

ELIZABETH II



1987 CHAPTER ii

An Act to confirm a Provisional Order under the Private
Legislation Procedure (Scotland) Act 1936, relating to
Shetland Islands Council (Ham Voe, Foula).

[19th January 1987]

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
Order should be confirmed by Parliament: 1936 c. 52.

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 Shetland Islands Council
(Ham Voe, Foula) Order Confirmation Act 1987. Short title.

SCHEDULE

SHETLAND ISLANDS COUNCIL (HAM VOE, FOULA)

Provisional Order to authorise the Shetland Islands Council to carry out works at their pier at Ham Voe, Foula; and for connected purposes.

WHEREAS—

1973 c. 65.

(1) By the Local Government (Scotland) Act 1973 the Shetland Islands Council (hereinafter called “the Council”) are the local authority vested with the functions of an islands council in respect of the Shetland Islands Area which area incorporates the island of Foula in the parish of Walls and Sandness:

1937 c. 28.

(2) By the operation of section 154 of the said Act of 1973 the Council have succeeded to the pier at Ham Voe on Foula being a marine work in the terms of the Harbours, Piers and Ferries (Scotland) Act 1937:

(3) The inhabitants of Foula are dependent upon a weekly passenger and mail boat service for the transportation of passengers and livestock and for the supply of food, fuel and stock-feeds, the said service being supplemented by a ferry vessel as occasion requires for heavier loads:

(4) The said pier and the area of navigable water adjacent thereto are not sufficiently extensive to allow the vessels now serving Foula to moor and to manoeuvre within the protection of the pier at all states of the tide even in moderate weather conditions:

(5) It is expedient that the said pier and the area of navigable water adjacent thereto be extended and its facilities improved and that the Council should be empowered to construct the works authorised by this Order:

(6) A plan and sections showing the lines, situations and levels of the works proposed to be authorised by this Order have been deposited with the sheriff-clerk of the Lerwick sheriff court district at Lerwick:

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

Now therefore in pursuance of the powers contained in the said Act of 1936, the Secretary of State orders as follows:—

1. This Order may be cited as the Shetland Islands Council (Ham Short title. Voe, Foula) Order 1986.

2.—(1) In this Order, except where the context otherwise Interpretation. requires—

“the Council” means the Shetland Islands Council;

“the deposited plan” and “the deposited sections” means respectively the plan and sections deposited on or before 20th November 1985 in Parliament, at the offices of the Council and with the sheriff-clerk of the Lerwick sheriff court district at Lerwick in connection with the application for this Order;

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

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

“tidal work” means so much of any work as is on, under or over tidal waters or tidal lands below the level of high water;

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

(2) Except in relation to section 5 below all dimensions stated in any description of works in this Order shall be construed as if the words “or thereabouts” were inserted after each such dimension.

(3) Any reference in this Order to a work identified by the number of that work shall be construed as a reference to the work of that number authorised by this Order.

3. Subject to the provisions of this Order, the Council may, in the lines and situations and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited sections, construct, execute and maintain Works Nos. 1 to 4, with all necessary works and conveniences connected therewith, and may, within the limits of dredging, also shown on the deposited plan, execute Work No. 5, all the works being on the island of Foula, in the Walls and Sandness Electoral Division, parish of Walls and Sandness in the Shetland Islands Area—

Power to
construct
works.

Work No. 1 A widening by 2 metres of the existing pier on its north-western face, of solid construction commencing at a point 55.5 metres south of the south-eastern corner of the existing winchhouse and extending in a south-south-westerly direction for a distance of 23 metres;

Work No. 2 An extension of the seaward end of the existing pier 6.5 metres wide of solid construction and extending in a generally southerly direction for a distance of 8 metres and there terminating;

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Work No. 3 A quay and marshalling area of solid construction having a frontage of 22 metres on its southern seaward face, commencing at a point 30.2 metres south-south-west of the south-western corner of the existing winchhouse extending in a southerly direction for a distance of 17.5 metres and there terminating and having an area of 0.033 hectares together with the reclamation of the seabed by infilling, levelling and surfacing;

Work No. 4 A slipway of solid construction commencing at a point 2 metres north of the existing winchhouse and extending in a southerly direction for a distance of 38.5 metres connecting with the north-eastern face of Work No. 3 and there terminating;

Work No. 5 Rock and soft dredging to a depth not exceeding 4 metres below the level of mean low-water springs in an area of irregular shape shown hatched black on the deposited plan and having an area of 0.247 hectares.

Power to renew, etc., works.

4. Subject to the provisions of this Order the Council may, within the limits of deviation, renew, replace, or otherwise alter temporarily or permanently Works Nos. 1 to 4.

Power to deviate.

5. Subject to the provisions of this Order in the construction or execution of Works Nos. 1 to 4 the Council 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.

Subsidiary works.

6. Subject to the provisions of this Order the Council for the purposes of or in connection with Works Nos. 1 to 4 may within the limits of deviation construct, execute and maintain all such subsidiary or incidental works and conveniences as may be necessary or expedient for or in connection with those works.

Works deemed to be within Shetland Islands Area.

7. So much of any work constructed or placed pursuant to this Order as is not within the Shetland Islands Area shall be deemed for all purposes to be within that area.

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

8.—(1) A tidal work shall not be constructed, executed, renewed, replaced 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.

(2) If a tidal work is constructed, executed, renewed, replaced or altered in contravention of this section—

(a) the Secretary of State may by notice in writing require the Council 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 when the notice is served upon the Council they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

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(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 from the Council.

9.—(1) The Council shall at or near a tidal work during the whole time of the construction, execution, renewal, replacement 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.

Lights on tidal works during construction.

(2) If the Council 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.

10.—(1) After the completion of a tidal work the Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

Permanent lights on tidal works.

(2) If the Council 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.

11. 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 it is proposed to construct and execute the work and any expenditure incurred by him in such survey and examination shall be recoverable from the Council.

Survey of tidal works.

12.—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Council 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 Council fail to notify the Commissioners of Northern Lighthouses as required by this section or 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.

13.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council 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 consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or

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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 section.

(3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Council, 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 Council.

Saving for
certain
enactments,
etc.
1971 c. 60.
1974 c. 40.
1975 c. 8.
1985 c. 48.
1949 c. 74.

14.—(1) Nothing in this Order affects the operation of—

- (a) the Prevention of Oil Pollution Act 1971;
- (b) the Control of Pollution Act 1974;
- (c) the Offshore Petroleum Development (Scotland) Act 1975;
- (d) Part II of the Food and Environment Protection Act 1985.

(2) Nothing in this Order shall exempt the Council from the provisions of Part I of the Coast Protection Act 1949.

(3) Nothing in this Order shall affect the jurisdiction or authority of the Commissioners of Northern Lighthouses.

Crown
rights.

15.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with, any land or interests 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 subsection (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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