



Fraserburgh Harbour Order Confirmation Act 1975

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ELIZABETH II



1975 CHAPTER xiii

An Act to confirm a Provisional Order under the Private
Legislation Procedure (Scotland) Act 1936, relating to
Fraserburgh Harbour. [3rd July 1975]

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 1936 c. 52.
Order should be confirmed by Parliament:

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 Short title.
Confirmation Act 1975.

SCHEDULE

FRASERBURGH HARBOUR

Provisional Order to authorise the Fraserburgh Harbour Commissioners to acquire lands and to carry out works for the improvement of Fraserburgh Harbour and to borrow money; and for other purposes.

Whereas it is expedient that the Fraserburgh Harbour Commissioners (hereinafter called "the Commissioners") should be authorised to acquire lands and to carry out the works hereinafter described for the improvement of Fraserburgh Harbour and to borrow money for the purposes of the said works and their harbour undertaking:

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:—

Purchase of lands, minerals and permanent rights	£10,000
For the construction of Works Nos. 1 to 3	... £867,700
For reclamation works £222,300

And whereas a plan and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order and a book of reference to such plan, showing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken or used for the purpose of or under the powers of this Order, were duly deposited with the sheriff-clerk of the county of Aberdeen and such plan, sections and book of reference are respectively called the deposited plan, sections and book of reference:

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

Short and
collective titles

1.—(1) This Order may be cited as the Fraserburgh Harbour Order 1975.

(2) The Fraserburgh Harbour Acts 1878 to 1930 and this Order may be cited together as the Fraserburgh Harbour Acts 1878 to 1975.

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:—

PART I
—cont.

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.

“ Balaclava Harbours ” means Balaclava Inner Harbour, Balaclava Harbour and Balaclava Outer Harbour or, as the case may require, either or any part of the said harbours;

“ 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 58 of the Fraserburgh Harbour Act 1878 and includes the lands to be acquired by the Commissioners under the authority of this Order; 1878 c. cii.

“ harbour undertaking ” means the undertaking of the Commissioners in connection with the harbour;

“ land ” or “ lands ” includes land covered by water and any interest therein;

“ 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.

(2) Any reference in this Order to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment including this Order.

3.—(1) The following sections of the Act of 1847, that is to say, sections 21, 23, 24, 27 to 29, 33 to 46, 48, 51 to 83, 92, 94, 99, 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;

PART I
—cont.

- (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 “ penalty ” to the end of the section, there shall be substituted the words “ a penalty not exceeding £20 ”;
- (d) in section 69, for the words from “ the sum ” to the end of the section there shall be substituted the words “ a sum not exceeding £10 ”.

1845 c. 19.

(2) (a) The Lands Clauses Acts (with the exception of sections 120 to 126 of the Lands Clauses Consolidation (Scotland) Act 1845 relating to the sale of superfluous lands) are hereby incorporated with this Order.

(b) For the purposes of the incorporation of the said Acts the expression “ the special Act ” in those Acts shall mean this Order.

(3) Officers of the Department of Trade in the execution of their duty shall at all times have free ingress, passage and egress on, into, from, over, along, through and out of the harbour and any works of the Commissioners by land and with their vessels or otherwise.

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 A deepening by means of excavation of Balaclava Harbour and the entrance to Balaclava Inner Harbour commencing at a point 13.7 metres (45 feet) or thereby measured in a north-easterly direction from the northernmost point of Provost Park's Jetty and terminating at a point 4.9 metres (16 feet) or thereby measured in a westerly direction from the southernmost point of Abernethy Jetty;

Work No. 2 A deepening by means of excavation of a part of Balaclava Outer Harbour commencing at the termination of Work No. 1 and terminating at a point in the entrance channel to Balaclava Outer Harbour 29.9 metres (98 feet) or thereby measured in a north-north-westerly direction from the eastmost corner of the North Pier Spur;

Work No. 3 A deepening by means of excavation of the said entrance channel commencing at the termination of Work No. 2 and terminating at a point 35.7 metres (117 feet) or thereby measured in a northerly direction from the northernmost point of the South Breakwater.

PART II
—cont.

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

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. Power to deviate.

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 necessary works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works. Subsidiary works.

7.—(1) Any person who wilfully obstructs any person acting under the authority of the Commissioners 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 fifty pounds and shall in addition be liable to repay to the Commissioners any expenses incurred by them in making good such damage. Fine for obstructing work.

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

8.—(1) If the works are not substantially commenced within five years from the commencement of this Order, or such extended time as the Secretary of State may in the circumstances by order direct, the powers granted to the Commissioners by this Order for the construction of the works shall cease. Powers to cease in certain events.

(2) If the execution of the works after having been substantially commenced is virtually suspended for twelve consecutive months, the said powers shall cease except as to so much of the works as is then completed unless the Secretary of State by order directs that the said powers shall continue and remain in force but, subject to the foregoing provision as to completion, the said powers shall cease in any event within eight years from the commencement of this Order.

(3) A certificate of the Secretary of State to the effect that the works have not been substantially commenced or that they have been virtually suspended for twelve consecutive months shall, for the purposes of this section, be conclusive evidence of the facts stated in such certificate.

PART II
—cont.

Works to be deemed part of harbour undertaking.

9.—(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.

10.—(1) A tidal work shall not be constructed, 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, 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 Commissioners 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 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 a debt due from the Commissioners to the Crown and shall be recoverable accordingly.

Survey of tidal works.

11. 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 a debt due from the Commissioners to the Crown and shall be recoverable accordingly.

Provision against danger to navigation.

12.—(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 one hundred pounds and on conviction on indictment to a fine.

Abatement of works abandoned or decayed.

13.—(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.

PART II
—cont.

(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 a debt due from the Commissioners to the Crown and shall be recoverable accordingly.

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

Lights on
works during
construction.

(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 one hundred pounds and on conviction on indictment to a fine.

15.—(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.

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 one hundred pounds and on conviction on indictment to a fine.

PART III

TEMPORARY CLOSURE OF HARBOUR

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

Temporary
closure of
Balaclava
Harbours.

(a) temporarily close the Balaclava Harbours to vessels by means of one or more coffer dams to be constructed between the North Pier and Balaclava Breakwater and at such other places within the harbour as the Commissioners shall think fit;

(b) dry out the Balaclava Harbours by pumping or otherwise and carry out all such measures and construct all such valves,

PART III
—cont.

sluices, gates, pipes, channels, aqueducts, pumps and similar works of a temporary nature as may be necessary to convey water entering the Balaclava Harbours into tidal waters.

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

Removal of
vessels from
Balaclava
Harbours.

17.—(1) Before exercising the power conferred on them by section 16 (Temporary closure of Balaclava Harbours) of this Order temporarily to close the Balaclava Harbours 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 Balaclava Harbours 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 Balaclava Harbours.

(3) (a) If the master of any vessel within the Balaclava Harbours does not remove the same before the date referred to in paragraph (b) of subsection (2) of this section; or (b) if any vessel remaining within the Balaclava Harbours after that date has been laid by or neglected or abandoned or has become unserviceable the harbour-master may cause every such vessel to be removed from the Balaclava Harbours and moored or laid in any other place where it may without injury be moored or laid and the Commissioners shall not be liable for any loss or injury caused to any person by reason of the exercise of the powers conferred by this subsection.

(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 harbour-master 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
Balaclava
Harbours after
date of closure.

18. If any vessel enters the Balaclava Harbours after the date referred to in paragraph (b) of subsection (2) of section 17 (Removal of vessels from Balaclava Harbours) of this Order, the harbourmaster may direct the master of such vessel forthwith to remove the vessel from the Balaclava Harbours, 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 Balaclava Harbours before the said date.

PART IV

BORROWING

19.—(1) The Commissioners may from time to time borrow upon the security of the assets for the time being and of the revenues of the Commissioners, by any methods they see fit— Power to borrow.

(a) such sums of money as they think necessary not exceeding in the aggregate £1,000,000; and

(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 subsection the aggregate sums of money borrowed by the Commissioners 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 Commissioners under this section shall be applied only to purposes to which capital money is properly applicable.

(3) For the purpose of the last foregoing subsection, 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 Commissioners under this section; 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 section shall supersede any powers of borrowing conferred by the Fraserburgh Harbour Acts 1878 to 1930 so far as those powers have not been exercised prior to the commencement of this Order.

(5) A person lending money to the Commissioners on any form of security or taking or holding any such security shall not be bound to inquire whether the borrowing of the money is or was legal or regular or whether the money raised was properly applied and shall not be prejudiced by any illegality or irregularity in the matters aforesaid or by the misapplication or non-application of any such money.

20. It shall not be lawful to exercise the powers of borrowing conferred by this Order otherwise than in compliance with any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946. Saving for powers of Treasury.
1946 c. 58.

PART V

POWER TO ACQUIRE AND RECLAIM LANDS

Power to
acquire lands
for
reclamation

21. Subject to the provisions of this Order, the Commissioners may enter upon, take, hold and use the lands shown on the deposited plan and described in the deposited book of reference and such of the bed, banks and shores of the sea adjoining the same as may be required for the purposes of exercising the powers of reclamation conferred by the provisions of this Part of this Order:

Provided that the powers of the Commissioners under this section shall cease on 31st December 1980.

Power to
acquire
servitudes
compulsorily
in certain
cases.

22. Notwithstanding anything in this Order or in any Act wholly or partly incorporated herewith, the Commissioners may purchase and acquire such servitudes or rights as they may require for the purposes of this Order without the Commissioners being obliged or compellable to purchase any greater interest in, under or over the lands to which they relate, and the provisions of the Lands Clauses Acts shall extend and apply to such servitudes and rights as if they were lands within the meaning of those Acts.

Extinction of
private rights
of way.

23. All private rights of way over any lands which, under the powers of this Order, are acquired compulsorily shall, as from the date of such acquisition, be extinguished:

Provided that the Commissioners shall make compensation to all persons interested in respect of any such rights and the compensation shall be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.

Correction of
errors in
deposited plan
and book of
reference.

24.—(1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, the Commissioners after giving ten days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake, he shall certify the fact accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, and with the sheriff-clerk of Aberdeen and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Commissioners to take the land and execute the works in accordance with the certificate.

(4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

25. Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and of this Order, grant to the Commissioners any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for the purposes of this Order in, over or affecting any such lands, and the provisions of the said Acts with respect to lands and rentcharges or feu duties so far as they are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

PART V
—cont.

Servitudes, etc.,
by agreement.

26. In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

Set-off of
betterment
against
compensation.

- (a) he has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the execution of the works authorised by this Order or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money:

Provided that any such enhancement in value of an interest in land shall be estimated on the assumption that planning permission in respect of that land would be granted under the Act of 1972 for the operations or uses specified in Schedule 6 to that Act but not for any other development.

27. Subject to the provisions of this Order, the Commissioners may, within the limits of the areas to be used for reclamation shown on the deposited plan, fill up, raise, enclose and reclaim land from the sea and the bed thereof and the foreshore and for that purpose may place such piles and construct such groynes, retaining walls and other works in and upon the sea, bed and foreshore and shall carry out such works to protect the seaward frontage of land so enclosed and reclaimed as the Commissioners deem necessary.

Reclamation
of lands.

28.—(1) Subject to the provisions of this Order, the Commissioners as part of or in connection with the works of reclamation authorised by section 27 (Reclamation of lands) of this Order may, within the limits of deviation for those works, remove, alter, divert or stop up any drain, sewer, channel or watercourse, providing a proper substitute before interrupting the flow of sewage in any drain or sewer or water in any channel or watercourse.

Ancillary
works.

(2) In the exercise of the powers conferred by this section the Commissioners shall cause as little detriment and inconvenience as circumstances admit and shall make reasonable compensation for any damage caused to any person by the exercise of such powers, such compensation to be determined in default of agreement by the Lands Tribunal for Scotland.

PART VI

MISCELLANEOUS

Saving for
Dumping at Sea
Act 1974.
1974 c. 20.

Saving for
Coast
Protection Act.
1949 c. 74.

Saving for
town and
country
planning.

1975 No. 679
(S. 107).

Crown rights.

Costs of Order.

29. Nothing in this Order shall affect the operation of the Dumping at Sea Act 1974.

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

31.—(1) Section 274 of the Act of 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 & 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 Act of 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 any provision of this Order, article 3 of, and class X in Schedule 1 to the Town and Country Planning (General Development) (Scotland) Order 1975 (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 such provision were limited to development begun within five years after the coming into force of that provision.

(3) In this section the reference to article 3 of, and class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1975 includes a reference to corresponding provisions of any general order superseding that order made under section 21 of the Act of 1972 or any corresponding provision of an Act repealing that section.

32. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order shall authorise the Commissioners to take, use or interfere with any land or rights—

(i) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners on behalf of Her Majesty; or

(ii) 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 the Crown Estate Commissioners or, as the case may be, that department.

33. 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.