SCOTTISH STATUTORY INSTRUMENTS

2004 No. 171

HARBOURS, DOCKS, PIERS AND FERRIES

The Highland Council (Inverie) Harbour Empowerment Order 2004

Made - - - -	*1st April 2004*
Coming into force - -	*2nd April 2004*

Whereas the Highland Council has applied in writing for a harbour empowerment order under section 16 of the Harbours Act 1964(**1**);

And whereas the Scottish Ministers(**2**) in pursuance of paragraph 5(b) of Schedule 3 to the said Act(**3**),determined that the application for this Harbour Empowerment Order is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(**4**) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment;

And whereas the Scottish Ministers have directed the applicant to supply them with the information referred to in Annex III to the Directive in accordance with that paragraph;

And whereas the Scottish Ministers have considered the information supplied under that paragraph;

Now, therefore, the Scottish Ministers, in exercise of the powers conferred by section 16 of the said Act (being the appropriate Ministers under section 16(1) of that Act for the purposes of making this order) and of all other powers enabling them in that behalf and being satisfied that the making of this order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, hereby make the following Order:

(**1**) 1964 c. 4 0; section 16 and Schedule 3 were amended by the Transport Act 1981 (c. 56) section 18 and Schedule 6, paragraphs 3, 14(2) and 14(3); and by the Transport and Works Act 1992 (c. 42), section 63 and Schedule 3.

(**2**) The functions of the Scottish Ministers were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**3**) Schedule 3 was substituted by regulation 15(4) of the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I.1999/3445).

(**4**) O.J. No. L175, 5.7.85, p.40; Council Directive 85/337/EEC was amended by Council Directive 97/11/EC (O.J. No L73, 14.3.1997, p.5).

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Highland Council (Inverie) Harbour Empowerment Order 2004 and shall come into force on 2nd April 2004.

Interpretation

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

"Act of 1991" means the Highland Regional Council (Harbours) Order Confirmation Act 1991(**5**);

"Act of 1997" means the Town and Country Planning (Scotland) Act 1997(**6**);

"annexed map" means the map annexed to this Order;

"building" includes a structure or any other erection;

"construct" includes make, build, erect, install, provide, execute, place, alter, maintain and renew and "construction" shall be construed accordingly;

"the Council" means the Highland Council;

"deposited plans" and "deposited sections" mean respectively the plans and sections which have been deposited in connection with this Order, two copies of which have been deposited with the Scottish Ministers at the Scottish Executive, one copy of which has been deposited at the offices of the Council;

"enactment" means any enactment, whether public general or local, and includes an enactment in this Order and any order, byelaw, rule, regulation, scheme and other instrument having effect by virtue of an enactment;

"government department" includes any part of or any member of staff of the Scottish Administration which shall have the meaning defined in section 126(6) of the Scotland Act 1998(**7**);

"harbour" means the harbour at Inverie as described at Article 3(4);

"harbour undertaking" means harbour undertaking of the Council authorised by this Order;

"land" includes land covered by water, any interest in land and any servitude or right in or over land;

"the Land Compensation Act" means the Land Compensation (Scotland) Act 1963(**8**);

"the limits of deviation" means the limits so shown on the deposited plans;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace and "maintenance" shall be construed accordingly;

"road" has the meaning given to it by section 151 of the Roads (Scotland) Act 1984(**9**);

"sheriff" means sheriff principal of the sheriffdom of Grampian, Highland and Islands and includes any sheriff of the Fort William sheriff court district;

"sheriff clerk" means sheriff clerk of the sheriffdom of Fort William district;

(**5**) 1991 c. xii.
(**6**) 1997 c. 8.
(**7**) 1998 c. 46.
(**8**) 1963 c. 51.
(**9**) 1984 c. 54.

"tribunal" means Lands Tribunal for Scotland; and

"works" means works authorised by this Order, or as the case may require, any part thereof and includes any work constructed pursuant to Article 5 (Power to carry out works) and any work carried out pursuant to Article 7 (Subsidiary Works).

(2) All areas, directions, distances, lengths and widths as stated in any description of works, powers or lands other than Article 6 (Power to deviate) of this Order shall be construed as if the words "or thereabouts" were inserted after each such area, direction, distance, length and width and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

(3) 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.

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

Incorporation of the Highland Regional Council (Harbours) Order

3.—(1) The Highland Regional Council (Harbours) Order (except sections 59, 62, 63 and 64) as confirmed by the Act of 1991, 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 subject to the modifications stated in paragraphs (2) and (3) below.

(2) In construing, for the purposes of this Order, the provisions of the Highland Regional Council (Harbours) Order as incorporated with this Order–

(a) the expression "the Council" means the Highland Council;

(b) the expression "harbour limits plans" means the location plan showing the limits of harbour jurisdiction at Inverie, two copies of which have been deposited with the Scottish Ministers at the Scottish Executive and one copy of which has been deposited at the offices of the Council; and

(c) the expression "the undertaking" means the harbour undertaking of the Council at Inverie authorised by this Order.

(3) Section 3(4) of the Highland Regional Council (Harbours) Order shall have effect as if for the reference to section 634 of the Merchant Shipping Act 1894(**10**) there were substituted a reference to section 193 of the Merchant Shipping Act 1995(**11**).

(4) Schedule 1 of the Highland Regional Council (Harbours) Order shall have effect as if there were added the following provision–

"Inverie

All waters below the level of high water forming Inverie Bay commencing at a point NG 176318 800318; thence in a south-westerly direction for a distance of 310 metres to a point NG 176100 800100; thence in a south-easterly direction for a distance of 566 metres to a point NG 176500 799700; thence in a north-easterly direction for a distance of 322 metres to a point NG 176728 799928; on the level of high water."

Incorporation of the Lands and Railways Clauses Acts

4.—(1) The Lands Clauses Acts (except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845)(**12**), so far as they are applicable for the purposes of, and are not varied by or inconsistent with, the provisions of this Order, are incorporated with this Order.

(**10**) 1894 c. 60.
(**11**) 1995 c. 21.
(**12**) 1845 c. 19.

(2) In construing, for the purposes of this Order, the provisions of the Lands Clauses Acts as incorporated with this Order–

(a) this Order shall be deemed to be the special Act;

(b) the Council shall be deemed to be the promoters of the undertaking or the company; and

(c) the works shall be deemed to be the works or the undertaking.

(3) Section 70 of the Railway Clauses Consolidation (Scotland) Act 1845(**13**) is incorporated with this Order.

PART II

WORKS

Power to carry out works

5.—(1) Subject to the provisions of this Order, the Council may, in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans and sections, carry out the following works in the parish of Glenelg, Highland, and on the foreshore and bed of the sea adjacent thereto together with all necessary and proper works and conveniences connected therewith or incidental thereto–

Work No.1:	An alignment and berthing structure of solid construction commencing at a point 176475,800175 and extending in a south-south-westerly direction for a distance of 95 metres to a point 176441,800086; thence in a north-westerly direction for a distance of 35 metres to terminate at a point 176414,800108.
Work No.2:	A slipway of solid construction 12 metres wide and associated access road commencing at a point 176482,800171 and extending in a south-south-westerly direction for a distance of 70 metres to a point at 176457,800105 and there terminating.
Work No.3:	The demolition of the existing pier commencing at a point 176667,800005 and extending in a west-south-westerly direction for a direction of 54 metres to a point 176620,799980; thence in a south-westerly direction for a distance of 17 metres to terminate at point 176628,799965.

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

(**13**) 1845 c. 33.

Power to deviate

6. Subject to the provisions of this Order, in carrying out the works the Council may deviate laterally from the lines or situations thereof as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as 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.

Subsidiary works

7.—(1) Subject to the provisions of this Order, the Council may within the limits of deviation from time to time erect, construct, maintain and operate, whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

(2) The works shall be deemed for all purposes to be within the parish of Glenelg, Highland.

Obstructing works

8. Any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of or in constructing the works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale, and shall in addition be liable to repay to the Council as a debt any expenses incurred by them in making good any damages resulting from such obstruction, damage, moving or removal.

Works to be deemed part of harbour undertaking

9. The works shall be deemed for all purposes to be part of the harbour undertaking and all byelaws, rules and regulations of the Council for the time being in force relating to the harbour undertaking shall apply to the works and may be enforced by the Council accordingly.

Period for completion of works

10. If the works are not completed by 31st December 2013, the powers by this Order granted to the Council for constructing the works shall cease except as to so much thereof as is then substantially commenced.

PART III

LAND

Power to take lands

11. Subject to the provisions of this Order, the Council may compulsorily enter upon, take and use all or any of the lands and moorings shown on the annexed map and the deposited plans and described in the book of reference contained in the Schedule to this order, which they may require for the purposes of the works; including for the improvement and development of any lands fronting or abutting on or adjacent to the harbour or for the purposes of recoupment, reinstatement or exchange or for any other purposes of this Order;