



Fraserburgh Harbour Order Confirmation Act 1990

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ELIZABETH II



1990 CHAPTER xxxii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Fraserburgh Harbour.

[20th December 1990]

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

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

1. The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed. Confirmation of Order in Schedule.
2. This Act may be cited as the Fraserburgh Harbour Order Confirmation Act 1990. Short title.

SCHEDULE

FRASERBURGH HARBOUR

Provisional Order to amend the Fraserburgh Harbour Order 1985 and make new provision with respect to the constitution, qualification, election and appointment of the Fraserburgh Harbour Commissioners; to authorise the Commissioners to carry out works for the improvement of Fraserburgh Harbour; and for other purposes.

1985 c. xlv. Whereas it is expedient to amend the provisions of the Fraserburgh Harbour Order 1985 and make new provisions with respect to the constitution, qualification, election and appointment of the Fraserburgh Harbour Commissioners (hereinafter referred to as "the Commissioners");

And whereas it is expedient that the Commissioners should be authorised to carry out the works hereinafter in this Order described for the improvement of Fraserburgh Harbour:

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

And whereas a plan and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order were duly deposited with the sheriff clerk of the sheriff court district of Peterhead:

And whereas a substituted plan and sections showing substituted lines, situations and levels of the works to be constructed under the powers of this Order were deposited in the month of May 1990 with the sheriff clerk of the sheriff court district of Peterhead:

1936 c. 52. 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 title and citation.

1. —(1) This Order may be cited as the Fraserburgh Harbour Order 1990.

1985 c. xlvi.

(2) The Fraserburgh Harbour Order 1985, the Fraserburgh Harbour (No. 2) Order 1985 and this Order may be cited together as the Fraserburgh Harbour Orders 1985 to 1990.

Interpretation.

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:—

1847 c. 27.

"Act of 1847" means the Harbours, Docks, and Piers Clauses Act 1847;

"area of works" means the Balaclava Harbour, the Balaclava Inner Harbour or any part of either of those harbours;

"clerk" means the clerk for the time being of the Commissioners, appointed by them;

"Commissioners" means the existing Commissioners and the Commissioners holding office under the authority of this Order, or either such body of Commissioners, as the case may require;

“deposited plan and sections” means the plan and sections deposited in connection with this Order in the month of March 1989;

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“district council” means the Banff and Buchan district council;

“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;

“existing Commissioners” means the Commissioners holding office under the authority of the Fraserburgh Harbour Order 1985 and the Fraserburgh Harbour (No. 2) Order 1985;

1985 c. xlv.
1985 c. xlvi.

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

“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;

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

“new constitution date” means 11th January 1992;

“parish” means the parish of Fraserburgh in the district of Banff and Buchan;

“rates” means any sum leviable as rates under Part VII of the Fraserburgh Harbour Order 1985 or payable to the Commissioners as rent in respect of any property in the Harbour;

“regional council” means the Grampian regional council;

“register of electors” means the register of electors published by the electoral registration officer for the Grampian region;

“substituted plan and sections” means the plan and sections deposited in connection with this Order in the month of May 1990 in substitution for the deposited plan and sections;

“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) All areas, directions, distances, lengths and widths as stated in any description of works, powers or lands other than section 16 (Power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length and width.

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:—

Incorporation of
enactments.

(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 same 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”;

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- (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

CONSTITUTION, QUALIFICATION, ELECTION AND APPOINTMENT OF COMMISSIONERS

New
constitution.

4. On and after the new constitution date —

(1) The Commissioners shall consist of —

(a) the Superior or principal Superior for the time being of the burgh;

(b) the factor (if any) for the Superior or principal Superior for the time being of the burgh but subject to the provision that such factor shall not vote at any meeting at which his principal is present and votes;

(c) two persons to be elected by persons appearing in the register of electors, qualified as hereinafter prescribed, from among their own number;

(d) five persons to be elected by the ratepayers, qualified as hereinafter provided, of the harbour from among their own number;

(e) five persons to be elected by shipowners, qualified as hereinafter provided, from among their own number;

(f) one district councillor appointed by the district council;

(g) one regional councillor appointed by the regional council.

(2) The Commissioners shall continue to be a body corporate under the name or style of “the Fraserburgh Harbour Commissioners”.

(3) All deeds and instruments to be made and granted by the Commissioners shall be valid and effectual if subscribed by any two of their number and sealed with their common seal.

Qualification of
electors.

5.—(1) A person shall be qualified to vote at the elections of Commissioners if he satisfies the following conditions: —

(a) in the case of elections by persons appearing in the register of electors, that he is recorded in the register of electors last published before 1st November in the year preceding the election as a person residing at an address within the parish;

(b) in the case of elections by the ratepayers of the harbour, that he resides or has his place of business in the parish and, during the year ending 31st October preceding the election, has paid as principal £50 or more of rates to the Commissioners;

(c) in the case of elections by shipowners —

(i) that he has a place of business in the parish; and

(ii) that on 1st November in the year preceding the election his name appears in the register of British fishing vessels under Part II of the Merchant Shipping Act 1988 as owner or part-owner of a fishing vessel.

1988 c. 12.

(2) For the purpose of paragraph (c) of subsection (1) above a shipowner shall be deemed to have a place of business in the parish if a fish salesman in the parish acting as his agent has sold fish on his behalf during the 12 months prior to 1st November in the year preceding the election.

6. The powers and duties conferred on the existing Commissioners or on the Commissioners by virtue of this Order shall, until the new constitution date, be vested in and performed by the existing Commissioners who shall remain in office until the new constitution date and then go out of office:

Provided that any such Commissioner going out of office may, if qualified, be elected or appointed under the provisions of this Order.

7.—(1) The elections of persons to take office as Commissioners on the new constitution date shall take place on 11th January 1992.

(2) The two persons to be elected in accordance with subsection (1) above by persons appearing in the register of electors shall remain in office for three years and then go out of office.

(3) Of the five persons to be elected in accordance with subsection (1) above by ratepayers of the harbour and of the five persons to be elected by shipowners the two Commissioners in each class who have received the smallest number of votes shall go out of office on the second Friday in January 1993, the two Commissioners in each such class who have received the next smallest number of votes shall go out of office on the second Friday in January 1994 and the remaining Commissioner so elected in each such class shall go out of office on the second Friday in January 1995.

(4) In the event of no election in either class of electors referred to in subsection (3) above being required in accordance with subsection (1) above by virtue of the fact that the number of candidates does not exceed five, the Commissioners in that class to go out of office on the second Friday in January 1993 and the Commissioners to go out of office on the second Friday in January 1994 shall be determined by lot.

(5) Elections shall be held on the second Friday in January 1993 and in each year thereafter and Commissioners elected then shall hold office for a period of three years and then go out of office.

(6) Any elected Commissioner going out of office may, if qualified, be re-elected.

8. On or before 10th December in 1991 and in each year thereafter the Commissioners shall cause lists to be made up of the electors by virtue of their appearance in the register of electors, their ownership of shipping and their payment of rates respectively which shall be affixed in some place accessible to the public within the harbour office or in some conspicuous place on the outside thereof and any person claiming to be an elector whose name is omitted from any such list may at any time before the twenty-fourth day of the same month apply to the Commissioners who shall thereupon, if they find such person entitled to be an elector, cause the name of such person to be added to the appropriate list or to the lists, and such lists with the additions if any so made shall be certified by the clerk and shall be deemed to be the list of electors under this Order.

9. For the purpose of making up the list of electors in each year as regards the persons qualified to be electors as ratepayers of the harbour, the Commissioners shall cause to be entered in a book or books kept by them the name and designation of every such person and the total amounts of such rates paid by such person during the period of 12 months ending 31st October in that year, which book or books shall be open to public inspection at all times during the hours of business.

10. Where rates are paid or a ship or a share in a ship is owned by any company or partnership consisting of two or more members or partners having a place of business within the parish, such company or partnership may, before expiration of the first week of November immediately preceding the election, intimate in writing to the Commissioners the name or

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Existing
Commissioners
to act until new
constitution date.

Elections of
Commissioners.

Commissioners
to make lists of
electors.

Commissioners
to keep book
showing names
of ratepayers.

Qualification of
members of
companies or
partnerships.

SCH.
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names of any one or more, not exceeding three in number, of the members or partners by whom such payment shall be deemed to have been made or by whom such ship or share in a ship shall be deemed to be owned, and such payment or such ship or share in a ship, as the case may be, shall, for the purposes of the election, be deemed to be made or owned, as the case may be, by the members or partners so named, if resident within the parish, and each such member or partner so named shall be qualified to be an elector, and to be elected one of the elected Commissioners, in the same manner as if such payment had been made or such ship or share in a ship had been owned by him as an individual, provided that the amount of rates paid by such company or partnership, be sufficient to afford the qualification hereinbefore provided in respect of rates to each of the members or partners so named.

Mode of
conducting
election of
Commissioners.

11. The following rules shall be observed with respect to the elections of each class of the elected Commissioners:—

- (1) At least 7 days previous to each election the Commissioners shall make available for inspection at the office of the Commissioners and at the office of the clerk a copy of the lists of electors made up in the manner prescribed in section 8 (Commissioners to make lists of electors) of this Order;
- (2) The chairman of the Commissioners shall fix the place of the election of elected Commissioners which shall be within the parish and also the time and place for the nomination of candidates which shall be not less than 21 days before the election;
- (3) The Commissioners shall cause the days and places of the nomination and election to be advertised in at least one newspaper published or circulating in Fraserburgh not less than six days previous to the nomination;
- (4) At or before the time and place fixed for the nomination any person qualified as an elector in a particular class may nominate in writing for election as a Commissioner any other person qualified to be elected for that class and such nomination may be seconded in writing by any other qualified elector in the same class:

Provided that such elector so nominating shall at once satisfy the returning officer that the person so nominated will accept office if elected otherwise the nomination will be invalid;

- (5) The returning officer shall be the sheriff or such other person as he may appoint and the returning officer shall preside at the polling place;
- (6) The chairman of the Commissioners may be appointed returning officer under paragraph (5) of this section provided that he is not a candidate at the elections;
- (7) Any nomination of a candidate may be withdrawn by notice of withdrawal to the returning officer and such notice of withdrawal shall be signed by the person nominated;
- (8) If no more candidates are nominated than the number to be elected in a particular class the returning officer shall on or before the Wednesday preceding the election cause public notice to be given of the persons so nominated, which notice shall be affixed in some place accessible to the public within the office of the Commissioners or in some conspicuous place on the outside thereof and advertised in one or more newspapers published or circulating in Fraserburgh, and shall give notice that as the number proposed for election in such class does not exceed the number of vacancies to be filled at the election there will be no poll for that class, and shall further declare that the persons so proposed will on the day of election be deemed to be the elected Commissioners, and on the day of the election the persons so proposed shall accordingly be deemed to be duly elected;

- (9) If more candidates are nominated for any of the classes than the number to be elected the returning officer shall order a poll which shall take place on the day fixed for the election and shall be by secret ballot;
- (10) The returning officer shall appoint a sufficient number of poll clerks and cause proper polling books to be provided;
- (11) Each poll clerk shall have with him at the polling place copies of the lists of electors certified by the clerk and the votes shall be taken according to such lists;
- (12) The poll shall be open at ten o'clock in the forenoon of the day of election, and close at four o'clock in the afternoon of the same day;
- (13) No returning officer or poll clerk shall vote at any election at which he officiates;
- (14) At the close of the poll the returning officer shall sum up in the polling books the votes taken and shall thereafter sign the polling books, and shall forthwith transmit them to the clerk;
- (15) Such of the persons who, being not more than the number of elected Commissioners at an election, shall be found to have the greatest number of valid votes at such election as appearing from the summation of the returning officer in the polling books, which shall be conclusive evidence of the number of votes and who are duly qualified in accordance with the provisions of this Order shall be deemed to be duly elected as Commissioners;
- (16) In case of an equality in the number of votes at an election, the Commissioners at their first meeting to be held after such election shall, if necessary to prevent an excess in the number of elected Commissioners, determine by lot which of the persons having such equality of votes shall be the Commissioner or Commissioners.

SCH.
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12.—(1) In the case of the failure or partial failure at any time of the electors to make a valid election in terms of this Order of persons duly qualified to be elected Commissioners, the Commissioners or, in the case of the first elections hereunder, the existing Commissioners shall, within six weeks after such failure shall have been ascertained, cause an election of such persons to be made according, in so far as may be, to the rules with respect to the annual elections of Commissioners; and any person so elected shall, in respect of continuance of office, be on the same footing as if his election had taken place on the second Friday in January immediately preceding the date thereof.

Failure to elect
Commissioners.

(2) Without prejudice to the provisions of subsection (1) above, if after an election pursuant to the provisions of subsection (1) above there is still a vacancy in any class of Commissioners, the Commissioners may fill that vacancy by co-opting as a Commissioner any person duly qualified in accordance with the provisions of this Order and any person so co-opted shall, in respect of continuance in office, be on the same footing as if he had been elected on the second Friday in January immediately preceding his co-option.

13.—(1) During the month of December 1991 the district council and the regional council shall each appoint one member of their council to take office as a Commissioner on the new constitution date who shall remain in office until the second Friday in January 1995.

Appointment of
Commissioners.

(2) Subsequent appointments of Commissioners by the district council and the regional council shall take place on or before the second Friday in January 1995 and on or before the second Friday in January in every third year thereafter and persons so appointed shall hold office for a period of three years beginning with that Friday.

- SCH.
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- 1973 c. 65.
- (3) A Commissioner appointed by the district council or the regional council under subsections (1) and (2) of this section shall cease to be a Commissioner when he retires at the end of his term of office as a councillor in terms of section 4 (3) of the Local Government (Scotland) Act 1973 or otherwise ceases to be a councillor unless, in the case of a councillor retiring on the day of the ordinary election of councillors he be re-elected as a councillor at the said election.
- (4) Subject to the provisions of subsection (3) of this section, a Commissioner appointed under the provisions of subsections (1) and (2) of this section may be re-appointed for a further term of office.
- Casual vacancies.
- 14.—(1) Subject to the provisions of subsection (3) of this section, if an elected Commissioner refuses to accept office, or dies or resigns, or ceases to be qualified or becomes incapable of acting, the resulting vacancy shall be filled in manner following:—
- (a) the Commissioners shall elect in his stead a person duly qualified in the same class, and the Commissioner so substituted shall continue in office for the period that the person in whose place he is elected would in the ordinary course have continued in office;
- (b) at the end of such period he shall go out of office but shall be eligible for re-election if qualified.
- (2) Subject to the provisions of subsection (3) of this section, if an appointed Commissioner ceases to be a Commissioner for any of the reasons aforesaid, the resulting vacancy shall be filled in manner following:—
- (a) the council who appointed such Commissioner shall, with due regard to the provisions of section 16 (Appointments by district and regional councils) of the Fraserburgh Harbour Order 1985, and within two months of such vacancy arising appoint in his stead one of themselves and in every case the Commissioner so substituted shall continue in office for the period that the person in whose place he is elected would in the ordinary course have continued in office;
- (b) at the end of such period he shall go out of office but shall, subject to the provisions of section 13 (3) of this Order, be eligible for re-appointment.
- (3) Any casual vacancy occurring four months or less before the end of the vacating Commissioner's normal term of office may, at the discretion of the remaining Commissioners in the case of elected Commissioners and at the discretion of the district council or the regional council, as the case may be, in the case of appointed Commissioners, be left unfilled for the remainder of that term of office.
- 1985 c. xlv.

PART III

WORKS

- Power to carry out works.
- 15.—(1) Subject to the provisions of this Order, the Commissioners may, in the situations and lines and within the limits of deviation and according to the levels shown on the substituted plan and sections, carry out the following works in the parish and on the foreshore and in the sea adjoining the same:—
- Work No. 1 Demolition to sea bed level of the eastern end of Provost Park's Jetty for a length of 10 metres; partial reconstruction by virtue of an extension to the existing quay walls around the perimeter of Balaclava Inner Harbour commencing at the termination of the said demolition and extending south-west for a distance of 97 metres, thence turning north for a distance of 52 metres, thence turning north-east for a distance of 70 metres,

thence turning east-north-east for a distance of 50 metres, thence turning south-east for a distance of 104 metres and there terminating at the south-west corner of the existing quay known as Bailie Dickson's Jetty, including reclamation of the sea bed by infilling, levelling and surfacing behind the said extension.

SCH.
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Work No. 2 An extension of the existing quay known as Provost Anderson's Jetty as a solid structure commencing at the east end of the said quay having a width of 16 metres and extending east for a distance of 13 metres and there terminating and the reclamation of the sea bed by infilling, levelling and surfacing together with the demolition to sea bed level of an existing dolphin located at a distance of 17 metres east from the east end of Provost Anderson's Jetty.

Work No. 3 The construction of a dry dock as a solid structure commencing at a point 19 metres in a north-west direction from the north-west corner of Bailie Dickson's Jetty and extending south-west for a distance of 21 metres, thence turning north-west for a distance of 65 metres, thence turning north-east for a distance of 21 metres and there terminating.

Work No. 4 Dredging of an area of the sea bed by excavation within Balaclava Inner Harbour.

Work No. 5 Dredging of the sea bed by excavation within Balaclava Harbour.

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

16. 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 substituted plan to any extent not exceeding the limits of deviation shown on the said plan and may deviate vertically from the levels of the works as shown on the substituted sections to any extent not exceeding 1 metre upwards or 2 metres downwards in respect of Works Nos. 1, 3, 4 and 5 authorised by this Order and 4 metres downwards in respect of Work No. 2 authorised by this Order.

Power to deviate.

17. Subject to the provisions of this Order, the Commissioners may within the limits 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.

18.—(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 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.

19.—(1) A tidal work shall not be demolished, 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 demolished, 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 to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if on the

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expiration of 30 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

- (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.

20. 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.

21.—(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.

22.—(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 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 30 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.

23.—(1) The Commissioners shall at or near a tidal work during the whole time of the demolition, 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.

24.—(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.

SCH.
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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.

25.—(1) If Works Nos. 1 to 4 authorised by this Order are not completed by 31st December 2000, the powers of this Order granted for executing such works or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

Periods for
completion of
works.

(2) If Work No. 5 authorised by this Order is not completed by 31st December 2005, the powers of this Order granted for executing such work or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

26.—(1) On the application of the Commissioners the Secretary of State may, by order, extend or further extend the periods referred to in section 25 (Periods for completion of works) of this Order.

Extension of
time may be
authorised.

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

(3) In the application of section 2(1) (as substituted by 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 2(1) 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) of this section as may be specified by the Secretary of State.

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

PART IV

TEMPORARY CLOSURE OF HARBOUR

27.—(1) For the purpose of carrying out the works the Commissioners may notwithstanding anything in any enactment (other than this Order)—

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 or instal 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 period continuous or discontinuous longer than two years.

28.—(1) Before exercising the power conferred on them by section 27 (Temporary closure of area of works) of this Order temporarily to close the area of works to vessels the Commissioners shall—

Removal of
vessels from area
of works.

(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 published or circulating in Fraserburgh, with an interval between the dates of publication of not less than six clear days;

SCH.
—cont.

(b) display 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 latest of the three 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 specified in accordance with paragraph (b) of subsection (2) of this section, the harbourmaster may cause that 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.

29. If any vessel enters the area of works after the date specified in accordance with paragraph (b) of subsection (2) of section 28 (Removal of vessels from area of works) of this Order, and during the period of temporary closure, 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 28 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 V

MISCELLANEOUS

Power to divert, etc., Balaclava Quay, Bisset's Quay and Balaclava Pier.

30. The Commissioners may in the execution of the works and for the purposes thereof and so far as necessary therefor temporarily cross, alter, stop up, divert, raise and lower or otherwise interfere with Balaclava Quay, Bisset's Quay and Balaclava Pier providing when possible a proper temporary substitute before interrupting the traffic on the said quays or pier.

Saving for Food and Environment Protection Act 1985.

31. Nothing in this Order shall affect the operation of Part II of the Food and Environment Protection Act 1985.

1985 c. 48.
Saving for Coast Protection Act 1949.

32. Nothing in this Order shall exempt the Commissioners or any other person from the provisions of Part I of the Coast Protection Act 1949.

1949 c. 74.
Saving for town and country planning.
1972 c. 52.

33. The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions or 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 by this Order.

34. For the protection of Scottish Hydro-Electric PLC the following provisions shall, except as may be otherwise agreed in writing between the Commissioners and the company, apply and have effect:—

- (1) In this section unless the subject or context otherwise requires—
- “apparatus” means—
- (a) any electrical plant or electric line as respectively defined in section 64 of the Electricity Act 1989; and
- (b) any meter used for ascertaining the quantity of electricity supplied to any premises, not being a meter which is under the control of a consumer;
- “the company” means Scottish Hydro-Electric PLC;
- “in” in a context referring to apparatus includes under, over, across, along or upon;
- “plan” includes a section and description;
- “position” includes depth.
- (2) (a) Nothing in this Order shall relieve the Commissioners from liability for damage caused by them to any apparatus in the exercise of the powers conferred on them by this Order and the Commissioners shall indemnify the company against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the company by reason or in consequence of any damage done by the Commissioners to any apparatus or of any interruption in the supply by the company of electricity which may without the written authority of the company be in any way occasioned either by reason of the exercise of any of the powers of this Order or by the acts or defaults (in, or in connection with, such exercise) of the Commissioners;
- (b) If in consequence of the exercise by the Commissioners of the powers of this Order the access to any apparatus is materially obstructed, the Commissioners shall provide an alternative means of access to such apparatus.
- (3) If the Commissioners in exercise of the powers of sections 15, 17, 27 or 30 of this Order require to cross over or under, remove, alter or otherwise interfere with any apparatus, or if the exercise of such powers is likely to affect any apparatus, the Commissioners shall—
- (a) give to the company not less than 28 days’ prior notice in writing of such requirement or (as the case may be) of their intention to exercise such powers, together with a plan of the work proposed, and shall execute the work only in accordance with such plan and in accordance with such reasonable requirements as may within 21 days of the receipt of the plan be made by the company, and the company may under such requirements alter or otherwise protect the apparatus or provide alternative apparatus adequate to enable them to fulfil their statutory functions not less efficiently than before (hereinafter referred to as “alternative apparatus”);
- (b) afford to the company, where possible, any necessary facilities and rights for the construction, use, maintenance, repair, renewal and inspection of any alternative apparatus;
- (c) pay to the company the expenses reasonably incurred by them in and in connection with removing, re-laying, replacing, altering or protecting the apparatus or providing alternative apparatus less (in a case where alternative apparatus is provided) the value of any apparatus removed pursuant to this section.
- (4) Alternative apparatus, if provided under this section, shall be constructed in such manner and in such line or position as may be agreed between the Commissioners and the company, and no

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—cont.

For protection of
Scottish
Hydro-Electric
PLC.

1989 c. 29.

SCH.
—cont.

apparatus shall be removed, altered or interfered with until any protective works required have been carried out or until alternative apparatus required has been provided and is operating to the reasonable satisfaction of the company.

- (5) (a) Any difference arising between the Commissioners and the company under this section shall be referred to and determined by an arbiter to be mutually agreed upon, or failing such agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers.
- (b) In settling any difference under this section the arbiter shall have regard to any duties or obligations which the company may be under in respect of any apparatus and may if he thinks fit require the Commissioners to execute any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

Crown rights.

35. —(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 terms and conditions.

Amendment of
Fraserburgh
Harbour Order
1985.
1985 c. xlv.

36. For the definition of “Commissioners” in section 2 of the Fraserburgh Harbour Order 1985 there shall be substituted —

“ ‘Commissioners’ means the Fraserburgh Harbour Commissioners holding office under the authority of this Order or the Fraserburgh Harbour Order 1990;”.

Repeals.

37. The enactments specified in the first and second columns of the Schedule to this Order are hereby repealed to the extent specified in the third column of the said Schedule.

SCHEDULE
ENACTMENTS REPEALED

Section 37.

Chapter (1)	Short title (2)	Extent of repeal (3)
1985 c. xlv.	Fraserburgh Harbour Order Confirmation Act 1985.	Sections 14, 15, 17, 18 to 20, 22, 23, 27 and 28 of the Order scheduled thereto.
1985 c. xlvi.	Fraserburgh Harbour (No. 3) Order Confirmation Act 1985.	The whole Act.

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