

2020 No. 173

HARBOURS, DOCKS, PIERS AND FERRIES

**The Highland Council (Uig, Isle of Skye) Harbour Revision
Order 2020**

Made - - - -

5th June 2020

Coming into force - -

6th June 2020

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The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (3) of the Harbours Act 1964(a) and all other powers enabling them to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act(b).

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to Ministers by the Highland Council (“the Council”) being the authority engaged in improving, maintaining or managing the harbour, and
- (b) the Ministers are 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 and facilitating the efficient and economic transport of goods and passengers by sea.

In accordance with paragraph 4 of Schedule 3 to that Act(c), Ministers have decided that the application relates to a project which falls within Annex II to Directive 2011/92/EU(d), of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment and, taking into account the criteria set out in Annex III to that Directive, that the project is a relevant project.

In accordance with paragraph 6 of that Schedule, Ministers have—

- (a) informed the applicant of that decision, and the reasons for it, and
- (b) given an opinion to the applicant about the extent of the information referred to in Annex IV to that Directive which the applicant would be required to supply in the environmental statement and—
 - (i) in giving that opinion Ministers have taken into account the matters in subparagraph (3) of that paragraph, and
 - (ii) before giving that opinion Ministers have consulted the applicant and such bodies with environmental responsibilities as Ministers thought appropriate.

In accordance with paragraph 8 of that Schedule, Ministers have directed the applicant to supply them with an environmental statement and as required by paragraph 9 of that Schedule, the applicant has complied with that direction.

(a) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(c) Schedule 3 was substituted by S.I. 1999/3445 and relevantly amended by the Transport (Scotland) Act 2005 (asp 12), section 46(5) and by the Transport and Works (Scotland) Act 2007 (asp 8) section 25(5).

(d) O.J. L 26, 28.1.2012, p.1. Directive 2011/92/EU repealed and recast the provisions contained in Council Directive 85/337/EC (O.J. L 175, 5.7.1985, p.40, as amended by Council Directive 97/11/EC (O.J. L 73, 14.3.1997, p.5) and Directive 2003/35/EC of the European Parliament and of the Council (O.J. L 140, 5.6.2009, p.114)).

Notices have been published by the applicant in accordance with the requirements of paragraph 10 of that Schedule.

In accordance with paragraph 15 of that Schedule, Ministers have—

- (a) consulted, and
- (b) sent the environmental statement and any further information falling within paragraph 10A(2) of that Schedule, to,

such bodies who were likely to have an interest in the project by reason of their environmental responsibilities as Ministers thought appropriate.

All objections to the application have been withdrawn or paragraph 18(1A) of that Schedule applied in respect of those objections. No representations under paragraph 10(2)(f), or 10A(4)(d), of that Schedule have been made.

In accordance with paragraph 19(1) of that Schedule, Ministers have considered—

- (a) the environmental statement,
- (b) the result of the consultations under paragraph 15 of that Schedule,
- (c) any objections made and not withdrawn,
- (d) any representations made under paragraph 10(2)(f), or 10A(4)(d) of that Schedule.

In accordance with paragraph 19(2) of that Schedule, Ministers have decided to make this Order in the form of the draft submitted to them.

PART 1 PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Highland Council (Uig, Isle of Skye) Harbour Revision Order 2020 and comes into force on the day after the day on which it is made.

(2) The 1991 Order so far as relating to the harbour and this Order may be cited together as the Uig, Isle of Skye, Orders 1991 and 2020.

Interpretation

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

“the 1964 Act” means the Harbours Act 1964(**a**),

“the 1991 Order” means the Highland Regional Council (Harbours) Order 1991(**b**),

“the 1995 Act” means the Merchant Shipping Act 1995(**c**),

“the 1998 Act” means the Scotland Act 1998(**d**),

(a) 1964 c.40.

(b) Confirmed by the Highland Regional Council (Harbours) Order Confirmation Act 1991 c.xii.

(c) 1995 c.21.

(d) 1998 c.46.

“the Commissioners of Northern Lighthouses” means the general lighthouse authority for Scotland, a body corporate constituted by section 193 of, and Schedule 8 of, the Merchant Shipping Act 1995(a),

“the Council” means the Highland Council,

“deposited plans, sections and elevations” means the plans, sections and elevations which are bound together and signed in duplicate with reference to this Order and marked “The Highland Council (Uig, Isle of Skye) Harbour Revision Order 2020 Plans, Sections and Elevations” and which are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ and at the offices of the Council at the Highland Council Headquarters, Glenurquhart Road, Inverness IV3 5NX, and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations,

“the harbour” means the harbour at Uig Bay for which the Council is the harbour authority by virtue of section 3 of the 1991 Order the limits of which are described in Schedule 1 of the 1991 Order,

“level of high water” means the level of mean high water springs,

“limits of deviation” means the limits of deviation shown on sheet 1,

“relevant person” in relation to any property, rights or interests to which section 90B(5) of the 1998 Act applies means the person who manages that property, or those rights and interests,

“vessel” means a ship, boat, raft or water-craft of any description however propelled or moved and includes anything constructed, adapted for or used to carry persons or goods by water or for floating on or being submerged in water (whether permanently or temporarily) and shall include but not be limited to a displacement craft, a personal water craft, a sea plane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle, and

“works” means the works authorised by this Order, or as the case may require, any part of those works and includes any work constructed pursuant to article 3 (power to construct works) or article 5 (subsidiary works).

(2) In this Order, all areas, directions, distances, lengths, widths and heights as stated in any description of works, powers or lands other than article 4 (power to deviate) shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width and height.

(3) Any reference in this Order to a work identified by a number is as a reference to the work of that number authorised by this Order.

(4) Any reference in this Order to a numbered sheet is a reference to that numbered sheet in the deposited plans, sections and elevations.

PART 2

WORKS

Power to construct works

3.—(1) Without affecting the powers which may be exercisable by the Council under section 5 of the 1991 Order, the Council may in the lines and situations and upon the lands delineated on sheet 1, and within the limits of deviation, and according to the levels shown on the deposited sections or elevations for each work, construct and maintain in the harbour the following works, with all necessary works and conveniences connected with them—

Work No. 1 – A widening and extension of the existing berthing structure on the western side and to the south of the existing structure formed of solid construction and

(a) 1995 c.21. Schedule 8 was amended by section 55 of the Scotland Act 2016 c.11.

incorporating scour protection and a wave protection wall the location of which is shown on sheet 1 and the section of which is shown on sheet 2. Sited on Work No. 1—

(a) a passenger waiting shelter (relocated from its location on the existing berthing structure), and

(b) a fuel tank for vessels,

the locations of which on Work No. 1 are shown on sheet 1 and elevations of which are shown on sheets 3 and 4.

Work No. 2 – A widening of King Edward Pier of open pile construction on the northern side the location of which is shown on sheet 1 and a section of which is shown on sheet 2.

Work No. 3 – A mechanically operated single deck linkspan, providing access to and from vessels, being a replacement of the existing linkspan and extending from King Edward Pier including supporting piled bankseat and lifting frame and supporting dolphin structures, the location of which is shown on sheet 1 and a section of which is shown on sheet 2.

(2) The Council may, for the purposes of the works authorised by paragraph (1), demolish and remove the whole or part of any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the bed of the harbour and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the harbour and so much of the seabed and of the foreshore as may be reclaimed shall be deemed to be operational land within the meaning of section 215 of the Town and Country Planning (Scotland) Act 1997.

(3) Without affecting the general power conferred under paragraph (2), the Council may in connection with the construction of the works on any land owned by it, demolish and remove so much of—

(a) the existing linkspan, the location of which is shown on sheet 1, and

(b) the existing passenger waiting shelter, the location of which is shown on sheet 1,

as may be required.

(4) Subject to the provisions of this Order, the Council may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

Power to deviate

4. In carrying out the works authorised by article 3 (power to construct works) the Council may deviate laterally from the lines or situations of those works as shown on sheet 1 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 or elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Subsidiary works

5.—(1) The Council may from time to time within the limits of deviation provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the works or the operation of the harbour, and for this purpose the Council may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, fendering, dolphins, mooring posts, pontoons, covered passenger walkways, catwalks, equipment, signage, machinery and appliances and such other works and conveniences (including levelling of surfaces) as may be necessary or expedient.

(2) Without affecting paragraph (1), the Council may within the limits of deviation carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and loading of passengers, and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations, electrical lines and telecommunications apparatus.

Power to dredge

6.—(1) Without affecting the powers of the Council which may be exercised within the harbour under section 4 of the 1991 Order, the Council may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve the bed, shores and channels of the sea as lie within the limits of the harbour and may use, appropriate or dispose of the materials (other than wreck within the meaning of Section 255 (interpretation) of the 1995 Act), from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste, or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

Obstruction of works

7. Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out the lines of or in constructing the works, or
- (b) without reasonable excuse interferes with, 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 Council as a debt any expenses incurred by it in making good any damage resulting from such obstruction, moving or removal.

Works to be deemed part of the harbour

8. The works shall be deemed for all purposes to be part of the harbour and the Uig, Isle of Skye, Orders 1991 and 2020 together with all byelaws, directions, rules and regulations of the Council for the time being in force relating to the harbour shall apply to the works and may be enforced by the Council accordingly.

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 Council.

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 Council shall as soon as practicable 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 Council fails to comply in any respect with the provisions of this article, the Council 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 allowed to fall into decay the Scottish Ministers may by notice in writing require the Council at its own expense either to repair and restore the work or any part of it, 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 allowed 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 of it, 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 Council it has 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 Council.

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 Council 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 Council 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 tidal works

13.—(1) After completion of a tidal work the Council 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 Council fails 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.

Period for completion of works

14.—(1) Subject to paragraph (2), if the works are not substantially completed within ten years from the coming into force of this Order or such extended time as the Scottish Ministers may on the application of the Council allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Council for making and maintaining the works shall cease except as to so much of those works as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under article 5 (subsidiary works) or any works to reconstruct, extend, enlarge, replace or relay the works authorised by article 3(1) (power to construct works).

Works to be within area of the Council

15. The works shall, to the extent that they lie outwith the area of the Council, be annexed to and incorporated within that area.

PART 3

MISCELLANEOUS

Defence of due diligence

16.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for the Council to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 10 (provision against danger to navigation),
- (b) article 12 (lights on tidal works during construction), and
- (c) article 13 (permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Council shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

Saving for Commissioners of Northern Lighthouses

17. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

Crown rights

18.—(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 that generality, nothing in this Order authorises the Council or any licensee to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners,
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land or (as the case may be) the relevant person, or
- (c) 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) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

(3) In this article, “government department” includes any part of, or any member of the staff of, the Scottish Administration (which shall have the same meaning as in section 126(6) of the 1998 Act).

NICK GOSLING

A member of the staff of the Scottish Ministers

St Andrew’s House,
Edinburgh
5th June 2020

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the Highland Council to construct and maintain works and other harbour facilities at the Council's harbour at Uig Harbour, Isle of Skye. The works comprise the widening and extension of the existing berthing facility including the construction of a wave protection wall on the extended part, the widening of part of King Edward Pier and the construction of a linkspan with bankseat and lifting dolphins, being a replacement of the existing linkspan, and associated infrastructure at the harbour.

The Order also authorises the construction of subsidiary works and confers a power to dredge for the purposes of constructing and maintaining the works.

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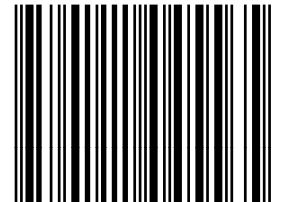
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen's Printer for Scotland.

£6.90

S202006111009 06/2020 19585

<http://www.legislation.gov.uk/id/ssi/2020/173>

ISBN 978-0-11-104556-5



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