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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 284**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Scrabster (Deep Inner Berth) Harbour Revision Order 2011**

*Made* - - - - - *27th June 2011*

*Coming into force* - - - - - *28th June 2011*

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1) of the Harbours Act 1964<sup>(1)</sup> and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act<sup>(2)</sup>.

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to Ministers by Scrabster Harbour Trust (“the applicant”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) Ministers are 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 and facilitating the efficient and economic transport of goods or passengers by sea.

In accordance with paragraph 4 of Schedule 3 to that Act<sup>(3)</sup>, Ministers have decided that the application relates to a project which falls within Annex II to Council Directive 85/337/EEC<sup>(4)</sup>, as relevantly amended by Council Directive 97/11/EC<sup>(5)</sup> and Council Directive 2003/35/EC<sup>(6)</sup>, on the assessment of the effects of certain public and private projects on the environment but, taking into account the criteria set out in Annex III to that Directive, that the project is not a relevant project.

In accordance with paragraph 5 of that Schedule<sup>(7)</sup>, Ministers have informed the applicant in writing that the application relates to a project which falls within Annex II to that Directive but is not a relevant project.

Notice has been published by the applicant in accordance with the requirements of paragraph 10 of that Schedule<sup>(8)</sup>.

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(1) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(3) Paragraph 4 of Schedule 3 was substituted by S.I. 1999/3445.

(4) O.J. L 175, 5.7.1985, p.40.

(5) O.J. L 73, 14.3.1997, p.5.

(6) O.J. L 156, 25.6.2003, p.17.

(7) Paragraph 5 of Schedule 3 was substituted by S.I. 1999/3445.

(8) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c).

The provisions of paragraph 17 of that Schedule(9) have been satisfied.

In accordance with paragraph 19(1) of that Schedule(10), Ministers have considered

- (a) any objections made and not withdrawn; and
- (b) any written representations submitted to Ministers by the Trust or any objector in elaboration of the application or, as the case may be, objection.

In accordance with paragraph 19(2) of that Schedule(11), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

## PART 1

### PRELIMINARY

#### Citation and commencement

1.—(1) This Order may be cited as the Scrabster (Deep Inner Berth) Harbour Revision Order 2011 and shall come into force on the day after the day on which it is made.

(2) The Scrabster Harbour Acts and Orders 1841 to 2005 and this Order may be cited together as the Scrabster Harbour Acts and Orders 1841 to 2011.

#### Interpretation

2.—(1) In this Order—

“1841 Act” means the Act passed in the fourth and fifth years of the reign of Her Late Majesty Queen Victoria intituled “An Act for making and maintaining a Harbour at Scrabster Roads in the Bay of Thurso and County of Caithness, and Road thereto”(12);

“deposited plans and sections” means the plans and sections prepared in duplicate and signed by a member of the Scottish Executive and marked “Plans and sections referred to in the Scrabster (Deep Inner Berth) Harbour Revision Order 2011” of which one is deposited with Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ and the other at the harbour office of the Trust;

“harbour” means the harbour of Scrabster as authorised by the 1841 Act, the Scrabster Harbour Order 1897(13) and the Scrabster Harbour Order 1989(14) or any part of it as the case may be;

“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 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;

“the Trust” means the Scrabster Harbour Trust (15);

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(9) Paragraph 17 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(g).

(10) Paragraph 19(1) of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(i).

(11) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

(12) 1841 c.1.

(13) 1897 c.lxxx.

(14) 1989 c.v.

“works” means the works authorised by articles 3 (power to carry out quay work) and 4 (power to carry out dredging and demolition works) or, as the case may require, any part of them.

(2) All areas, directions and distances as stated in any description of works, powers or lands other than article 5 (power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction and distance.

(3) Any reference in a description of works to a point shall be a reference to that point on the deposited plan.

(4) All references to point locations in this Order are given as National Grid references.

(5) 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 the same number authorised by this Order.

## PART 2

### WORKS

#### **Power to carry out quay work**

3.—(1) The Trust may, in the situations and lines and within the limits of deviation for Work No. 1 and according to the levels shown on the deposited plans and sections, carry out and maintain the following improvement work:—

**Work No. 1:** A quay of solid construction occupying the area bounded by a line on the plan with one long and two short dashes starting at point W1 (310026 970242) and travelling in straight lines via point W2 (310143 970326), W3 (310193 970281), W4 (310193 970276), W5 (310094 970204), W6 (310082 970220), W7 (310044 970195) and returning to point W1, with berthing faces and with a reclamation of the seabed by infilling, levelling and surfacing.

(2) The Trust may, within the limits of deviation for Work No. 1, maintain, renew, reconstruct and alter the works temporarily or permanently.

#### **Power to carry out dredging and demolition works**

4.—(1) The Trust may, in the situations and lines and within the limits of deviation for Works No. 2, 3 and 4 and according to the levels shown on the deposited plans and sections, carry out the following works to the extent described below, or as may be required for the purpose of maintaining the works:—

**Work No. 2:** dredging of an area of seabed shown hatched brown on the plan, together with the demolition of those parts of the Centre Pier and the Old Fish Pier shown washed brown on the plan;

**Work No. 3:** dredging of an area of seabed shown crosshatched black on the plan; and

**Work No. 4:** dredging of an area of seabed shown hatched black on the plan.

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

(3) The power to dredge described above includes the power to carry out such additional dredging as may be required to provide side slopes or otherwise secure the dredged areas against siltation, scouring or collapse.

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(15) The Scrabster Harbour Trust was constituted and incorporated by the 1841 Act under the name The Trustees of the Harbour of Scrabster and was renamed Scrabster Harbour Trust by article 3 of The Scrabster Harbour Revision Order 1993 (S.I. 1993/1201).

(4) All materials dredged up or removed by the Trust in exercise of the powers of this article (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>(16)</sup>) shall be the property of the Trust and may be used, sold, deposited or otherwise disposed of as the Trust thinks fit.

(5) The Trust shall not lay down or deposit such materials in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

(6) In this article, dredging includes deepening, scouring, cleansing, altering and improving the sea bed and foreshore.

### **Power to deviate**

5.—(1) In carrying out the work authorised by article 3 (power to carry out quay work), the Trust may deviate laterally from the lines or situations as shown on the deposited plan to any extent within the limits of deviation shown on the said plan for Work No 1, and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding 2 metres upwards and to such extent downwards as may be found necessary or convenient.

(2) The limit of the area of lateral deviation referred to in paragraph (1) is indicated by a dashed line on the plan starting at point L8 (310022 970245) and travelling in straight lines via points L9 (310143 970333), L10 (310204 970278), L11 (310094 970199), L12 (310089 970206), L13 (310065 970189), L14 (310044 970187) and returning to point L8.

(3) In carrying out the dredging works, the Trust may:—

- (a) deviate laterally from the lines or situations as shown on the deposited plan to any extent within the limits of deviation shown on the said plan; and
- (b) deviate vertically from the levels of the works as shown on the deposited sections to any extent upwards below the existing sea bed and to any extent not exceeding 2 metres downwards.

(4) The seaward limit of the area referred to in paragraph (3)(a) is wholly within the harbour limits and is indicated by a dashed line on the plan, starting at point L1 (310383 970264) and travelling in straight lines via points L2 (310420 970168), L3 (310465 970086), L4 (310419 970020), L5 (310363 970043), L6 (310260 970161) and ending at point L7 (310252 970155).

### **Subsidiary works**

6. The Trust 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, including, but not limited to, revetments and floating pontoons.

### **Obstructing works**

7. Any person who:—

- (a) intentionally obstructs any person acting under the authority of the Trust in setting out the lines of or in constructing the works, or
- (b) moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(16) 1995 c.21.

### **Status of works**

- 8.**—(1) The works shall be deemed for all purposes to be part of the harbour.
- (2) When complete, Work No. 1 shall be deemed to be—
- (a) operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997(17); and
  - (b) to the extent that it lies outwith the area of the Highland Council, be deemed to be part of that area.

### **Tidal works not to be executed without approval of Scottish Ministers**

**9.**—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed 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, reconstructed or altered in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Scottish Ministers may by notice in writing require the Trust at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and if on the expiration of 30 days from the date when the notice is served upon the Trust it has 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 Trust as a debt.

(3) The works referred to in paragraph (1) shall be deemed to be “harbour works” within the meaning and for the purposes of the Marine Works (Environmental Impact Assessment) Regulations 2007(18).

### **Survey of tidal works**

**10.** The Scottish Ministers may at any time, if they deem it expedient, order a survey and examination of a tidal work or of a site upon which it is proposed to construct the work and any expenditure incurred by them in such a survey and examination shall be recoverable from the Trust as a debt.

### **Provision against danger to navigation**

**11.**—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Trust shall notify the Commissioners of Northern Lighthouses as soon as reasonably practicable 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 Trust fails to comply in any respect with the provisions of this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine.

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(17) 1997 c.8; “operational land” is defined in section 215, to which there are amendments not relevant to this Order, which section is subject to section 216.

(18) S.I. 2007/1518.

### **Abatement of works abandoned or decayed**

12.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Scottish Ministers may by notice in writing require the Trust at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site to its former condition, to such an extent and within such limits as the Scottish Ministers think proper.

(2) Where a work 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 of it, 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 Trust it has 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 Trust as a debt.

(4) A notice or other document required to be served under this article may be sent by recorded delivery and that notice shall be deemed served the next day after the date of posting.

### **Lights on tidal works during construction**

13.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Trust shall at the outer extremity of it 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 Trust fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine.

### **Permanent lights on works**

14.—(1) After the completion of a tidal work the Trust 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 Trust fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine.

### **Period for completion of works**

15.—(1) If the works are not completed within five years from the date of the coming into force of this Order or such extended time as the Scottish Ministers may on the application of the Trust allow by consent given in writing, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Trust for making and maintaining those works shall cease except as to so much of those works as is then substantially commenced.

(2) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions.

(3) As soon as reasonably practicable after a consent is given under paragraph (1), the Trust shall arrange for a notice to be published in the Edinburgh Gazette and in a local newspaper circulating in the area where the port is situated and the notice shall contain a concise summary of that consent.

(4) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (3), a copy of the consent referred to in that notice shall be kept

by the Trust at the offices of the Trust situated at the port and shall at reasonable hours be open to public inspection without payment.

(5) The works shall be deemed to be substantially commenced for the purposes of paragraph (1) for Work No. 1 where infilling has commenced, and for the other works where any dredging has taken place.

#### **Saving for other consents etc.**

16. The carrying out of any works or operations pursuant to this Order is subject to the Trust obtaining any consent, permission or licence required under any other enactment.

#### **Saving for Commissioners of Northern Lighthouses**

17. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

#### **For the protection of the Scottish Environment Protection Agency**

18.—(1) No works shall be commenced until the Scottish Ministers have, following consultation with the Scottish Environment Protection Agency, approved an environmental management plan for the works.

(2) Subject to paragraph (3), in constructing the works, the Trust shall act in accordance with the approved environmental management plan for the works.

(3) Nothing in paragraph (2) shall exempt the Authority from fulfilling any requirement imposed on the Trust by any rule of law or which arises from any commitment which is binding on the Trust.

#### **For the protection of Scottish Natural Heritage**

19.—(1) Any piling that is undertaken for the purpose of constructing any of the works shall only be carried out between the hours of 8 a.m. and 8 p.m. Monday to Saturday.

(2) The construction of the works shall adhere to the statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise issued by the Joint Nature Conservation Committee(19) except as agreed with Scottish Natural Heritage.

(3) Works Nos. 2 to 4 (dredging) shall not be commenced until a system for the monitoring and mitigation of sediment arising from the carrying out of these works has been agreed with Scottish Natural Heritage.

#### **Crown rights**

20.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Trust or any licensee to take, use, enter upon or in any manner interfere with any land or any rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having the management of that land; or

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- (c) 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 paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

St Andrew's House, Edinburgh  
27th June 2011

*ALASTAIR WILSON*  
A member of the staff of the Scottish Ministers



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises the redevelopment of the existing Old Fish Market Pier to form a new quay at Scrabster Harbour together with three areas that may be dredged as part of the improvement of the harbour.

The applicant for the Order is the Scrabster Harbour Trust, Harbour Office, Scrabster, Caithness, KW14 7UJ.