

1975 No. 348

HARBOURS, DOCKS, PIERS AND FERRIES

The Montrose Harbour Revision Order 1974

<i>Made</i> - - - -	26th October 1974
<i>Laid before Parliament</i>	10th December 1974
<i>Coming into Operation</i>	11th February 1975

The Secretary of State for the Environment in exercise of powers conferred by section 14 of the Harbours Act 1964(a) and now vested in him(b) and of all other powers enabling him in that behalf and on the application of the Trustees of the Harbour of Montrose, hereby makes the following Order:—

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Montrose Harbour Revision Order 1974 and the Montrose Harbour Acts 1837 to 1961 and this Order may be cited together as the Montrose Harbour Acts and Order 1837 to 1974.

(2) This Order shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(c).

Incorporation of Act of 1847

2.—(1) The following provisions of the Act of 1847 so far as the same are applicable to the purposes of and are not inconsistent with the provisions of this Order are hereby incorporated with this Order:—

Sections 1 to 6, 14, 15, 20 to 22, 28, 29, 31, 33, 34 to 46, 48, 51 to 76, 79, 80, 83, 97 to 100 and 102 to 104:

Provided that in construing the Act of 1847 as so incorporated the expression “the special Act” shall mean this Order; “the prescribed limits” means the Harbour; and the expression “vessel” shall have the meaning assigned to it by Article 3 of this Order.

(2) Section 15 of the Act of 1847 as so incorporated shall have effect as if the words from “shall forfeit” to the end of the section were deleted and there were substituted therefor the words “shall be liable on summary conviction to a fine not exceeding £20”.

(a) 1964 c. 40.

(b) S.I. 1970/1681 (1970 III, p. 5551).

(c) 9 & 10 Geo. 6 c. 18; 1965 c. 43.

Interpretation

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

“Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(a);

“deposited plan” and “deposited sections” mean respectively the plan and sections prepared in triplicate, signed by an Assistant Secretary in the Department of the Environment and marked “Plan and sections referred to in Montrose Harbour Revision Order 1974” of which copies are deposited at the offices of the Secretary of State for the Environment, the offices of the Secretary of State for Trade and the principal office of the Trustees;

“Harbour” means the Harbour of Montrose as described in Article 19 of this Order and includes the land, buildings, works, plant, property and conveniences connected therewith or any part thereof as the case may be;

“harbour undertaking” means the undertaking of the Trustees as for the time being authorised in connection with the harbour and the works;

“level of high water” means the level of mean high water springs;

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

“tidal work” means so much of any work authorised by this Order, including the works referred to in Article 4(1)(a) of this Order, as is on, under or over tidal waters or tidal lands below the level of high water;

“Trustees” means the Trustees of the Harbour of Montrose incorporated by the Montrose Harbour Act 1837(b);

“vessel” includes any ship or boat or other description of vessel used in navigation, any seaplane on the surface of the water and any hovercraft within the meaning of the Hovercraft Act 1968(c);

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

(2) The Interpretation Act 1889(d) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(3) Unless the context otherwise requires, any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by any subsequent enactment, including this Order.

(4) This Order shall be read as if the words “or thereabouts” were inserted after each distance mentioned in Article 4 (Power to construct works) of this Order.

PART II

WORKS

Power to construct works

4.—(1) Subject to the provisions of this Order the Trustees may partly in the Burgh of Montrose and partly in the County of Angus and within the limits of deviation—

(a) continue and maintain the works described in paragraph (2) below so far as the same have already been constructed; and

(a) 1847 c. 27.
(c) 1968 c. 59.

(b) 1837 c. xcix.
(d) 1889 c. 63.

(b) in so far as those works have not already been constructed construct and maintain the same.

(2) The works referred to in paragraph (1) above are a quay comprising steel sheet piling, bearing piles and reinforced concrete of solid faced construction commencing at a point 38 metres to the north north-west of the root of the eastern face of the existing pier near Brownlow Place, Ferryden, proceeding thence in a north north-westerly direction for a distance of 28 metres to national grid reference point 371621 756772, thence in a west north-westerly direction for a distance of 244 metres to national grid reference point 371386 756839, thence in a north-westerly direction for a distance of 220 metres and there terminating, together with all necessary excavation of the bed of the sea.

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

Period for completion of works

5. If the works are not completed before 1st January, 1983, the powers by this Order granted to the Trustees for constructing the works shall on that day cease except as to so much thereof as is then substantially commenced.

Subsidiary works

6.—(1) Subject to the provisions of this Order the Trustees may from time to time erect, construct and maintain whether temporarily or permanently all such necessary works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

(2) Any electrical works or equipment constructed or placed and maintained and used pursuant to the powers conferred by this article shall be so constructed or placed and so maintained and used as to prevent interference with any telegraphic line belonging to or used by the Post Office or with telecommunication by means of any such line.

Power to deviate

7. Subject to the provisions of this Order, in constructing the works the Trustees may deviate laterally from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3.5 metres upwards and to such extent downwards as may be found necessary or convenient.

Fine for obstructing work

8.—(1) Any person who wilfully obstructs any person acting under the authority of the Trustees in setting out the lines of the works, or who damages, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall for every such offence be liable to a fine 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.

(2) Proceedings for any offence under this article for the recovery of any fine thereunder may be brought in any court of summary jurisdiction.

Tidal works not to be executed without approval of Secretary of State

9.—(1) The Trustees shall provide the Secretary of State for Trade with such plans and sections in such form as he may require of the works referred to in Article 4(1)(a) of this Order.

(2) Except for such of the works referred to in Article 4(1)(a) as are tidal works, a tidal work shall not be constructed other than in accordance with plans and sections approved by the Secretary of State for Trade and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(3) A tidal work (including such of the works referred to in Article 4(1)(a) as are tidal works) shall not be reconstructed, renewed, enlarged or altered except in accordance with plans and sections approved by the Secretary of State for Trade and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

Survey of tidal works

10. The Secretary of State for Trade may at any time if he deems it expedient order a survey and examination of a tidal work constructed by the Trustees or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State for Trade in any such survey and examination shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Provision against danger to navigation

11.—(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 notify the Commissioners of Northern Lighthouses as required by this article or to comply in any respect with the provisions of this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Abatement of works abandoned

12.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State for Trade may by notice in writing require the Trustees at their own expense 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 for Trade thinks proper.

(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 for Trade may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of thirty days from the date when a notice under this article is served upon the Trustees they have failed to comply with the require-

ments of the notice, the Secretary of State for Trade may execute the works specified in the notice and any expenditure incurred by him in so doing shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Lights on tidal works during construction

13.—(1) The Trustees shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, enlargement or alteration thereof exhibit, every night from sunset to sunrise, such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State for Trade shall from time to time direct.

(2) If the Trustees fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Permanent lights on tidal works

14.—(1) After the completion of a tidal work, the Trustees shall at the outer extremity thereof exhibit every night from sunset to sunrise 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 article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Works to form part of harbour undertaking and application of byelaws

15.—(1) The works shall for all purposes form part of the harbour undertaking.

(2) All byelaws and regulations for the time being in force relating to the harbour undertaking shall so far as applicable apply to the works and may be enforced by the Trustees accordingly.

Amendment of section LVIII of Montrose Harbour Act 1837

16. So much of section LVIII of the Montrose Harbour Act 1837(a) as follows the words "eastward of the said Chain Bridge" where secondly occurring shall cease to have effect in relation to the works.

PART III

BORROWING

Borrowing powers

17.—(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 four million pounds;

(b) with the consent of the Secretary of State such further sums of money as they may require:

Provided that in calculating for the purpose of paragraph (a) of this article the aggregate sums of money borrowed by the Trustees there shall be excluded

(a) 1837 c. xcix.

any sums borrowed for use within twelve months of the date of borrowing for repayment of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(2) Moneys borrowed by the Trustees under this article shall be applied only to purposes to which capital money is properly applicable.

(3) For the purposes of the last foregoing paragraph, 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 article; and

(b) the repayment within twelve months from the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(4) The powers of borrowing conferred by this article shall supersede any powers of borrowing conferred by the Montrose Harbour Acts 1837 to 1961 so far as those powers have not been exercised prior to the commencement of this Order.

(5) Nothing in the Montrose Burgh and Harbour Order 1927(a) or the Montrose Burgh and Harbour Order 1961(b) shall apply to money borrowed under this article.

Ranking of moneys borrowed

18. All moneys borrowed under Article 17 of this Order shall rank in point of security as to interest and capital after moneys borrowed under the Montrose Harbour Acts 1837 to 1961 before and remaining outstanding at the date of the coming into operation of this Order but, subject as aforesaid, shall rank *pari passu* one with another without any priority on account of the date of issue or on any other account.

PART IV

MISCELLANEOUS

Harbour limits

19.—(1) The harbour of Montrose shall comprise the area within a line commencing at a point on the level of mean high water springs 60 metres or thereby due north (true) from Scurdie Ness Lighthouse as shown on the 1/10560 Ordnance Survey Map Sheet NO. 75 NW marked "Montrose Harbour Limits" deposited in pursuance of paragraph (3) of this article, proceeding thence in a north-westerly direction for a distance of 400 metres or thereby to position latitude $56^{\circ} 42' 19.2''$ N. longitude $02^{\circ} 26' 20.9''$ E., thence in a west-south-westerly direction following generally the level of mean low water springs as shown on the said map for a distance of 860 metres or thereby to position latitude $56^{\circ} 42' 12.4''$ N. longitude $02^{\circ} 27' 09.5''$ W., thence due north (true) to the line of mean high water springs, thence following the level of mean high water springs on the north bank of the river South Esk in a westerly direction till it meets the New Bridge connecting Montrose and Rossie Island, thence in a south-westerly direction along the east face of the New Bridge to a point on the level of mean high water springs on Rossie Island as shown on the said

(a) 1927 c. i.

(b) 1961 c. xviii.

Ordnance Map, thence following the said level in a south-easterly and westerly direction round Rossie Island till it meets Inch Bridge connecting Rossie Island with the south bank of the river South Esk, thence along the eastern face of Inch Bridge to a point on the level of mean high water springs as shown on the said Ordnance Map, thence along the said level in an easterly direction to the point of commencement, which area is shown coloured pink on the said map.

(2) In the event of any discrepancy between the harbour limits defined in the foregoing paragraph and the limits shown on the said map the map shall be deemed to be correct and shall prevail.

(3) The said map having been signed in triplicate by an Assistant Secretary in the Department of the Environment.

copies thereof have been deposited at the offices of the Secretary of State for the Environment, the offices of the Secretary of State for Trade and the principal office of the Trustees at which office the map or copies may be inspected at all reasonable hours.

Power to appropriate lands and works for particular trades, etc.

20.—(1) Notwithstanding anything in this or any other statutory provision of local application the Trustees may from time to time set apart and appropriate any lands, works, buildings, machinery, equipment or other property of the Trustees, for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel, or class of vessels or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Trustees may think fit.

(2) No person or vessel shall make use of any lands, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the Trustees, and the harbour master or other duly authorised officer of the Trustees may order any person or vessel making use thereof without such consent to leave or be removed, and the provisions of section 58 of the Act of 1847 shall extend and apply mutatis mutandis to and in relation to any such vessel.

Power to lease, etc.

21. Notwithstanding anything in this or any other statutory provision of local application the Trustees for the purposes of or in connection with the management of the harbour may lease or grant the use or occupation of or any easement, servitude or other right or interest in or over any lands, works, buildings, machinery, equipment or other property of the Trustees for such period or periods, at such rents and considerations and on such terms and conditions as shall be agreed between the Trustees and the person taking the same.

Byelaws respecting harbour

22.—(1) In addition to the powers of making byelaws contained in the Act of 1847, the Trustees may, subject to the provisions of this Order, make such byelaws as they think fit for all or any of the following purposes, that is to say:—

- (a) for the protection of the harbour and the buildings, accommodation, machinery and appliances connected therewith and for regulating the use thereof and the conduct of persons frequenting or using the same;
- (b) for the regulation and control of vessels within the harbour and persons resorting to or employed within the harbour;
- (c) for the regulation of the embarking, loading and unloading of any goods or traffic at or within the harbour.

(2) Byelaws to be made by the Trustees under the Act of 1847 or this Order may provide for imposing a penalty not exceeding £10 for the breach or non-observance of any byelaw.

Confirmation of byelaws

23. The provisions of subsections (4), (5), (6), (7), (8), (10), (11) and (12) of section 202 and section 204 of the Local Government (Scotland) Act 1973(a) 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 Local Government (Scotland) Act 1973 the Secretary of State shall be the confirming authority.

Crown rights

24. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing herein contained shall authorise the Trustees to take, use or in any way interfere with any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary or any land, heritages, subjects or rights of whatsoever description—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of such Commissioners on behalf of Her Majesty first had and obtained for that purpose; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

Costs of Order

25. All costs, charges and expenses of or in connection with the preparation, submission and making of this Order (other than costs, charges and expenses which any person is lawfully ordered to pay, and any costs, charges and expenses incurred in opposing the Order) shall be paid or reimbursed by the Trustees.

Signed by authority of the Secretary of State

26th October 1974.

Fred Mulley,
Minister for Transport,
Department of the Environment.

(a) 1973 c. 65.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order—

- (a) empowers the Trustees of the Harbour of Montrose to construct so far as it has not already been constructed a new quay partly in the Burgh of Montrose and partly in the County of Angus and to continue and maintain the said quay; and to carry out subsidiary works;
- (b) authorises the Trustees to borrow upon the assets and revenues of the Trustees such sums of money as they think necessary not exceeding £4,000,000 and with the consent of the Secretary of State such further sums as they may require; such borrowing powers to supersede existing borrowing powers of the Trustees so far as not already exercised;
- (c) empowers the Trustees to appropriate lands and works for particular trades, to grant leases and to make byelaws for the protection of their harbour and the regulation and control of vessels and persons.