SCOTTISH STATUTORY INSTRUMENTS

1999 No. 199

HARBOURS, DOCKS, PIERS AND FERRIES

The National Trust for Scotland (Canna) Harbour Revision Order 1999

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

Whereas the National Trust for Scotland have applied in writing for a harbour revision order under section 14 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 14 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 14 and Schedule 3 were amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4, 12 and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraphs 1 and 10.

(**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 14(7) contains a definition of "the appropriate 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 National Trust for Scotland (Canna) Harbour Revision Order 1999 and shall come into force on 23rd December 1999.

Interpretation

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

"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 the Trust;

"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(**7**);

"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 the Trust;

"harbourmaster" means any person appointed as such pursuant to Article 15(4) of this Order, and includes his deputes and assistants and any person for the time being authorised by the Trust 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 the Trust 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;

"Trust" means the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the National Trust for Scotland Order Confirmation Act 1935(**8**);

"undertaking" means the harbour undertaking for the time being of the Trust on the island of Canna;

"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(**9**) or any other amphibious vehicle or a seaplane; 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 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

(**7**) 1998 c. 46.
(**8**) 1935 c.ii.
(**9**) 1968 c. 59.

"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, the Trust 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 Canna, 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 at a point NG 127785 805140 and extending in a south westerly direction for a distance of 45 metres and then extending in a south easterly direction for a distance of 105 metres to a point NG 127786 805072 and there terminating and infilling between the slipway and the existing land.

Work No 2: Dredging of an area of seabed 35 metres wide commencing from the termination of Work No 1 and extending 26 metres in a south easterly direction to terminate at a point NG 127804 805052.

(2) The Trust 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 the Trust 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, the Trust 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 Canna, Highland.

Obstructing works

6. Any person who intentionally obstructs any person acting under the authority of the Trust 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 the Trust for the time being in force relating to the harbour undertaking shall apply to the works and may be enforced by the Trust 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 the Trust at is 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 Trust 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 the Trust 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 the Trust 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, the Trust 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 Trust 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 the Trust 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 the Trust 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 the Trust 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 the Trust 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 Trust 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 the Trust 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 Trust 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 the Trust for constructing the works shall cease except as to so much thereof as is then substantially commenced.

PART III

HARBOUR REGULATION

Harbour jurisdiction

15.—(1) The Trust shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 and the powers of the harbourmaster shall be exercisable within the harbour limits.

(2) The harbour limits shall comprise the harbour premises, together with all waters below the level of high water forming the Sound of Canna commencing on the western boundary from the north end of the footbridge linking Canna with Sanday at a point NG 126670 804971, thence in a south easterly direction for a distance of 33 metres to a point NG 126692 804947, and on the eastern boundary from the east shore of Rubha Carr Innis at a point NG 127973 805061, thence in a southerly direction for a distance of 473 metres to a point NG 127976 804588, on the level of high water.

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

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