

ELIZABETH II



1981 CHAPTER xi

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to the Western Isles Islands Council (Berneray Ferry).
[21st May 1981]

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 Western Isles Islands Council Short title. (Berneray Ferry) Order Confirmation Act 1981.

SCHEDULE

WESTERN ISLES ISLANDS COUNCIL (BERNERAY FERRY)

Provisional Order to empower the Western Isles Islands Council to construct works at the islands of Berneray and North Uist; and for other purposes.

1973 c. 65.

Whereas under the Local Government (Scotland) Act 1973 the Western Isles Islands Council are the local authority vested with the functions of an islands council in respect of the Western Isles Islands Area:

And whereas the provision and maintenance of proper and convenient means of communication between the islands comprised in the said Area is important to the well-being of the inhabitants of the Area and of public benefit:

And whereas the inability of the present ferry across the Sound of Berneray to carry vehicular traffic is causing inconvenience to and economic difficulties for the inhabitants of the island of Berneray and is considered to be one of the factors leading to depopulation of the island:

And whereas accordingly it is expedient and considered to be of public and local advantage to replace that ferry with facilities which are suitable for a vessel capable of carrying vehicles:

And whereas it is expedient that the said Council be empowered to construct the works authorised by this Order and that the other provisions of this Order be enacted:

And whereas plans and sections showing the lines or situations and levels of the works proposed to be authorised by this Order, such plans showing also the lands which were at the time of the deposit intended to be liable to be compulsorily acquired or used under the powers of this Order and for the purposes thereof, together with a book of reference to the said plans containing the names of the owners or reputed owners, lessees or reputed lessees and occupiers of all such lands and describing the lands, were in November 1979 deposited with the sheriff-clerk of the sheriff court district of Lochmaddy at Lochmaddy, and with the sheriff-clerk of the sheriff court district of Stornoway at Stornoway:

And whereas altered plans and sections and an amended book of reference showing substituted lines, situations and levels of the works to be constructed under the powers of this Order were deposited in the month of November 1980 with the said sheriff-clerks and such further plans, sections and book of reference are hereinafter referred to respectively as the substituted plans, the substituted sections and the substituted book of reference:

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Order Confirmation Act 1981

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And whereas 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 Western Isles Islands Council Short title. (Berneray Ferry) Order 1981.

2.—(1) In this Order except where the context otherwise requires— Interpretation.

“ the Council ” means the Western Isles Islands Council;

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

“ the limits of deviation ” means the limits of deviation shown on the substituted plans;

“ substituted plans ”, “ substituted sections ” and “ substituted book of reference ” mean respectively the plans, sections and book of reference deposited in substitution for the plans, sections and book of reference deposited in Parliament and elsewhere in connection with the application for this Order;

“ 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 works ” means the works (or any of them) described in section 3 (Power to construct works) of this Order, and includes such works as renewed, replaced, enlarged or altered under subsection (2) of that section and any works constructed, executed or placed under section 5 (Subsidiary works) of this Order.

(2) All distances and lengths stated in any description of works, powers or lands in this Order shall be construed as if the words “ or thereabouts ” were inserted after each such distance and length.

(3) Any reference in this Order to a work identified by the number of that work shall be construed as a reference to the work of that number authorised by this Order.

3.—(1) Subject to the provisions of this Order, the Council may, Power to construct works.
in the lines and situations and within the limits of deviation shown on the substituted plans and according to the levels shown on the substituted sections, construct, execute and maintain the works hereinafter described, with all necessary works and conveniences connected therewith, in the Paible Electoral Division, Parishes of Harris and North Uist and the Western Isles Islands Area:—

WORK No. 1 An access road 3.3 metres wide connecting with the road leading from the south-eastern side of Loch Borve in Berneray to its junction with an existing access road leading

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to Seaforth Cottage, commencing at a point 275 metres west of the said junction and extending in a south-south-easterly direction then turning through an arc to an east-south-easterly direction and extending in all for a distance of 402 metres;

WORK No. 2 A slipway of solid construction 11 metres wide commencing 2.5 metres west-north-west of the termination of Work No. 1 and extending in a south-south-easterly direction for a distance of 88 metres;

WORK No. 3 A fendering structure half a metre wide (or thereabouts) of open construction adjoining for part of its length the eastern side of Work No. 2 commencing at a point 52.5 metres south-south-east of the commencement of that work and extending for a distance of 19.5 metres beyond the termination of that work;

WORK No. 4 Rock and soft dredging in an area measuring 40 metres by 70 metres adjoining the termination of Work No. 2;

WORK No. 5 An access road 3.3 metres wide connecting with the road from Newtonferry to the existing jetty at Loch nam Ban in North Uist commencing at a point 300 metres north-west of the jetty extending in a north-north-easterly direction and then turning through an arc to a north-easterly direction and extending in all for a distance of 529 metres;

WORK No. 6 A slipway of solid construction 11 metres wide commencing at the termination of Work No. 5 and extending in a north-easterly direction for a distance of 65.5 metres;

WORK No. 7 A fendering structure half a metre wide (or thereabouts) of open construction adjoining for part of its length the eastern side of Work No. 6 commencing at a point 30 metres north-east of the commencement of Work No. 6 and extending for a distance of 19.5 metres beyond the termination of that work;

WORK No. 8 Rock and dredging in an area measuring 20 metres by 70 metres adjoining the termination of Work No. 6.

(2) The Council may, within the limits of deviation, renew, replace, enlarge or otherwise alter temporarily or permanently the works authorised by this section.

(3) As early as possible, and in any event not less than 28 days before any of the works authorised by this section are started, the Council shall give notice in writing to the Post Office of the intended works.

Power to deviate.

4. Subject to the provisions of this Order, in the construction or execution of the works authorised by section 3 (Power to construct works) of this Order, or any part of those works, the Council may deviate laterally from the lines or situations thereof shown on the substituted plans to the extent of the limits of deviation, and may deviate vertically from the levels shown on the substituted sections to any extent not exceeding 3 metres.

5. Subject to the provisions of this Order the Council, for the purposes of or in connection with the works, may within the limits of deviation construct, execute, place and maintain all such subsidiary works and conveniences as they may find necessary or expedient for or in connection with the works. Subsidiary works.

6.—(1) If the substituted plans or the substituted 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 Council, after giving not less than 10 days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof. Correction of errors in substituted plans and book of reference.

(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 respectively in the Private Bill Office, House of Commons, and with the sheriff-clerk and with the proper officer of the Council within the meaning of section 235 of the Local Government (Scotland) Act 1973, and thereupon the substituted plans and the substituted book of reference shall be deemed to be corrected according to the certificate, and it shall be lawful for the Council to take the land or a servitude therein (as the case may be) and execute the works in accordance with the certificate. 1973 c. 65.

(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.

(5) In this section "the sheriff-clerk" means the sheriff-clerk of the sheriff court district of Lochmaddy or the sheriff-clerk of the sheriff court district of Stornoway (as the case may require).

7.—(1) A tidal work shall not be constructed, executed, renewed, replaced, 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. Tidal works not to be executed without approval of Secretary of State.

(2) If a tidal work is constructed, executed, renewed, replaced, 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 Council 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 30 days from the date when the notice is served upon the Council they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

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(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 recoverable from the Council.

Works, etc.,
to be deemed
within Western
Isles Islands
Area.

8. So much of any works constructed or executed pursuant to this Order as is not within the Western Isles Islands Area, and any alteration or enlargement of such works, shall be deemed for all purposes to be within that area.

Lights on
tidal works
during
construction.

9.—(1) The Council shall at or near a tidal work during the whole time of the construction, execution, renewal, replacement, 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.

(2) If the Council fail to comply in any respect with a direction given under this section they shall be liable on conviction in a court of summary jurisdiction to a fine not exceeding £200 and on conviction on indictment to a fine.

Survey of
tidal works.

10. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work constructed or executed by the Council or of the site upon which it is proposed to construct or execute the work, and any expenditure incurred by him in such survey and examination shall be recoverable from the Council.

Permanent
lights on
works.

11.—(1) After the completion of a tidal work the Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, 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 Council fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on conviction in a court of summary jurisdiction to a fine not exceeding £200 and on conviction on indictment to a fine.

Provision
against danger
to navigation.

12.—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Council 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 Council fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section they shall be liable on conviction in a court of summary jurisdiction to a fine not exceeding £200 and on conviction on indictment to a fine.

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 Council 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 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 30 days from the date when a notice under this section is served upon the Council, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

14. Nothing in this Order shall exempt the Council or any other person from the provisions of Part I of the Coast Protection Act 1949. Saving for
Coast
Protection
Act 1949.
1949 c. 74.

15. 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 Council to take, use or interfere with any land or rights— Crown rights.

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

(b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

without the consent in writing of the Crown Estate Commissioners or, as the case may be, that department.

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CHAPTER xi

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