SCOTTISH STATUTORY INSTRUMENTS

1999 No. 203

HARBOURS, DOCKS, PIERS AND FERRIES

The Highland Council (Muck) Harbour Empowerment Order 1999

Made - - - -	*21st December 1999*
Coming into force - -	*23rd December 1999*

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

And whereas it appears to the Scottish Ministers(**2**) in pursuance of paragraph A2 of Schedule 3 to the said Act(**3**), that the application 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 where 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 complied with the requirements of paragraph 3A of Schedule 3 to the said Act(**5**).

Now, therefore, the Scottish Ministers, in exercise of the powers conferred on them by section 16 of the said Act(**6**) 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 making the following Order:

(**1**) 1964 c. 40; section 16 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), 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 amended by the Transport Act 1981, section 18 and Schedule 6, paragraph 4(2) to (7) and 12) and by the Transport and Works Act 1992, Schedule 3, paragraph 10. Paragraph A2 was inserted by the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996 (S.I.1996/1946).

(**4**) O.J. No. L175, 5.7.85, p.40.

(**5**) Paragraph 3A was inserted by the Harbour Works (Assessment of Environmental Effects) Regulations 1996 (S.I. 1996/1946).

(**6**) Section 57 contains a definition of "the Minister" relevant to the exercise of the powers under which this Order is made.

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Highland Council (Muck) Harbour Empowerment Order 1999 and shall come into force on 23rd December 1999.

Interpretation

"Act of 1991" means the Highland Regional Council (Harbours) Order Confirmation Act 1991(**7**);

"Act of 1997" means the Town and Country Planning (Scotland) Act 1997(**8**);

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

"building" includes 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 book of reference", "deposited plans" and "deposited sections" mean respectively the book of reference, plans and sections which have been deposited in connection with this Order, two copies of which have been deposited at the Scottish Executive and 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(**9**);

"harbour" means the harbour of Muck as authorised by this Order;

"harbour undertaking" means the harbour undertaking of the Council at Muck 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(**10**);

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

"the limits of land to be acquired or used" means the limits marked "limit of land to be acquired or used" 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(**11**);

"sheriff" means any sheriff for the Fort William Sheriff Court district;

(**7**) 1991 c.xii.
(**8**) 1997 c. 8.
(**9**) 1998 c. 46.
(**10**) 1963 c. 51.
(**11**) 1984 c. 54.

"sheriff clerk" means any sheriff clerk within Fort William Sheriff Court district;

"tribunal" means the Land Tribunal for Scotland; and

"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 5 (power to carry out works) and any work carried out pursuant to the incorporation of the Highland Regional Council (Harbours) Order(**12**) in this Order.

In this Order, except where the context otherwise requires–

(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 plan.

(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.

Incorporation of 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) to (4) 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 plans showing the limits of harbour jurisdiction at Muck, two copies of which have been deposited 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 Muck 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(**13**) there were substituted a reference to section 193 of the Merchant Shipping Act 1995(**14**).

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

"Muck

All waters below the level of high water forming Port Mor commencing at a point NM 142201 778535, thence in a south easterly direction for a distance of 650 metres to a point NM 142644 778062, thence in a north easterly direction for a distance of 490 metres to a point NM 143058 778320, thence in a north westerly direction for a distance of 756 metres to a point NM 142670 778968, on the level of high water.".

(**12**) Confirmed by section 1 of the Act of 1991 and as set out in the Schedule thereto.
(**13**) 1894 c. 60.
(**14**) 1995 c. 21.

Incorporation of Lands Clauses Act

4.—(1) The Lands Clauses Acts (except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845)(**15**), 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.

(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 of the undertaking.

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 and maintain the following works in the island of Muck, 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: A slipway of solid construction 15 metres wide and associated access road commencing at a point at NM 142417 779159 and extending ina south south-westerly direction for a distance of 62 metres to a point at NM 142392 779102 and there terminating;

Work No. 2: A breakwater of solid construction commencing at a point NM 142495 779113 extending in a south-westerly direction for a distance of 165 metres to a point at NM 142388 778987 and there terminating;

Work No. 3: Dredging of an area of seabed 110 metres wide commencing from the north west side of Work No. 1 at a point NM 142357 779163 and extending 259 metres in a south south-westerly direction to terminate at a point NM 142310 778908;

Work No. 4: An alignment structure commencing from the south east side of Work No. 1 at a point NM 142421 779144 and extending 86 metres in a south south-westerly direction to terminate at a point NM 142387 779064;

Work No. 5: Dredging of an area of seabed 30 metres wide commencing at a point NM 142559 778680 and extending 35 metres in a south-easterly direction to terminate at a point NM 142580 778651;

Work No. 6: Dredging of an area of seabed 70 metres wide commencing at a point NM 142700 778475 and extending 53 metres in a south-easterly direction to terminate at a point NM 142728 778430;

Work No. 7: Access road and embankment construction commencing at a point NM 142247 779330 and extending in a south-easterly direction to terminate at a point NM 142408 779174.

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

(**15**) 1845 c. 19.

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 island of Muck, 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.

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 2009, 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–

(a) the lands shown on the annexed map and the deposited plans and described in the deposited book of reference 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; and

(b) so much of the land specified in columns (1) and (2) of the Schedule to this Order (being land shown on the annexed map and the deposited plans as within the limits of land to be acquired or used) as may be required for the purpose specified in relation to that land in column (3) of that Schedule.