



## CHAPTER xxxii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Eyemouth Harbour. [27th July, 1961.]

**W**HEREAS 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:

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 Eyemouth Harbour Order Confirmation Act, 1961. Short title.

## SCHEDULE

## EYEMOUTH HARBOUR

*Provisional Order to authorise the Eyemouth Harbour Trustees to acquire lands and to carry out works for the improvement of Eyemouth Harbour and to borrow money and for other purposes.*

Whereas it is expedient that the Eyemouth Harbour Trustees (hereinafter called "the Trustees") should be authorised to acquire lands and to carry out the works hereinafter described for the improvement of Eyemouth Harbour and to borrow money for the purposes of the said works and of their harbour undertaking:

And whereas it is expedient that the further powers mentioned in this Order should be conferred on the Trustees:

And whereas estimates have been prepared by the Trustees in relation to the following purposes in respect of which they are authorised to borrow money and such estimates are as follows:—

Purchase of lands, minerals and permanent rights	£1,000
For the construction of Works Nos. 1 to 11 ... ..	£229,000

And whereas a plan and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order and a book of reference to such plan, showing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken or used for the purpose of or under the powers of this Order, were duly deposited with the sheriff-clerk of the county of Berwick and such plan, sections and book of reference are respectively called the deposited plan, sections and book of reference:

And whereas the purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act, 1936:

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

## PART I

## PRELIMINARY

Short and  
collective titles.

1.—(1) This Order may be cited as the Eyemouth Harbour Order, 1961.

(2) The Eyemouth Harbour Orders, 1882 and 1920, and this Order may be cited together as the Eyemouth Harbour Orders, 1882 to 1961.

2.—(1) In this Order unless there be something in the subject or context repugnant to such construction the following words and expressions have the meanings hereby assigned to them (that is to say):—

PART I  
—cont.  
Interpretation.

“ Act of 1847 ” means the Harbours Docks and Piers (Clauses) Act, 1847;

“ daily fine ” means a fine for every day on which any offence is continued after conviction therefor;

“ date of commencement ” means the date of the passing of the Act confirming this Order;

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

“ existing ” means existing at the date of commencement;

“ harbour ” means the harbour of Eyemouth as defined in the Eyemouth Harbour Order, 1882;

“ harbour master ” means the harbour master for the harbour or other officer deputed by him;

“ harbour undertaking ” means the undertaking of the Trustees in connection with the harbour;

“ high-watermark ” means high-water mark of ordinary spring tides;

“ Minister ” means the Minister of Transport;

“ seaplane ” includes a flying boat and any other aircraft designed to manoeuvre on the water;

“ sheriff ” means the sheriff of Roxburgh, Berwick and Selkirk;

“ the works ” means the works respectively authorised by section 5 (Power to carry out works) of this Order;

“ Trustees ” means the Eyemouth Harbour Trustees;

“ vessel ” includes a seaplane when on the surface of the water.

(2) Any reference in this Order to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment.

3. The following enactments, so far as the same are applicable for the purposes of and are not inconsistent with or varied by the provisions of this Order, are hereby incorporated with and form part of this Order:—

(i) the Lands Clauses Acts (with the exception of sections 120 to 126 of the Lands Clauses Consolidation (Scotland) Act, 1845, relating to the sale of superfluous lands) and for the purposes of the incorporation of the said Acts the expression “ the special Act ” in those Acts shall mean this Order;

(ii) Part III of the Harbours Piers and Ferries (Scotland) Act, 1937, and for the purposes of such incorporation the works shall be deemed to be a marine work.

4.—(1) Notwithstanding anything contained in section 10 of the Harbours Piers and Ferries (Scotland) Act, 1937, or in the Eyemouth Harbour Orders, 1882 and 1920, section 6 of the Act of 1847 shall apply and sections 22 to 26, 31, 79, 80, 94 to 98, 101 and 103 of the Act of 1847 shall not apply to the harbour undertaking.

Application of  
Harbours  
Docks and  
Piers Clauses  
Act, 1847.

(2) In the application to this Order of the Act of 1847 the expression “ the special Act ” shall mean this Order and the word “ vessel ” shall include a seaplane on the surface of the water:

PART I  
—cont.

Provided that nothing in the Act of 1847 or this Order shall in any circumstances require or authorise the harbour master or other officer to require the dismantling of a seaplane or any part thereof or the making of any alteration whatever of the structure or equipment of a seaplane.

(3) Section 28 of the Act of 1847 (which section exempts certain vessels from the provisions of the Act) in its application to this Order shall have effect as if in the said section for the words from “or any packet boat” to “any such packet boat or packet” there were substituted the words “or any vessel employed by or under the authority of the Postmaster-General for the conveyance under contract of postal packets as defined by the Post Office Act, 1953, not being a vessel also conveying passengers or goods for hire or reward, or any mail bag as so defined conveyed by any such vessel”.

## PART II

## WORKS

Power to  
carry out  
works.

5. Subject to the provisions of this Order, the Trustees may, in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plan and sections, carry out the following works in the burgh of Eyemouth and in the respective parishes of Eyemouth and Ayton in the county of Berwick and on the foreshore and in the sea adjacent thereto:—

Work No. 1 The construction of a pier or breakwater (hereinafter referred to as the “East Breakwater”) commencing at a point on the existing East Pier of the harbour (hereinafter referred to as the “existing East Pier”) seventy-two yards or thereby from its eastern extremity measured in a westerly direction and following the bend along the existing East Pier and terminating in Eyemouth Bay below the line of low water of ordinary spring tides at a point eighty-seven yards or thereby measured in a north-north-westerly direction from the said point of commencement;

Work No. 2 The construction of a pier or breakwater (hereinafter referred to as the “West Breakwater”) commencing at a point on the existing East Pier ninety-two yards or thereby from its eastern extremity measured in a westerly direction and following the bend along the existing East Pier and terminating in Eyemouth Bay at the line of low water of ordinary spring tides at a point fifty yards or thereby measured in a north-north-westerly direction from the said point of commencement, the east face of the West Breakwater being parallel to and distant from the west face of the East Breakwater by seventeen yards or thereby at the line of low water of ordinary spring tides and twenty yards or thereby at the line of high water of ordinary spring tides;

Work No. 3 The construction of a pier or breakwater (hereinafter referred to as the “West Pier Extension”) commencing at the north-west extremity of the existing West Pier of the harbour (hereinafter referred to as the “existing West Pier”) extending for a distance of sixty-three yards or thereby

measured in a northerly direction across the existing entrance of the harbour and terminating at the western extremity of the existing East Pier;

Work No. 4 The dredging of a new approach and new entrance channel to the existing harbour between the East Breakwater and the West Breakwater up to the seaward face of the existing East Pier and the deepening and dredging of parts of the existing harbour;

Work No. 5 The underpinning and strengthening by means of concrete, piling, tie rods, anchor blocks and the like of part of Saltgreens Quay commencing at a point near the boat slip at the south-west end of the harbour and terminating at a point on the said quay one hundred and eighty-two yards or thereby from the point of commencement;

Work No. 6 The refacing, underpinning and strengthening by means of concrete, piling, tie rods, anchor blocks and the like of Saltgreens Quay commencing by a junction with the termination of Work No. 5 and terminating at a point on the said quay two hundred and twenty-two yards or thereby from the point of commencement;

Work No. 7 The refacing, underpinning and strengthening by means of concrete, piling, tie rods, anchor blocks and the like of the existing Middle Pier of the harbour (hereinafter referred to as the "existing Middle Pier") commencing at a point at the south-west end of the harbour proceeding along the north-west face of the existing Middle Pier and in continuation along the east-south-eastern face of the existing Middle Pier and terminating at the swing foot bridge over the Eye Water;

Work No. 8 The construction of a training wall in the harbour commencing below the line of high water of ordinary spring tides at a point twenty-five yards or thereby measured in an easterly direction from the northern extremity of the existing Middle Pier and terminating below the line of high water of ordinary spring tides at a point in the harbour distant one hundred and twenty-seven yards or thereby measured in a north-north-westerly direction from the said point of commencement;

Work No. 9 The construction of a wave-trap of rock filling between the western portion of the existing East Pier, Work No. 3 and the existing West Pier;

Work No. 10 The construction of a wave-trap of rock filling between Work No. 1 and the eastern portion of the existing East Pier;

Work No. 11 The removal of that portion of the existing East Pier and rock under the same lying between the south-south-eastern extremity of the East Breakwater and the south-south-eastern extremity of the West Breakwater.

6. Subject to the provisions of this Order, in carrying out the works the Trustees may deviate laterally from the lines thereof as shown on the deposited plan to any extent not exceeding the limits of deviation Power to deviate.

PART II  
—cont.

shown on the said plan and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding ten feet:

Provided that notwithstanding anything in section 5 (Power to carry out works) of this Order or this section, in carrying out so much of the works as will be situate northward of the ordnance bench mark situate on the existing West Pier and shown on the deposited plan, the Trustees shall not, without the consent in writing of the Minister, deviate laterally from the situation thereof shown on the deposited plan to any greater extent than a line drawn fifty feet to the eastward of the western or one hundred and fifty feet to the southward of the northern limit of the lands delineated as within the "limit of deviation for works and of land to be acquired" on the deposited plan:

Provided also that no deviation either lateral or vertical below high-water mark shall be made without the consent in writing of the Minister.

Temporary  
closure of  
harbour.

7.—(1) For the purpose of carrying out Works Nos. 1 to 9 inclusive referred to in section 5 (Power to carry out works) of this Order, the Trustees may notwithstanding anything in any enactment—

- (a) temporarily close the harbour to vessels;
- (b) dry out the harbour by pumping or otherwise and carry out all such measures and construct all such valves, sluices, gates, pipes, channels, aqueducts, pumps and similar works of a temporary nature as may be necessary to convey water from the mouth of the Eye Water across the harbour into Eyemouth Bay.

(2) In conjunction with the carrying out of Work No. 11 referred to in section 5 (Power to carry out works) of this Order, the Trustees shall cause the harbour to be flooded and shall remove all such works of a temporary nature as are referred to in paragraph (b) of the immediately preceding subsection and shall thereafter forthwith reopen the harbour to vessels.

(3) Notwithstanding anything contained in this Order, the harbour shall not be closed to vessels for a longer period than two years.

Removal of  
vessels from  
harbour.

8.—(1) Before exercising the power conferred on them by section 7 (Temporary closure of harbour) of this Order temporarily to close the harbour to vessels the Trustees shall—

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

(2) Each of the notices shall—

- (a) state that the Trustees intend temporarily to close the harbour to vessels; and
- (b) specify a date, which shall be a date not earlier than one month after the date of the later of the two publications, by which all vessels must be removed from the harbour.

- (3) (a) if the master of any vessel within the harbour does not remove the same before the date referred to in paragraph (b) of subsection (2) of this section; or  
(b) if any vessel remaining within the harbour after that date has been laid by or neglected or abandoned or has become unserviceable;

the harbour master may cause every such vessel to be removed from the harbour and moored or laid in any other place where it may without injury be moored or laid and the Trustees shall not be liable for any loss or injury caused to any person by reason of the exercise of the powers conferred by this subsection.

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

(5) The powers conferred on the Trustees and the harbour master by this section shall be in addition to and without prejudice to the powers as to the removal of vessels conferred upon them by sections 64 and 65 of the Act of 1847.

9. If any vessel enters the harbour after the date referred to in paragraph (b) of subsection (2) of section 8 (Removal of vessels from harbour) of this Order, the harbour master may direct the master of such vessel forthwith to remove the vessel from the harbour, and if the master of such vessel does not forthwith comply with such directions the provisions of subsections (3) to (5) inclusive of the said section 8 shall apply to and in respect of such vessel as if such vessel had been within the harbour before the said date.

As to vessels entering harbour after date of closure.

10. Subject to the provisions of this Order, the Trustees may 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.

Powers as to subsidiary works.

11.—(1) Subject to the provisions of this Order, the Trustees may rebuild, maintain, repair, renew, widen, alter, improve, restore, reconstruct and extend the harbour undertaking and any works thereof and in connection therewith, may from time to time construct, erect, maintain, alter and improve all necessary ancillary works, buildings, apparatus and conveniences, and may also from time to time lay down and maintain rails, tramways and turntables.

Power to maintain and improve harbour undertaking.

(2) A line of rails or tramway constructed under the powers of this Order shall not be used for the public conveyance of passengers unless it has been certified by the Minister to be fit for that purpose.

(3) Any electric light and power or other apparatus constructed and maintained under this Order shall be so constructed, used and maintained as to prevent any interference with any telegraphic line (as defined by the Telegraph Act, 1878) belonging to or used by the Postmaster-General or with telegraphic communication by means of any such line.

12. Any person who wilfully obstructs any person acting under the authority of the Trustees in setting out the lines of the works, or who pulls up or removes any poles or stakes driven into the ground for the purpose of such setting out, shall be guilty of an offence and shall be

Penalty for obstructing works.

PART II  
—cont.

liable, on summary conviction, to a fine not exceeding five pounds and shall in addition be liable to repay to the Trustees any expenses incurred by them in making good such damage.

Powers to  
cease in certain  
events.

13.—(1) If the works are not substantially commenced within five years from the date of commencement, or such extended time as the Secretary of State may in the circumstances by order direct, the powers granted to the Trustees by this Order for the construction of the works shall cease.

(2) If the execution of the works after having been substantially commenced is virtually suspended for twelve consecutive months, the said powers shall cease except as to so much of the works as is then completed unless the Secretary of State by order directs that the said powers shall continue and remain in force but, subject to the foregoing provision as to completion, the said powers shall cease in any event within eight years from the date of commencement.

(3) A certificate of the Secretary of State to the effect that the works have not been substantially commenced or that they have been virtually suspended for twelve consecutive months shall, for the purposes of this section, be conclusive evidence of the facts stated in such certificate.

Works to be  
deemed part of  
harbour  
undertaking and  
in burgh of  
Eyemouth.

14.—(1) The works shall be deemed for all purposes to be part of the harbour undertaking and all byelaws, rules and regulations of the Trustees for the time being in force relating to the harbour undertaking shall be applicable and shall apply to the works and may be enforced by the Trustees accordingly.

(2) The works shall be deemed for all purposes to be within the burgh of Eyemouth and within the respective parishes of Eyemouth and Ayton.

Works below  
high-water  
mark to be  
subject to  
approval of  
Minister.

15.—(1) Subject to the provisions of this Order any work authorised by this Order shall only be constructed so far as the same shall be on, under or over tidal waters or tidal lands below high-water mark in accordance with plans and sections approved by the Minister and subject to such conditions and restrictions as he may prescribe before such work is begun.

(2) Any alteration or extension of any such work shall be subject to the like approval.

(3) If any such work be commenced or completed contrary to the provisions of this section the Minister may abate and remove the same and restore the site thereof to its former condition at the cost of the Trustees and the amount of such cost shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Survey of works  
by Minister.

16. If at any time the Minister deems it expedient to order a survey and examination of any work carried out by the Trustees under the powers of this Order on, in, under or over tidal waters or tidal lands below high-water mark or of the site upon which it is proposed to construct any such work the Trustees shall defray the expense of the survey and examination and the amount thereof shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.



PART II  
—cont.

17.—(1) Where any work carried out by the Trustees under the powers of this Order wholly or partially on, in, under or over tidal waters or tidal lands below high-water mark is abandoned or suffered to fall into decay, the Minister may, by notice in writing, either require the Trustees at their own expense to repair and restore such part of such work as is situated below high-water mark or any portion thereof or require them to abate or remove the same and restore the site thereof to its former condition to such an extent and within such limits as the Minister may think proper.

Abatement of work abandoned or decayed.

(2) Where any part of such work which has been abandoned or suffered to fall into decay is situated above high-water mark and is in such condition as to interfere or cause reasonable apprehension that the same may interfere with the right of navigation or the exercise of other public rights over the foreshore, the Minister may include any such part of such work or any portion thereof in any notice under this section.

(3) If the Trustees fail to comply with any notice under this section within thirty days from the date when the notice is served upon them, the Minister may execute the works specified in the notice at the expense of the Trustees and the amount of such expense shall be a debt due from the Trustees to the Crown and shall be recoverable accordingly.

18.—(1) The Trustees shall, at or near such part of any work authorised by this Order as shall be below high-water mark, during the whole time of the construction, renewal, extension or alteration thereof, exhibit and keep burning every night from sunset to sunrise such lights (if any) and take such other steps for the prevention of danger to navigation as the Minister shall from time to time require or approve.

Lights on works during construction.

(2) If the Trustees fail to comply in any respect with the provisions of this section they shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding twenty pounds and to a daily fine not exceeding two pounds.

19.—(1) After the completion of any work authorised by this Order the Trustees shall at the outer extremity of such work below high-water mark exhibit and keep burning every night from sunset to sunrise such lights (if any) and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

Permanent lights on works.

(2) If the Trustees fail to comply in any respect with the provisions of this section they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty pounds and to a daily fine not exceeding two pounds.

20.—(1) In the case of injury to or destruction or decay of any work authorised by this Order or any part thereof, so far as the same shall be constructed on, under or over any tidal waters or tidal lands below high-water mark, the Trustees shall lay down such buoys, exhibit such lights or take such other means for preventing, so far as may be,

Provision against danger to navigation.

PART II  
—cont.

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.

(2) If the Trustees fail to comply in any respect with the provisions of this section they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds and to a daily fine not exceeding one pound.

## PART III

## LANDS

Power to  
acquire lands.

21.—(1) Subject to the provisions of this Order the Trustees may enter upon, take and use such of the lands delineated as within the “limit of deviation for works and of land to be acquired” on the deposited plan and described in the deposited book of reference as may be required for the purposes of this Order.

(2) The powers of the Trustees for the compulsory purchase of land under this section shall cease after the expiration of three years from the date of commencement.

## Access to works.

22.—(1) The Trustees may use the lands delineated as within the “limit of land for providing access to works” on the deposited plan for the purposes of access to or construction, maintenance, repair, extension or enlargement of the works and may also make temporary roads over the said lands for such purposes.

(2) The Trustees shall make reasonable compensation to the proprietors of the said lands for any loss or damage caused by the Trustees to such proprietors in relation to such lands in exercising the powers conferred on them by the foregoing subsection and such compensation shall, failing agreement, be assessed in manner provided by the Lands Clauses Acts for determining the amount of compensation to be paid for land taken otherwise than by agreement under the provisions thereof.

Correction of  
errors in  
deposited plan  
and book of  
reference.

23.—(1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land the Trustees after giving ten days’ notice to the owner, lessee and occupier of the land in question may apply to the sheriff for the correction thereof.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake he shall certify the fact accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons and with the sheriff clerk of the county of Berwick and with the town clerk of the burgh of Eyemouth and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected

according to the certificate and it shall be lawful for the Trustees to take or use the land and execute the works in accordance with the certificate.

PART III  
—cont.

(4) A person with whom a copy of a certificate has been deposited under this section shall keep it with the other documents to which it relates.

24.—(1) All private rights of way over any land that may be acquired compulsorily under this Order shall, as from the acquisition of the land, whether compulsorily or by agreement, be extinguished.

Extinction of  
private rights  
of way.

(2) Any person who suffers loss by the extinction of any right under this section shall be entitled to be paid by the Trustees compensation to be determined, in case of dispute, under and in accordance with the provisions of the Lands Clauses Acts.

25. Whereas in the construction of the works authorised by this Order or otherwise in exercise by the Trustees of the powers of this Order it may happen that portions only of the lands and properties shown on the deposited plan may be sufficient for the purposes of the Trustees, and that such portions may be severed from the remainder of the said properties without material detriment thereto, therefore, notwithstanding the provisions of section 90 of the Lands Clauses Consolidation (Scotland) Act, 1845, the owners of and other persons interested in the said lands and properties whereof parts only are required for the purposes of this Order, may, if such portions can in the opinion of the official arbiter or other authority to be appointed under the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, be severed from the remainder of such properties without material detriment thereto, be required to sell and convey to the Trustees the portions only of the said properties so required without the Trustees being obliged or compellable to purchase the whole or any greater portion thereof, the Trustees paying for the portions required by them and making compensation for any damage sustained by the owners thereof and other parties interested by severance or otherwise.

Acquisition of  
part only of  
certain lands.

26. The Trustees and their surveyors and workmen and any person duly authorised in writing under the hand of the Trustees may from time to time at all reasonable times in the day, upon giving in writing for the first time seven days' notice and afterwards from time to time twenty-four hours' previous notice, enter upon and into the lands, houses and buildings authorised by this Order to be taken and used, or any of them, for the purpose of surveying and valuing the said lands, houses and buildings, without being subject or liable to any fine, penalty or punishment on account of entering or remaining on any part of the said lands, houses and buildings.

Power to  
enter for  
survey and  
valuation.

27. At any time after notice to treat has been served for any land which the Trustees are authorised by this Order to purchase compulsorily, the Trustees may, after giving to the owner and occupier of the land not less than fourteen days' notice, enter on and take possession of the land or such part thereof as is specified in the notice without

Further powers  
of entry.

PART III  
—cont.

previous consent or compliance with the provisions of sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act, 1845, but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

Power to  
acquire lands  
by agreement.

28. The Trustees may by agreement acquire whether by way of purchase, feu, lease or excambion and use all or such parts of the lands shown on the deposited plan as they may think requisite for the purposes of the works and may (in addition to the lands so authorised) purchase by agreement and hold for the purposes of this Order any lands, not exceeding in the whole five acres, but nothing in this section shall exempt the Trustees from any proceedings for nuisance caused or permitted by them on land acquired by them under the powers conferred by this section.

Power to grant  
servitudes.

29.—(1) Any person empowered by the Lands Clauses Acts to sell and convey or release lands may, if he thinks fit, subject to the provisions of those Acts, grant to the Trustees any servitude, right or privilege required for the purposes of this Order in, over or affecting any such lands (not being a servitude or right of water in which some person other than the grantor has an interest).

(2) The provisions of the said Acts with respect to lands and feu duties or ground annuals, so far as such provisions are applicable, shall extend and apply to any such grant and to any such servitude, right or privilege as aforesaid.

## PART IV

## BORROWING

Power to  
borrow.

30.—(1) The Trustees may in addition to the sums already borrowed or authorised to be borrowed by them from time to time borrow—

- (a) for the purposes of the harbour undertaking and this Order such sum or sums of money as may be required for those purposes not exceeding in the whole seventy-six thousand pounds;
- (b) with the sanction of the Secretary of State such further sum or sums as may from time to time be required for the purposes of the harbour undertaking; and
- (c) for paying the costs, charges and expenses of this Order, the sum requisite for that purpose.

(2) The Secretary of State shall have and may exercise in relation to any such sanction as aforesaid all the powers of section 355 of the Local Government (Scotland) Act, 1947, and such sanction shall be subject to such conditions (if any) as the Secretary of State may consider proper.

31. All moneys borrowed by the Trustees under this Order shall be repaid within the respective periods following, that is to say:—

PART IV  
—cont.

- (a) as to moneys borrowed under paragraph (a) of subsection (1) of section 30 (Power to borrow) of this Order, within sixty years from the date or dates of borrowing the same; Periods for repayment of borrowed money.
- (b) as to moneys borrowed under paragraph (b) of the said subsection, within such period from the date or dates of borrowing the same and by such method as the Secretary of State may prescribe;
- (c) as to moneys borrowed under paragraph (c) of the said subsection, within five years from the commencement of this Order.

32. All moneys borrowed by the Trustees under this Order shall be applied only to the purposes for which such sums are authorised to be borrowed and to which capital is properly applicable. Application of moneys borrowed.

33. The Trustees shall pay off all moneys borrowed by them on mortgage under this Order, either by means of a sinking fund formed under the provisions of this Order or by equal yearly or half-yearly instalments of principal or of principal and interest combined, or partly by one of those methods and partly by another or others of them, and the first payment to the sinking fund or the payment of the first instalment shall be made within twelve months or (when the money is repayable by half-yearly instalments) within six months from the date of borrowing. Mode of repayment of moneys borrowed on mortgage.

34. If the Trustees determine to repay by means of a sinking fund any moneys borrowed on mortgage under the powers of this Order, such sinking fund shall be formed and maintained either— Sinking fund.

- (a) by payment to the fund throughout the period fixed for the repayment of the sum borrowed (in this section referred to as “the fixed period”) of such equal annual sums as will be sufficient to pay off within that period the sum for the repayment of which the sinking fund is formed; or
- (b) by payment to the fund throughout the fixed period of such equal annual sums as, with accumulations at a rate not exceeding such rate as the Secretary of State may approve, will be sufficient to pay off within that period the sum for the repayment of which such sinking fund is formed.

35.—(1) The Trustees may deposit any moneys, including such portion of any sinking fund established in accordance with the provisions of section 34 (Sinking fund) of this Order as may not at the time have been applied in manner hereinbefore provided, in any bank or banks in Scotland incorporated under Act of Parliament or by royal charter, or invest the same in the public or government funds of Great Britain and Ireland or on heritable security or in securities in which trustees in Scotland may lawfully invest money. Investment of sinking fund.

PART IV  
—cont.

(2) The Trustees shall carry and credit to the sinking fund each year all dividends and interest arising out of the investment of the sinking fund.

Return to  
Secretary of  
State.

36.—(1) The Trustees shall, within four months after the expiration of each financial year, transmit to the Secretary of State a return made up in relation to that year showing the provision made by the Trustees for the repayment of moneys borrowed under the authority of this Order.

(2) The return shall show such particulars and shall be in such form as the Secretary of State may require, shall be certified by the clerk to the Trustees and shall, if so required by the Secretary of State, be verified by statutory declaration made by such clerk.

(3) If it appears to the Secretary of State from any return made under this section or otherwise that the Trustees—

- (a) have failed to pay any instalment or annual payment required to be paid; or
- (b) have failed to appropriate to the discharge of any loan any sum required to be so appropriated; or
- (c) have failed to set apart any sum required for a sinking fund; or
- (d) have applied any portion of a sinking fund to a purpose other than those authorised;

the Secretary of State may by order direct that such sum as is specified in the order, not exceeding the amount in respect of which default has been made, shall be paid or applied in the manner and by the date set out in the order, and the Trustees shall notify the Secretary of State as soon as the order has been complied with.

(4) An order made under the last preceding subsection may be enforced at the instance of the Secretary of State by decree of either division of the Inner House of the Court of Session pronounced in a summary application presented for that purpose.

(5) If a return required to be made under this section is not made within the time specified in subsection (1) of this section, the Trustees shall be liable to a fine not exceeding twenty pounds, to be recovered by the Secretary of State as a debt to the Crown is recoverable and, notwithstanding the recovery of any such fine, the making of the return may be enforced at the instance of the Secretary of State by decree of either division of the Inner House of the Court of Session pronounced in a summary application presented for that purpose.

Saving for  
powers of  
Treasury.

37. It shall not be lawful to exercise the powers of borrowing conferred by this Order otherwise than in compliance with the provisions of any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act, 1946.

## PART V

## MISCELLANEOUS

38. The following provisions for the protection of the Scottish Gas Board (hereinafter in this section referred to as "the board") shall unless otherwise agreed in writing between the Trustees and the board apply and have effect:—

For protection  
of Scottish Gas  
Board.

- (1) In this section unless the subject or context otherwise requires—

"adequate alternative apparatus" means alternative apparatus adequate to enable the board to fulfil their statutory functions in a manner not less efficient than previously;

"apparatus" means and includes all or any mains, pipes or other apparatus belonging to or maintained by the board (not being in any case apparatus in respect of which the relations between the Trustees and the board are regulated by the provisions of Part II of the Public Utilities Street Works Act, 1950) and includes any works constructed for the lodging therein of apparatus;

"works" includes any works carried out by the Trustees under the powers of section 7 (Temporary closure of harbour), section 10 (Powers as to subsidiary works), or section 11 (Power to maintain and improve harbour undertaking) of this Order;

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

"position" includes depth:

- (2) Notwithstanding anything in this Order or shown on the deposited plans the Trustees shall not acquire any apparatus otherwise than by agreement:
- (3) If the Trustees for the purpose of the construction of any of the works or in carrying out any of the works stop up any road or street or acquire or appropriate any lands or any interest therein in which any apparatus is placed that apparatus shall not be removed under this section, and any right of the board to maintain, repair, renew or inspect that apparatus in such road or street or in those lands shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the board:
- (4) The Trustees for the purpose of the construction or the carrying out of any of the works may require the board to remove any apparatus. If the Trustees require the board to remove such apparatus and give to the board written notice of such requirement, together with a plan, section and particulars of the proposed work, and of the proposed position of the alternative apparatus to be constructed, so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, or if, in consequence of the construction or

PART V  
—cont.

carrying out of any of the works, the board reasonably require to remove any apparatus, the Trustees shall afford to the board the necessary facilities and rights for the construction of such alternative apparatus in other lands of the Trustees and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that if the alternative apparatus or any part thereof is to be constructed elsewhere than in other lands of the Trustees and the Trustees are unable to afford such facilities and rights as aforesaid in the lands in which the alternative apparatus or such part thereof is to be constructed, the board shall, on receipt of a written notice to that effect from the Trustees, forthwith use their best endeavours to obtain the necessary facilities and rights in such last-mentioned lands:

- (5) (a) Any alternative apparatus to be constructed in lands of the Trustees in pursuance of paragraph (4) of this section shall be constructed in such manner and in such line or situation as may be agreed between the board and the Trustees or as, failing agreement, may be settled by arbitration;
- (b) The board shall, after the alternative apparatus to be constructed has been agreed or settled by arbitration as aforesaid and after the grant to the board of any such facilities and rights as are referred to in paragraph (4) of this section, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Trustees to be removed under the provisions of this section:
- (6) Notwithstanding anything in the immediately preceding paragraph, if the Trustees give notice in writing to the board that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus or the removal of the apparatus required to be removed as will be situate in any lands of the Trustees, such work, in lieu of being executed by the board, shall be executed by the Trustees with all reasonable dispatch under the superintendence (if given) and to the reasonable satisfaction of the board:

Provided that nothing in this paragraph shall authorise the Trustees to execute the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around the apparatus extending (where the apparatus is laid in a trench) to not less than twelve inches above the apparatus:

- (7) (a) Not less than twenty-eight days before commencing to execute any of the works which is near to or is likely to affect any apparatus the removal of which has not been required by the Trustees under paragraph (4) of this section, the Trustees shall submit to the board a plan, section and particulars of the work to be executed;



- (b) Such work shall be executed substantially in accordance with the plan, section and particulars submitted as aforesaid and in accordance with such reasonable requirements as may be made by the board for the alteration or otherwise for the protection of such apparatus or for securing access thereto, and the board shall be entitled by an officer of the board to watch and inspect the execution of such work:

Provided that if the board within fourteen days after the submission to them of any such plan, section and particulars shall in consequence of the work proposed by the Trustees reasonably require the removal of any apparatus and give written notice to the Trustees of such requirement, the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required by the Trustees under paragraph (4) thereof:

Provided also that nothing in this sub-paragraph shall preclude the Trustees from submitting at any time, or from time to time, but in no case less than twenty-eight days before commencing the execution of any such work, a new plan, section and particulars in lieu of the plan, section and particulars previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan, section and particulars;

- (c) The Trustees shall not be required to comply with sub-paragraph (a) of this paragraph in any case of emergency but, in such a case, they shall give to the board notice as soon as reasonably practicable and a plan, section and particulars of the work as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) of this paragraph so far as reasonably practicable in the circumstances:
- (8) The Trustees shall repay to the board the reasonable expenses incurred by the board in or in connection with—

(a) the removal and relaying or replacing of any apparatus and the provision and construction of any alternative apparatus under the provisions of paragraph (4) of this section;

(b) the cutting off of any apparatus from any other apparatus; and

(c) any other work or thing rendered reasonably necessary in consequence of any such operations as are referred to in this paragraph:

Provided that subsections (3) and (4) of section 23 of the Public Utilities Street Works Act, 1950 (which imposes limitations on undertakers' rights to payment) shall so far as applicable extend and apply to any payment to be made by the Trustees under this paragraph as if the works hereinbefore in this paragraph mentioned were such undertakers' works as are referred to in the said subsection (3) and as if in that subsection for the words "specified as so necessary

PART V  
—cont.

in a specification of the works settled under Part I of the Fourth Schedule to this Act agreed so to be by the promoting authority” there were substituted the words “agreed or settled by arbitration under section 38 (For protection of Scottish Gas Board) of the Eyemouth Harbour Order, 1961”:

- (9) The Trustees shall indemnify the board against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the board by reason or in consequence of any damage done by the Trustees to any apparatus or of any interruption in the supply of gas by the board which may, without the written authority of the board, be in any way occasioned either by reason of the execution by the Trustees of the works or by the acts or defaults (in or in connection with such execution) of the Trustees:
- (10) The board shall, if so requested by the Trustees, furnish to the Trustees all available information relative to the position and nature of any apparatus which, in the opinion of the chief engineer of the board, might be affected by any of the works:
- (11) (a) Any difference between the Trustees and the board in connection with any of the provisions of this section, or with anything contained in this Order, shall, failing agreement, be determined by an arbiter to be mutually agreed upon between them or, failing agreement, to be appointed by the sheriff on the application of either party;
- (b) If in determining any such difference any question of law arises the said arbiter shall, at the request of either party, state a case for the opinion and judgment of the Court of Session.

## Crown rights.

39. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing herein shall authorise the Trustees 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, heritages, subjects or rights of whatsoever description 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 on behalf of Her Majesty first had and obtained for that purpose.

Saving for  
town and  
country  
planning.

40. This Order shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning (Scotland) Act, 1947, for the purposes of subsection (4) of section 11, and subsection (1) of section 112 of that Act and, for the purposes of the last-mentioned subsection, shall be further deemed to be an enactment whereby provision is made for authorising or regulating the development of land.

41. The costs, charges and expenses of and incidental to the preparing for, obtaining and confirming this Order, or otherwise in relation thereto, shall be paid by the Trustees out of money to be borrowed by them under the powers of this Order for that purpose or in whole or in part out of the revenues of the harbour undertaking.

PART V  
—cont.

Costs of  
Order.

*Table of Statutes referred to in this Act*

Short title	Session and chapter
Lands Clauses Consolidation (Scotland) Act, 1845	8 & 9 Vict. c. 19.
Harbours Docks and Piers Clauses Act, 1847	10 & 11 Vict. c. 27.
Telegraph Act, 1878 ... ..	41 & 42 Vict. c. 76.
Acquisition of Land (Assessment of Compensation) Act, 1919	9 & 10 Geo. 5 c. 57.
Private Legislation Procedure (Scotland) Act, 1936	26 Geo. 5 and 1 Edw. 8 c. 52.
Harbours Piers and Ferries (Scotland) Act, 1937	1 Edw. 8 and 1 Geo. 6 c. 28.
Borrowing (Control and Guarantees) Act, 1946	9 & 10 Geo. 6 c. 58.
Local Government (Scotland) Act, 1947 ...	10 & 11 Geo. 6 c. 43.
Town and Country Planning (Scotland) Act, 1947	10 & 11 Geo. 6 c. 53.
Public Utilities Street Works Act, 1950 ...	14 Geo. 6 c. 39.
Post Office Act, 1953 ... ..	1 & 2 Eliz. 2 c. 36.

PRINTED BY THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., FOR  
SIR JOHN ROUGHTON SIMPSON, C.B.

Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

Ch. xxxii

*Eyemouth Harbour Order  
Confirmation Act, 1961*

9 & 10 ELIZ. 2

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

Price 1s. 6d. net

PRINTED IN ENGLAND