

**ELIZABETH II**



**1980 CHAPTER xxvii**

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Breasclete Harbour. [1st August 1980]

**W**HEREAS 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 Breasclete Harbour Order Short title. Short title.  
Confirmation Act 1980.

*Breasclete Harbour Order  
Confirmation Act 1980*

SCHEDULE

BREASCLETE HARBOUR

*Provisional Order to establish the Highlands and Islands Development Board as a harbour authority in respect of the harbour at Breasclete, East Loch Roag, Lewis, in the Western Isles; to provide for harbour limits and authorise the exercise of harbour jurisdiction; and for other purposes.*

Whereas—

1965 c. 46.

(1) By the Highlands and Islands Development (Scotland) Act 1965 the Highlands and Islands Development Board (hereinafter called “the Board”) were established for the purpose of assisting the people of the Highlands and Islands to improve their economic and social conditions and of enabling the Highlands and Islands to play a more effective part in the economic and social development of the nation and the Board were entrusted with the general function of preparing, concerting, promoting, assisting and undertaking measures for the economic and social development of the Highlands and Islands and with the duties more particularly set out in section 3 of the said Act of 1965:

(2) In pursuance of the performance of their general function and in discharge of their duties and for the purpose of assisting in the further development of the fisheries to the west of the Outer Hebrides, the Board have obtained from the Secretary of State approval under section 4 of the said Act of 1965 for the acquisition of land comprising approximately 2.655 hectares at Breasclete on East Loch Roag on the west coast of Lewis in the islands area of the Western Isles for the construction thereon of a fish-drying plant and other facilities. In addition, the approval of the Secretary of State has been obtained for the acquisition by lease by the Board from the Crown Estate Commissioners of an area of the sea bed adjacent to such land and comprising approximately 0.068 hectares for the construction of a pier to provide appropriate landing and other facilities for fish and for the acquisition of such rights in the land comprising the foreshore as may be required for such purposes:

1949 c. 74.

(3) In pursuance of the consent granted to the Board by the Secretary of State under section 34 of the Coast Protection Act 1949 the construction of the said pier has been undertaken and completed so that the Board are in a position to bring the said pier into public use and thereby provide the marine facilities needed to enable the proposed fisheries to be developed. For this purpose the Board consider it desirable to establish themselves as a harbour authority so as to be able to maintain the said facilities and exercise proper control of the movement of vessels in the vicinity of the said pier:

(4) It is expedient therefore that there should be conferred on the Board powers to maintain the said facilities and that for the better performance of their functions and discharge of their duties they should be authorised to exercise harbour jurisdiction and the powers

of a harbour authority in respect of the undertaking being established at Breasclete aforesaid and that the other provisions of this Order should be enacted:

(5) The purposes of this Order 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 said Act of 1936 the Secretary of State orders as follows:—

1. This Order may be cited as the Breasclete Harbour Order 1980. Short title.

2.—(1) In this Order— Interpretation.

“ the Act of 1847 ” means the Harbours, Docks and Piers Clauses Act 1847; 1847 c. 27.

“ the Board ” means the Highlands and Islands Development Board;

“ enactment ” means any Act, any order (including this Order), scheme, byelaw or other instrument made under an Act, and any provision in an Act or in such order, scheme, byelaw or instrument;

“ the harbour ” means the area referred to in section 4 (Limits of the harbour) of this Order;

“ the harbour master ” means the harbour master appointed by the Board, and includes his authorised deputies and assistants;

“ hovercraft ” has the same meaning as in the Hovercraft Act 1968 c. 59. 1968;

“ hydrofoil vessel ” means a vessel, however propelled, designed to be supported on foils;

“ land ” includes land covered by water, and any interest in land;

“ the level of high water ” means the level of mean high-water springs;

“ the signed plan ” means the plan signed in quadruplicate by Gavin Douglas, Q.C., Senior Counsel to the Secretary of State for the purposes of the Private Legislation Procedure (Scotland) Act 1936, and deposited, within one month of the commencement of this Order, as follows, that is to say, one copy at the office of the Secretary of State in Edinburgh, one at the Department of Trade, one with the sheriff clerk of the sheriffdom of Grampian, Highlands and Islands at Stornoway and one at the office of the chief executive of the Western Isles Islands Council;

“ tidal work ” means so much of any work belonging to the Board as is on, under or over tidal waters or tidal lands below the level of high water;

“ undertaking ” means the undertaking of the Board as for the time being authorised;

*Breasclete Harbour Order  
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“ vessel ” means every description of vessel however propelled or moved, and includes any thing constructed or used to carry persons or goods by water, and a seaplane on or in the water, a hovercraft and a hydrofoil vessel;

“ works ” means works of every description.

(2) Reference in this Order to any enactment shall be construed as reference to that enactment as extended, amended or applied by or by virtue of any other enactment, including this Order.

Incorporation  
of Harbours,  
Docks and  
Piers Clauses  
Act 1847.  
1847 c. 27.

3. The Act of 1847 (except sections 6 to 13, 16 to 19, 22, 25, 26, 28, 79 to 82, 95 and 97 to 103), so far as applicable for the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with and forms part of this Order:

Provided that in construing the provisions so incorporated the expression “ the special Act ” shall mean this Order, and—

(i) the expressions “ the Promoters of the undertaking ” and “ the undertakers ” shall mean the Board, and the expression “ the harbour, dock and pier ” shall mean the harbour;

(ii) the meaning of the word “ vessel ” as defined in section 2 (Interpretation) of this Order shall be substituted for the meaning assigned to that word by section 3 of that Act;

(iii) section 23 shall be read and have effect as if the words “ provided that no such lease be granted for a longer term than 3 years ” were omitted and there were added the words “ Provided that as from the commencement of any lease of a tidal work made under this section the lessee shall during the continuance of his lease be subject to all the liabilities and obligations to which the undertakers are subject and shall perform all the duties of the undertakers under the special Act in respect of that work ”;

(iv) section 63 shall be read and have effect as if for the words after “ penalty ” to the end of the section there were substituted the words “ not exceeding £50 ”;

(v) section 69 shall be read and have effect as if for the words after “ sum ” to the end of the section there were substituted the words “ not exceeding £50 ”;

(vi) section 84 shall be read and have effect as if for the words “ five pounds ” there were substituted the figures “ £50 ”.

Limits of the  
harbour.  
1964 c. 40.

4. The Board shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964, and the powers of the harbour master shall be exercised, within the area described in the schedule to this Order.

Power to  
dredge.

5.—(1) The Board may from time to time, as may appear to them to be necessary or proper for the safety or convenience of navigation, deepen, widen, dredge, scour and improve the bed and foreshore of the harbour and of the seaward approaches to the harbour, and blast any rock in the harbour and such approaches.

1894 c. 60.

(2) Any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected in the course

of such operations shall be the property of the Board and may be used, sold, removed, deposited or otherwise disposed of as the Board may think fit:

Provided that the Board shall not lay down or deposit materials in a place below the level of high water except in such position as the Secretary of State may approve and subject to such conditions and restrictions as he may impose.

6. Subject to the provisions of any other enactment the Board shall have power on the lands and within the limits of deviation shown on the signed plan to renew, enlarge and alter temporarily or permanently all works now or hereafter constructed by them in the harbour. Works in the harbour.

7. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which the Board propose to construct a tidal work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be a debt due from the Board to the Crown and shall be recoverable accordingly. Survey of tidal works.

8.—(1) In any case of injury to or destruction or decay of a tidal work or any part thereof the Board 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. Provision against danger to navigation.

(2) If the Board fail to comply in any respect with a provision of this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200 and on conviction on indictment to a fine.

9.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Board 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. Abatement of works abandoned or decayed.

(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 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 30 days from the date on which a notice under this section is served upon the Board 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 Board to the Crown and shall be recoverable accordingly.

Permanent  
lights on tidal  
works.

10.—(1) After completion of a tidal work the Board 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 Board 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 £200 and on conviction on indictment to a fine.

Directions of  
harbour  
master.

11.—(1) Section 52 of the Act of 1847 in its application to this Order shall extend to empower the harbour master to give directions prohibiting the mooring of vessels or other structures within the harbour.

(2) The powers conferred by section 52 of the Act of 1847, as applied to this Order and as extended by this section, shall not be exercised except—

- (a) in relation to vessels using the works for the time being vested in the Board at the harbour or coming to or departing from those works;
- (b) in relation to vessels within the harbour which shall obstruct the approaches to those works; or
- (c) in relation to vessels which shall threaten the safety of navigation within the harbour.

Confirmation  
of byelaws.

12.—(1) Byelaws made by the Board under section 83 of the Act of 1847 shall not come into operation until they have been confirmed by the Secretary of State.

(2) At least one month before application for confirmation of byelaws is made by the Board to the Secretary of State, notice of the intention to apply for confirmation and of the place at which and the times during which a copy of the byelaws shall be open to inspection shall be published once in the *Edinburgh Gazette* and once in each of two successive weeks in some one and the same daily newspaper circulating in the islands area of the Western Isles.

(3) Not later than the first date on which the notice under subsection (2) of this section is published the Board shall send a copy of the notice together with a copy of the byelaws to the chief executive of the council of the islands area of the Western Isles.

(4) During a period of at least one month before application is made for confirmation of byelaws under this section a copy of the byelaws shall be kept at the office of the Board at Breasclete and shall at all reasonable hours be open to public inspection without payment.

(5) The Board shall supply a copy of the byelaws or of part of the byelaws to any person who shall apply for it, on payment of a reasonable charge.

(6) During the period of one month after the completion of the publication of any notice required by subsection (2) of this section any person may make in writing to the Secretary of State an objection to or representation respecting the byelaws to which the notice relates.

(7) The Secretary of State may confirm the byelaws in the form submitted to him with such modifications as he thinks fit, or may refuse to confirm them:

Provided that where the Secretary of State proposes to make a modification which appears to him to be substantial he shall inform the Board and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Board and by other persons who have been informed of it.

(8) When confirmed the byelaws shall be published by the Board.

13.—(1) Except in so far as may be agreed between the Board and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Board to levy dues shall extend to authorise them to levy dues on—

Exemption from dues for Crown, etc.

(a) a vessel—

(i) belonging to or in the service of Her Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under custom seizure;

(c) troops landed at the harbour premises or a person employed by the Secretary of State for Defence while in the execution of his duty;

(d) goods or stores belonging to the Secretary of State for Defence.

(2) 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 Board by land, and with their vessels and otherwise.

14. The Board may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, freezing plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

Power to enter into arrangements to provide supplies.

15. The Board may within the limits of the harbour fill up, raise, enclose and reclaim land from the sea and the bed and foreshore of the harbour ex adverso the area of land at Breasquete extending to 2.655 hectares in the ownership of the Board but that only from the westernmost point of the existing old pier at Breasquete Bay for a distance of 207.26 metres or thereby following the line of the level of high water to the western boundary of the said area of land and for

Reclamation of land.

that purpose may place such piles and construct such groynes, retaining walls and other works in and upon the sea, bed and foreshore as the Board deem necessary:

Provided that the Board shall not exercise the powers of this section—

- (a) in relation to any land not owned by them unless they first obtain a consent in writing of the owner thereof; or
- (b) in relation to any part of the harbour in front of or adjoining land belonging to Her Majesty in right of Her Crown or to a government department or held in trust for Her Majesty for the purposes of a government department and protected by section 19 (Crown rights) of this Order, without the consent in writing of the Crown Estate Commissioners or, as the case may be, the government department.

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

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

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

17. Nothing in this Order shall exempt the Board from the provisions of Part I of the Coast Protection Act 1949 nor affect the application to any operation of sections 34 to 36 of that Act (which require the consent of the Department of Trade or the Secretary of State to certain operations and contain other provisions for the safety of navigation):

Provided that, notwithstanding the provisions of section 35 (1) (c) of that Act, section 34 (1) thereof shall apply in respect of operations carried out in the seaward approaches to the harbour under section 5 (Power to dredge) of this Order.

Saving for  
Commissioners  
of Northern  
Lighthouses.

18. Nothing in this Order shall prejudice or derogate from, or in any way alter, affect or interfere with, the jurisdiction or authority of the Commissioners of Northern Lighthouses.

Crown rights.

19. 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 Board to take, use or interfere with any land or rights—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners on behalf of Her Majesty; 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 the Crown Estate Commissioners or, as the case may be, that department.

Costs of Order.

20. 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 Board.



**SCHEDULE**

**Section 4.**

**LIMITS OF THE HARBOUR**

An area bounded by an imaginary line commencing at a point 1 metre west of the westernmost point of the existing old pier at Breasclete Bay where latitude  $58^{\circ} 13' 01''$  north intersects longitude  $6^{\circ} 45' 14''$  west and from there drawn on a bearing of  $156^{\circ}$  true for 130 metres (or thereby) to the point where latitude  $58^{\circ} 12' 57''$  north intersects longitude  $6^{\circ} 45' 11''$  west, then on a bearing of  $270^{\circ}$  true for 360 metres (or thereby) to the point where latitude  $58^{\circ} 12' 57''$  north intersects longitude  $6^{\circ} 45' 33''$  west, then on a bearing of  $000^{\circ}$  true for 370 metres (or thereby) to the point on the level of high water where latitude  $58^{\circ} 13' 09''$  north intersects longitude  $6^{\circ} 45' 33''$  west, then following the level of high water along the south-west coast of Rudha Arspaign to the point adjacent to the existing old pier first hereinbefore mentioned and there terminating.

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# Breascrete Harbour Order Confirmation Act 1980

## CHAPTER xxvii

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#### SCHEDULE

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