requisite for that purpose.

(2) The Secretary of State shall have and may exercise in relation to any such sanction as aforesaid all the powers of section 355 of the Local Government (Scotland) Act 1947 and such sanction shall be subject to such conditions (if any) as the Secretary of State may consider proper.

Periods for  
repayment of  
borrowed  
money.

29. All moneys borrowed by the Trustees under this Order shall be repaid within the respective periods following (that is to say):—

(a) as to moneys borrowed under paragraph (a) of subsection (1) of the section of this Order of which the marginal note is "Power to borrow" within thirty years from the date or dates of borrowing the same ;

(b) as to moneys borrowed under paragraph (b) of the said subsection within such period from the date or dates of borrowing the same and by such method as the Secretary of State may prescribe ;

(c) as to moneys borrowed under paragraph (c) of the said subsection within five years from the commencement of this Order.

Application of  
money  
borrowed.

30. The money borrowed under this Order shall be applied only for the purposes of this Order for which capital money may properly be applied and not otherwise.

Sinking fund.

31.—(1) For the purpose of paying off any moneys borrowed under this Order the Trustees shall annually set apart out of the surplus revenue of the Trust a sum equal to one-thirtieth part of the total amount so borrowed as a sinking fund and such sinking fund shall be from time to time applicable to the redemption of the bonds and assignations in security granted by the Trustees and of the annuities payable to the holders of the funded debt on such terms and conditions as may be agreed upon.

(2) No part of such sinking fund shall be applied in redemption of the said annuities until the whole bonds and assignations granted by the Trustees have been redeemed.

(3) If at any time the Trustees have paid off or may pay off moneys secured by any such securities or otherwise to a greater extent than the amount for the time being available for that purpose from the sinking fund they may from time to time reborrow the amount so paid off in excess thereof.

Application of  
provisions of  
Act of 1877  
with reference to  
borrowing etc.

32. The sections of the Act of 1877 of which the marginal notes are as follows shall *mutatis mutandis* apply and have effect (namely):—

Section 47 (Power to borrow money) ;

Section 48 (Power to reborrow):

Provided that any moneys reborrowed under the said section 48 shall be deemed to form part of the original loan and shall be repaid within the remainder of the

period prescribed for the repayment of the original loan or such other period as the Secretary of State may prescribe and the provisions for the time being applicable to the original loan shall apply to the moneys reborrowed.

PART VI  
—cont.

- Section 50 (Form of securities) ;  
Section 51 (Bonds may be accompanied by interest warrants) ;  
Section 52 (Power to borrow on cash credit) ;  
Section 53 (Discharge of securities) ;  
Section 54 (Trustees may fund debt and issue certificates of funded debt) ;  
Section 55 (Register of holders of funded debt) ;  
Section 56 (Transfer of funded debt) ;  
Section 57 (As to payment of annuities) ;  
Section 58 (Security of holders of funded debt) ;  
Section 59 (As to appointment of judicial factor) ;  
Section 60 (Powers and duties of judicial factor) ;  
Section 62 (Investment of sinking fund).

33. It shall not be lawful to exercise the powers of borrowing conferred by this Order otherwise than in compliance with the provisions of any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946. Saving for powers of Treasury.

## PART VII

### MISCELLANEOUS

34.—(1) A person shall not fish from a vessel or boat or otherwise by means of nets within the limits of the harbour. Prohibition of net fishing within limits of harbour.

(2) A person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on summary conviction for each offence to a fine not exceeding one hundred pounds and in default in payment to imprisonment for a period not exceeding three months.

(3) Without prejudice to the provisions of subsection (1) of this section the following persons shall be guilty of an offence and be liable on summary conviction to the aforesaid penalty:—

- (a) the owner of any fishing or other vessel or boat who uses or permits the use of such vessel or boat for the purpose of fishing by means of nets within the limits of the harbour ;
- (b) the master or person in charge of a fishing or other vessel from which fishing is carried out in manner aforesaid within the limits of the harbour ; and
- (c) all or any of the persons on board a boat which does not have a person in charge and from which fishing is carried out in manner aforesaid within the limits of the harbour.

PART VII  
—cont.Power to cut or  
sink nets.

35. The harbour-master or any servant of the Trustees acting on the instructions of the harbour-master may after giving warning if reasonably practicable to the owner or person in charge thereof cut adrift or sink any fishing nets or appurtenances within the limits of the harbour which may constitute a danger to navigation.

Parking places.

36.—(1) The Trustees may provide facilities within the limits of the harbour for the parking of motor vehicles and for this purpose may erect barricades or fencing on the harbour property with relative offices waiting rooms and other conveniences.

(2) The Trustees may reserve portions of the harbour property for use as an omnibus station or stance.

Power to enter  
into  
arrangements to  
supply oil-fuel.

37. The Trustees may make arrangements for the purpose of providing and supplying oil-fuel to vessels using the harbour and in respect of the supply laying down and maintaining of pipe-lines storage tanks and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour limits.

Penalty for  
closing valves  
and apparatus.

38. A person who wilfully or by wilful negligence closes shuts off or interferes with any pipe-line valve stopcock or other work or apparatus belonging to the Trustees or to any persons with whom the Trustees have made arrangements in terms of the immediately preceding section of this Order whereby the supply of oil-fuel to vessels is interfered with shall be guilty of an offence and for every such offence shall be liable on summary conviction to a penalty not exceeding five pounds and the Trustees may in addition to such penalty recover from such person the amount of any damage sustained by the Trustees.

Removal of sunk  
stranded or  
abandoned  
vessels.

39. Subsection (3) of section 10 of the Act of 1937 shall not apply to the harbour and in lieu thereof the following provisions shall apply:—

(1) Whenever any vessel is sunk stranded or abandoned in any part of the harbour or in or near any approach thereto the Trustees may if they think fit cause the vessel or any part thereof to be raised removed blown up or destroyed:

(2) The Trustees may cause any such vessel and the furniture and tackle and apparel thereof or any part thereof respectively which is raised or salvaged and also all or any part of the cargo goods and effects which may be raised or salvaged from any such vessel to be sold in any such manner as they may think fit and out of the proceeds of sale may reimburse themselves for the expenses incurred by them under this section and also for any expenses incurred by them in marking buoying watching lighting or otherwise controlling the vessel and shall hold the surplus (if any) of the proceeds of the sale in trust for the persons entitled thereto:

Provided that the Trustees shall before selling any such cargo goods or effects as aforesaid pay all duties of customs or excise and purchase tax which are payable in respect of the cargo goods or effects to be sold and they may retain



the amount of the duties of customs or excise and purchase tax so paid out of the proceeds arising from the sale of such cargo goods or effects:

(3) If the proceeds of the sale are insufficient to reimburse the Trustees for the aforesaid expenses and duties of customs or excise and purchase tax the Trustees may recover the deficiency or in case of an appeal under subsection (4) of this section such sum as is awarded by the arbiter to be payable in respect of the deficiency from the owner of any such vessel:

(4) (a) If on demand being made under this section for payment of any deficiency the owner of the vessel is dissatisfied with the amount demanded he may within fourteen days after the receipt of the demand appeal to the Minister who shall appoint an arbiter to determine and award whether any and if so what sum is payable in respect of the deficiency and the award of the arbiter appointed by the Minister that no sum is payable or as to the sum payable as the case may be shall be final and binding on both parties;

(b) The expenses of the appeal and the award shall be in the absolute discretion of the arbiter and he shall award and order how those expenses are to be borne and paid:

(5) The Trustees shall (except in any case which in their opinion is a case of emergency) before raising removing blowing up or destroying any vessel under the provisions of this section give to the owner of the vessel twenty-four hours' notice of their intention so to do and if within twelve hours after the expiration of such notice the owner gives to the Trustees notice in writing of his intention himself to raise and remove the vessel he shall be at liberty to do so in lieu of the Trustees:

Provided that if the owner gives any such notice as last aforesaid—

(a) he shall in raising or removing the vessel comply with any directions which may from time to time be given to him by or on behalf of the Trustees for the purpose of preventing interference with navigation; and

(b) he shall forthwith after giving such notice commence and shall with all diligent dispatch proceed with and complete the raising or removal of the vessel;

and if such raising or removal is not completed within seven days after the giving of such notice by the owner such notice shall be null and void and the Trustees shall be at liberty to cause the vessel to be raised removed blown up or destroyed in accordance with the provisions of this section as if the owner had not given such notice:

(6) The Trustees shall (except in any case which in their opinion is a case of emergency or when required by the owner to sell) before selling any vessel or any part thereof or any

PART VII  
—cont.

part of the cargo goods and effects thereof under the provisions of this section give to the owner seven days' notice of their intention so to do:

- (7) Any notice given by the Trustees pursuant to subsection (5) or subsection (6) of this section shall be given by delivering the same to the owner or by posting a prepaid letter addressed to the owner at the place in the United Kingdom where he carries on business or at his last known place of abode in the United Kingdom or if the owner or his place of business or abode is not known to the Trustees then by exhibiting such notice at the principal office of the Trustees for twenty-four hours in the case of a notice given under the said subsection (5) or for seven days in the case of a notice given under the said subsection (6):
- (8) In this and the following section the expression—  
“owner” in relation to any vessel sunk stranded or abandoned as aforesaid means the owner of the vessel at the time of the sinking stranding or abandonment thereof;  
“vessel” includes a seaplane and other aircraft:
- (9) The powers conferred on the Trustees by this section shall be in addition to and not in derogation of any other powers exercisable by them for or with respect to the removal of wrecks:
- (10) Except for the purpose of removing any obstruction to the harbour nothing in this section shall entitle the Trustees to remove any wreck (as defined in section 510 of the Merchant Shipping Act 1894) to the prejudice or in derogation of the rights with respect to such wreck of the receiver of wreck under the provisions of Part IX of the said Merchant Shipping Act and if the Trustees for any such purpose as aforesaid remove any such wreck they shall (without prejudice to the rights of sale conferred upon them by the foregoing provisions of this section) hold and dispose of the same or any such surplus of the proceeds of sale thereof as is referred to in subsection (2) of this section in accordance with such directions (if any) as may be given to them by the said receiver:
- (11) For the removal of doubt it is expressly provided that nothing in this section shall apply to any vessel belonging to Her Majesty or held by any person on behalf of or for the benefit of the Crown nor shall any of the powers conferred by this section be exercised if by such exercise the Crown would become liable directly or indirectly otherwise than as an insurer or reinsurer under a contract of insurance or reinsurance for any expenses incurred by the Trustees except where such consent is given as is provided for in section 40 (As to vessels in which the Crown have an interest) of this Order and the vessel was not such a vessel as aforesaid at any such time as is mentioned in subsection (8) of this section.

40.—(1) The Trustees shall before taking possession of raising removing blowing up or destroying any vessel sunk stranded or abandoned under the powers conferred upon them by this Order or by any other enactment give to the Admiralty and to the Minister notice in writing of their intention so to do and if within fourteen days after the receipt of such notice the Admiralty or the Minister gives to the Trustees—

PART VII  
—cont.

As to vessels in which the Crown have an interest.

- (a) a certificate that the vessel was sunk stranded or abandoned by a person acting on behalf of Her Majesty or otherwise by an officer or servant of the Crown acting in the course of his duty as such and that it is not in the national interest that the Trustees should take possession of the vessel or that the vessel should be raised removed or blown up or destroyed ; or
- (b) a notice that the exercise by the Trustees of the rights of recovery conferred by subsection (2) of the immediately preceding section of this Order would render the Crown liable directly or indirectly otherwise than as an insurer or reinsurer under a contract of insurance or reinsurance for all or a substantial proportion of the expense incurred by the Trustees ;

the Trustees shall not without the consent in writing of the authority by whom the certificate was issued or the notice given take possession of raise remove blow up or destroy such vessel provided that in any case which in their opinion is a case of emergency the Trustees may take possession of raise remove blow up or destroy any vessel without giving notice of their intention so to do to the Admiralty or to the Minister and in that event the Trustees shall not be entitled to recover from any person the expenses incurred by them in so doing if the effect of such recovery would be to render the Crown so liable.

(2) If the Trustees mark light watch buoy control or give warning to shipping of the presence of any vessel in respect of which the Admiralty or the Minister have refused their consent under subsection (1) of this section the Trustees shall not be entitled to recover the expenses of so doing from the owner of the vessel.

41. For the protection of the North of Scotland Hydro-Electric Board (in this section referred to as "the board") the following provisions 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) Not less than twenty-one days before the Trustees pursuant to section 12 (Power to maintain and improve the harbour undertaking) of this Order lay down rails tramways and turntables over or within three feet of any electric lines or other apparatus of the board they shall give notice in writing to the board and if the carrying out of any works makes it reasonably necessary to alter the position of such apparatus the board may and if reasonably so required by the Trustees shall alter the position of the apparatus to such other position as may be reasonable and the Trustees

PART VII  
—cont.

shall repay to the board the reasonable expenses incurred by the board in connection with the alteration of the position of their apparatus:

- (2) Any difference which may arise between the Trustees and the board under this section shall be referred to an arbiter to be mutually chosen or failing agreement to be appointed by the sheriff on the application of either party and the decision of the arbiter shall be final.

For protection  
of Scottish  
Gas Board.

42. For the protection of the Scottish Gas Board (in this section referred to as "the board") the following provisions shall unless otherwise agreed in writing between the Trustees and the board apply and have effect:—

- (1) Not less than twenty-one days before the Trustees pursuant to section 12 (Power to maintain and improve the harbour undertaking) of this Order lay down any rails tramways or turntables over or within three feet of any mains or pipes or other apparatus of the board they shall give notice in writing to the board and if the carrying out of any works makes it reasonably necessary to alter the position of such mains pipes or apparatus the board may and if reasonably so required by the Trustees shall alter the position of such mains pipes or apparatus to such other position as may be reasonable and the Trustees shall repay to the board the reasonable expenses incurred by the board in connection with the alteration of the position of such mains pipes or apparatus:
- (2) Any difference which may arise between the Trustees and the board under this section shall be referred to an arbiter to be mutually chosen or failing agreement to be appointed by the sheriff on the application of either party and the decision of the arbiter shall be final.

Proceedings  
under Order.

43. Proceedings for any offence under this Order or against any byelaws made in relation to the harbour shall be brought in the sheriff court.

## Crown rights.

44. Nothing in this Order shall affect prejudicially any estate right power privilege or exemption of the Crown and in particular nothing herein contained shall authorise the Trustees to take use or in any manner interfere with any portion of the shore or bed of the sea or of any river channel creek bay or estuary or any lands heritages subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Commissioners of Crown Lands without the consent in writing of such Commissioners on behalf of Her Majesty first had and obtained for that purpose.

Saving for town  
and country  
planning.

45. This Order shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning (Scotland) Act 1947 for the purposes of subsection (4) of section 11 and subsection (1) of section 112 of that Act.

46. The following provisions Parts and Orders of the Harbour Acts are hereby repealed to the extent shown in the second column hereof (namely):—

PART VII  
—cont.  
Repeal.

Act or Order	Extent of repeal
The Act of 1877 ... ..	Sections 35 and 63. Part V (Rates).
The Order of 1903 ... ..	The whole Order.
The Order of 1911 ... ..	Sections 8 9 and 10.
The Order of 1927 ... ..	Sections 9 11 and 12.
The Order of 1939 ... ..	The whole Order.

47. All costs charges and expenses of or incidental to the preparing for and obtaining of this Order and the confirming Act or otherwise in relation thereto shall be paid by the Trustees out of the harbour revenue. Costs of Order.

*Table of Statutes referred to in this Act*

Short title	Session and chapter
Lands Clauses Consolidation (Scotland) Act 1845	8 & 9 Vict. c. 19.
Commissioners Clauses Act 1847 ... ..	10 & 11 Vict. c. 16.
Harbours Docks and Piers Clauses Act 1847 ...	10 & 11 Vict. c. 27.
Lerwick Harbour Improvements Act 1877 ...	40 & 41 Vict. c. cxciv.
Telegraph Act 1878 ... ..	41 & 42 Vict. c. 76.
Merchant Shipping Act 1894 ... ..	57 & 58 Vict. c. 60.
Private Legislation Procedure (Scotland) Act 1936	26 Geo. 5. & 1 Edw. 8. c. 52.
Harbours Piers and Ferries (Scotland) Act 1937 ...	1 Edw. 8. & 1 Geo. 6. c. 28.
Borrowing (Control and Guarantees) Act 1946 ...	9 & 10 Geo. 6. c. 58.
Local Government (Scotland) Act 1947 ... ..	10 & 11 Geo. 6. c. 43.
Town and Country Planning (Scotland) Act 1947	10 & 11 Geo. 6. c. 53.

Ch. liii

*Lerwick Harbour Order  
Confirmation Act, 1952*

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