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STATUTORY INSTRUMENTS

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**1995 No. 2971 (S.214)**

**HARBOUR, DOCKS, PIERS AND FERRIES**

The Western Isles Islands Council  
(Leverburgh) Harbour Revision Order 1995

*Made - - - - 13th November 1995*

*Coming into force - - 17th November 1995*

Whereas the Secretary of State has, in pursuance of paragraph 1A of Part I of Schedule 3 to the Harbours Act 1964(1), determined that the application for this Harbour Revision Order is made in relation to a project which falls within Annex II to Council Directive No.85/337/EEC(2) on the 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:

Now therefore, the Secretary of State, in exercise of the powers conferred on him by section 14 of the said Act, (being the appropriate Minister under section 14(7) of that Act for the purpose of making this Order), and of all other powers enabling him in that behalf, and on the written application of the Western Isles Islands Council, and being satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, hereby makes the following Order

**PART I**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Western Isles Islands Council (Leverburgh) Harbour Revision Order 1995 and shall come into force on 17th November 1995.

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(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) section 63 and Schedule 3, paragraphs 1 and 10; and Schedule 3 was further amended by regulations 4 to 8 of the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S.I.1988/1336) as applied and amended in relation to Scotland by the Harbour Works (Assessment of Environmental Effects) Regulations 1992 (S.I. 1992/1421).

(2) OJ No. L175, 5.7.85, p. 40.

## **Interpretation**

2.—(1) In this Order, unless the content otherwise requires—

“charges” means the charges, rates, tolls or dues which the Council are for the time being authorised to demand, take and recover in relation to the undertaking;

“the Council” means the Western Isles Islands Council;

“the deposited plans and sections” means the plans and sections signed on behalf of the Secretary of State and marked “Plans and sections referred to in the Western Isles Islands Council (Leverburgh) Harbour Revision Order 1995” of which copies have been deposited at the office of the Secretary of State for Scotland at St Andrew’s House, Edinburgh EH1 3DG and with the Council at Sandwick Road, Stornoway, Isle of Lewis, PA87 2BW;

“the harbour” means the area of tidal waters within 500 metres in any direction from the landward end of the existing pier at Leverburgh at a point at NG 01238636 and includes the harbour premises;

“the harbourmaster” means any person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of harbourmaster;

“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 Council as part of the undertaking;

“the level of high water” means the level of mean high-water springs;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“tidal work” means so much of any work as is on, under or over tidal waters or tidal lands below the level of high water;

“the undertaking” means the harbour undertaking for the time being of the Council at Leverburgh on the Island of Harris;

“the 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 25 below.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area 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.

## **PART II**

### **HARBOUR REGULATION**

#### **Moorings**

3.—(1) The Council 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.

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

(3) 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 this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

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

### **Power to dredge**

4.—(1) The Council may from time to time, as may appear to them to be necessary or desirable for the purposes of the undertaking, deepen, widen, dredge, scour and improve the bed and foreshore of the harbour and the approaches thereto, and may blast any rock in that area.

(2) Subject to the provisions of article 29 below, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894(3)) taken up or collected in the course of such operations shall be the property of the Council and may be used, sold, removed, deposited or otherwise disposed of as the Council may think fit:

Provided that the Council shall not lay down or deposit any materials below the level of high water except in such position as the Secretary of State may approve and subject to such conditions and restrictions as he may impose.

### **Power to detain vessels, etc., in certain circumstances**

5. If any person contravenes any of the provisions of this Order and any damage is occasioned thereby to the property of the Council, they may in addition to any right they have to recover from any such person the cost of repairing or making good any such damage, detain any vessel or other property belonging to or in charge of such person or belonging to his employers until the cost has been paid or until reasonable security therefor has been given to the Council.

### **Special directions**

6.—(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) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (b) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at harbour premises;
- (c) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (d) as to the use of the motive power of the vessel;
- (e) prohibiting or restricting the use of fires or lights;
- (f) as to the use of ballast;
- (g) requiring the removal from any part of the harbour of a vessel if—
  - (i) it is on fire; or
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink; or
  - (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;
  - (h) requiring the removal outside the harbour of a vessel if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life (including wildlife) or to property.
- (2) A special direction may be given in any manner considered by the harbourmaster to be appropriate.

#### **Failure to comply with special directions**

- 7.—(1) The master of a vessel who fails to comply with a 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 grounds 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**

- 8.—(1) Without prejudice to any other remedy available to the Council, 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:  
Provided that the powers of this paragraph 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.
- (3) Expenses incurred by the Council in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of the Council in respect of the vessel.

#### **Master’s responsibility in relation to special directions**

9. The giving of 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.

## **PART III CHARGES**

#### **Charges for harbour facilities**

- 10.—(1) The Council may demand, take and recover in respect of anything done or provided by them or on their behalf in relation to the harbour such reasonable charges as they may determine.
- (2) In paragraph (1) above “charges” does not include ship, passenger or goods dues.

### **Liability for charges**

11.—(1) Charges payable to the Council 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 Council 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**

12. The Council 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.

### **Security for charges**

13. The Council 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 Council, 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 Council 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**

14.—(1) A person, who by agreement with the Council collects charges on their behalf and who pays or gives security for the payment of charges in 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 Council 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**

15. An officer of the Council may prevent a vessel from using a landing place provided by the Council, if the master of the vessel refuses to pay the charges for such use.

### **Exemptions from charges**

16.—(1) Except in so far as may be agreed between the Council and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council 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 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 Council.

#### **Conditions as to payment of charges**

17.—(1) Charges shall be payable subject to such terms and conditions as the Council 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 Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

## **PART IV**

### **FISH MARKET**

#### **Power to provide, operate and maintain fish market**

18. The Council may provide, operate and maintain a fish market for the sale of fish at any convenient place in or adjacent to the harbour and on any lands belonging to the Council or which they may acquire by agreement with all such appliances and fittings as they may deem necessary for the purposes thereof and they may divide or allocate any parts or part thereof into stalls or other defined or limited places and make provision for the cleansing and general management thereof and may provide and operate in connection with the fish market such services and facilities as may be requisite or expedient and they shall have the sole operation, superintendence and management thereof and they may fix and regulate the hours during which the said fish market or any part thereof shall be open.

#### **Power to make charges**

19. The Council may demand, take and recover such reasonable charges, rates and dues as they think fit for the use of any fish market provided, operated or maintained by them and for services and facilities provided by them in relation thereto.

#### **Officer for fish market**

20. The Council may appoint such person or persons as they think fit to superintend the traffic within the fish market and to carry out the regulations, byelaws and orders of the Council thereat.

#### **Power to lease fish market and enter into agreements**

21. The Council may for such consideration and upon such terms and conditions and subject to such restrictions and for such period as they think fit, feu, lease, excamb or otherwise dispose of

the whole or any part of the lands which from time to time form the fish market and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

## PART V

### WORKS

#### **Power to construct works**

**22.** Subject to the provisions of this Order, the Council may in the lines and situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections, construct, execute and maintain the works hereinafter described, with all necessary works and conveniences connected therewith, in the Obbe Electoral Division, parish of Harris on the island of Harris in the Western Isles Islands Area—

#### **Work No.1**

A slipway of solid construction commencing at a point at NG 101256886291, 87 metres east-south-east of the southern extremity of the existing pier and extending in a north-easterly direction for a distance of 81 metres to a point at NG 101335886343 and there terminating.

#### **Work No.2**

Fendering of open construction commencing at a point at NG 101256886289, 14 metres west-south-west from the commencement of Work No.1 and extending in a north-easterly direction for a distance of 50 metres to a point at NG 101295886320 and there terminating.

#### **Work No.3**

The construction of a seawall and the reclamation of the sea bed and foreshore behind by infilling, levelling and surfacing, commencing on the south-east face of the existing pier at a point at NG 101238886352 and extending in a south-easterly for a distance of 61 metres to a point at NG 101277886305, thence in a north-easterly direction for a distance of 49 metres and there terminating; the centre line of this work commences at a point at NG 101258886328, 39 metres north of the commencement of Work No. 2 and extends in a north-easterly direction for a distance of 81.5 metres to a point at NG 101323886376 and there terminates.

#### **Work No.4**

A breakwater of solid construction commencing at the south-south-west face of the existing pier head at a point at NG 101186886321 and extending in a south-south-westerly direction for a distance of 30 metres to a point at NG 101181886290, thence extending in a south-south-easterly direction for a distance of 30 metres to a point at NG 101186886263 and there terminating.

#### **Power to renew, etc., works**

**23.** Subject to the provisions of this Order the Council may, within the limits of deviation, renew, replace, or otherwise alter temporarily or permanently the works.

#### **Power to deviate**

**24.** Subject to the provisions of this Order, in the construction or execution of the works authorised by article 22 above, the Council may deviate laterally from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 2 metres upwards and to any extent downwards as may be found necessary or convenient.

### **Subsidiary works**

25. Subject to the provisions of this Order the Council for the purposes of or in connection with the 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 those works.

### **Works deemed to be within Western Isles Islands Area**

26. So much of any work constructed or placed pursuant to this Order as is not within the Western Isles Islands Area shall be deemed for all purposes to be within that Area.

### **Period for completion of works**

27. If the works are not completed within 10 years from the coming into force of this Order or such extended time as the Secretary of State 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 constructing and maintaining the works shall cease except as to so much thereof as shall then be completed.

## **PART VI**

### **MISCELLANEOUS**

#### **Incorporation of certain provisions of Order of 1993**

28. The following provisions of the Western Isles Islands Council (Brevig) Harbour Empowerment Order 1993(4) shall, with necessary modifications, apply to the works as they apply to the works authorised by that Order—

- article 28 (Tidal works not to be executed without approval of Secretary of State);
- article 29 (Lights on tidal works during construction);
- article 30 (Permanent lights on tidal works);
- article 31 (Survey of tidal works);
- article 32 (Provision against danger to navigation); and
- article 33 (Abatement of works abandoned or decayed).

#### **Crown Rights**

29.—(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 Council to take, use, enter upon or in any manner interfere with, any land or hereditaments (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.

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(4) S.I. 1993/2908.

(2) A consent under paragraph (1) above may be given unconditionally, or subject to such conditions and upon such terms as may be considered necessary or appropriate.

St Andrew's House,  
Edinburgh  
13th November 1995

*Raymond S Robertson*  
Parliamentary Under Secretary of State, Scottish  
Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises the Western Isles Islands Council to construct new harbour works at Leverburgh in the Obbe Electoral Division, parish of Harris on the island of Harris in the Western Isles Islands Area. The Order invests in the Council additional powers of control and administration in relation to the harbour.

The applicants for the Order are the Western Isles Islands Council, Sandwick Road, Stornoway, PA87 2BW.