

Department of the EnvironmentOctober 1972

STATUTORY INSTRUMENTS

1973 No. .

HARBOURS, DOCKS, PIERS AND FERRIES

(Draft)

THE MONTROSE HARBOUR REVISION ORDER 1973

Made 1973

Coming into operation 1973

The Secretary of State for the Environment in exercise of the powers conferred on him by section 14 of the Harbours Act 1964^(a), and of all other powers enabling him in that behalf and on the application of the Trustees of the Harbour of Montrose, hereby makes the following Order:

PART IPreliminaryCitation and
commencement

1. (1) This Order may be cited as the Montrose Harbour Revision Order 1973 and the Montrose Harbour Acts 1837 to 1961 and this Order may be cited together as the Montrose Harbour Acts 1837 to 1973.

(2) This Order shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965^(b).

Interpretation

2. (1) In this Order, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:-

(a) 1964 c.40

(b) 9+10 Geo.6. c.18;
1965 c.43.

"deposited plans" and "deposited sections" mean

respectively the plans and sections prepared in triplicate, signed by an Assistant Secretary of the Ministry of Transport Industries and marked "Plans and sections referred to in Montrose Harbour Revision Order 1973" of which copies are deposited at the Ministry of Transport Industries, the Board of Trade and the principal office of the Trustees;

"Harbour" means the Harbour of Montrose and includes the land, buildings, works, plant, property and conveniences connected therewith or any part thereof as the case may be;

"harbour undertaking" means the undertaking of the Trustees in connection with the harbour and the works;

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

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

"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;

"Trustees" means the Trustees of the Harbour of Montrose incorporated by the Montrose Harbour Act 1837^(a);

"works" means the works authorised by this Order or any part thereof as the case may be.

(2) The Interpretation Act 1889^(a) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(3) Unless the context otherwise requires, any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by any subsequent enactment, including this Order.

(4) This Order shall be read as if the words "or thereabouts" were inserted after each distance mentioned in Article 3 (Power to construct works) of this Order.

(5) Unless the context otherwise requires, any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

(a) 1889 c.63

PART IIWorks

Power to
construct
works

3. (1) Subject to the provisions of this Order the Trustees may partly in the Burgh of Montrose and partly in the County of Angus and within the limits of deviation construct and maintain the works hereinafter described, together with all necessary and proper works and conveniences connected therewith or incidental thereto, that is to say:-

(2) The Trustees may within the limits of deviation maintain, renew, enlarge, alter and reconstruct temporarily or permanently the works.

Subsidiary
works

4. (1) Subject to the provisions of this Order the Trustees in connection with the works may within the limits of deviation construct or place and maintain and use all such permanent or temporary quays, wharves, stairs, dolphins, piles, transit sheds, silos, warehouses, buildings, offices, refreshment rooms, washrooms, sanitary conveniences, dock yards, cranes, transporters, elevators, conveyors, lifts, gantries, weighing facilities, lighting and other masts, approaches, roads, road junctions, railways, tramways, sidings, viaducts, bridges, storage places, parking places, caissons, gates, wind, sand and other screens, sewers, drains, culverts, sluicing apparatus, pumping arrangements, tanks, mains, pipes, cables, wires, electricity substations, fences, boundary, river and other walls and embankments, staithes, jetties, stages, slips, graving docks, pontoons, floating and other fenders, booms, moorings, mooring and other chains, shipping-places, landing-places, buoys, beacons, landmarks, lights, radio and radar stations and other works and conveniences as may be expedient or desirable.

(a) Any electrical works or equipment constructed or placed and maintained and used pursuant to the powers conferred by this section shall be so constructed or placed and so maintained and used as to prevent interference with any telegraphic line belonging to or used by the Post Office or with telecommunication by means of any such line.

Power to deviate

5. Subject to the provisions of this Order, in constructing the works the Trustees may deviate laterally from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 10 feet upwards and to such extent downwards as may be found necessary or convenient

Fine for obstructing work

6. (1) Any person who wilfully obstructs any person acting under the authority of the Trustees in setting out the lines of the works, or who damages, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall for every such offence be liable to a fine not exceeding five pounds and shall in addition be liable to repay to the Trustees any expenses incurred by them in making good such damage.

(2) Proceedings for any offence under this section or for the recovery of any fine thereunder may be brought in any court of summary jurisdiction.

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

7. (1) A tidal work shall not be constructed, reconstructed, renewed, enlarged 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 constructed, reconstructed, renewed, enlarged 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 Trustees 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 Trustees 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 so to do, 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 a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Survey of
tidal works

8. 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 Trustees 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 a debt due from the Trustees to the Crown and shall be recoverable accordingly.

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 Trustees 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 Trustees 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 one hundred pounds 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 Secretary of State may by notice in writing require the Trustees 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 Trustees 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 a debt due from the Trustees to the Crown and shall be recoverable accordingly.

Lights on
tidal works
during
construction

11. (1) The Trustees shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, enlargement 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.

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(2) If the Trustees 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 one hundred pounds and on conviction on indictment to a fine.

Permanent
lights on
tidal works

12. (1) After the completion of a tidal work, the Trustees shall at the outer extremity 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 Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Trustees 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 one hundred pounds and on conviction on indictment to a fine.

Works to form
part of harbour
undertaking and
application of
byelaws

13. (1) The works shall for all purposes form part of the harbour undertaking.

(2) All byelaws and regulations for the time being in force relating to the harbour undertaking shall so far as applicable apply to the works and may be enforced by the Trustees accordingly.

Amendment of
section LVIII
of Montrose
Harbour Act
1837

14. So much of the second proviso to section LVIII of the Montrose Harbour Act 1837^(a) as restricts or prohibits the construction of any pier or quay on the south side of the river South Esk shall cease to have effect.

PART IIIBorrowingBorrowing
powers

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

(a) such sums of money as they think necessary not exceeding in the aggregate three million pounds;

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

Provided that in calculating for the purpose of paragraph (a) of this article the aggregate sums of money borrowed by the Trustees 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) Moneys borrowed by the Trustees under this article shall be applied only to purposes to which capital money is properly applicable.

(3) For the purposes of the last foregoing paragraph, 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 Trustees under this article; 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.

(4) The powers of borrowing conferred by this article shall supersede any powers of borrowing conferred by the Montrose Harbour Acts 1837 to 1961 so far as those powers have not been exercised prior to the commencement of this Order.

Ranking of
moneys borrowed

16. All moneys borrowed under ARTICLE 15 of this Order shall rank pari passu in point of security as to interest and capital one with another without any priority on account of the date of issue or on any other account.

Saving for
powers of
Treasury

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

PART IV

Miscellaneous

Power to
appropriate
lands and
works for
particular
trades etc.

18. (1) Notwithstanding anything in this or any other statutory provision of local application the Trustees may from time to time set apart and appropriate any lands, works, buildings, machinery, equipment or other property of the Trustees, for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Trustees may think fit.

(2) No person or vessel shall make use of any lands, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Trustees, and the harbour master or, as the case may be, such officer may order any person or vessel making use thereof without such consent to leave or be removed, and the provisions of section 58 of the Harbours Clauses Act 1847^(b) shall extend and

(a) 1946 c.58

(b) 1847 c.27

apply mutatis mutandis to and in relation to any such vessel.

Power to
lease etc.

19. Notwithstanding anything in this or any other statutory provision of local application the Trustees for the purposes of or in connection with the management of the harbour may lease or grant the use or occupation of or any easement, servitude or other right or interest in or over any lands, works, buildings, machinery, equipment or other property of the Trustees for such period or periods, at such rents and considerations and on such terms and conditions as shall be agreed between the Trustees and the person taking the same.

Crown rights

20. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing herein contained shall authorise the Council to take, use or in any way interfere with any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary or any land, heritages, subjects or rights of whatsoever description -

(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 on behalf of Her Majesty first had and obtained for that purpose; 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.

Saving for
Town and
Country
Planning
Acts

1972 c.52

21. (1) Section 27⁴ of the Town and Country Planning (Scotland) Act 1972 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the Session of Parliament held during the regnal years 10 and 11 Geo.6 for authorisation or regulation of development of the land) shall apply to this Order as if it had been passed during that Session; and accordingly the Town and Country Planning (Scotland) Act 1972 and Orders, Regulations, Rules, Schemes and directions made or given thereunder shall apply to development authorised by this Order.

(2) In their application to development authorised by this Order, article 3 of, and Class XI in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1950 (which permit development authorised by any local or private Act or by any Order approved by both Houses of Parliament, being an Act or Order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Order were limited to development begun within five years after the passing of the Act confirming this Order.

(3) In this section the reference to article 3 of and Class XI in Schedule 1 to the Town and Country Planning (General Development) (Scotland) Order 1950 includes a reference to corresponding provisions of any general order superseding that Order made under section 21 of the Town and Country Planning (Scotland) Act 1972 or any corresponding provision of an Act repealing those subsections.

Costs of Order 22. All costs, charges and expenses of or in connection with the preparation, submission and making of this Order (other than costs, charges and expenses which any person is lawfully ordered to pay, and any costs, charges and expenses incurred in opposing the Order) shall be paid or reimbursed by the Trustees.

October 1972

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THE MONTROSE HARBOUR REVISION ORDER
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