

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

ARRANGEMENT OF ARTICLES

PART I

PRELIMINARY

Article

1. Citation, commencement and extent.
2. Interpretation.
3. Incorporation of 1847 Act.
4. Harbour jurisdiction.

PART II

WORKS

5. Power to construct works.
6. Power to renew, etc., works.
7. Power to deviate.
8. Subsidiary works.
9. Reclamation of land.
10. Power to dredge.
11. Fine for obstructing works.
12. Works deemed to be within na h'Eileanan an Iar.
13. Tidal works not to be executed without approval of the Scottish Ministers.
14. Lights on tidal works during construction.
15. Permanent lights on tidal works.
16. Survey of tidal works.
17. Provision against danger to navigation.

18. Abatement of works abandoned or decayed.

PART III
HARBOUR REGULATION

19. Power to lay down moorings.
20. Licensing of moorings.
21. Offences as to moorings, etc.
22. General byelaws.
23. Provisions as to damage.
24. General directions to vessels.
25. Publication of general directions.
26. Special directions to vessels.
27. Failure to comply with directions.
28. Enforcement of special directions.
29. Master's responsibility in relation to directions.
30. Power to lease harbour land and enter into agreements.

PART IV
CHARGES

31. Liability for charges.
32. Exemptions, rebates, etc. in respect of charges.
33. Security for charges.
34. Liens for charges.
35. Refusal to pay charges for landing place, etc.
36. Exemption from charges.
37. Conditions as to payment of charges.

PART V
MISCELLANEOUS

38. Power to enter into arrangements to provide supplies.
39. Crown Rights.

SCHEDULE 1 – HARBOUR LIMITS

SCHEDULE 2 – WORKS

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(a);

And whereas the Scottish Ministers(b) have, in pursuance of paragraph 5 of Part 1 of Schedule 3 to the said Act(c), 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(d) on the

(a) 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.

(b) 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).

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

(d) O.J. No. L 175, 5.7.85, p.40.

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.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

“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.

(a) 1847 c.27.

(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.

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(a)) 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.

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.

(a) 1995 c.21.

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 down such buoys, exhibit such lights and take such other steps as the Commissioners of Northern Lighthouse shall from time to time direct.

(2) If the Comhairle fail 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

18.—(1) Where a tidal work is abandoned or suffered to fall into decay the Scottish Ministers may by notice in writing require the Comhairle 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 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 the 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 Comhairle, 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 by them in so doing shall be recoverable from the Comhairle as a debt.

PART III HARBOUR REGULATION

Power to lay down moorings

19. The Comhairle may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as they consider necessary or desirable for the convenience of vessels.

Licensing of moorings

20.—(1) The Comhairle may from time to time grant a licence to any person to place, lay down, maintain, renew or use moorings, buoys and similar apparatus for vessels in the harbour.

(2) Any licence granted under paragraph (1) shall be valid for a period of three years commencing with the date on which it takes effect.

(3) The Comhairle may charge a reasonable fee for the grant of a licence under this article.

Offences as to moorings, etc.

21. Any person who, without reasonable excuse, shall place, lay down, maintain, renew, or use a mooring, buoy or similar apparatus for vessels within the harbour except under and in accordance with the terms and conditions of a licence granted under article 20 above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

General byelaws

22.—(1) The Comhairle may from time to time make byelaws for the efficient management and regulation of the harbour and the harbour undertaking.

(2) Without prejudice to the generality of paragraph (1) above, byelaws may be made under this article for the following purposes—

- (a) regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, quays, piers, jetties, staiths, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings in the harbour);
- (b) regulating the admission to, and the movement within, and the departure of vessels from the harbour or the removal of vessels, and for the good order and government of vessels whilst within the harbour;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;
- (d) regulating the navigation, berthing and mooring of vessels within the harbour and their speed and manner of navigation, and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the harbour;
- (f) regulating the conduct of all persons in the harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
- (g) regulating the placing and maintenance of moorings within the harbour;
- (h) preventing and removing obstructions or impediments within the harbour;

- (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour;
 - (j) regulating the use of ferries within the harbour;
 - (k) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
 - (l) regulating the holding of regattas and other public events in the harbour;
 - (m) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in subparagraph (k) above;
 - (n) regulating the launching of vessels within the harbour;
 - (o) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
 - (p) regulating or preventing the use of fires and lights within the harbour, and within any vessels within the harbour;
 - (q) regulating the movement, speed and parking of vehicles within the harbour;
 - (r) regulating the use of any fish market provided by the Comhairle and the conduct of persons working therein or resorting thereto, and for preventing nuisance or annoyance thereat;
 - (s) regulating the exercise of the powers vested in the harbour master;
 - (t) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
 - (u) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora, or geological or physiographical features in the harbour and all other natural features.
- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 4 on the standard scale;
 - (b) relate to the whole of the harbour or to any part thereof;
 - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels.

(4) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and, if he was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

(5) Where the Scottish Ministers propose to exercise the power of modification conferred on them by subsection (10) of section 202 of the Local Government (Scotland) Act 1973^(a), and the modification appears to them to be substantial, they shall inform the Comhairle and require them to take any steps they consider necessary for informing persons likely to be concerned with the modification and they shall not confirm the byelaws until such period has elapsed as they think reasonable for consideration of, and comment upon, the proposed modification by the Comhairle and by other persons who have been informed of it.

Provisions as to damage

23.—(1) This article applies to any damage caused to any of the authorised works or to any other work or property of the Comhairle in the harbour—

- (a) by any person who contravenes any provision of this Order, or of any byelaw made in relation to the harbour by the Comhairle; or
- (b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Comhairle may detain any vessel which caused the damage, and any other property belonging to or in charge of the person

(a) 1973 c.65.

causing the damage, or belonging to his employers, until the cost of the damage has been paid or until reasonable security therefor has been given to the Comhairle.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article is without prejudice to—

- (a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act, or failure to act, gave rise to the damage; or
- (b) any right of the Comhairle under any other enactment, agreement or rule of law; or
- (c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the harbour by the Comhairle.

General directions to vessels

24.—(1) The Comhairle may give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation and the safety of persons and property in the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) for designating areas, routes or fairways in the harbour which vessels are to use or refrain from using for movement, mooring or anchorage;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) for prohibiting—
 - (i) entry into the harbour by a vessel which for any reason would be or likely to become a danger to other vessels in the harbour, or to persons, property, flora or fauna in the harbour or within the harbour premises; and
 - (ii) entry into or navigation within any of the main fairways during any temporary obstruction thereof; and
- (e) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for effecting any of the purposes of this paragraph.

(2) A direction under this article may apply—

- (a) to all vessels or to a class of vessels designated in the direction;
- (b) to the whole of the harbour or to a part designated in the direction; or
- (c) at all times or at times designated in the direction,

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) of this paragraph.

(3) The Comhairle may revoke or amend any general direction.

Publication of general directions

25.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by the Comhairle as soon as practicable once in a newspaper circulating in the locality of the harbour and, if the notice relates to the giving or amendment of a direction, shall state a place at which copies thereof may be inspected and bought and the price thereof.

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Comhairle to be appropriate.

Special directions to vessels

26.—(1) The harbourmaster may give a direction under this article in respect of a vessel anywhere in the harbour for any of the following purposes:—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;

- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at harbour premises;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) as to the use of the motive power of the vessel;
- (f) prohibiting or restricting the use of fires or lights;
- (g) as to the use of ballast;
- (h) requiring the removal from any part of the harbour of a vessel if–
 - (i) it is on fire;
 - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life (including wildlife) or property;
 - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment thereof by other vessels or persons; or
 - (iv) its removal is necessary to enable maintenance or repair work to be carried out to harbour premises or to premises adjacent thereto; and
- (i) requiring its removal outside the harbour if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) In an emergency the harbour master may give special directions applicable to all vessels or to a particular class of vessels for any of the purposes mentioned in paragraph (1) above.

(3) A special direction may be given in any manner considered by the harbour master to be appropriate.

Failure to comply with directions

27.—(1) The master of a vessel who fails to comply with a general direction or special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Without prejudice to any other defence, it shall be a defence to a charge made pursuant to paragraph (1) above that the master had reasonable ground for believing that to comply with the direction in question would have endangered life or imperilled the safety of any vessel or its cargo, or that for other reason such compliance was impracticable.

Enforcement of special directions

28.—(1) Without prejudice to any other remedy available to the Comhairle, if a special direction is not complied with within a reasonable time, the harbourmaster may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to attend to a special direction, the harbourmaster may proceed as if the direction had been given and not complied with.

(3) The powers of paragraph (2) shall not be exercised–

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

(4) Expenses incurred by the Comhairle in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of the Comhairle in respect of the vessel.

Master's responsibility in relation to directions

29. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, to persons on board the vessel, to the cargo or any other person or property.

Power to lease harbour land and enter into agreements

30. The Comhairle may for such consideration and upon such terms and conditions and subject to such restrictions and for such period as they think fit sell, feu, lease, excamb or otherwise dispose of the whole or any part of the lands which from time to time form the harbour and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

PART IV CHARGES

Liability for charges

31.—(1) Charges payable to the Comhairle on or in respect of—

- (a) a vessel, shall be payable by the owner or master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

(2) Where a charge payable to the Comhairle may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

Exemptions, rebates, etc., in respect of charges

32.—(1) The Comhairle may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to, charges and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Comhairle to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

Security for charges

33. The Comhairle may require a person who incurs or is about to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Comhairle, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Comhairle may detain the vessel in the harbour or goods on or in harbour premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

Liens for charges

34.—(1) A person, who by agreement with the Comhairle collects charges on their behalf and who pays or gives security for the payment of charges on goods in his possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Comhairle give security for charges on goods in his custody, and in that event he shall have a like lien on the goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place, etc.

35. An officer of the Comhairle may prevent a vessel from using a landing place or any other facilities provided by the Comhairle, if the master of the vessel refuses to pay the charges for such use.

Exemptions from charges

36.—(1) Except in so far as may be agreed between the Comhairle and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Comhairle to levy charges shall extend to authorise them to levy charges on—

- (a) a vessel—
 - (i) belonging to or in the service of Her Majesty or any member of the Royal Family; or
 - (ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or
 - (iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or
 - (iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;
- (b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;
- (c) troops landed at the harbour premises or a person employed by the Secretary of State for Defence while in the execution of his duty;
- (d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department of Transport, Local Government and the Regions and the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the harbour without mooring or making use of any facilities provided by the Comhairle.

Conditions as to payment of charges

37.—(1) Charges shall be payable subject to such terms and conditions as the Comhairle may from time to time specify in their published list of charges.

(2) Without prejudice to the generality of paragraph (1) above the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Comhairle by the owner or master of a vessel or a person using a service or facility of the Comhairle as the Comhairle may require in connection with the assessment or collection of a charge.

PART V

MISCELLANEOUS

Power to enter into arrangements to provide supplies

38. The Comhairle may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, freezing plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

Crown Rights

39.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Comhairle to take, use, enter upon or in any manner interfere with, any land or interest in land (including any portion of the shore or bed of the sea or of any river channel, creek, bay or estuary) or any rights of whatsoever description—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) above may be given unconditionally, or subject to terms and conditions.

St Andrew's House,
Edinburgh
9th July 2001

ANGUS MACKAY
A member of the Scottish Executive

SCHEDULE 1
HARBOUR LIMITS

An area of the Inner Oitir Mhor in the Sound of Barra enclosed on its seaward sides by imaginary lines drawn:-

- (a) in an arc of radius 640 metres, (with centre at reference point NF 072179 803815), from a point on the north coast of Aird Mhor, (reference point NF 071639 804082) to a point on the northern shore of Lamalum, (reference point NF 072712 803563);
- (b) in a straight line from a point on the west shore of Lamalum, (reference point NF 072806 803222), to a point on the northern shore of Aird Mhor, (reference point NF 072554 803162),

and on its landward sides by the level of high water within the area so enclosed.

SCHEDULE 2

WORKS

Work No. 1. A rubble mound breakwater, protected on its external faces by rock armour, commencing at reference point NF 072088 803889, curving for a distance of 150 metres in a generally east-north-easterly direction and then in a generally south-easterly direction and terminating at reference point NF 072227 803857.

Work No. 2. A slipway consisting of a reinforced concrete slab over rock fill on the bed of the sea, protected on its south face by rock armour and on its north face by a vertical concrete face, and a timber alignment structure, commencing at reference point NF 072119 803821 extending in a generally easterly direction for a distance of 97 metres and terminating at reference point NF 072216 803811.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes Comhairle nan Eilean Siar as the harbour authority for an area described in Schedule 1 at Aird Mhor on the island of Barra, na h'Eileanan an Iar. The Order authorises the Comhairle to construct the works described in Schedule 2 consisting of a breakwater, shipway and alignment structure. The Order confers on the Comhairle duties and powers in relation to the works and the harbour, and makes related provisions.

The applicant for the Order is Comhairle nan Eilean Siar, Sandwick Road, Stornoway, HS1 2BW.

£3.00

© Crown Copyright 2001

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
200 08/01 19593

