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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 489**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Inverness Harbour Revision (Works) Order 2005**

*Made* - - - - *3rd October 2005*

*Coming into force* - - *4th October 2005*

Whereas the Trustees of the Harbour of Inverness have applied in writing to the Scottish Ministers for a Harbour Revision Order under section 14 of the Harbours Act 1964(1);

And whereas the Scottish Ministers(2) have in pursuance of paragraph 1A of Schedule 3 to the said Act(3), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(4) on the assessment of the effects of certain public and private projects on the environment but whose characteristics require that it should be made subject to an environmental assessment;

And whereas The Scottish Ministers are satisfied as required by subsection (2)(b) of the said section 14;

Now therefore, The Scottish Ministers, in exercise of the powers conferred by section 14 of the said Act and all other powers enabling them in that behalf, hereby make the following Order:

**PART I**

**PRELIMINARY**

**Citation and commencement**

1.—(1) This Order may be cited as the Inverness Harbour Revision (Works) Order 2005 and shall come into force on 4th October 2005

(2) The Inverness Harbour Acts and Orders 1808 to 2002 and this Order may be cited together as The Inverness Harbour Acts and Orders 1808 to 2005 (hereinafter referred to as “The Harbour Acts and Orders”).

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(1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 1 and Schedule 6, paragraphs 2 to 4 and 14, and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1.  
(2) The functions of the Secretary of State were transferred to the Scottish Minister by virtue of section 53 of the Scotland Act 1998 (c. 46).  
(3) Schedule 3 was substituted by Regulation 15(4) of the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I.1999/3445).  
(4) O.J. No. L 175, 5.7.85, p.40; Council Directive 85/337/EEC was amended by Council Directive 97/11/EC (O.J. No. L 73, 14.3.1997, p.5).

## Interpretation

### 2.—(1) In this Order—

“deposited plan and section” means the plan and section prepared in triplicate, signed on behalf of The Scottish Ministers and marked “Plan and sections referred to in Article 2 of The Inverness Harbour Revision (Works) Order 2005” of which one is deposited at the Offices of The Scottish Ministers and the other at the Harbour Office of the Trustees;

“harbour” means the port and harbour of Inverness as defined by the Harbour Acts and Orders;

“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 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 Inverness;

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

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

(2) This Order shall be read as if the words “or thereabouts” were inserted after each distance mentioned in Article 3 of this Order.

## PART II

### WORKS

#### Power to construct works

3.—(1) Subject to the provisions of this Order, the Trustees may, in Inverness and in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plan and section, construct and maintain the works hereinafter described, together with all necessary and proper works and conveniences connected with or incidental thereto, that is to say:—

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Work No. 1	A reclamation of 9.8 hectares of foreshore of the river Ness north east of the existing harbour at Longman Quay, Inverness, the formation of a quay wall of sheet steel piling extending some 180 metres in length to the north east, the dredging and formation of a marina facility for up to 100 berths and the provision of storage facilities, the infilling of the existing yacht haven and the formation of a rock armour bunds to protect the works.
Work No. 2	An extension of Carnarc Point on the north west shore of the river Ness by 70 metres to form a breakwater to protect works in Work No. 1.

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

### **Subsidiary works**

4. Subject to the provisions of this Order, the Trustees may, within the limits of deviation, from time to time erect, construct and maintain, whether temporarily or permanently, all such necessary works and conveniences and take such measures as may be requisite, or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

### **Power to Deviate**

5. 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 section to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

### **Tidal works not to be executed without approval of The Scottish Ministers**

6.—(1) A tidal work shall not be constructed, reconstructed, renewed, enlarged or altered except in accordance with plans and sections approved by The Scottish Ministers and subject to any conditions and restrictions imposed by The Scottish Ministers before the work is begun.

(2) If a tidal work is constructed, reconstructed, renewed, enlarged or altered in contravention of this Article or any condition or restriction imposed under this Article—

- (a) The Scottish Ministers may, by notice in writing, require the Trustees at their own expense to remove the tidal work or any part thereof and restore the site thereto to its form condition; and, if on the expiration of thirty days from the date when the notice is served upon the Trustees, they have failed to comply with the requirements of the notice, The Scottish Ministers may execute the works specified in the notice; or
- (b) if it appears to The Scottish Ministers urgently necessary so to do, they may themselves remove the tidal work or part of it and restore the site to its form condition, and any expenditure incurred by The Scottish Ministers in so doing shall be recoverable from the Trustees.

### **Survey of tidal works**

7. The Scottish Ministers may at any time, if they deem 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 Scottish Ministers in any such survey and examination shall be recoverable from the Trustees.

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

8.—(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 lights and take such other steps for preventing danger to navigation as the Commissions 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 any 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.

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

9.—(1) Where a tidal work is abandoned or suffered to fall into decay, The Scottish Ministers 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 Scottish Ministers think 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 Scottish Ministers 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 requirements of the notice, The Scottish Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Trustees.

### **Lights on tidal works during construction**

**10.**—(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 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 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 tidal works**

**11.**—(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 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.

### **Obstructing works**

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

### **Work to form part of undertaking and application of byelaws**

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

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

(3) The works shall be deemed for all purposes to be within the Inverness area of The Highland Council.

### **Defence in relation to offences under articles 8, 10 and 11 of this Order**

14.—(1) In any proceedings for an offence under articles 8, 10 and 11 of this Order, it shall be a defence for the Trustees to prove that they took all reasonable precautions and exercised all due diligence to avoid commission of such an offence.

(2) If in any case the defence made under paragraph (1) above involves an allegation that the commission of the offence was due to the act or default of another person, the Trustees shall not, without the leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, they have served on the prosecution a notice in writing giving such information as was then in their possession identifying or assisting in the identification of that other person.

### **Saving for Town and Country Planning**

15.—(1) Section 276 of the Town and Country Planning (Scotland) Act 1997<sup>(5)</sup> (which declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the Session of Parliament held during the regnal years 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this Order as if it had been passed during that session; and accordingly the Town and Country Planning (Scotland) Act 1997 and orders, regulation, rules, schemes and directions made or given thereunder shall apply to development authorised by this Order.

(2) In their application to development authorised by this Order, article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1981<sup>(6)</sup> (which permit development authorised by any local or private Act or by any order approved by both Houses of Parliament, or by an order made under section 14 or section 16 of the Harbours Act 1964, being an Act or Order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Order were limited to development begun within ten years of the coming into operation of this Order.

## **PART III**

### **MISCELLANEOUS**

#### **Crown rights**

16.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing herein contained shall authorise the Trustees or any licensee of the Trustees to take, use, enter upon or in any manner interfere with any land or interest in land or any rights of whatsoever description (including any proportion 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 Commissions 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 such conditions and upon such terms as shall be considered necessary or appropriate.

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(5) 1997 c. 8.

(6) S.I. 1981/830.

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

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Victoria Quay, Edinburgh  
3rd October 2005

*DAVID M HART*  
A member of the staff of the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises the Trustees of the Harbour of Inverness to carry out reclamation works, to construct a bund and protect with rock armour, construct a quay wall in Inverness and to continue and maintain the said quay wall and these works; and to carry out subsidiary works.