

ELIZABETH II



1986 CHAPTER v

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Peterhead Harbours (South Bay Development).
[26th March 1986]

WHEREAS 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 1936 c. 52. 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 Peterhead Harbours (South Bay Development) Order Confirmation Act 1986. Short title.

SCHEDULE

PETERHEAD HARBOURS (SOUTH BAY DEVELOPMENT)

Provisional Order to authorise the Trustees of the harbours of Peterhead to construct works adjacent to their existing undertaking in the area commonly known as South Bay, Peterhead; to provide for a partial cesser of the Peterhead Bay Harbour Trust and Transfer Order 1983; and for other purposes.

Whereas—

1873 c. clvii.

(1) By the Peterhead Harbours Act 1873 (hereinafter referred to as “the Act of 1873”) the trustees therein named and appointed to be elected as therein provided (hereinafter called “the Trustees”) were incorporated and were authorised to construct the harbour and other works therein described and to raise money for those purposes:

1876 c. clxxiv.

(2) By the Peterhead Harbours Amendment Act 1876 (hereinafter referred to as “the Act of 1876”) certain works authorised by the Act of 1873 were abandoned and certain others of the said works were altered and the provisions with respect to the same amended:

(3) By divers subsequent Acts and Orders relating to the harbours of Peterhead further powers were conferred on the Trustees, the construction of additional works was authorised and other provisions were enacted with respect to the Trustees and their undertaking:

(4) Owing to a further increase in the size and number of vessels engaged in fishing and other industries at the harbours of Peterhead it is expedient to authorise the Trustees to construct and maintain the new works hereinafter in this Order described for the improvement of their undertaking and for the benefit of trade and shipping at the said harbours:

S.I. 1983/316
(S.26).

(5) It is expedient that the said new works should be subject to the harbour jurisdiction of the Trustees and that consequently the Peterhead Bay Harbour Trust and Transfer Order 1983 should cease to have effect within the limits of deviation of those works:

(6) Estimates of the expense of constructing the works and fulfilling the purposes authorised by this Order have been prepared and amount in total to £13,190,000:

(7) A plan and sections showing the lines or situations and levels of the works to be constructed under the powers of this Order have been deposited with the sheriff clerk of the sheriff court district of Peterhead:

(8) It is expedient that the other provisions hereinafter contained should be enacted:

(9) The purposes aforesaid cannot be effected without an Order confirmed by Parliament under the Private Legislation Procedure (Scotland) Act 1936: 1936 c. 52.

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 Peterhead Harbours (South Bay Development) Order 1985 and this Order and the Peterhead Harbours Acts and Orders 1873 to 1980 may be cited together as the Peterhead Harbours Acts and Orders 1873 to 1985. Short title and citation.

2.—(1) In this Order—

“Act of 1847” means the Harbours, Docks, and Piers Clauses Act 1847; Interpretation.
1847 c. 27.

“deposited plan” and “deposited sections” means respectively the plan and sections deposited in connection with this Order;

“harbours” means the harbours of Peterhead as defined in the Peterhead Harbours Acts and Orders 1873 to 1980 and shall also include the works authorised by this Order and the area of water below the level of high water within the limits of deviation;

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

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

“statutory maximum” has the meaning assigned to it in section 74 (2) of the Criminal Justice Act 1982; 1982 c. 48.

“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 harbours acting for the time being under the Peterhead Harbours Acts and Orders 1873 to 1980;

c. v *Peterhead Harbours (South Bay Development)
Order Confirmation Act 1986*

PART I
—cont.

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

“vessel” means every description of vessel however propelled or moved, and includes anything constructed or used to carry persons or goods by water, and a seaplane on or in the water, a hovercraft and a hydrofoil vessel;

“works” means the works authorised by 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 in section 6 (Power to deviate) of this Order shall be construed as if the words “or thereby” were inserted after each such area, direction, distance, length and width.

Incorporation of
Harbours,
Docks,
and Piers Clauses
Act 1847.
1847 c. 27.

3. The Act of 1847 (except sections 6 to 13, 16 to 19, 22, 25, 26, 48, 79 to 82, 95, 97, 98, 99 and 101 to 103) so far as applicable for the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with and forms part of this Order:

Provided that—

(a) in construing the provisions so incorporated the expression “the special Act” shall mean this Order, and—

(i) the expressions “the Promoters of the undertaking” and “the undertakers” shall mean the Trustees and the expression “the harbour, dock and pier” shall mean the harbours;

(ii) the meaning of the word “vessel” as defined in section 2 (Interpretation) of this Order shall be substituted for the meaning assigned to that word by section 3 of the Act of 1847;

(iii) section 23 shall be read and have effect as if the words “Provided that no such lease be granted for a longer term than three years” were omitted and there were added the words “provided that as from the commencement of any lease of a tidal work made under this section the lessee shall during the continuance of his lease be subject to all the liabilities and obligations to which the undertakers are subject and shall perform all the duties of the undertakers under the special Act in respect of that work.”;

(iv) section 63 shall be read and have effect as if for the words from “to a penalty” to the end of the section there were substituted the words “on summary conviction to a fine not exceeding level 2 on the standard scale.”;

(v) section 69 shall be read and have effect as if for the words from “forfeit” to the end of the section there were substituted the words “be liable on summary conviction to a fine not exceeding level 2 on the standard scale.”;

(vi) section 84 shall be read and have effect as if for the words “five pounds” there were substituted the words “level 2 on the standard scale.”; and

- (b) the height of any warehouse or other building which the Trustees may erect on the areas of Works Nos. 5 and 6 authorised by this Order shall not exceed the level of the top of the existing wall on the south side of the streets known as Harbour Street, Lodge Walk and Bath Street, Peterhead.

PART I
—cont.

PART II

WORKS

4.—(1) Subject to the provisions of this Order, the Trustees may, in the Banff and Buchan district in the Grampian Region and on the foreshore and bed of the sea adjacent thereto and in the lines and situations and upon the lands delineated on the deposited plan and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the works hereinafter described with all necessary works and conveniences connected therewith or incidental thereto:—

Power to
construct works.

Work No. 1 The deepening of a portion of the south entrance channel to the harbours of Peterhead commencing between West Pier and South Pier and extending some 40 metres beyond the lifeboat slip on the north side of the channel to a depth of 5.5 metres below mean low-water springs and cutting down and trimming the rock on the foreshore on the north side of the south entrance channel to a slope of 1 in 2 commencing at a minimum of 9 metres from the west face of West Pier 63 metres from the eastern extremity of West Pier. A further deepening immediately southwards of the south entrance channel between South Pier and the jetty known as the S.B. Offshore Jetty to a depth of 8.5 metres below mean low-water springs and cutting down and trimming seabed materials to 1 in 2 at the change in depth of dredge and on the east and south extent of dredge commencing at a point 18 metres from the north face of South Pier and a minimum of 36 metres from the north-west corner of the S.B. Offshore Jetty;

Work No. 2 A road and land reclamation commencing 32 metres in a southerly direction from the north-east side of the junction of Castle Street and Ship Street extending in a south-westerly direction and terminating at a point 167 metres from the point of commencement bounded by the southerly face of South Pier to the north and the northerly face of the S.B. Offshore Jetty to the south;

Work No. 3 A pier and breakwater commencing at the termination of Work No. 2 and extending in a westerly direction and terminating at a point 303 metres from the point of commencement;

Work No. 4 A berthing face commencing at the eastern end of Work No. 3 and extending in a north-westerly direction and terminating at a point 96 metres from the point of commencement on the line of the north face of South Pier;

PART II
—cont.

Work No. 5 Land reclamation and a berthing face commencing 52 metres in a westerly direction from the fixed point marked on the deposited plan at the centre of the east face of West Pier extending in a westerly direction for 30 metres continuing a further 14 metres in a northerly direction and then a further 136 metres in a westerly direction and terminating at a point 180 metres from the point of commencement, such works to include the demolition and removal of the existing lifeboat shed and slipway;

Work No. 6 A pier and breakwater commencing from the south-east corner of the Smith Embankment at a point 320 metres from the fixed point marked on the deposited plan extending 136 metres in a south-easterly direction and then a further 86 metres in a southerly direction and terminating at a point 222 metres from the point of commencement, such work to include the reconstruction of a replacement lifeboat shed and slipway on the western side of the breakwater.

(2) Subject to the provisions of this Order, the Trustees may within the limits of deviation renew and alter temporarily or permanently the works.

Subsidiary
works.

5. 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 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.

6.—(1) 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 plan 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 metres upwards, 1.5 metres downwards in respect of Work No. 1 of this Order, and to such extent downwards as may be found necessary or convenient in respect of Works Nos. 2 to 6 of this Order.

(2) Notwithstanding the provisions of subsection (1) of this section the pier and breakwater comprising Work No. 3 authorised by this Order including any wall forming part thereof or erected thereon shall not exceed in height 6.2 metres above ordnance datum Newlyn.

Power to dredge.

7.—(1) The Trustees may from time to time, as may appear to them to be necessary or proper for the safety or convenience of navigation, deepen, widen, dredge, scour and improve the bed and foreshore of, and blast any rock in, the harbours.

1894 c. 60.

(2) Any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected in the course of such operations shall be the property of the Trustees and may be used, sold, removed, deposited or otherwise disposed of as the Trustees may think fit:

Peterhead Harbours (South Bay Development) Order Confirmation Act 1986 c. v

Provided that the Trustees shall not lay down or deposit materials in a place below the level of high water except in such position as the Secretary of State may approve and subject to such conditions and restrictions as he may impose.

PART II
—cont.

8.—(1) A tidal work shall not be 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.

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

(2) If a tidal work is 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 Trustees at their own expense 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 on which the notice is served upon the Trustees they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

(b) if it appears to the Secretary of State urgently necessary so to do, 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 by him from the Trustees.

9. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which the Trustees propose to construct a tidal work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable by him from the Trustees.

Survey of tidal works.

10.—(1) In any 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.

Provision against danger to navigation.

(2) If the Trustees fail to comply in any respect with a provision of this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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 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 thinks proper.

Abatement of works abandoned or decayed.

(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

PART II
—cont.

work on or over land above the level of high water is in such condition as to interfere or cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.

(3) If, on the expiration of 30 days from the date on which a notice under this section is served upon the Trustees they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable by him from the Trustees.

Lights on tidal works during construction.

12.—(1) The Trustees shall at or near a tidal work during the whole time of the construction, renewal 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 shall from time to time direct.

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

Permanent lights on tidal works.

13.—(1) After completion of a tidal work the Trustees 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 Trustees fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Works to form part of undertaking.

14. The works authorised by this Order and any lands and property vested in the Trustees for the purposes of this Order shall for all purposes including the levying and collecting of rates, dues and charges form part of the undertaking and be deemed to be within the Banff and Buchan district in the Grampian Region.

Power to shut up parts of harbours during execution of works.

15. Subject to the provisions of this Order the Trustees may during the execution of the works shut up wholly or partially any part or parts of the harbours which they may consider necessary or expedient.

Power to take lands by agreement.

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

Power to divert, etc., Castle Street, Peterhead.

17.—(1) The Trustees may in the execution of the works and for the purposes thereof and so far as necessary therefor temporarily cross, alter, stop up, divert, raise and lower or otherwise interfere with the road known as Castle Street, Peterhead, so far as it lies to the south of Ship Street, Peterhead, providing when possible a proper temporary substitute before interrupting the traffic on such road.

(2) (a) The exercise of powers conferred by this section shall not affect the powers under the telecommunications code applied to British Telecommunications plc by licence under section 7 of the Telecommunications Act 1984 to install, keep installed, inspect, maintain, adjust, repair and alter telecommunications apparatus or to open or break up, or tunnel or bore under, a road for any of those purposes.

PART II
—cont.

1984.c. 12.

(b) In this subsection “telecommunications apparatus” has the same meaning as in the telecommunications code.

18. If Work No. 1 authorised by this Order is not completed by 31st December 1990 or if the remaining works are not completed by 31st December 2000, the powers of this Order granted for executing the works or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

Periods for completion of works.

19.—(1) On the application of the Trustees the Secretary of State may, by order, extend the periods respectively referred to in section 18 (Periods for completion of works) of this Order or either of such periods.

Extension of time may be authorised.

(2) Any such period may, from time to time, be further extended by an order made by the Secretary of State on the application of the Trustees under this section.

(3) (a) An order under this section shall be subject to special parliamentary procedure and accordingly an order under this section shall be deemed to be an order in pursuance of an Act passed after the passing of the Statutory Orders (Special Procedure) Act 1945.

1945 c. 18
(9 & 10 Geo. 6).

(b) In the application of section 10 of the said Act to an order under this section, there shall be substituted for the requirements of the empowering enactment referred to in the said section 10 such requirements as to the service of notices and as to the time within which and the manner in which objections may be made to any application made by the Trustees in pursuance of subsection (1) of this section as may be specified by the Secretary of State.

PART III

MISCELLANEOUS

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

Partial cesser of Peterhead Bay Harbour Trust and Transfer Order 1983.
S.I. 1983/316
(S.26).

21. The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions of powers thereby imposed or

Saving for town and country planning.
1972 c. 52.

c. v *Peterhead Harbours (South Bay Development)
Order Confirmation Act 1986*

PART III
—cont.

conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

For protection
of proprietors
of adjacent
properties.

22.—(1) This clause shall apply and have effect for the protection of proprietors of heritable property adjacent to Work No. 1 authorised by this Order.

(2) In carrying out any drilling or blasting in the execution of Work No. 1 authorised by this Order the Trustees shall not—

- (a) carry out any such drilling or blasting between the hours of 6 o'clock in the afternoon and 8 o'clock in the forenoon of the following day or between the hours of sunset and sunrise or at any time on a Saturday or Sunday;
- (b) contravene the code of practice for the control of noise approved by the British Standards Institution and numbered BS 5228 or such other code of practice as may from time to time be approved by the said Institution in lieu thereof;
- (c) cause greater vibration at any heritable property adjacent to the said Work No. 1 than vibration of a peak particle velocity of 12.5 millimetres per second.

(3) Notwithstanding the powers conferred on the Trustees by this Order and without prejudice to any other remedies available, they shall be liable to the said proprietors of heritable property adjacent to Work No. 1 authorised by this Order for damage to such heritable property caused by the execution of the said Work No. 1.

Saving for
Dumping at Sea
Act 1974.
1974 c. 20.

23. Nothing in this Order shall affect the operation of the Dumping at Sea Act 1974.

Saving for Coast
Protection Act
1949.
1949 c. 74.

24. Nothing in this Order shall exempt the Trustees from the provisions of Part I of the Coast Protection Act 1949.

Saving for
Control of
Pollution Act
1974.
1974 c. 40.
Crown rights.

25. Nothing in this Order shall affect the operation of the Control of Pollution Act 1974.

26.—(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 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 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.

PART III
—cont.

(2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

27. The costs, charges and expenses of and incidental to the preparing for, obtaining and confirming of this Order, and otherwise in relation thereto, shall be paid by the Trustees. Costs of Order.

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12

c. v

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CHAPTER v

ARRANGEMENT OF SECTIONS

Section

1. Confirmation of Order in Schedule.
2. Short title.

SCHEDULE

PETERHEAD HARBOURS (SOUTH BAY DEVELOPMENT)

PART I

PRELIMINARY

1. Short title and citation.
2. Interpretation.
3. Incorporation of Harbours, Docks, and Piers Clauses Act 1847.

c. v *Peterhead Harbours (South Bay Development)
Order Confirmation Act 1986*

PART II

WORKS

Section

4. Power to construct works.
5. Subsidiary works.
6. Power to deviate.
7. Power to dredge.
8. Tidal works not to be executed without approval of Secretary of State.
9. Survey of tidal works.
10. Provision against danger to navigation.
11. Abatement of works abandoned or decayed.
12. Lights on tidal works during construction.
13. Permanent lights on tidal works.
14. Works to form part of undertaking.
15. Power to shut up parts of harbours during execution of works.
16. Power to take lands by agreement.
17. Power to divert, etc., Castle Street, Peterhead.
18. Periods for completion of works.
19. Extension of time may be authorised.

PART III

MISCELLANEOUS

20. Partial cesser of Peterhead Bay Harbour Trust and Transfer Order 1983.
21. Saving for town and country planning.
22. For protection of proprietors of adjacent properties.
23. Saving for Dumping at Sea Act 1974.
24. Saving for Coast Protection Act 1949.
25. Saving for Control of Pollution Act 1974.
26. Crown rights.
27. Costs of Order.