SCOTTISH STATUTORY INSTRUMENTS

2001 No. 262

HARBOURS, DOCKS, PIERS AND FERRIES

The Comhairle nan Eilean Siar (Aird Mhor, Barra) Harbour Empowerment Order 2001

Made - - - -	*9th July 2001*
Coming into force - -	*10th July 2001*

Whereas Comhairle nan Eilean Siar has applied in writing to the Scottish Ministers for a harbour empowerment order under section 16 of the Harbours Act 1964(**1**);

And whereas the Scottish Ministers(**2**) have, in pursuance of paragraph 5 of Part 1 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 No.85/337/EEC(**4**) on the assessment of 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.

And whereas the Scottish Ministers are satisfied as mentioned in subsection (5) of the said section 16;

Now therefore, the Scottish Ministers, in exercise of the powers conferred by section 16 of the said Act, and of all other powers enabling them in that behalf, hereby make the following Order:

PART I

PRELIMINARY

Citation, commencement and extent

1.—(1) This Order may be cited as the Comhairle nan Eilean Siar (Aird Mhor, Barra) Harbour Empowerment Order 2001 and shall come into force on 10th July 2001.

(2) This Order extends to Scotland only.

(**1**) 1964 c. 40; section 16 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraph 3, 4 and 14 and by the Transport and Works Act 1992 (c. 42), section 63 and Schedule 3, paragraph 2.
(**2**) The functions of the Secretary of State 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. L 175, 5.7.85, p.40.

Interpretation

2.—(1) In this Order–

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847(**5**);

"the authorised 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 8 below;

"the Comhairle" means Comhairle nan Eilean Siar;

"the deposited plan" and "the deposited sections" mean respectively the plan and sections signed on behalf of the Scottish Ministers and marked "Plan and sections referred to in the Comhairle nan Eilean Siar (Aird Mhor, Barra) Harbour Empowerment Order 2001" of which copies are deposited at the offices of the Scottish Ministers at the Scottish Executive, Victoria Quay, Edinburgh, EH6 6QQ and with the Comhairle at Sandwick Road, Stornoway, Isle of Lewis HS1 2BW;

"general direction" means a direction given under article 24 below;

"the harbour" means the harbour of Aird Mhor, Barra, the area of which is described in article 4 of, and Schedule 1 to, this Order;

"the harbour map" means the map referred to in article 4 below;

"the harbour master" means any person appointed as such by the Comhairle, and includes his deputies and assistants and any other person for the time being authorised by the Comhairle to act, either generally or for a specific purpose, in the capacity of harbour master;

"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 Comhairle as part of the harbour undertaking;

"the harbour undertaking" means the harbour undertaking of the Comhairle at Aird Mhor, Barra authorised by this Order;

"the level of high water" means the level of mean high-water springs;

"the limits of deviation" means the limits of deviation for the authorised works shown on the deposited plan;

"special direction" means a direction given under article 26 below;

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

"vessel" means every description of vessel, however propelled or moved, and includes any thing constructed or used to carry persons or goods by water, a seaplane on or in the water, a hovercraft and a hydrofoil.

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

(**5**) 1847 c. 27.

Incorporation of the 1847 Act

3.—(1) The 1847 Act, except sections 6 to 19, 22, 25, 28, 49, 50, 60, 66, 67, 79 to 82 and 97 to 103, so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with and forms part of this Order.

(2) For the purposes of the 1847 Act, as so incorporated–

(a) the expression "the special Act" means this Order;

(b) the expressions "the Promoters of the undertaking" and "the undertakers" mean the Comhairle;

(c) the expression "the harbour, dock or pier" means the harbour;

(d) the meaning of the word "vessel" as defined in article 2 above shall be substituted for the meaning assigned to that word by section 3 of the 1847 Act;

(e) section 63 shall be read and have effect as if for the words from "penalty" to the end of the section there were substituted the word "on summary conviction to a fine not exceeding level 2 on the standard scale.";

(f) section 69 shall be read and have effect as if for the words from "forfeit" to the end of the section there were substituted the words "be liable on summary conviction to a fine not exceeding level 2 on the standard scale.";

(g) section 73 shall be read and have effect as if for "level 1" there were substituted "level 2.".

Harbour jurisdiction

4.—(1) The Comhairle 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 exercisable within the area the boundaries of which are described in Schedule 1 to this Order and shown in red on the harbour map together with so much of the harbour premises as are not situated within that area.

(2) In the event of any discrepancy between the boundaries as described in paragraph (1) above and in Schedule 1 and the boundaries shown on the harbour plan, the harbour map shall prevail.

PART II

WORKS

Power to construct works

5. Subject to the provisions of this Order, the Comhairle may, within the limits of deviation, and according to the levels shown on the deposited sections, construct, execute and maintain the works described in Schedule 2 to this Order, together with all necessary works and conveniences connected therewith, in the Barra and Vatersay Electoral Division, parish of South Uist and Barra, in na h'Eileanan an Iar.

Power to renew, etc. works

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

Power to deviate

7. Subject to the provisions of this Order, in the construction or execution of the authorised works the Comhairle 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 necessary or convenient.

Subsidiary works

8. Subject to the provisions of this Order the Comhairle, for the purposes of or in connection with the authorised 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 the authorised works.

Reclamation of land

9.—(1) Subject to the provisions of this Order, the Comhairle may, within 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 seabed and foreshore as the Comhairle deem necessary.

(2) The Comhairle shall not exercise the powers conferred by paragraph (1)–

(a) in relation to any land not owned by them unless they first obtain the 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 article 39 (Crown Rights) below, without the consent in writing of the Crown Estate Commissioners or, as the case may be, the government department.

Power to dredge

10.—(1) Subject to the provisions of this Order, the Comhairle may from time to time deepen, dredge, scour, cleanse, alter and improve the harbour for the purpose of affording uninterrupted means of access to the harbour or any part of it or for the accommodation of vessels.

(2) Subject to paragraph (3) below the Comhairle may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995(**6**)) from time to time dredged by them from the harbour.

(3) No material referred to in this article shall–

(a) be disposed of in contravention of any enactment relating to the disposal of waste; or

(b) be deposited below the level of mean high water except in such places and in accordance with such conditions and restrictions as may be approved or directed by the Scottish Ministers.

Fine for obstructing works

11. Any person who intentionally obstructs any person acting under the authority of the Comhairle in setting out the lines of 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 guilty of an offence and 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 Comhairle as a debt any expenses incurred by them in making good any damage resulting from such obstruction, moving or removal.

(**6**) 1995 c. 21.

Works deemed to be within na h'Eileanan an Iar

12. So much of the authorised works as is not within the administrative area known as na h'Eileanan an Iar shall be deemed for all purposes to be within that area.

Tidal works not to be executed without approval of the Scottish Ministers

13.—(1) A tidal work shall not be constructed, executed, renewed, replaced or altered except in accordance with plans and sections approved by the Scottish Ministers and subject to any conditions and restrictions imposed by the Scottish Ministers before the work is begun.

(2) If a tidal work is constructed, executed, renewed, replaced or altered in contravention of this article–

(a) the Scottish Ministers may by notice in writing require the Comhairle 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 Comhairle they have failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice; or

(b) if it appears to the Scottish Ministers urgently necessary to do so, they may themselves remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from the Comhairle as a debt.

Lights on tidal works during construction

14.—(1) During the whole time of demolition, construction, renewal or alteration of any tidal work the Comhairle 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 Comhairle fail to comply in any respect with paragraph (1) above 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

15.—(1) After the completion of a tidal work the Comhairle 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 Comhairle 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

16. The Scottish Ministers may at any time they deem 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 them in such survey or examination shall be recoverable from the Comhairle.

Provision against danger to navigation

17.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Comhairle shall forthwith notify the Commissioners of Northern Lighthouses and shall lay