SCOTTISH STATUTORY INSTRUMENTS

1999 No. 202

HARBOURS, DOCKS, PIERS AND FERRIES

Scottish Natural Heritage (Rum) Harbour Empowerment Order 1999

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

Whereas Scottish Natural Heritage have 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 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 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 make 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) (Amendment) 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 Scottish Natural Heritage (Rum) Harbour Empowerment Order 1999 and shall come into force on 23rd December 1999.

Interpretation

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

"Act of 1995" means the Merchant Shipping Act 1995(**7**);

"deposited plans" and "deposited sections" mean respectively 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 Scottish Natural Heritage;

"government department" includes any part of or any member of the staff of the Scottish Administration which shall have the meaning defined in section 126(6) of the Scotland Act 1998(**8**);

"harbour limits plan" means the plan showing the limits of jurisdiction in the harbour, two copies of which have been deposited at the Scottish Executive and one copy of which has been deposited at the offices of Scottish Natural Heritage;

"harbourmaster" means any person appointed as such pursuant to article 15(4) of this Order, and includes his deputies and assistants and any person for the time being authorised by Scottish Natural Heritage to act, either generally or for a specific purpose, in the capacity of harbourmaster;

"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 Scottish Natural Heritage as part of the undertaking;

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

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

"master" in relation to a vessel means any person for the time being having or taking the command, charge or management thereof;

"Scottish Natural Heritage" means the body established by the Natural Heritage (Scotland) Act 1991(**9**);

"undertaking" means the harbour undertaking for the time being of Scottish Natural Heritage on the island of Rum;

"vessel" means a ship, boat or craft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968(**10**) or any other amphibious vehicle or a seaplane; and

(**7**) 1995 c. 21.
(**8**) 1998 c. 46.
(**9**) 1991 c. 28.
(**10**) 1968 c. 59.

"works" means the works authorised by the Order, or as the case may require, any part thereof and includes any work constructed pursuant to article 3 (power to carry out works).

(2) All areas, directions, distances, lengths and widths as stated in any description of works, powers or lands other than article 4 (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.

PART II

WORKS

Power to carry out works

3.—(1) Subject to the provisions of this Order, Scottish Natural Heritage 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 work on the island of Rum, 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 constructions 15 metres wide and associated access road commencing 200 metres east north east of the north eastern corner of the school house at a point of NM 141124 799098 and extending in a north north easterly direction for a distance of 105 metres to a point NM 141173 799191 and there terminating;

Work No 2: Dredging of an area of seabed 178 metres wide commencing at a point 238 metres east north east of the north eastern corner of the school house at a point at NM 141145 799155 and extending in a north easterly direction for a distance of 132 metres to a point NM 141213 799268 and there terminating;

Work No 3: An alignment structure commencing from the south east side of Work No. 1 at a point at NM 141162 799145 and extending in a north north easterly direction for 80 metres to a point NM 141200 799216 and there terminating.

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

Power to deviate

4. Subject to the provisions of this Order, in carrying out the works Scottish Natural Heritage 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

5.—(1) Subject to the provisions of this Order, Scottish Natural Heritage 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 Rum, Highland.

Obstructing works

6. Any person who intentionally obstructs any person acting under the authority of Scottish Natural Heritage in setting out the lines of or in constructing the authorised 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

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

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

8.—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed 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 or while work is still in progress.

(2) If a tidal work is demolished, constructed, renewed, reconstructed or altered in contravention of this article or of any condition or restriction imposed under this article–

(a) the Scottish Ministers may by notice in writing require Scottish Natural Heritage at its 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 Scottish Natural Heritage it has 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 Scottish Natural Heritage as a debt.

Survey of tidal works

9. The Scottish Ministers may at any time if they deem it expedient order a survey and examination of a tidal work or a site upon which it is proposed to construct the work and any expense incurred by them in such a survey and examination shall be recoverable from Scottish Natural Heritage as a debt.

Provision against danger to navigation

10.—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof, Scottish Natural Heritage 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 Scottish Natural Heritage fails to comply in any respect with the provisions of 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

11.—(1) Where a tidal work is abandoned or suffered to fall into decay the Scottish Ministers may by notice in writing require Scottish Natural Heritage 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 Scottish Ministers think proper.

(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 to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Scottish Ministers may include that part of the work or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon Scottish Natural Heritage they have failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from Scottish Natural Heritage as a debt.

Lights on tidal works during construction

12.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work Scottish Natural Heritage 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 Scottish Natural Heritage fails to comply in any respect with a direction given under this article it 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 works

13.—(1) After completion of a tidal work Scottish Natural Heritage 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 Scottish Natural Heritage fails to comply in any respect with a direction given under this article it 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.

Period for completion of works

14. If the works are not completed by 31st December 2009, the powers by this Order granted to Scottish Natural Heritage for constructing the works shall cease except as to so much thereof as is then substantially commenced.