

**ELIZABETH II**



**1985 CHAPTER ii**

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Highland Region (Kinlochbervie). [11th March 1985]

**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 Highland Region Short title. (Kinlochbervie) Order Confirmation Act 1985.

**SCHEDULE****HIGHLAND REGION (KINLOCHBERVIE)**

*Provisional Order to confer powers on the Highland Regional Council with respect to their pier at Loch Clash and their harbour at Loch Bervie; to authorise the construction of works; to provide for new harbour limits within which the Council shall have jurisdiction; and for other purposes.*

**WHEREAS —**

1973 c. 65.  
S.I. 1975/659  
(S. 92).

(1) By virtue of the provisions of the Local Government (Scotland) Act 1973 and the Local Authorities (Property etc.) (Scotland) Order 1974 the rights in respect of the pier known as Lochclash Pier and the rights in respect of the harbour at Loch Bervie were transferred to the Highland Regional Council (hereinafter called "the Council"):

(2) It is expedient that the limits within which the Council should exercise jurisdiction as a harbour authority so as to be able to exercise proper control of the movement of vessels in the vicinity of the said pier and harbour should be extended as in this Order provided and in the month of November 1983 a map (hereinafter referred to as "the harbour limits map") marked "Kinlochbervie Harbour" showing such extended limits was deposited at the Scottish Office, Whitehall, London, S.W.1, at the Harbour Office, Loch Bervie Pier, Kinlochbervie, Sutherland and at the offices of the Highland Regional Council, Regional Buildings, Glenurquhart Road, Inverness IV3 5NX:

(3) It is expedient that the Council should be authorised to carry out the works described in this Order for the improvement of the harbour at Loch Bervie and the facilities thereat:

(4) Estimates have been prepared by the Council with respect to the following purposes and such estimates are as follows:—

	£
An extension of the existing quay as a solid structure, the construction of buildings over part thereof and reclamation of the seabed by infilling, levelling and surfacing .. .. .	1,759,000
A further extension of the quay as a solid structure, the construction of buildings and reclamation of the seabed .. .. .	1,106,000
Dredging of the seabed .. .. .	375,000
A slipway of solid construction, the construction of buildings over part thereof and reclamation of the seabed by infilling, levelling and surfacing	712,000
	<u>3,952,000</u>

(5) A plan and sections showing the lines or situations and levels of the works to be constructed under the powers of this Order have been deposited with the sheriff clerk of the sheriff court district of Sutherland:

(6) Vessels frequently moor in the waters of Loch Clash and Loch Inchard for the purposes of seeking shelter, gutting fish and washing down and awaiting tidal entry to Loch Bervie:

(7) It is expedient that the powers and provisions contained in this Order as to moorings be enacted to enable the Council to provide for and control mooring by such vessels:

(8) Fish processing and allied activities carried out from vessels in the waters of Loch Clash and Loch Inchard may from time to time give rise to pollution and other nuisances seriously detrimental to the amenities of the coastal areas of Loch Clash and Loch Inchard, partly because of the discharge of fish offal and other products and partly by the occurrence of obnoxious odours, noise and other forms of nuisance:

(9) It is expedient that for the avoidance of such nuisances the powers of the Council to make byelaws effective within their limits of jurisdiction should be extended so to enable them to make byelaws for the control and prevention of nuisances in the said waters:

(10) It is expedient that the other provisions of this Order should be enacted:

(11) The purposes aforesaid cannot be effected without an Order confirmed by Parliament under 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:—

*Highland Region (Kinlochbervie)  
Order Confirmation Act 1985*

PART I

PRELIMINARY

Short title. 1. This Order may be cited as the Highland Region (Kinlochbervie) Order 1985.

Interpretation. 2.—(1) In this Order—

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

“Council” means the Highland Regional Council;

“deposited plan and sections” means the plan and sections deposited in connection with this Order;

“harbour” means the area referred to in section 15 (Harbour limits) of this Order;

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

“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 the high water;

“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 the works authorised by this Order or, as the case may require, any part thereof.

(2) All areas, directions, distances, lengths and widths stated in any description of works, powers or lands shall be construed as if the words “or thereby” were inserted after each such area, distance, length and width.

Incorporation of Act of 1847.

3. The following sections of the Act of 1847, that is to say, sections 1 to 5, 21, 23, 27 to 29, 33 to 46, 51 to 76, 79 to 83, 97 to 100, 102 and 103 are hereby incorporated with this Order and shall apply to the harbour subject to the following modifications, that is to say:—

(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 Council and the harbour limits respectively;

(b) 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;

(c) section 23 shall be read and have effect as if for the words “Provided that no such lease be granted for a longer term than three years” there were substituted 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, obligations and duties as the Council were subject to immediately before the granting of the lease”;

PART I  
—cont.

- (d) in section 63, for the words from “penalty” to the end of the section there shall be substituted the words “penalty not exceeding level 2 on the standard scale”;
- (e) in section 69, for the words from “not exceeding” to the end of the section there shall be substituted the words “not exceeding level 2 on the standard scale”.

## PART II

### WORKS

4.—(1) Subject to the provisions of this Order, the Council may, in the parish of Eddrachillis in the Highland Region area and on the foreshore and bed of the sea adjacent thereto and in the lines and situations and upon the lands delineated on the deposited plan and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the works hereinafter described with all necessary works and conveniences connected therewith or incidental thereto:—

Power to  
construct  
works.

#### *Work No. 1*

An extension of the existing quay as a solid structure commencing at a point on the line of mean high-water springs on the existing sheet-piled wall 4.5 metres north-west of the north-west gable of the existing fish market building and extending north-westward for a distance of 153 metres and thence turning north-eastward for a distance of 114.5 metres and thence turning south-eastward for a distance of 22 metres and thence turning eastward for a distance of 2.5 metres and thence turning southward for a distance of 45 metres and thence turning eastward for a distance of 76.5 metres and there terminating and the construction over part thereof of necessary buildings together with a reclamation of the seabed by infilling, levelling and surfacing.

#### *Work No. 2*

An extension of the said quay Work No. 1 as a solid structure commencing at a point 41 metres westward of the termination of Work No. 1 and extending south-eastward for a distance of 237.5 metres and thence turning eastward for a distance of 46 metres and there terminating and the construction over part thereof of necessary buildings together with a reclamation of the seabed by infilling, levelling and surfacing.

#### *Work No. 3*

Dredging of an area of the seabed commencing at a point 59 metres westward of the termination of Work No. 1 and

PART II  
—cont.

extending southward for a distance of 108.5 metres and thence turning south-eastward for a distance of 150 metres and there terminating.

*Work No. 4*

A slipway of solid construction commencing at a point 127 metres south-eastward of the south-east gable of the existing fish market building and 12.5 metres above (south-westward) of the line of mean high-water springs and extending northward for a distance of 100 metres and there terminating and the construction over part thereof of necessary buildings together with a reclamation of the seabed by infilling, levelling and surfacing.

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

Subsidiary  
works.

5. Subject to the provisions of this Order, the Council may within the limits of deviation from time to time erect, construct and maintain, 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.

Power to  
deviate.

6. Subject to the provisions of this Order, in constructing the works the Council may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient but, in the case of Work No. 3, not exceeding 6 metres downwards.

Power to  
dredge.

7.—(1) The Council 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, and blast any rock in, the harbour.

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 Council and may be used, sold, removed, deposited or otherwise disposed of as the Council may think fit:

Provided that the Council 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.

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

8.—(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 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 on which 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

PART II  
—cont.

(b) if it appears to the Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be a debt due from the Council to the Crown and shall be recoverable accordingly.

9. 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 Council 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 Council to the Crown and shall be recoverable accordingly.

Survey of  
tidal  
works.

10.—(1) In any 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.

Provision  
against  
danger to  
navigation.

(2) If the Council 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 the statutory maximum and on conviction on indictment to a fine.

11.—(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 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 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 a debt due from the Council to the Crown and shall be recoverable accordingly.



## PART II

—cont.

Lights on  
tidal works  
during  
construction.

12.—(1) The Council 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.

(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 summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Permanent  
lights on  
tidal works.

13.—(1) After completion of a tidal work the Council 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 Council 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 the statutory maximum and on conviction on indictment to a fine.

Works within  
parish.

14. The works shall for all purposes be deemed to be within the parish of Eddrachillis within the Highland Region area.

## PART III

## MISCELLANEOUS

Harbour  
limits.

15.—(1) The limits within which the Council shall exercise jurisdiction as a harbour authority and within which the power of the harbour authority and the power of the harbour master may be exercised shall comprise the area described in the Schedule to this Order.

1964 c. 40.

(2) Nothing in subsection (1) of this section shall empower the Council in that part of the harbour which is outwith the Council's former limits of jurisdiction to levy ship, passenger or goods dues (as defined in section 57 of the Harbours Act 1964) in respect of any pleasure craft which—

(a) is under 24 metres over all in length; and

(b) is not plying for hire or reward or engaged in commercial fishing or trans-shipment of fish.

1906 c. cxiv.

(3) In this section the expression "former limits of jurisdiction" means in respect of Loch Clash the rating limits defined in section 4 (2) of the Loch Claish Pier Order 1906 and in respect of Loch Bervie the Loch Bervie Harbour Limits defined in paragraph 9 of the Loch Bervie Harbour Order 1959.

S.I. 1959/2003  
(S. 108).

Directions  
of harbour  
master.

16.—(1) Section 52 of the Act of 1847 as incorporated with this Order shall extend to empower the harbour master to give directions prohibiting the mooring of vessels in any particular part or parts of 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 Council 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.

17.—(1) In addition to the powers of making byelaws contained in the Act of 1847, the Council may, subject to the provisions of this Order, make such byelaws as they think fit for all or any of the following purposes, that is to say:— Byelaws.

- (a) for the protection of the piers, quays and the buildings, accommodation, machinery and appliances connected therewith and for regulating the use thereof and the conduct of persons frequenting or using the same;
- (b) for the regulation and control of vessels within the harbour and persons resorting to or employed within the harbour;
- (c) for the regulation of the embarking, loading and unloading of any goods or traffic at or within the harbour;
- (d) for the control or prevention of pollution and other nuisances arising from activities carried on in relation to vessels within the harbour.

(2) Byelaws made under this section shall not have effect until confirmed by the Secretary of State, and the provisions of sections 202, 203 and 204 of the Local Government (Scotland) Act 1973 shall have effect in relation to such byelaws as if they were byelaws made under section 201 of that Act: 1973 c. 65.

Provided that the maximum penalty which may be imposed under the said section 203 in relation to such byelaws shall be a fine at level 4 on the standard scale.

18.—(1) The Council may provide, place, lay down, maintain, renew, use, remove, make charges for and control such moorings, buoys and similar apparatus within the harbour as they consider necessary or desirable for the convenience of vessels. Moorings.

(2) The Council may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the harbour.

(3) Any person who, without reasonable excuse shall place, lay down, maintain, renew or use a mooring, buoy or similar apparatus for vessels within the harbour area except under and in accordance with the terms and conditions of a licence granted under this section shall be guilty of an offence and liable on conviction in a court of summary jurisdiction to a fine not exceeding level 3 on the standard scale.

PART III  
—cont.

(4) Any licence granted under subsection (2) above shall be valid only for a period of three years commencing with the date on which it takes effect.

(5) The Council may charge a reasonable fee for the grant of a licence under this section.

Power to enter into arrangements to provide supplies.

19. The Council 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 plant, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

Reclamation of land.

20. Subject to the provisions of this Order, the Council 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 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 as the Council deem necessary:

Provided that the Council 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 24 (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.

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

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

22. Nothing in this Order shall exempt the Council from the provisions of Part I of the Coast Protection Act 1949.

Saving for Control of Pollution Act 1974.  
1974 c. 40.

23. Nothing in this Order shall affect the operation of the Control of Pollution Act 1974.

Crown rights.

24.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown, and in particular without prejudice to the generality of the foregoing nothing herein contained shall authorise the Council or any licensee of the Council to take, use, enter upon or in any manner interfere with any land or interest in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners; or

(b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

PART III  
—cont.

(2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

25. 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 Council. Costs of Order.



Section 15.

**SCHEDULE****LIMITS OF THE HARBOUR**

All the waters below mean high-water springs forming the approaches to Loch Clash, Loch Inchard, Loch Bervie, Loch Sheigra and Achriesgill Bay within the boundary commencing at the easternmost point of Eilean Dubh; thence in a northerly direction to the westernmost point of Rubha na Leacaig; thence in a northerly direction to the easternmost point of Eilean a'Chonnaidh and continuing in a straight line to the mainland and the mark of mean high-water springs; and shall include any water channels, quays, piers, jetties and other works, lands, buildings, wharves and erections which are for the time being vested in or occupied or administered by the Council.



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Controller and Chief Executive of Her Majesty's Stationery Office and  
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# Highland Region (Kinlochbervie) Order Confirmation Act 1985

## CHAPTER ii

### ARRANGEMENT OF SECTIONS

#### Section

1. Confirmation of Order in Schedule.
2. Short title.

#### SCHEDULE

#### HIGHLAND REGION (KINLOCHBERVIE)

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SCHEDULE—Limits of the harbour.