
STATUTORY INSTRUMENTS

1993 No. 2908 (S.259)

HARBOURS, DOCKS, PIERS AND FERRIES

The Western Isles Islands Council (Brevig)
Harbour Empowerment Order 1993

Made - - - - 23rd November 1993

Coming into force - - 1st December 1993

Whereas the Secretary of State has, in pursuance of paragraph 1A of Part I of Schedule 3 to the Harbours Act 1964(1), determined that the application for this Harbour Empowerment Order is made in relation to a project which falls within Annex II to Council Directive No.85/337/EEC(2) on the effects of certain public and private projects on the environment but whose characteristics do not require that it should be made subject to an environmental assessment:

And whereas the making of this Order is not opposed:

Now therefore, the Secretary of State, in exercise of the powers conferred on him by section 16 of the said Act, and of all other powers enabling him in that behalf, and on the application of the Western Isles Islands Council, hereby makes the following Order:

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Western Isles Islands Council (Brevig) Harbour Empowerment Order 1993 and shall come into force on 1st December 1993.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—
“the Council” means the Western Isles Islands Council;

(1) 1964 c. 40; section 16 and Schedule 3 were amended by the Transport Act 1981 (c. 56) and Schedule 3 was further amended by regulation 4 of the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S.I.1988/1336), section 18 and Schedule 6, paragraphs 3, 4 and 14; and by the Transport and Works Act 1992 (c. 42) section 63 and Schedule 3, paragraphs 2 and 10.
(2) OJ No. L175, 5.7.85, p.40.

“the deposited plan and sections” means the plan and sections signed on behalf of the Secretary of State and marked “Plan and sections referred to in the Western Isles Islands Council (Brevig) Harbour Empowerment Order 1993” of which copies are deposited at the offices of the Secretary of State for Scotland and with the Council at Sandwick Road, Stornoway, Isle of Lewis, PA87 2BW;

“the harbourmaster” means any person appointed as such pursuant to article 3(3) of this Order, and includes his deputed and assistants and any person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of harbourmaster;

“the harbour premises” means the quays, piers, landing places and all other works, land and buildings for the time being vested in, or occupied or administered by the Council as part of the undertaking;

“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 deposited plan;

“signed plan” means the plan signed in triplicate by an Under Secretary in the Scottish office Agriculture and Fisheries Department, two copies of which have been deposited at that Department and one copy of which has been deposited at the offices of the Council at Sandwick Road, Stornoway, Isle of Lewis, PA87 2BW;

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

“the undertaking” means the harbour undertaking for the time being of the Council at Brevig on the island of Lewis;

“the works” means the works authorised by this Order, or as the case may require any part thereof, and includes any work constructed pursuant to article 26 (Subsidiary works) of this Order.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

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

PART II

HARBOUR REGULATION

Harbour jurisdiction

3.—(1) The area within which the Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 and within which the powers of the harbourmaster shall be exercised shall comprise the harbour premises, together with so much of the waters of Broad Bay (or Loch a' Tuath) below the level of high water as is shown coloured blue on the signed plan, being an area within the following imaginary straight lines:—

- (a) a line from a point at Latitude 58° 16.04'N, Longitude 6° 17.96'W to a point at Latitude 58° 15.76'N, Longitude 6° 17.96'W;
- (b) a line from that point to a point at Latitude 58° 15.76'N, Longitude 6° 16.76'W;
- (c) a line from that point to a point at Latitude 58° 16.23'N, Longitude 6° 16.76'W.

(2) In the event of any discrepancy between the harbour limits as described in paragraph (1) above and the limits shown on the signed plan, the limits described in the said paragraph shall be deemed to be correct and shall prevail.

(3) For and incidental to their functions under this Order, the Council may employ and appoint a harbourmaster.

Moorings

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

(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 except under and in accordance with the terms and conditions of a licence granted under this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any licence granted under paragraph (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 article.

Power to dredge

5.—(1) The Council may from time to time, as may appear to them to be necessary or desirable for the purposes of the undertaking, deepen, widen, dredge, scour and improve the bed and foreshore of the harbour and the approaches thereto, and may blast any rock in that area.

(2) Subject to the provisions of article 35 (Crown rights) of this Order, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894⁽³⁾) 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 any materials 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.

General byelaws

6.—(1) The Council may from time to time make byelaws for the efficient management and regulation of the harbour and the undertaking.

(2) Without prejudice to the generality of paragraph (1) above, byelaws made under this article may provide for—

- (a) preventing and removing obstructions or impediments within the harbour, and at or in or on the quays and other works and accesses of the harbour;
- (b) regulating the berthing or removal of vessels lying in any part of the harbour;
- (c) regulating the management and superintendence of the harbour;
- (d) regulating the conduct of the owners, masters and crews of vessels and the conduct of boatmen with regard to the rate of speed at which they may proceed within the harbour and the mode of navigating vessels;

(3) 1894 c. 60.

- (e) regulating the conduct of persons working in or resorting to any fish market operated or maintained by the Council and for preventing nuisances at any such market;
 - (f) regulating the use of any fish market provided, operated or maintained by the Council;
 - (g) regulating the conveyance to and the laying down at or on the quays of the harbour, of all goods intended for shipment;
 - (h) regulating the conveyance, landing, laying down, discharge and removal of goods, gear, equipment, timber, logs, floats, or rafts of timber and other items within the harbour.
- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 3 on the standard scale;
 - (b) relate to the whole of the harbour or to any part thereof;
 - (c) make different provisions for different parts of the harbour or in relation to difference classes of vessels.

(4) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and, if he was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

(5) For byelaws made under this article the confirming authority for the purposes of section 202 of the Local Government (Scotland) Act 1973(4) shall be the Secretary of State; and where the Secretary of State proposes to exercise the power of modification conferred on him by subsection (10) of the said section 202 and the modification appears to him to be substantial, he shall inform the Council 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 Council and by other persons who have been informed of it.

Power to detain vessels, etc., in certain circumstances

7. If any person contravenes any of the provisions of this Order or of any byelaw made thereunder by the Council and any damage is occasioned thereby to the property of the Council, they may in addition to any right they have to recover from any such person the cost of repairing or making good any such damage, detain any vessel or other property belonging to or in charge of such person or belonging to his employers until the cost has been paid or until reasonable security therefor has been given to the Council.

Special directions

8.—(1) The harbourmaster may give a direction under this article in respect of a vessel anywhere in the harbour for any of the following purposes:—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at harbour premises;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) as to the use of the motive power of the vessel;

(4) 1973 c. 65.

- (f) prohibiting or restricting the use of fires or lights;
- (g) as to the use of ballast;
- (h) requiring the removal from any part of the harbour of a vessel if—
 - (i) it is on fire; or
 - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink; or
 - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment thereof by other vessels or persons; or
 - (iv) its removal is necessary to enable maintenance or repair work to be carried out to harbour premises or to premises adjacent thereto,and requiring its removal outside the harbour if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) A special direction may be given in any manner considered by the harbourmaster to be appropriate.

Failure to comply with directions

9.—(1) The master of a vessel who fails to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Without prejudice to any other defence, it shall be a defence to a charge made pursuant to paragraph (1) above that the master had reasonable ground for believing that to comply with the direction in question would have endangered life or imperilled the safety of any vessel or its cargo, or that for other reason such compliance was impracticable.

Enforcement of special directions

10.—(1) Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the harbourmaster may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board a vessel to attend to a special direction, the harbourmaster may proceed as if the direction had been given and not complied with:

Provided that the powers of this paragraph shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

(3) Expenses incurred by the Council in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of the Council in respect of the vessel.

Master's responsibility in relation to special directions

11. The giving of a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, to persons on board the vessel, to the cargo or any other person or property.

PART III

CHARGES

Liability for charges

12.—(1) Charges payable to the Council on or in respect of—

- (a) a vessel, shall be payable by the owner or master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

(2) Where a charge payable to the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

Exemptions, rebates, etc., in respect of charges

13.—(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

Security for charges

14. The Council may require a person who incurs or is about to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Council may detain the vessel in the harbour or goods on or in harbour premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

Liens for charges

15.—(1) A person, who by agreement with the Council collects charges on their behalf and who pays or gives security for the payment of charges on goods in his possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in his custody, and in that event he shall have a like lien on the goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place

16. An officer of the Council may prevent a vessel from using a landing place provided by the Council, if the master of the vessel refuses to pay the charges for such use.

Exemptions from charges

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

- (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; or
 - (iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;
 - (b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs 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 Transport in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.
- (3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the harbour without mooring or making use of any facilities provided by the Council.

Conditions as to payment of charges

- 18.—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in their published list of charges.
- (2) Without prejudice to the generality of paragraph (1) above the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

PART IV

FISH MARKET

Power to provide, operate and maintain fish market

19. The Council may provide, operate and maintain a fish market for the sale of fish at any convenient place in or adjacent to the harbour and on any lands belonging to the Council or which they may acquire by agreement with all such appliances and fittings as they may deem necessary for the purposes thereof and they may divide or allocate any parts or part thereof into stalls or other defined or limited places and make provision for the cleansing and general management thereof and may provide and operate in connection with the fish market such services and facilities as may be requisite or expedient and they shall have the sole operation, superintendence and management thereof and they may fix and regulate the hours during which the said fish market or any part thereof shall be open.

Power to make charges

20. The Council may demand, take and recover such reasonable charges, rates and dues as they think fit for the use of any fish market provided, operated or maintained by them and for services and facilities provided by them in relation thereto.

Officer for fish market

21. The Council may appoint such person or persons as they think fit to superintend the traffic within the fish market and to carry out the regulations, byelaws and orders of the Council thereat.

Power to lease fish market and enter into agreements

22. The Council may for such consideration and upon such terms and conditions and subject to such restrictions and for such period as they think fit sell, feu, lease, excamb or otherwise dispose of the whole or any part of the lands which from time to time form the fish market and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

PART V

WORKS

Power to construct works

23. Subject to the provisions of this Order, the Council may in the lines and situations and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited sections, construct, execute and maintain the works hereinafter described, with all necessary works and conveniences connected therewith, in the Coll Electoral Division, parish of Stornoway on the island of Lewis in the Western Isles Islands Area–

Work No.1

The construction at Brevig of a harbour comprising a rectangular tidal basin commencing at a point at NB48265 39003 and extending in a generally south-south-easterly direction for a distance of 50 metres to a point at NB48300 38950 and there terminating, having a width of 30 metres, by excavation from solid rock bounded on its northern, eastern and southern sides and partially on its western side by concrete lined walls.

Work No.2

An access channel excavated from the foreshore and seabed to provide access for vessels between the sea and the harbour (Work No.1), commencing at a point at NB48285 38929 and extending in a northerly direction for a distance of 80 metres to a point at NB48290 39000, thence in a generally north-north-easterly direction for a distance of 8 metres to a point at NB48295 38995 and there terminating.

Work No.3

A vehicle parking and storage area of solid construction and of irregular shape, partially on the foreshore and partially on land adjacent thereto lying westward of Work No.1, commencing at a point at NB48215 38965 and extending in a generally east-north-easterly direction for a distance of 90 metres to a point at NB48265 39015 and there terminating, having a maximum width of 80 metres and a minimum width of 30 metres and surrounded on its seaward face by a rock-armoured slope.

Work No.4

A slipway of solid construction 4 metres wide commencing at a point at NB48270 38975 on the southern side of Work No.3 and extending in a generally south-south-easterly direction for a distance of 20 metres to a point at NB48280 38965 and there terminating.

Power to renew, etc., works

24. Subject to the provisions of this Order the Council may, within the limits of deviation, renew, replace, or otherwise alter temporarily or permanently the works.

Power to deviate

25. Subject to the provisions of this Order, in the construction or execution of 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.

Subsidiary works

26. 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 and maintain all such subsidiary or incidental works and conveniences as may be necessary or expedient for or in connection with those works.

Works deemed to be within Western Isles Islands Area

27. So much of any work constructed or placed pursuant to this Order as is not within the Western Isles Islands Area shall be deemed for all purposes to be within that Area.

PART VI

MISCELLANEOUS

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

28.—(1) A tidal work shall not be constructed, executed, renewed, replaced 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, executed, renewed, replaced or altered in contravention of 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 executed the works specified in the notice; or
- (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.

Lights on tidal works during construction

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

30.—(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 article 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.

Survey of tidal works

31. 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 it is proposed to construct and execute the work and any expenditure incurred by him in such survey and examination shall be recoverable from the Council.

Provision against danger to navigation

32.—(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 article or to comply in any respect with a direction given under this article 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.

Abatement of works abandoned or decayed

33.—(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.

(2) Where a work authorised by this Order 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.

As to section 10 of Harbours, Piers and Ferries (Scotland) Act 1937

34. Section 10 (application of 10 & 11 Vict. c.27, &C.) of the Harbours, Piers and Ferries (Scotland) Act 1937(5) shall not apply to the harbour.

Crown Rights

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

- (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.

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

St Andrew's House,
Edinburgh
23rd November 1993

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Western Isles Islands Council to construct a harbour at Brevig, in the Coll Electoral Division, parish of Stornoway on the island of Lewis in the Western Isles Islands Area. The Order confers on the Council jurisdiction as a harbour authority and invests in the Council powers of control and administration in relation to the harbour.

The applicants for the Order are the Western Isles Islands Council, Sandwick Road, Stornoway, PA87 2BW.