ELIZABETH II

1985 CHAPTER xlvii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Fraserburgh Harbour (No. 3). [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 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 (No. 3) Order Confirmation Act 1985. Short title.

SCHEDULE

FRASERBURGH HARBOUR (No. 3)

Provisional Order to authorise the Fraserburgh Harbour Commissioners to carry out works for the improvement of Fraserburgh Harbour; 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 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:—

	£
Dredging of the sea bed by excavation within the Balaclava Inner Harbour, Fraserburgh ...	540,000
A reconstruction of the existing quay wall at Balaclava Inner Harbour as a solid structure and the construction of necessary related services with a reclamation of the sea bed by infilling, levelling and surfacing and the partial demolition to sea bed level of two existing quays and a slipway	1,590,000
A further extension of an existing quay as a solid structure and reclamation of the sea bed by infilling, levelling and surfacing and demolition to sea bed level of an existing dolphin	125,000
	2,255,000

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

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. 3) Order 1985. Short title.

2. 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.

"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 Balaclava Inner Harbour or any part thereof;

"Commissioners" means the Fraserburgh Harbour Commissioners;

"deposited plan and sections" means the plan and sections deposited 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;

"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 this Order or, as the case may require, any part thereof.

PART I —*cont.*

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 limits of deviation and according to the levels shown on the deposited plan and 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 Dredging of an area of the sea bed by excavation within Balaclava Inner Harbour, Fraserburgh.

Work No. 2 Demolition to sea bed level of the eastern end of Provost Park's Jetty for a length of 4 metres or thereabouts; 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 westward for a distance of 100 metres or thereabouts, thence turning north for a distance of 27 metres or thereabouts, thence turning north-east for a distance of 85 metres or thereabouts, thence turning eastward for a distance of 60 metres or thereabouts, thence turning southward for a distance of 95 metres or thereabouts and thence turning westward for a distance of 29 metres or thereabouts and there terminating at a point 8 metres or

PART II —*cont.*

thereabouts eastward from the north-west corner of the existing quay known as Bailie Dickson's Jetty including the demolition of an existing slipway at the north-east corner of Balaclava Inner Harbour and reclamation of the sea bed by infilling, levelling and surfacing; demolition to sea bed level of the western end of Bailie Dickson's Jetty for a length of 8 metres or thereabouts.

Work No. 3 An extension of the existing quay known as Abernethy Jetty as a solid structure commencing at the west end of the said quay having a width of 18 metres or thereabouts and extending westward for a distance of 6 metres or thereabouts 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 13 metres or thereabouts westward from the west end of Abernethy Jetty.

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

Power to deviate.

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 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 3 metres upwards or 2 metres downwards in respect of Works Nos. 1 and 2 authorised by this Order and 4 metres downwards in respect of Work No. 3 authorised by this Order.

Subsidiary works.

6. 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.

Works to be deemed part of harbour undertaking.

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.

(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.

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

8.—(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.

(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 at their own expense to remove the tidal

PART II —*cont.*

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

(*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 demolition, construction, renewal or alteration thereof exhibit, every night from sunset to sunrise, such lights, if any,

PART II —*cont.*

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.

Permanent lights on works.

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.

(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.

Period for completion of works.

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.

Extension of time may be authorised.

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.

(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.

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

(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.

PART III

TEMPORARY CLOSURE OF HARBOUR

Temporary closure of area of works.

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

(*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.

PART III —*cont.*

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

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

MISCELLANEOUS

Power to divert, etc., Balaclava Quay and Balaclava Pier.

19. 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

PART IV —*cont.*

Balaclava Quay and Balaclava Pier providing when possible a proper temporary substitute before interrupting the traffic on the said quay or pier.

Saving for Food and Environment Protection Act 1985. 1985 c. 48.

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

Saving for Coast Protection Act 1949. 1949 c. 74.

21. 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 town and country planning. 1972 c. 52.

22. 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.

23.—(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.

24. 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.

PRINTED IN ENGLAND BY OYEZ PRESS LIMITED
FOR W. J. SHARP
Controller and Chief Executive of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
£1·85 net
ISBN 0 10 514785 0



Fraserburgh Harbour (No. 3) Order Confirmation Act 1985

CHAPTER xlvii

ARRANGEMENT OF SECTIONS

Section
1. Confirmation of Order in Schedule.
2. Short title.

SCHEDULE

FRASERBURGH HARBOUR (NO. 3)

PART I

PRELIMINARY

1. Short title.
2. Interpretation.
3. Incorporation of enactments.

PART II

WORKS

4. Power to carry out works.
5. Power to deviate.
6. Subsidiary works.
7. Works to be deemed part of harbour undertaking.
8. Tidal works not to be executed without approval of Secretary of State.
9. Survey of tidal works.
10. Provision against danger to navigation.

Section

11. Abatement of works abandoned or decayed.
12. Lights on works during construction.
13. Permanent lights on works.
14. Period for completion of works.
15. Extension of time may be authorised.

Part III

Temporary closure of harbour

16. Temporary closure of area of works.
17. Removal of vessels from area of works.
18. As to vessels entering area of works after date of closure.

Part IV

Miscellaneous

19. Power to divert, etc., Balaclava Quay and Balaclava Pier.
20. Saving for Food and Environment Protection Act 1985.
21. Saving for Coast Protection Act 1949.
22. Saving for town and country planning.
23. Crown rights.
24. Costs of Order.