
STATUTORY INSTRUMENTS

1995 No. 1527 (S.109)

HARBOURS, DOCKS, PIERS AND FERRIES

The Fraserburgh Harbour Revision Order 1995

Made - - - - - *12th June 1995*

Coming into force - - - - - *19th June 1995*

Whereas the Fraserburgh Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(1):

And whereas the Secretary of State has, in pursuance of paragraph 1A of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment but whose characteristics do not require that it should be made subject to an environmental assessment:

And whereas the Secretary of State is satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner:

Now, therefore, the Secretary of State for Scotland, in exercise of the powers conferred by section 14 of the said Act and of all other powers enabling him in that behalf, hereby makes the following Order

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Fraserburgh Harbour Revision Order 1995 and shall come into force on 19th June 1995.

(2) The Fraserburgh Harbour Order 1985(4), the Fraserburgh Harbour (No.2) Order 1985(5), the Fraserburgh Harbour Order 1990(6) and this Order may be cited together as the Fraserburgh Harbour Orders 1985 to 1995.

(1) 1964 c. 40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4, 12 and 14, and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraphs 1 and 10.
(2) Paragraph 1A was applied to Scotland by the Harbour Works (Assessment of Environmental Effects) Regulations 1992 (S.I.1992/1421).
(3) OJ No.L175, 5.7.85, p.40.
(4) 1985 c.xlv.

Interpretation

2.—(1) In this Order—

- “area of works” means the area within the limits of deviation or, any part of that area;
- “Commissioners” means the body corporate known as the Fraserburgh Harbour Commissioners;
- “deposited plan and sections” means the plan and sections prepared in duplicate and signed on behalf of the Secretary of State and marked “Plan and sections referred to in Article 2 of the Fraserburgh Harbour Revision Order 1995” of which one is deposited at the offices of the Secretary of State for Scotland and the other at the harbour office of the Commissioners;
- “enactment” means any Act, whether general, local or personal and any order (including this Order) or other instrument made thereunder and any provision in any such Act, order or instrument;
- “harbour” means the harbour of Fraserburgh as defined in section 2 (Interpretation) of the Fraserburgh Harbour Order 1985;
- “harbour undertaking” means the undertaking of the Commissioners in connection with the harbour;
- “level of high water” means the level of mean high-water springs;
- “level of low water” means the level of mean low-water springs;
- “limits of deviation” means the limits of deviation shown on the deposited plan;
- “tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;
- “works” means the works authorised by article 3 (Power to carry out works) of this Order or, as the case may require, any part thereof.

(2) All areas, directions, distances, lengths and widths as stated in any description of works, powers or lands other than article 4 (Power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length and width and any reference in a description of works to a point shall be a reference to that point on the deposited plan.

PART II

WORKS

Power to carry out works

3.—(1) Subject to the provisions of this Order, the Commissioners may, in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plan and sections, carry out and maintain the following improvement works in the parish of Fraserburgh, Banff and Buchan district, Grampian Region, together with all necessary and proper works and conveniences connected therewith or incidental thereto:—

Work No.1A.

A refacing of the quay wall in Balaclava Harbour to a width of 4 metres commencing at Point A at the eastern end of Provost Park’s Jetty, thence extending to Points B and C at Bisset’s Quay and to Point D at the north-east corner of Provost Anderson’s Jetty and terminating at Point E at the south-east corner of Provost Anderson’s Jetty.

(5) 1985 c.xlvi.
(6) 1990 c.xxxii.

Work No.1B.

A refacing of the quay wall in Balaclava Harbour to a width of 4 metres commencing at Point F at the western end of Baillie Dickson's Jetty, thence extending to Points G and H at Balaclava Pier and to Point I at the north-west corner of Abernethy Jetty and terminating at Point J at the south-west corner of Abernethy Jetty.

Work No.1C.

A refacing of the quay wall in Balaclava Outer Harbour to a width of 4 metres commencing at Point K at the north side of North Pier and terminating at Point L at the north side of North Pier.

Work No.2A.

Underpinning in Balaclava Outer Harbour for 2 metres in width commencing at Point L at the north side of North Pier and terminating at Point M at the north-east corner of North Pier.

Work No.2B.

Underpinning in Balaclava Outer Harbour for 2 metres in width commencing at Point N at the south side of Steamboat Quay and terminating at Point O at the south-west of Steamboat Quay.

Work No.2C.

Underpinning at Balaclava Outer Harbour for 2 metres in width commencing at Point E at the south-east corner of Provost Anderson's Jetty and terminating at Point Q at the south side of Provost Anderson's Jetty.

Work No.2D.

Underpinning in Balaclava Outer Harbour for 2 metres in width commencing at Point J at the south-west corner of Abernethy Jetty and terminating at Point P at the south side of Abernethy Jetty.

Work No.2E.

Underpinning in Balaclava Harbour for 2 metres in width commencing at Point A at the south-east corner of Provost Park's Jetty and terminating at Point R at the north-east corner of Provost Park's Jetty.

Work No.2F.

Underpinning in Balaclava Harbour for 2 metres in width commencing at Point F at the south-west corner of Baillie Dickson's Jetty and terminating at Point S at the western end of Baillie Dickson's Jetty.

Work No.3.

A deepening by means of excavation of the Entrance Channel to the harbour and Balaclava Outer Harbour to a depth of 8 metres below the level of low water within the area commencing at Point P, extending westwards to Point Q, southwards to Point K, south-eastward to Points M and U, north-eastward to Point T, north-westwards to Point P and there terminating.

Work No.4.

Demolition to seabed level of the eastern end of Provost Anderson's Jetty for a length of 8 metres; deepening by means of excavation of Balaclava Harbour to a depth of 8 metres below the level of low water within the area commencing at Point E, extending northwards to Point D, westwards to Point C, northwards to Point B, eastwards to Point A, northwards to Point R, eastwards to Point S, southwards to Point F, eastwards to Point G, southwards to Point H, westwards to Point I, southwards to Point J and there terminating.

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

Power to deviate

4. Subject to the provisions of this Order, in carrying out the works the Commissioners may deviate laterally from the lines or situations thereof as shown on the deposited plan to any extent not exceeding the limits of deviation shown on the said plan and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding 1 metre upwards or 2 metres downwards.

Subsidiary works

5. Subject to the provisions of this Order, the Commissioners may within the limits of deviation from time to time erect, construct, maintain and operate, whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

Power to dredge

6.—(1) Subject to the provisions of this Order the Commissioners may from time to time deepen, dredge, scout, cleanse, alter and improve the harbour for the purpose of affording uninterrupted means of access to the harbour or any part of it or the accommodation of vessels thereat.

(2) The Commissioners may use, appropriate or dispose of any material (other than a wreck within the meaning of Part IX of the Merchant Shipping Act 1894(7)) from time to time dredged by them from the harbour.

Obstructing Works

7. Any person who intentionally obstructs any person acting under the authority of the Commissioners in setting out the lines of the authorised works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Works to be deemed part of harbour undertaking

8. The works shall be deemed for all purposes to be part of the harbour undertaking and all byelaws, rules and regulations of the Commissioners for the time being in force relating to the harbour undertaking shall apply to the works and may be enforced by the Commissioners accordingly.

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

9.—(1) A tidal work shall not be demolished, constructed, renewed or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun or while work is still in progress.

(2) If a tidal work is demolished, constructed, renewed or altered in contravention of this section or of any condition or restriction imposed under this section:—

- (a) the Secretary of State may by notice in writing require the Commissioners to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if on the expiration of 30 days from the date when the notice is served upon the Commissioners they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

(7) 1894 c. 60.

(b) if it appears to the Secretary of State urgently necessary to do so, he may himself remove the tidal work or part of it and restore the site to its former condition; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Commissioners.

Provision against danger to navigation

10.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Commissioners 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 Commissioners fail 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 the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

11.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners 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.

(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 article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Commissioners, 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 from the Commissioners as a debt.

Lights on works during construction

12.—(1) The Commissioners shall at or near a tidal work during the whole time of the demolition, construction, renewal or alteration thereof exhibit, every night from sunset to sunrise, such lights as will clearly warn seafarers of the presence of that work.

(2) If the Commissioners fail to comply with paragraph (1) above 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.

Permanent lights on works

13.—(1) After the completion of a tidal work the Commissioners shall at the outer extremity thereof 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 Commissioners 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 the statutory maximum and on conviction on indictment to a fine.

PART III

TEMPORARY CLOSURE OF HARBOUR

Temporary closure of area of works

14.—(1) For the purpose of carrying out the works the Commissioners may notwithstanding anything in any enactment (other than this Order):—

- (a) temporarily close the area of works to vessels by means of one or more coffer dams at such places within the harbour as the Commissioners shall think fit;
- (b) dry out the area of works by pumping or otherwise and carry out all such measures and construct or install all such valves, sluices, gates, pipes, channels, aqueducts, pumps and similar works of a temporary nature as may be necessary to convey water entering the area of works into tidal waters.

(2) Notwithstanding anything contained in this Order, the area of works shall not be closed to vessels for a period continuous or discontinuous longer than two years.

Removal of vessels from area of works

15.—(1) Before exercising the power conferred on them by article 14 (Temporary closure of area of works) of this Order temporarily to close the area of works to vessels the Commissioners shall:—

- (a) publish a notice of their intention to do so in Lloyd's List and once in each of two successive weeks in a local newspaper published or circulating in Fraserburgh, with an interval between the dates of publication of not less than six clear days;
- (b) display notice thereof in a conspicuous position in the harbour; and
- (c) give notice thereof in writing to the Secretary of State.

(2) Each of the notices shall:—

- (a) state that the Commissioners intend temporarily to close the area of works to vessels; and
- (b) specify a date, which shall be a date not earlier than one month after the date of the latest of the three publications referred to in paragraph (1)(a) above, by which all vessels must be removed from the area of works.

(3) If the master of any vessel within the area of works does not remove the same before the date specified in accordance with paragraph 2(b) above, the harbourmaster may cause that vessel to be removed from the area of works and moored or laid in any other place where it may without injury be moored or laid.

(4) The Commissioners may recover as a debt from the owner of any vessel removed as aforesaid all expenses incurred by them in respect of its removal.

(5) The powers conferred on the Commissioners and the harbourmaster by this article shall be in addition to and without prejudice to the powers as to the removal of vessels conferred upon them by sections 64 and 65 of the Harbours, Docks and Piers Clauses Act 1847⁽⁸⁾.

As to vessels entering area of works on or after date of closure

16. If any vessel enters the area of works on or after the date specified in accordance with paragraph (2)(b) of article 15 (Removal of vessels from area of works) of this Order, and during the period of temporary closure, the harbourmaster may direct the master of such vessel forthwith to remove the vessel from the area of works, and if the master of such vessel does not forthwith

(8) 1847 c. 27.

comply with such directions the provisions of paragraphs (3) to (5) inclusive of the said article 15 shall apply to and in respect of such vessel as if such vessel had been within the area of works before the said date.

PART IV BORROWING

Power to borrow

17.—(1) The Commissioners may from time to time borrow upon the security of the assets for the time being and of the revenues of the Commissioners, by any methods they see fit:—

- (a) such sums of money as they think necessary provided that the total amount of money so borrowed and outstanding shall not at any time exceed £5,000,000; and
- (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 (1)(a) above the total sums of money borrowed by the Commissioners there shall be excluded 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 Commissioners under this article shall be applied only to purposes to which capital money is properly applicable.

(3) For the purposes of paragraph (2) above, 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 Commissioners under this section; 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.

Repeals

18. Section 19 (Power to borrow) and section 20 (Saving for powers of Treasury) of the Fraserburgh Harbour (No.2) Order 1985⁽⁹⁾ are hereby repealed.

PART V MISCELLANEOUS

Power to divert, etc., Bisset's Quay, Balaclava Pier, etc.

19. The Commissioners may in the execution of the works and for the purposes thereof and so far as necessary temporarily cross, alter, stop up, divert, raise and lower or otherwise interfere with Bisset's Quay, Balaclava Pier, Steamboat Quay, Bailie Dickson's Jetty, Provost Park's Jetty, Provost Anderson's Jetty, Abernethy Jetty and North Pier, providing when possible a proper temporary substitute before interrupting the traffic on the said quays, jetties or piers.

(9) 1985 c.xlvi.

For protection of Scottish Hydro-Electric PLC

20. For the protection of Scottish Hydro-Electric PLC the following provisions shall, save to the extent that the company may release the Commissioners therefrom, apply and have effect:—

(1) In this article unless the subject or context otherwise requires:—

“apparatus” means—

- (a) any electrical plant or electric line as respectively defined in section 64 of the Electricity Act 1989⁽¹⁰⁾; and
- (b) any meter used for ascertaining the quantity of electricity supplied to any premises, not being a meter which is under the control of a consumer;

“the company” means Scottish Hydro-Electric PLC;

“in” in a context referring to apparatus includes under, over, across, along or upon;

“plan” includes a section and description;

“position” includes depth.

- (a) (2) (a) Nothing in this Order shall relieve the Commissioners from liability for damage caused by them to any apparatus in the exercise of the powers conferred on them by this Order and the Commissioners shall indemnify the company against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the company by reason or in consequence of any damage done by the Commissioners to any apparatus or of any interruption in the supply by the company of electricity which may without the written authority of the company be in any way occasioned either by reason of the exercise of any of the powers of this Order or by the acts or defaults (in, or in connection with, such exercise) of the Commissioners;
- (b) If in consequence of the exercise by the Commissioners of the powers of this Order the access to any apparatus is materially obstructed, the Commissioners shall provide an alternative means of access to such apparatus.

(3) If the Commissioners in exercise of the powers of articles 3, 5, 14, or 19 of this Order require to cross over or under, remove, alter or otherwise interfere with any apparatus, or if the exercise of such powers is likely to affect any apparatus, the Commissioners shall:—

- (a) give to the company not less than 28 days' prior notice in writing of such requirement or (as the case may be) of their intention to exercise such powers, together with a plan of the work proposed, and shall execute the work only in accordance with such plan and in accordance with such reasonable requirements as may within 21 days of the receipt of the plan be made by the company, and the company may under such requirements alter or otherwise protect the apparatus or provide alternative apparatus adequate to enable them to fulfil their statutory functions not less efficiently than before (hereinafter referred to as “alternative apparatus”);
- (b) afford to the company, where possible, any necessary facilities and rights for the construction, use, maintenance, repair, renewal and inspection of any alternative apparatus;
- (c) pay to the company the expenses reasonably incurred by them in and in connection with removing, re-laying, replacing, altering or protecting the apparatus or providing alternative apparatus less (in a case where alternative apparatus is provided) the value of any apparatus removed pursuant to this article.

(4) Alternative apparatus, if provided under this article, shall be constructed in such manner and in such line or position as may be agreed between the Commissioners and the company, and

(10) 1989 c. 29.

no apparatus shall be removed, altered or interfered with until any protective works required have been carried out or until alternative apparatus required has been provided and is operating to the reasonable satisfaction of the company.

- (a) (5) (a) Any difference arising between the Commissioners and the company under this article shall be referred to and determined by an arbiter to be mutually agreed upon, or failing such agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers.
- (b) In settling any difference under this article the arbiter shall have regard to any duties or obligations which the company may be under in respect of any apparatus and may if he thinks fit require the Commissioners to execute within the limits of deviation any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

Crown rights

21.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown, and in particular without prejudice to the generality of the foregoing nothing herein contained shall authorise the Commissioners or any licensee of the Commissioners to take, use, enter upon or in any manner interfere with any land or interest in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary):—

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

(2) A consent under paragraph (1) above may be given unconditionally or subject to terms and conditions.

St Andrew's House,
Edinburgh
12th June 1995

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the Fraserburgh Harbour Commissioners:—

- (1) to underpin parts of various quays and jetties in Fraserburgh Harbour;
- (2) to reface the quay walls of Balaclava Harbour and parts of the quay walls of Balaclava Outer Harbour;
- (3) to dredge the entrance channel to Fraserburgh Harbour and to dredge within Balaclava Harbour and Balaclava Outer Harbour to a depth of 8 metres below mean low-water springs;
- (4) to close temporarily the harbour, if deemed necessary, for the purpose of carrying out the works.

The Order also gives the Commissioners ancillary powers in relation to the works and also enlarges the Commissioners' borrowing powers.