

[9 EDW. 7.] *Buckie Burgh and Buckie (Cluny)* [Ch. cxliv.]
Harbour Order Confirmation Act, 1909.



CHAPTER cxliv.

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1899 relating to Buckie Burgh and Buckie (Cluny) Harbour. A.D. 1909.

[20th September 1909.]

WHEREAS His Majesty's Secretary for Scotland has made the Provisional Order set forth in the schedule hereunto annexed under the provisions of the Private Legislation Procedure (Scotland) Act 1899 and it is requisite that the said Order should be confirmed by Parliament: 62 & 63 Vict.
c. 47.

Be it therefore enacted by the King'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 shall be and the same is hereby confirmed. Confirmation
of Order in
schedule.

2. This Act may be cited as the Buckie Burgh and Buckie (Cluny) Harbour Order Confirmation Act 1909. Short title.

A.D. 1909.

SCHEDULE.

BUCKIE BURGHE AND BUCKIE (CLUNY) HARBOUR.

Provisional Order to empower the Provost Magistrates and Councillors of the Burgh of Buckie in the County of Banff to construct additional Harbour Works at the Buckie (Cluny) Harbour to authorise the Town Council to borrow money for the purposes of the said Harbour to apply the special Cluny Harbour rate authorised by the Buckie Burgh and Buckie (Cluny) Harbour Order 1908 for the purposes of this Order and to confer further powers on the Town Council with reference to the said Harbour and Works and for other purposes.

WHEREAS by the Buckie (Cluny) Harbour Order 1874 (in this Order called "the Order of 1874") confirmed by the Pier and Harbour Orders Confirmation Act 1874 John Gordon of Cluny Cluny Castle Aberdeenshire his heirs assignees and successors were appointed undertakers for carrying that Order into execution and were authorised to construct maintain improve and regulate a harbour and works at Buckie in the county of Banff and the said John Gordon in virtue of the powers conferred by the Order of 1874 commenced and partially carried out the construction of the harbour and works by that Order authorised:

And whereas the trustees (in this Order called "the Cluny trustees") acting under the trust disposition and settlement of the said John Gordon dated the fourth day of January one thousand eight hundred and sixty-nine and codicils thereto upon the death of the said John Gordon and in virtue of the powers conferred on them by the Order of 1874 and the said trust disposition and settlement and codicils subsequently completed the harbour and works by the said Order authorised:

And whereas by the Buckie (Cluny) Harbour Act 1898 (in this Order called "the Act of 1898") the Cluny trustees amongst other things were authorised to construct and carry out various works for the improvement and enlargement of the said harbour and the limits of the said harbour were extended and

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other provisions were made with reference to the said harbour and the tolls rates dues and charges to be demanded and recovered thereat and further powers were conferred on the Cluny trustees as therein mentioned: A.D. 1909.

And whereas the provost magistrates and councillors (in this Order called "the Town Council") of the burgh of Buckie in the county of Banff are the local and sanitary authority of the said burgh and the said burgh and its inhabitants and the district in the neighbourhood thereof are largely interested in the fishing industries carried on in the Moray Firth and adjoining sea and the trade and commerce connected therewith:

And whereas by the Buckie Burgh and Buckie (Cluny) Harbour Order 1908 (in this Order called "the Order of 1908") an agreement between the Town Council and the Cluny trustees for the purchase by the Town Council from the Cluny trustees of the Buckie (Cluny) Harbour undertaking and certain lands and other subjects in the vicinity thereof was confirmed and the Town Council were created the harbour and pilotage authority for the said harbour undertaking and powers with reference to the holding maintenance and improvement of the said harbour undertaking and other purposes were conferred on the Town Council:

And whereas by disposition dated the first and recorded in the division of the General Register of Sasines applicable to the county of Banff on the twentieth both days of August one thousand nine hundred and eight the Cluny trustees conveyed to the Town Council the Buckie (Cluny) Harbour undertaking and certain lands and other subjects in the vicinity thereof:

And whereas in consequence of the growth of the burgh of Buckie and the increase in the size and number of vessels and boats resorting to the said Buckie (Cluny) Harbour the said harbour is insufficient for the accommodation of vessels and boats engaged in the fishing industries carried on by the inhabitants of the said burgh and the district in the neighbourhood thereof and for the trade and commerce connected therewith and it is expedient that the said harbour should be improved and enlarged by the execution of the works herein-after in this Order described:

And whereas it is expedient that the Town Council should be authorised to construct the additional works herein-after described for the extension and improvement of the said harbour and for

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A.D. 1909. — the improvement of the lands and other subjects belonging to the Town Council adjacent thereto :

And whereas estimates have been prepared by the Town Council for the construction and completion of the said additional works and for the purchase of land as follows:—

	£
Outer harbour works - - - -	11,302
Inner harbour works - - - -	79,819
Embankment and reclamation - - -	12,118
Compensation and purchase of land and buildings	100

And whereas the said several works included in the said estimates are permanent works and it is expedient that the cost thereof should be spread over a term of years :

And whereas it is expedient that the limits of the said harbour should be extended as provided by this Order :

And whereas it is expedient to make such provision as regards the rates leviable at the harbour as is herein-after contained :

And whereas it is expedient to authorise the Town Council for the purposes of this Order to borrow money and to apply the special harbour rate authorised by the Order of 1908 for the purposes of this Order as herein-after provided :

And whereas it is expedient to amend alter or repeal certain provisions of the Order of 1874 the Act of 1898 and the Order of 1908 in the manner herein-after provided :

And whereas it is expedient that the other powers herein-after in this Order contained should be conferred on the Town Council :

And whereas a plan and sections showing the lines situation and levels of the works authorised by this Order and also a book of reference thereto containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands and property required or which may be taken for the purposes or under the powers of this Order were duly deposited with the principal sheriff clerk of the county of Banff and are herein-after respectively referred to as the deposited plan sections and book of reference :

And whereas the purposes aforesaid cannot be effected without an Order of the Secretary for Scotland confirmed by Parliament

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under the provisions of the Private Legislation Procedure (Scotland) Act 1899: A.D. 1909.

Now therefore in pursuance of the powers contained in the last-mentioned Act the Secretary for Scotland orders as follows:—

1. This Order is divided into Parts as follows:—

Division of
Order into
Parts.

Part I.—Preliminary.

Part II.—New Works and Extension of Harbour Limits.

Part III.—Harbour Rates.

Part IV.—Finance.

Part V.—Miscellaneous.

PART I.

PRELIMINARY.

2. This Order may be cited as the Buckie Burgh and Buckie (Cluny) Harbour Order 1909 and shall come into operation on the date of the passing of the Act confirming the same. Short title
and com-
mencement
of Order.

3. The Lands Clauses Acts are except where expressly varied by this Order incorporated with and form part of this Order and this Order shall be deemed to be a special Act within the meaning of those Acts. Incorporation
of Lands
Clauses
Acts.

4. The following parts of Acts (so far as the same are applicable for the purposes and are not inconsistent with the provisions of this Order) are incorporated with and form part of this Order (that is to say):— Partial in-
corporation
of Harbours
Docks and
Piers
Clauses Act
1847 and
Railways
Clauses Con-
solidation
(Scotland)
Act 1845.

The Harbours Docks and Piers Clauses Act 1847 excepting the sections thereof with respect to lifeboats with respect to keeping a tide and weather gauge (unless the Town Council shall be required by the Board of Trade to provide and maintain a lifeboat and tide and weather gauge) and with respect to the police of the harbour dock or pier and excepting sections 25 and 26 of that Act:

The provisions of the Railways Clauses Consolidation (Scotland) Act 1845 with respect to the temporary occupation of lands near the railway during the construction thereof and with respect to the crossing of roads or other interference therewith.

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Interpreta-
tion.

5. In this Order the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated with this Order have the same respective meanings unless there be something in the subject or context repugnant to such construction. Provided that in the Acts wholly or partially incorporated herewith the following words and expressions have for the purposes of this Order the meanings hereby assigned to them (that is to say):—

“The Promoters of the undertaking” “the Undertakers” and
“the Company” respectively mean the Town Council;

“The railway” means the works by this Order authorised or any of them and “the centre of the railway” means the boundaries of those works respectively;

“The special Act” means this Order:

And in this Order unless the context otherwise requires—

“The burgh” means the burgh of Buckie;

“The Town Council” means the provost magistrates and councillors of the burgh;

“The town clerk” means the town clerk of the burgh and includes any depute acting for him;

“The harbour” means the Buckie (Cluny) Harbour and includes the works by this Order authorised;

“The harbour undertaking” means the harbour undertaking for the time being of the Town Council;

“The sheriff” means the sheriff of the counties of Aberdeen Kincardine and Banff or any of his substitutes;

“The sheriff clerk” means the principal sheriff clerk of the county of Banff;

“The Police Acts” means the Burgh Police (Scotland) Acts 1892 to 1903 and any Act or Acts amending the same.

PART II.

NEW WORKS AND EXTENSION OF HARBOUR LIMITS.

Power to
construct
and descrip-
tion of
works.

6. Subject to the provisions of this Order and to the powers of deviation herein-after contained the Town Council for the purposes of the harbour may make and maintain in the lines and according to the levels shown on the deposited plan and sections the works herein-after described and may enter upon take and use such of the lands delineated on the said plan and

described in the deposited book of reference as may be required for those purposes or in connexion therewith. The said works authorised by this Order are—

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- (1) A wall or quay and roadway (herein-after called "Work No. 1") commencing at a point fifty-five feet or thereabouts from the south-east corner of the existing inner harbour measured therefrom in a direction approximately east-south-east and two hundred and fifty feet or thereabouts from the bench mark on the north wall of the custom house measured in a direction approximately north-east and extending in a direction approximately east-north-east for a distance of five hundred and eighty-seven feet or thereabouts from the said point of commencement and there terminating by a junction with Work No. 3 herein-after described at a point eighty-two feet or thereabouts measured in a direction approximately north-north-west from the east gate post of the entrance to Jones and Sons' timber yard:
- (2) A wall or quay on the east face of the existing East Pier commencing at the bend in the said pier at the north-east corner of the existing harbour and extending in a direction approximately south-south-east for a distance of two hundred and thirty-two feet or thereabouts and there terminating by a junction with Work No. 1 at the point of commencement of Work No. 1:
- (3) A wall or quay commencing at the termination herein-before described of Work No. 1 and extending in a direction approximately north-north-west for a distance of one hundred and thirty feet or thereabouts and there terminating on the foreshore or bed of the sea:
- (4) A jetty of solid construction or partly of solid and partly of openwork construction commencing by a junction with Work No. 1 at a point distant three hundred and twenty feet or thereabouts from the termination herein-before described of Work No. 1 and extending in a direction approximately north-north-west for a distance of two hundred and twenty feet or thereabouts and there terminating on the foreshore or bed of the sea:

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- (5) A pier or breakwater commencing at the termination herein-before described of the proposed Work No. 3 herein-before described and extending in a direction approximately west-north-west for a distance of three hundred and eighty feet or thereabouts and afterwards in a direction approximately west-south-west for a distance of six hundred and thirty feet or thereabouts and there terminating by a junction with the existing North Pier of the existing harbour at a point distant four hundred and fifty-five feet or thereabouts from the existing termination of the said North Pier :
- (6) An embankment commencing at the eastern extremity of the proposed Work No. 5 herein-before described and extending in a direction approximately east-north-east for a distance of six hundred and eighty-five feet or thereabouts and there terminating on the foreshore or banks of the sea at a point distant two hundred and ninety feet or thereabouts measured in a direction approximately west by north from a bench mark on the north boundary wall of a house occupied by James Scott fish merchant at the junction of Aboyne Street and Commercial Road in Gordonsburgh and seven hundred and seventy-five feet or thereabouts measured in a direction approximately north-east from the gate post at the eastern side of the gateway to Jones and Sons' timber yard :
- (7) A reclamation and filling in of foreshore and other lands adjoining lying to the south of the proposed Embankment Work No. 6 herein-before described and bounded on the north-west by the said embankment on the south by Commercial Road and on the west by the proposed Work No. 3 herein-before described and on the east by the present foreshore and banks of the sea at Gordonsburgh :
- (8) A seaward extension of the existing North Pier commencing at the existing western termination of the said North Pier and extending in a direction approximately west by north for a distance of one hundred feet or thereabouts and there terminating on the bed of the sea :

- (9) A breastwork or breakwater of solid or open construction commencing at a point at or near the head of the existing Spur Pier (adjoining the existing North Pier on its south side) and on the west side thereof and extending in a direction approximately north-west by west for a distance of one hundred and twenty-five feet or thereabouts and there terminating by a junction with the existing North Pier on its southern face at a point distant two hundred and sixty feet or thereabouts from the existing termination of the said North Pier : A.D. 1909.
- (10) The pulling down and removal of the portion of the existing North Pier lying between the point of commencement herein-before described of the proposed Work No. 2 herein-before described and a point on the said North Pier distant sixty feet or thereabouts from the junction of the east wall of the existing Spur Pier with the said North Pier :
- (11) The excavation and deepening to a depth of twelve feet or thereabouts below the level of low water of ordinary spring tides of the bed of the existing harbour and the approaches thereto within the area bounded on the north by the existing North Pier of the harbour and on the south-east and south by a line commencing at the point of commencement of the proposed Work No. 2 herein-before described and proceeding thence in a direction approximately west-south-west for a distance of two hundred and eighty feet or thereabouts and thence in a direction approximately west through the northern extremity of the existing Middle Pier of the existing harbour for a distance of six hundred feet or thereabouts together with the deepening of the sea bed to the south and west of the present western extremity of the North Pier for a distance of two hundred feet or thereabouts in a southerly and westerly direction respectively :
- (12) The excavation and deepening to a depth of eleven feet or thereabouts below the level of low water of ordinary spring tides of the area contained between the proposed pier or breakwater Work No. 5 herein-before described and the proposed Works Nos. 1 2, 3 and 10 respectively herein-before described (including the site

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of the said Work No. 10) including the removal of the sheds buildings warehouses curing yards paths walls fences stairs embankments and other works now existing on the said area.

The said works will be situate in the burgh of Buckie parish of Rathven and county of Banff and on the foreshore and bed of the sea adjacent thereto.

Power to
make subsi-
diary works.

7. The Town Council may subject to the provisions of this Order make and maintain on in over or in connexion with the said works herein-before described or any of them all necessary footways carriageways approaches roads communications steps slips slipways sewers drains sluices culverts embankments walls fences railings groynes sea defences aprons dams cuts jetties landing places quays wharves gates basins stages staithes gantries gridirons channels locks beacons buoys dolphins moorings pontoons floating docks dredgers lights warehouses sheds cellars storehouses toll-houses shelters cranes hoists lifts machinery engines tramways railway sidings junctions turntables reclamations deepenings dredgings excavations conveniences works and appliances necessary or convenient for or ancillary or incidental to the said works or any of them.

Works to be
deemed to be
part of har-
bour under-
taking.

8. The works by this Order authorised shall subject to the provisions of this Order for the purposes of rates and charges which may be demanded recovered and received by the Town Council and for all other purposes be and be deemed to be part of the harbour and of the harbour undertaking and the powers and provisions of the Order of 1874 the Act of 1898 and the Order of 1908 as each of such Orders and Act is amended or varied by any subsequent Act or Order shall extend and apply mutatis mutandis to the works by this Order authorised and all byelaws rules and regulations of the Town Council for the time being in force relating to the harbour or the harbour undertaking shall be applicable and apply to the works by this Order authorised and shall and may be enforced by the Town Council accordingly and all securities granted by the Town Council over the existing harbour and harbour undertaking shall be held to include and extend to the works by this Order authorised to the same effect as if the said works had formed part of the existing harbour and harbour undertaking.

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9. In constructing the works by this Order authorised the Town Council may deviate laterally from the lines thereof as shown on the deposited plan to any extent not exceeding the limits of deviation shown on that plan and they may deviate vertically from the levels of the said works as shown on the deposited sections to any extent approved by the Board of Trade Provided that no deviation either lateral or vertical below high-water mark shall be made without the consent in writing of the Board of Trade having been first obtained.

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Limits of
deviation.

10. If any person wilfully obstructs any person acting under the authority of the Town Council in setting out the lines of the works by this Order authorised or pulls up or removes any poles or stakes driven into the ground for the purpose of setting out the lines of those works or defaces or destroys those works or any part thereof that person shall for each offence be liable to a penalty not exceeding ten pounds and shall in addition be liable to repay to the Town Council any expenses incurred by them in making good such damage.

Penalty for
obstructing
works.

11. Subject to the provisions of this Order and within the limits shown on the deposited plan the Town Council for the purposes of the works by this Order authorised or any of them or works connected therewith may make and maintain junctions and communications with any existing roads highways streets quays or footways which may be intersected or interfered with by any of the said works or be contiguous thereto and for the purposes of any such junctions or communications may alter the line or level of any existing road highway street quay or footway and may remove alter divert stop up enclose use or appropriate all or any part of any road highway street quay footway stream watercourse sewer drain gas water or other main or pipe telegraph telephone or other wire main pipe work or apparatus within the limits aforesaid the Town Council first providing all proper substituted works and making reasonable compensation to any person who suffers damage from the exercise of the powers in this section contained Provided that the Town Council shall not alter divert or in any way interfere with telegraphic telephonic or electric apparatus belonging to or used by the Postmaster-General except in accordance with and subject to the provisions of the Telegraph Act 1878 Provided further that nothing in this section shall extend to or authorise any interference with any works of any undertakers within the meaning of the Electric

Power to
make road
connexions
&c.

A.D. 1909. Lighting Acts 1882 to 1890 to which the provisions of section 15 of the said Act of 1882 apply.

Power to dredge &c.

12.—(1) The Town Council may from time to time excavate dredge deepen scour and improve the harbour and the approaches thereto and all channels waterways and anchorages therein or adjacent thereto and all rock stone shingle sand mud and other materials so excavated dredged up or removed as aforesaid shall be the property of the Town Council and they may use appropriate sell or otherwise dispose of the same or lay down and use the same for the purposes of the harbour and the harbour undertaking as they think fit Provided that all materials excavated or dredged under the provisions of this section if deposited below high-water mark shall be deposited in such position and under such restrictions as may be fixed by the Board of Trade.

(2) All money arising from any sale or other application of any rock stone shingle sand mud and other materials under this section after payment of any expenses connected therewith shall be applied as part of the revenue of the harbour undertaking.

Omission or misstatement in plan or book of reference may be corrected.

13. If there be any omission misstatement or erroneous description of any lands or of the owners lessees or occupiers of lands shown on the deposited plan or specified in the deposited book of reference the Town Council may after giving ten days' notice to the owners lessees and occupiers of the lands in question apply to the sheriff for the correction thereof and if it appear to the sheriff that such omission misstatement or erroneous description arose from accident or mistake he shall certify the same accordingly in duplicate and shall in such certificate state the particulars of the omission and in what respect any such matter is misstated or erroneously described and the decision of the sheriff in such matter shall be final.

Certificates to be deposited.

14. The certificate of the sheriff granted under the immediately preceding section shall be deposited in the office of the sheriff clerk and a duplicate thereof shall be deposited with the town clerk and such certificate and duplicate thereof shall be kept by the sheriff clerk and the town clerk respectively along with the other documents to which they relate and thereupon the deposited plan and book of reference shall be deemed to be corrected in accordance with the certificate and the Town Council may enter on purchase take hold and use for the purposes of this Order any lands in accordance with such certificate as if such omission misstatement or erroneous description had not been made.

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15. Persons empowered by the Lands Clauses Acts to sell and convey or discharge lands may by agreement if they think fit subject to the provisions of those Acts and of this Order grant to the Town Council any servitude right or privilege (not being a servitude right or privilege of water in which persons other than the grantors have an interest) required for the purposes of this Order or any of them in over or affecting any such lands and the provisions of the said Acts with respect to lands and ground annuals or feu-duties so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes rights and privileges as aforesaid respectively.

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Power to
take servi-
tudes &c. by
agreement.

16. The Town Council shall not under the powers of this Order purchase or acquire in any district within the meaning of the Public Health (Scotland) Act 1897 ten or more houses which on the fifteenth day of April last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers or except with the consent of the Secretary for Scotland ten or more houses which were not so occupied on the said fifteenth day of April but have been or shall be subsequently so occupied.

Restriction
on taking
houses of
labouring
class.

If the Town Council acquire or appropriate any house or houses under the powers of this Order in contravention of the foregoing provision they shall be liable to a penalty of five hundred pounds in respect of every such house which penalty shall be recoverable by the Secretary for Scotland by action in the Court of Session and shall be carried to and form part of the Consolidated Fund of the United Kingdom. Provided that the court may if they think fit reduce such penalty.

For the purposes of this section the expression "labouring class" means mechanics artisans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others except members of their own family and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them. The expression "house" means any house or part of a house occupied as a separate dwelling.

17. The powers for the compulsory purchase of lands for the purposes of this Order shall not be exercised after the expiration of three years from the passing of the Act confirming this Order.

Period for
compulsory
purchase of
lands.

A.D. 1909.
Period for
completing
works.

18. On the expiration of seven years from the passing of the Act confirming this Order the powers by this Order given to the Town Council for constructing the works by this Order authorised shall cease except as to so much thereof as shall then be completed. Provided that the Board of Trade may on application in writing to them before the expiration of the said period by the Town Council extend the period for completion of the said works for such period not exceeding fourteen years from the passing of the Act confirming this Order as they may think fit by a consent under the hand of the secretary or assistant secretary of the said Board.

Limits of
harbour.

19. Section 11 of the Act of 1898 is hereby repealed and the limits within which the Town Council shall have authority (and which shall except where otherwise expressly provided be deemed the limits to which the Order of 1874 the Act of 1898 the Order of 1908 and this Order extend) shall for the purposes of levying tolls rates dues and charges comprise the piers harbours quays and other works already constructed before the passing of the Act confirming this Order and to be constructed under the authority of this Order (in this section referred to as "the works") and also so much of the shores and waters of the sea or Moray Firth below high-water mark (in this section referred to as "the Moray Firth") (A) as lies within two hundred yards to the northward of the Embankment Work No. 6 by this Order authorised and (B) as lies within two hundred yards of any part of the works (other than the said Work No. 6) and such limits shall for all other purposes comprise the works and also so much of the Moray Firth as lies within five hundred yards of any part of the works.

PART III.

HARBOUR RATES.

Rates for
use of slip-
ways &c.

20. The Town Council may levy demand recover and receive reasonable rates or other consideration for the use of any slipways or slips and conveniences connected therewith belonging to or provided by them at the harbour.

Revision of
rates.

21. Section 26 of the Order of 1908 is hereby repealed and section 19 of the Act of 1898 shall not apply to the Town Council or the harbour or the harbour undertaking and in lieu

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thereof the following provisions shall have effect (that is to say) :— A.D. 1909.

(1) The rates to be levied by the Town Council for the time being with reference to the harbour and the harbour undertaking shall be adjusted by the Town Council within the maximum rates authorised to be taken by them in such a manner that so far as possible the income of the harbour and the harbour undertaking shall not for the time being be more than is sufficient for the purposes of the Order of 1874 the Act of 1898 the Order of 1908 and this Order and for repaying any moneys borrowed on account of the harbour and the harbour undertaking and for paying interest thereon and recouping the burgh on account of the special Cluny Harbour rate authorised by the Order of 1908 to be levied :

(2) If at any time it appears to the Board of Trade from the annual account to be sent to them under section 20 of the Act of 1898 that the clear annual income derived from the harbour and the harbour undertaking on the average of the three last preceding years after payment of all expenses and outgoings exceeds the amount sufficient for the purposes of the Order of 1874 the Act of 1898 the Order of 1908 and this Order that Board may if they think fit reduce the maximum rates to such sums as will be sufficient to provide the amount aforesaid and may at any time raise those maximum rates again but so that they do not exceed the sums authorised to be taken by the Town Council with reference to the harbour and the harbour undertaking.

PART IV.

FINANCE.

22. The Town Council may and shall provide such moneys as may become necessary for the purposes of this Order or any of them and of the harbour and the harbour undertaking and the maintenance management and improvement thereof and the payment of expenses in connexion therewith out of the revenue

Power to
Town Council to provide
moneys for
purposes of
Order.

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A.D. 1909. of the harbour and the harbour undertaking and by means of the special Cluny Harbour rate authorised by the Order of 1908 to be imposed and levied or either of them as the Town Council may think fit and section 30 (Power to Town Council to impose and levy special rate) of the Order of 1908 shall be read and have effect as if the said section authorised the imposing levying and recovering of the said special Cluny Harbour rate for the purposes of this Order as well as for the purposes of the Order of 1908 and the Town Council may accordingly impose levy and recover the said rate for those purposes:

Provided always that owners and occupiers of lands or premises referred to in section 31 (Limitation of rate in area added to burgh under Order of 1902) of the Order of 1908 shall continue to be entitled to the exemption conferred upon them by that section but shall be charged with the said special Cluny Harbour rate to the extent necessary for the "other purposes" in that section referred to for which the said rate is by the Order of 1908 authorised to be levied and for the purposes of this Order.

Limitation
of rate as
regards
Great North
of Scotland
and High-
land Rail-
way Com-
panies.

23. Section 32 (Limitation of rate as regards Great North of Scotland and Highland Railway Companies) of the Order of 1908 is hereby repealed and in lieu thereof the following provisions shall have effect (that is to say) The Great North of Scotland and the Highland Railway Companies shall not be called upon to pay in any one year in respect of their property within the burgh by way of rates or assessments levied for the purposes of the Order of 1908 and of this Order a sum greater than three shillings in the pound calculated upon the amount of the valuation of their property for ordinary burgh purposes Provided always that unless and until the Town Council exercise the borrowing powers conferred upon them for the works authorised by this Order the said railway companies shall not be called upon to pay in any one year in respect of their property within the burgh by way of rates or assessments levied for the purposes of the Order of 1908 and of this Order a sum greater than two shillings in the pound calculated as aforesaid.

Power to
accept con-
tributions.

24. The Town Council may accept and apply towards the purposes of this Order for the harbour and the harbour undertaking any moneys which may be contributed by gift to them for those purposes.

25.—(1) The Town Council may from time to time borrow and re-borrow at interest by means of mortgage bond or otherwise:—

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Power to
borrow.

(A) For carrying into effect the construction of the works by this Order authorised any sum or sums of money not exceeding in the whole seventy thousand pounds;

(B) For carrying into effect the other purposes of this Order or any of them such sum or sums of money not exceeding in the whole ten thousand pounds as may be sanctioned by the Secretary for Scotland; and

(c) For paying the costs of this Order the amount necessary.

(2) Any money may be so borrowed on the security of the tolls rates duties dues and charges arising from the harbour and the harbour undertaking and the other revenues of the harbour and the harbour undertaking and on the security of the special Cluny Harbour rate authorised by the Order of 1908 to be levied or any one or more of them as the Town Council may from time to time determine but not so as to affect the priority of any securities heretofore granted by the Town Council in favour of the Cluny trustees under the Order of 1908.

(3) The Town Council for the purpose of raising the money which may be so borrowed may accept and take from any bank or banking company credit to such amount as they think expedient on a cash account to be opened and kept with such bank or banking company in the name of the Town Council according to the usage of bankers in Scotland and subject to the securities and priority of the Cluny trustees as aforesaid the Town Council may make and grant mortgages or other securities of and may assign the tolls rates duties dues and charges and revenues and the said special Cluny Harbour rate herein-before mentioned or any of them in security for the repayment of the sum or sums so borrowed or of the amount of the credit or of the sums advanced on the cash account with interest thereon. Provided always that the whole sums due and owing by the Town Council on such cash account and borrowed on mortgage or bond under the powers conferred by this Order shall never when taken together exceed the aggregate amount of the sum by this Order authorised to be borrowed and not repaid by instalments or by sinking fund.

(4) The Town Council shall pay off all moneys borrowed by them under this Order within the respective periods following

A.D. 1909. (which periods are herein-after respectively referred to as "the prescribed period") (that is to say):—

- (A) As to money borrowed for carrying into effect the construction of the works by this Order authorised within sixty years from the date or dates of borrowing the same;
- (B) As to money borrowed for the other purposes of this Order (other than the payment of the costs of this Order) within such period not exceeding fifty years from the date or dates of borrowing the same and by such method of repayment as the Secretary for Scotland may fix at the time when he gives his sanction to such borrowing; and
- (c) As to money borrowed for paying the costs of this Order within five years from the passing of the Act confirming this Order.

(5) The Town Council shall pay off all moneys borrowed by them under this Order either by means of equal yearly or half-yearly instalments of principal or of principal and interest combined or by means of a sinking fund or partly by one of those methods and partly by another or others of them and such sum as will be sufficient to make the required payment shall be set apart out of the revenue of the harbour and the harbour undertaking and by means of the special Cluny Harbour rate authorised by the Order of 1908 or either of them as the Town Council may think fit in each year and paid either to the sinking fund or as an instalment as the case may be.

(6) Any money borrowed under the provisions of this Order which shall be discharged otherwise than by means of the sinking fund or instalments may be re-borrowed by the Town Council from time to time if required for the purposes of this Order.

(7) The provisions of the Police Acts as to the borrowing of money for the general purposes of those Acts shall in so far as applicable and not inconsistent with the provisions of this Order apply to the borrowing by the Town Council of the money which they are by this Order authorised to borrow and the mortgages or bonds to be granted by the Town Council for the purposes of this Order shall refer to the title of this Order.

26.—(1) If the Town Council determine to repay by means of a sinking fund any moneys borrowed under the powers of

Sinking
fund.

this Order such sinking fund shall be formed or maintained either— A.D. 1909.

- (A) By payment to the fund throughout the prescribed period of such equal annual sums as will together amount to the moneys for the repayment of which the sinking fund is formed. A sinking fund so formed is hereinafter called a non-accumulating sinking fund; or
- (B) By payment to the fund throughout the prescribed period of such equal annual sums as with accumulations at a rate not exceeding three per centum per annum will be sufficient to pay off within the prescribed period the moneys for the repayment of which such sinking fund is formed. A sinking fund so formed is hereinafter called an accumulating sinking fund.

(2) Every sum paid to a sinking fund and in the case of an accumulating sinking fund the interest on the investments of the sinking fund shall unless applied in repayment of the loan in respect of which the sinking fund is formed be immediately invested in securities in which trustees are by law for the time being authorised to invest or in mortgages bonds debentures debenture stock stock or other securities (not being annuity certificates or securities payable to bearer) duly issued by any local authority other than the Town Council the Town Council being at liberty from time to time to vary and transpose such investments.

(3) In the case of a non-accumulating sinking fund the interest on the investments of the fund may be applied by the Town Council towards the equal annual payments to the fund.

(4) The Town Council may at any time apply the whole or any part of any sinking fund in or towards the discharge of the money for the repayment of which the fund is formed. Provided that in the case of an accumulating sinking fund the Town Council shall pay into the fund each year and accumulate during the residue of the prescribed period a sum equal to the interest which would have been produced by such sinking fund so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

(5)—(A) If and so often as the income of an accumulating sinking fund is not equal to the income which would be derived from the amount invested if the same were invested at the rate

A.D. 1909. per centum per annum on which the annual payments to the fund are based any deficiency shall be made good by the Town Council:

(B) If and so often as the income of an accumulating sinking fund is in excess of the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the annual payments to the fund are based any such excess may be applied towards such annual payments.

(6) Any expenses connected with the formation maintenance investment application management or otherwise of any sinking fund under this Order shall be paid by the Town Council in addition to the payments provided for by this Order.

(7) If it appears to the Secretary for Scotland or to the Town Council at any time that the amount in the sinking fund with the future payments thereto in accordance with the provisions of this Order together with the accumulations thereon (in the case of an accumulating sinking fund) will probably not be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed it shall be the duty of the Town Council to make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose.

(8) If the Town Council desire to accelerate the repayment of any loan they may increase the amounts payable to any sinking fund.

(9) If the amount in any sinking fund with the future payments thereto in accordance with the provisions of this Order together with the accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Town Council be more than sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed the Town Council may with the consent of the Secretary for Scotland reduce the payments to be made to the sinking fund either temporarily or permanently to such amounts as will be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed.

(10) If the amount in any sinking fund at any time together with the probable accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Town

Council be sufficient to repay the loan in respect of which it is formed within the prescribed period the Town Council may with the consent of the Secretary for Scotland discontinue the annual payments to such sinking fund.

A.D. 1909.

(11) Any surplus of any sinking fund remaining after the discharge of the whole of the moneys for the repayment of which it was formed shall be applied to such purpose as the Town Council may determine.

(12) The period at which the payments into the sinking fund shall commence shall be not later than one year after the date or dates of borrowing.

27.—(1) The mortgagees of the Town Council in respect of money borrowed under this Order may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a judicial factor.

For appointment of a judicial factor.

(2) In order to authorise the appointment of a judicial factor in respect of arrears of principal the amount owing to the mortgagees by whom the application for a judicial factor is made shall not be less than two thousand pounds in the whole.

28.—(1) The town clerk shall within two months after the expiration of each year during which any sum is required to be set apart for a sinking fund or any instalment is required to be paid in respect of money borrowed under this Order transmit to the Secretary for Scotland a return in such form as may be prescribed by him and verified by statutory declaration if so required by him showing the amount which has been paid as an instalment or invested or deposited for the purpose of the sinking fund during the year preceding the making of the return and the description of the securities upon which the amount has been invested or deposited and also showing the purposes to which any portions of the moneys invested or deposited for the sinking fund and the interest thereof have been applied during the same period and the total amount remaining invested or deposited at the end of the year.

Annual return to Secretary for Scotland with respect to sinking fund.

(2) The town clerk in the event of any default in making the return shall be liable to a penalty not exceeding twenty pounds.

(3) If it appears to the Secretary for Scotland by the return under this section or otherwise that the Town Council have failed to pay any instalment or to set apart the sum required for the

A.D. 1909. sinking fund or to make any increased payment thereto under this Order required or have applied any portion of the moneys set apart for that fund or any interest thereof to any purposes other than those authorised the Secretary for Scotland may by order direct that a sum not exceeding double the amount in respect of which the default has been made shall be set apart and invested or deposited as part of the sinking fund and that order shall be enforceable by decree of either division of the Inner House of the Court of Session in Scotland in a summary application presented for that purpose.

Application
of money
borrowed.

29. All money borrowed under this Order shall be applied only for the purposes of this Order for which the money is authorised to be borrowed and to which capital is properly applicable.

Protection of
lenders.

30. Any person lending or paying money to the Town Council under this Order shall not be bound to inquire as to the observance by the Town Council of any provision of this Order or be bound to see to the application or be answerable for any loss mis-application or non-application of the money or of any part thereof.

Securities to
rank pari
passu.

31. All mortgages bonds or other securities granted under the section of this Order of which the marginal note is "Power to borrow" and the amounts due under the same for the time being shall rank pari passu without any preference among such mortgages bonds or other securities by reason of priority in the dates thereof or the dates of advancing the moneys for which the same shall have been granted.

Contingency
fund.

32. Section 40 of the Order of 1908 is hereby repealed and the following provision shall have effect in lieu thereof:—

The Town Council may if they think fit form and maintain a contingency fund not exceeding the sum of fifteen thousand pounds to meet any extraordinary claim or demand or any unforeseen accident or extraordinary damage which may happen or be caused to the harbour or the harbour undertaking or works connected therewith and for that purpose appropriate and set apart subject to the provisions of this Order as to application of revenue any amount which they may think fit in any year out of the surplus revenue of the harbour and the harbour undertaking and shall deposit any such amount in some joint stock bank of issue in

Scotland to be increased by accumulation in the way of compound interest or otherwise or shall invest the same in securities in which trustees in Scotland may lawfully invest money (but not in securities of the Town Council) until required for any of the aforesaid purposes. A.D. 1909.

33. Section 41 (Application of rates) of the Order of 1908 is hereby repealed and from and after the passing of the Act confirming this Order the Town Council shall notwithstanding anything contained in the Order of 1874 the Act of 1898 or the Order of 1908 apply all rates and other moneys received by them by way of revenue in respect of the harbour or the harbour undertaking and also (subject to the proviso to the section of this Order of which the marginal note is "Power to Town Council to provide moneys for purposes of Order") all moneys received from the special Cluny Harbour rate authorised by the Order of 1908 for the purposes and in the order following (that is to say):— Application of rates.

- (1) In paying the costs of and connected with the preparation obtaining and confirming of the Order of 1908 and of this Order so far as those costs are not paid out of money borrowed under the Order of 1908 or under this Order as the case may be:
- (2) In paying the expenses properly chargeable to revenue of conducting managing and maintaining the harbour and the harbour undertaking and works lands property and other subjects connected therewith:
- (3) In paying any feu-duties and rents payable in respect of the lands and property belonging to or leased by the Town Council in connexion with the harbour and the harbour undertaking:
- (4) In paying the instalments of the purchase price and interest to the Cluny trustees in terms of the agreement set forth in the schedule to the Order of 1908:
- (5) In paying year by year the interest on money borrowed under the Order of 1908:
- (6) In paying year by year the interest on money borrowed under this Order:
- (7) In providing for instalments for repayment of money borrowed under the Order of 1908 and in creating and maintaining any sinking fund required for the purpose of paying off the moneys so borrowed:

A.D. 1909.

- (8) In providing for instalments for repayment of moneys borrowed under this Order and in creating and maintaining any sinking fund required for the purpose of paying off the moneys so borrowed :
- (9) In making such payments (if any) as the Town Council think fit to the contingency fund authorised by this Order :
- (10) In recouping the burgh for the proceeds of any special Cluny Harbour rate authorised by the Order of 1908 which may have been levied on or contributed by the burgh for the purposes of the Order of 1908 or of this Order :
- (11) Subject to and after answering the purposes aforesaid the surplus revenue (if any) shall be applied by the Town Council in the general improvement of the harbour and the harbour undertaking.

PART V.

MISCELLANEOUS.

Town Council may license harbour pilots.

34.—(1) The Town Council may admit and license as pilots for the harbour according to the practice in use and subject to the statutes relating to pilotage in force for the time being in so far as they extend to or include pilotage at the harbour any person who satisfies the Town Council that he is qualified as a pilot for the harbour and that he is of sober habits and good moral character.

(2) The Town Council may make a classification of pilots for the harbour whereby according to their respective qualifications applicants may be admitted and licensed as pilots for all vessels or only for such vessels as do not have a register tonnage exceeding the register tonnage specified in the licence granted by the Town Council.

(3) The Town Council may at any time suspend any pilot from acting or withdraw or cancel the licence held by him when they see fit.

(4) No person (other than a person who is licensed as a pilot by the Town Council) shall board a vessel for the purpose of piloting or shall pilot such vessel into out of or within or about the harbour and [no shipmaster requiring a pilot shall

employ or allow any person (other than a person so licensed) so to act as a pilot in navigating or assisting to navigate his vessel. A.D. 1909.

(5) Licences granted by the Town Council and in force at the passing of the Act confirming this Order shall until withdrawn or cancelled by the Town Council continue in force in the same manner as if they had been granted under the provisions of this section.

(6) Any shipmaster employing or allowing any person to act as a pilot or any person acting as a pilot or any person asking employment as a pilot in contravention of this section shall be liable to a penalty not exceeding ten pounds.

35. The Town Council shall not be liable or answerable to any person whomsoever for any accident loss or damage occasioned by the fault or incapacity of any pilot licensed or appointed by them or happening in any way in consequence of the employment of any such pilot. Town Council not to be liable for damage by pilots.

36. All penalties under this Order shall be recovered and applied as penalties are recoverable and applicable under the Harbours Docks and Piers Clauses Act 1847. Recovery of penalties 10 & 11 Vict. c. 27.

37. The Town Council shall not under the powers of this Order construct on the shore of the sea or of any creek bay arm of the sea or navigable river communicating therewith where and so far up the same as the tide flows and reflows any work without the previous consent of the Board of Trade to be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade and then only according to such plan and under such restrictions and regulations as the Board of Trade may approve of such approval being signified as last aforesaid and where any such work may have been constructed the Town Council shall not at any time alter or extend the same without obtaining previously to making any such alteration or extension the like consents or approvals. If any such work be commenced or completed contrary to the provisions of this section the Board of Trade may abate and remove the same and restore the site thereof to its former condition at the costs and charges of the Town Council and the amount of such costs and charges shall be a debt due from the Town Council to the Crown and shall be recoverable as a Crown debt or summarily. Works below high-water mark not to be commenced without consent of Board of Trade.

38. The Town Council shall at or near the works below high-water mark hereby authorised during the whole time of the constructing altering or extending the same exhibit and keep burning at their own expense every night from sunset to sunrise Lights on works during construction.

A.D. 1909. such lights (if any) and take such other steps for the prevention of danger to navigation as the Board of Trade from time to time require or approve.

If the Town Council fail to comply in any respect with the provisions of this section they shall for each day in which they so fail be liable to a penalty not exceeding twenty pounds.

Permanent lights on works.

39. The Town Council shall at the outer extremity of their works below high water exhibit and keep burning 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.

If the Town Council fail to comply in any respect with the provisions of the present section they shall for each day in which they so fail be liable to a penalty not exceeding twenty pounds.

Provision against danger to navigation.

40. In case of injury to or destruction or decay of the works by this Order authorised or any part thereof the Town Council shall lay down such buoys exhibit such lights or take such other means for preventing so far as may be danger to navigation as shall from time to time be directed by the Commissioners of Northern Lighthouses and shall apply to those Commissioners for directions as to the means to be taken and the Town Council shall be liable to a penalty not exceeding ten pounds for every calendar month during which they omit so to apply or refuse or neglect to obey any direction given in reference to the means to be taken.

Lifebuoy to be kept.

41. The Town Council shall at all times keep at convenient places on the works by this Order authorised and in obedience to any requirements which may be made by the Board of Trade lifebuoy and lifelines in good order and fit and ready for use.

Survey of works by Board of Trade.

42. If at any time the Board of Trade deems it expedient for the purposes of this Order to order a survey and examination of a work constructed by the Town Council on in over through or across tidal lands or tidal water or of the intended site of any such work the Town Council shall defray the expense of the survey and examination and the amount thereof shall be a debt due from the Town Council to the Crown and be recoverable as a Crown debt or summarily.

Abatement of work abandoned or decayed.

43. If a work constructed by the Town Council on in over through or across tidal lands or tidal water is abandoned or suffered to fall into decay the Board of Trade may abate and remove the work or any part of it and restore the site thereof to its former condition at the expense of the Town Council

and the amount of such expense shall be a debt due from the Town Council to the Crown and be recoverable as a Crown debt or summarily. A.D. 1909.

44. Nothing contained in this Order shall be deemed to exempt the harbour or the Town Council from the provisions of the Merchant Shipping Act 1894 or from any general Act relating to merchant shipping harbours or docks or to dues on shipping or on goods carried in vessels now in force or which shall be passed during the present or any future session of Parliament or from any future revision or alteration under the authority of Parliament of the rates authorised by this Order. Nothing to exempt harbour or Town Council from provisions of Merchant Shipping Act.

45. Nothing in this Order shall affect prejudicially any estate right power privilege or exemption of the Crown or shall subject to the provisions of this Order any lands buildings or works vested in or occupied by the Crown or any department of His Majesty's Government except to such extent as His Majesty or such department may voluntarily agree and in particular nothing herein contained shall authorise the Town Council to take use or in any manner interfere with any portion of the shore or bed of the sea or of any river channel creek bay or estuary or any land hereditaments subjects or rights of whatsoever description belonging to His Majesty in right of His Crown and under the management of the Commissioners of Woods or of the Board of Trade respectively without the consent in writing of the Commissioners of Woods or the Board of Trade as the case may be on behalf of His Majesty first had and obtained for that purpose (which consent the said Commissioners and Board are hereby respectively authorised to give). Crown rights.

46. All costs charges and expenses of or incident to the preparing obtaining and confirmation of this Order shall be paid by the Town Council out of any moneys to be borrowed under the powers of this Order or out of the special Cluny Harbour rate authorised by the Order of 1908 or out of any of their funds but shall be ultimately charged to the account of the harbour and the harbour undertaking. Costs of Order.

Printed by EYRE and SPOTTISWOODE, LTD.,

FOR

ROWLAND BAILEY, Esq., M.V.O., the King's Printer of Acts of Parliament.

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