SCOTTISH STATUTORY INSTRUMENTS

1999 No. 40

HARBOURS, DOCKS, PIERS AND FERRIES

Fraserburgh Harbour Revision Order 1999

Made - - - -	*31st August 1999*
Coming into force - -	*1st September 1999*

Whereas the Fraserburgh Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(**1**)

And whereas it appears to the Scottish Ministers(**2**) in pursuance of paragraph A2 of Schedule 3 to the said Act(**3**) that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(**4**) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment;

And whereas the Scottish Ministers have directed the applicant to supply them with the information referred to in Annex III to the Directive in accordance with that paragraph;

And whereas the Scottish Ministers have complied with the requirements of paragraph 3A of Schedule 3 to the said Act;

Now, therefore, the Scottish Ministers, in exercise of the powers conferred on them by section 14 of the said Act(**5**) and of all other powers enabling them in that behalf and being satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, hereby make the following Order:

(**1**) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4 and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.

(**2**) The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46)

(**3**) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) to (3) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10. Paragraph A2 was inserted by the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996 (S.I.1996/1946).

(**4**) OJ No. L175, 5.7.85, p.40.

(**5**) The Scottish Ministers are the "appropriate Minister" under section 14(7) of the Harbours Act 1964 (c. 46).

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Fraserburgh Harbour Revision Order 1999 and shall come into force on 1st September 1999.

(2) The Fraserburgh Harbour Order Confirmation Act 1985(**6**) the Fraserburgh Harbour (No 2) Order Confirmation Act 1985(**7**) the Fraserburgh Harbour Order Confirmation Act 1990(**8**) the Fraserburgh Harbour Revision Order 1995(**9**) and this Order may be cited together as the Fraserburgh Harbour Orders 1985 to 1999.

Interpretation

2.—(1) In this Order–

"area of works" means the area within the limits of deviation or, any part of that area;

"Commissioners" means the Fraserburgh Harbour Commissioners;

"deposited plan and sections" means the plan and sections prepared in duplicate and signed on behalf of the Scottish Ministers and marked "Plan and sections referred to in Article 2 of the Fraserburgh Harbour Revision Order 1999" of which one is deposited with the Rural Affairs Department at Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY and the other at the harbour office of the Commissioners;

"enactment" means any Act, whether general, local or personal and any order (other than this Order) or other instrument made thereunder and any provision in any such Act, order or instrument and includes Acts of the Scottish Parliament and any order or instrument made thereunder;

"government department" includes any part of, or any member of the staff of the Scottish Administration which shall have the meaning defined in section 126 of the Scotland Act 1998(**10**);

"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;

"level of low water" means the level of mean low-water springs;

"limits of deviation" means the limits of deviation shown on the deposited plan;

"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 article 3 (power to carry out works) of 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 article 4 (power to deviate) of this Order shall be construed as if the words

(**6**) 1985 c.xlv.
(**7**) 1985 c.xlvi.
(**8**) 1990 c.xxxii.
(**9**) S.I.1995/1527.
(**10**) 1998 c. 46.

"or thereabouts" were inserted after each such area, direction, distance, length and width and any reference in a description of works to a point shall be a reference to that point on the deposited plan.

PART II

WORKS

Power to carry out works

3.—(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 deposited plan and sections, carry out and maintain the following improvement works in the parish of Fraserburgh, Aberdeenshire, together with all necessary and proper works and conveniences connected therewith or incidental thereto:–

Work No. 1 A deepening by means of excavation to a depth of 7 metres below the level of low water of that part of Faithlie Basin shown hatched black on the deposited plan.

Work No. 2 A three-sided pier of open-work construction incorporating a shiplift commencing at Point A 50 metres north of the east side of the cut in the South Breakwater for the existing slipway, thence extending south to Point B, thence extending east to Point C, thence extending north to Point D and there terminating.

Work No. 3 A reclamation and infilling of the existing slipway at Faithlie Basin and a levelling of the adjacent land, construction of ship repair bays, a ship traverser bay and boundary walls and construction of a retaining wall in the South Breakwater, all in the area shown cross-hatched black on the deposited plan.

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

Power to deviate

4. 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 deposited 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 deposited sections to any extent not exceeding 1 metre upwards and to such extent downwards as may be found necessary or convenient.

Subsidiary works

5. 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.

Obstructing Works

6. Any person who intentionally obstructs any person acting under the authority of the Commissioners in setting out the lines of the works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Works to be deemed part of harbour undertaking

7. 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.

Tidal works not to be executed without approval of Scottish Ministers.

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

(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 article–

(a) the Scottish Ministers 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 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 Scottish Ministers may execute the works specified in the notice; or

(b) if it appears to the Scottish Ministers urgently necessary to do so, they may themselves remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from the Commissioners as a debt.

Provision against danger to navigation

9.—(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 article, 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

10.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Scottish Ministers 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 Scottish Ministers think 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 Scottish Ministers may include that part of the work or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Commissioners as a debt.