

ELIZABETH II



1985 CHAPTER xlvi

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Fraserburgh Harbour (No. 2). [19th December 1985]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said 1936 c. 52. Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed. Confirmation
of Order in
Schedule.
2. This Act may be cited as the Fraserburgh Harbour (No. 2) Short title.
Order Confirmation Act 1985.

SCHEDULE

FRASERBURGH HARBOUR (No. 2)

Provisional Order to authorise the Fraserburgh Harbour Commissioners to carry out works for the improvement of Fraserburgh Harbour and to borrow money; and for other purposes.

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

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

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

	£
Purchase of land, minerals and permanent rights	10,000
Excavation of the seabed (otherwise than by maintenance)	1,179,000
A quay wall of solid construction and reclamation of the seabed behind the same by infilling, levelling and surfacing and the provision of mooring facilities and other ancillary work	354,000
	<u>1,543,000</u>

And whereas a plan (hereafter called "the deposited plan") and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order were duly deposited in the month of November 1984 with the sheriff clerk of the sheriff court district of Banff:

And whereas a plan of the said works showing a revised limit of deviation for the said works is to be deposited as hereinafter provided in substitution for the deposited plan:

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:

1936 c. 52.

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

PART I

PRELIMINARY

1. This Order may be cited as the Fraserburgh Harbour (No. 2) Order 1985. Short title.

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:— Interpretation,
etc.

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

“Act of 1972” means the Town and Country Planning (Scotland) Act 1972; 1972 c. 52.

“area of works” means the area within the limit of deviation or, as the case may require, any part of that area;

“Commissioners” means the Fraserburgh Harbour Commissioners;

“deposited plan and deposited sections” means the plan and sections deposited in the month of November 1984 in connection with this Order;

“enactment” means any Act, whether general, local or personal and any order (including this Order) or other instrument made thereunder and any provision in any such Act, order or instrument;

“harbour” means the harbour of Fraserburgh as defined in section 2 (Interpretation) of the Fraserburgh Harbour Order 1985; 1985 c. xlv.

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

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

“limit of deviation” means the limit of deviation shown on the signed plan;

“signed plan” means the plan to be deposited in connection with this Order in substitution for the deposited plan, six copies of which have been signed by Gavin Douglas, Q.C., Senior Counsel to the Secretary of State for the purposes of the Private Legislation Procedure (Scotland) Act 1936; 1936 c. 52.

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

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

(2) Within one month after the commencement of this Order copies of the signed plan shall be deposited as follows, that is to say, one copy at the office of the Clerk of the Parliaments, House of Lords, one copy at the Private Bill Office, House of Commons, one copy at the office of the Secretary of State in Edinburgh, one copy at the office of the Department of Transport, one copy with the sheriff clerk of the

PART I
—cont.

sheriff court district of Peterhead and one copy with the chief executive of the Banff and Buchan district council.

Incorporation
of enactments.

3. The following sections of the Act of 1847, that is to say, sections 21, 23, 24, 27 to 29, 33 to 46, 51 to 83, 92, 94, 100, 102 and 103, are hereby incorporated with this Order and shall apply to the harbour undertaking subject to the following modifications, that is to say:—

- (a) for any reference in any of the said sections to the special Act, the undertakers and the prescribed limits, there shall be substituted references to this Order, the Commissioners and the harbour respectively;
- (b) in section 23, in place of the words “provided that no such lease be granted for a longer term than three years” there shall be inserted the words “Provided that it shall be a condition of any such lease that, in respect of the subjects thereby leased, the persons taking the same shall be subject to the like responsibilities, liabilities and duties as the Commissioners were subject to immediately before the granting of the lease”;
- (c) in section 63, for the words from “to a penalty” to the end of the section there shall be substituted the words “on summary conviction to a penalty not exceeding level 2 on the standard scale”;
- (d) in section 69, for the words from “forfeit” to the end of the section there shall be substituted the words “be liable on summary conviction to a penalty not exceeding level 2 on the standard scale”.

PART II

WORKS

Power to carry
out works.

4.—(1) Subject to the provisions of this Order, the Commissioners may, in the situations and lines and within the limit of deviation and according to the levels shown on the signed plan and deposited sections, carry out the following works in the parish of Fraserburgh in the district of Banff and Buchan and on the foreshore and in the sea adjoining the same:—

Work No. 1 A deepening by means of excavation of that part of the entrance channel at the entrance to North Harbour commencing at a point 62 metres or thereby measured in an east-south-easterly direction from the southernmost point of the spur of North Pier and terminating at a point 19 metres or thereby measured in a south-westerly direction from the southernmost point of the said spur;

Work No. 2 A deepening by means of excavation of part of North Harbour and the whole of South Harbour commencing at the termination of Work No. 1 and terminating at a point 6 metres or thereby measured in an east-north-easterly direction from the easternmost point of South Pier;

Work No. 3 The construction in Faithlie Basin of a quay wall and the reclamation of the seabed behind the same by infilling, levelling and surfacing to provide a site for a fish market commencing at a point 22 metres or thereby measured in an east-north-easterly direction from the junction of the faces of Finlayson Quay and Faithlie Jetty and terminating at a point 33 metres or thereby measured in an east-north-easterly direction from the junction of the faces of Finlayson Quay and South Pier.

(2) The Commissioners may, within the limit of deviation, renew and alter temporarily or permanently the works.

5. Subject to the provisions of this Order, in carrying out the works the Commissioners may deviate laterally from the lines or situations thereof as shown on the signed plan to any extent not exceeding the limit of deviation 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 2 metres in respect of Works Nos. 1 and 2 authorised by this Order and 4 metres in respect of Work No. 3 authorised by this Order.

Power to deviate.

6. Subject to the provisions of this Order, the Commissioners may within the limit of deviation from time to time erect, construct, maintain and operate, whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

Subsidiary works.

7.—(1) The works shall be deemed for all purposes to be part of the harbour undertaking and all byelaws, rules and regulations of the Commissioners 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 Commissioners accordingly.

Works to be deemed part of harbour undertaking.

(2) The works shall be deemed for all purposes to be within the parish of Fraserburgh and within the Grampian Region and the district of Banff and Buchan.

8.—(1) A tidal work shall not be constructed, renewed or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

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

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

(a) the Secretary of State may by notice in writing require the Commissioners at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if on the expiration of thirty days from the date when the notice is served upon the Commissioners they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

PART II
—cont.

(b) if it appears to the Secretary of State urgently necessary to do so, he may himself remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Commissioners.

Survey of tidal
works.

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

Provision
against danger
to navigation.

10.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Commissioners shall forthwith notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

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

Abatement of
works
abandoned or
decayed.

11.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work or any portion thereof, in any notice under this section.

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

Lights on
works during
construction.

12.—(1) The Commissioners shall at or near a tidal work during the whole time of the construction, renewal or alteration thereof exhibit, every night from sunset to sunrise, such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under this section they shall be guilty of an offence and

liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART II
—cont.

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

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

14. If the works are not completed by 31st December 1995, the powers of this Order granted for executing the works or otherwise in relation thereto shall cease except as to so much thereof as is then completed. Period for completion of works.

15.—(1) On the application of the Commissioners the Secretary of State may, by order, extend the period referred to in section 14 (Period for completion of works) of this Order. Extension of time may be authorised.

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

(3) An order under this section shall be subject to special parliamentary procedure.

(4) In the application of section 10 of the Statutory Orders (Special Procedure) Act 1945 to an order under this section, there shall be substituted for the requirements of the empowering enactment referred to in the said section 10 such requirements as to the service of notices and as to the time within which and the manner in which objections may be made to any application made by the Commissioners in pursuance of subsection (1) or (2) of this section as may be specified by the Secretary of State. 1945 c. 18
(9 & 10 Geo. 6).

PART III

TEMPORARY CLOSURE OF HARBOUR

16.—(1) For the purpose of carrying out the works the Commissioners may notwithstanding anything in any enactment— Temporary closure of area of works.

(a) temporarily close the area of works to vessels by means of one or more coffer dams at such places within the harbour as the Commissioners shall think fit;

(b) dry out the area of works 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 entering the area of works into tidal waters.

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

PART III
—cont.
Removal of
vessels from
area of works.

17.—(1) Before exercising the power conferred on them by section 16 (Temporary closure of area of works) of this Order temporarily to close the area of works to vessels the Commissioners shall—

- (a) publish a notice of their intention to do so in Lloyd's List and once in each of two successive weeks in a local newspaper circulating in the parish of Fraserburgh and the district of Banff and Buchan, 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 Secretary of State.

(2) Each of the notices shall—

- (a) state that the Commissioners intend temporarily to close the area of works 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 area of works.

(3) If the master of any vessel within the area of works does not remove the same before the date referred to in paragraph (b) of subsection (2) of this section, the harbourmaster may cause every such vessel to be removed from the area of works and moored or laid in any other place where it may without injury be moored or laid.

(4) The Commissioners 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 Commissioners and the harbourmaster 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.

As to vessels
entering area of
works after date
of closure.

18. If any vessel enters the area of works after the date referred to in paragraph (b) of subsection (2) of section 17 (Removal of vessels from area of works) of this Order, the harbourmaster may direct the master of such vessel forthwith to remove the vessel from the area of works, 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 17 shall apply to and in respect of such vessel as if such vessel had been within the area of works before the said date.

PART IV

BORROWING

Power to
borrow.

19.—(1) The Commissioners may from time to time borrow upon the security of the assets for the time being and of the revenues of the Commissioners, by any methods they see fit—

- (a) such sums of money as they think necessary provided that the total amount of money so borrowed and outstanding shall not at any one time exceed £3,000,000; and

(b) with the consent of the Secretary of State such further sums of money as they may require:

PART IV
—cont.

Provided that in calculating for the purpose of paragraph (a) of this subsection the total sums of money borrowed by the Commissioners there shall be excluded any sums borrowed for use within twelve months of the date of borrowing for repayment of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(2) Subsection (1) of this section shall be deemed to be an existing local provision for the purposes of section 3 of the Ports (Finance) Act 1985 notwithstanding the date on which the local Act confirming this Order comes into force. 1985 c. 30.

(3) Moneys borrowed by the Commissioners under this section shall be applied only to purposes to which capital money is properly applicable.

(4) For the purpose of the last foregoing subsection, but without prejudice to the generality thereof, purposes to which capital money is properly applicable shall be deemed to include—

(a) the payment of any interest falling due within five years immediately following the date of the borrowing on any sum of money borrowed by the Commissioners under this section; and

(b) the repayment within twelve months from the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(5) A person lending money to the Commissioners shall not be bound to inquire whether the borrowing of the money is or was within the powers of the Commissioners or whether the money raised is properly applied.

20. It shall not be lawful to exercise the powers of borrowing conferred by this Order in contravention of any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946. Saving for powers of Treasury. 1946 c. 58.

21. Section 19 (Power to borrow) and section 20 (Saving for powers of Treasury) of the Fraserburgh Harbour Order 1975 are hereby repealed. Repeals. 1975 c. xiii.

PART V

MISCELLANEOUS

22. Nothing in this Order shall affect the operation of Part II of the Food and Environment Protection Act 1985. Saving for Food and Environment Protection Act 1985. 1985 c. 48.

23. Nothing in this Order shall exempt the Commissioners or any other person from the provisions of Part I of the Coast Protection Act 1949. Saving for Coast Protection Act 1949. 1949 c. 74.

PART V
—cont.Saving for town
and country
planning.
1972 c. 52.

24. The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions of powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

Crown rights.

25.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown, and in particular without prejudice to the generality of the foregoing nothing herein contained shall authorise the Commissioners or any licensee of the Commissioners to take, use, enter upon or in any manner interfere with any land or interest in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

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

Costs of Order.

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

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Fraserburgh Harbour (No. 2) Order Confirmation Act 1985

CHAPTER xlvi

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FRASERBURGH HARBOUR (NO. 2)

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