

**2004 No. 485**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Mallaig Harbour Revision Order 2004**

*Made* - - - - - *5th November 2004*

*Coming into force* - - - - - *6th November 2004*

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Whereas the Mallaig Harbour Authority has applied in writing for a harbour revision order under section 14 of the Harbours Act 1964(a);

And whereas the Scottish Ministers(b) in pursuance of paragraph 4(b) of Schedule 3 to the said Act(c), determined that the application for this Harbour Revision Order is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(d) on the assessment of the

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(a) 1964 c.40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c.56) section 18 and Schedule 6, paragraphs 2-4, 12 and 14; and by the Transport and Works Act 1992 (c.42), section 63 and Schedule 3.

(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; Council Directive 85/337/EEC was amended by Council Directive 97/11/EC (O.J. No L 73, 14.3.1997, p.5).

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 Scottish Ministers have in accordance with paragraph 15 of the said Schedule furnished bodies appearing to them to have environmental responsibilities with the information supplied to them under paragraph 8 of that Schedule and have consulted such bodies;

And whereas the Scottish Ministers have directed the applicant to supply them with the information referred to in Annex IV to the Directive in accordance with that paragraph;

And whereas the Scottish Ministers are satisfied as required by subsection (2)(b) of the said section 14;

Now, therefore, the Scottish Ministers, in exercise of the powers conferred by section 14 of the said Act and of all other powers enabling them in that behalf hereby make the following Order:—

## PART I PRELIMINARY

### **Citation and commencement**

1. This Order may be cited as the Mallaig Harbour Revision Order 2004 and shall come into force on 6th November 2004.

### **Interpretation**

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

“Authority” means Mallaig Harbour Authority;

“construct” includes make, build, erect, install, provide, execute, place, alter, maintain and renew and “construction” shall be construed accordingly;

“deposited plans” and “deposited sections” mean respectively the plans and sections prepared in duplicate, signed by a member of the Scottish Executive and marked “The Mallaig Harbour Revision Order 2004” copies of which have been deposited with the Scottish Ministers at the Scottish Executive and at the office of the Authority;

“harbour undertaking” means the harbour undertaking of the Authority as for the time being authorised;

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

“works” means 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) and any work carried out pursuant to Article 5 (Subsidiary Works).

(2) All areas, directions, distances, lengths and widths as stated in any description of works, powers or lands other than Article 4 (Power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length and width and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

## PART II WORKS

### **Power to carry out works**

3.—(1) Subject to the provisions of this Order the Authority may in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans and sections, construct the following works in the area of the Highland Council, 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 breakwater of solid construction commencing at a point 167760,797360 extending in a northerly direction for a distance of 250 metres to a point 167780,797610 and there terminating.

(2) The Authority 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 Authority 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 Authority may within the limits of deviation from time to time construct 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 area of Highland Council.

### **Obstructing works**

6. Any person who intentionally obstructs any person acting under the authority of the Authority in setting out the lines of or in constructing 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 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 Authority for the time being in force relating to the harbour undertaking shall apply to the works and may be enforced by the Authority accordingly.

### **Incorporation of certain provisions of Order of 1992**

8. The following provisions of the Mallaig Harbour Revision Order 1992(a) shall, with necessary modifications, apply to the works as they apply to the works authorised by that Order:—

article 6 (Tidal works not to be executed without approval of Secretary of State);

article 7 (Provision against danger to navigation);

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(a) S.I. 1992/3232 (s.261).

article 8 (Abatement of works abandoned or decayed);

article 9 (Survey of tidal works);

article 10 (Lights on tidal works during construction);

article 11 (Permanent lights on tidal works).

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

9. If the works are not completed by 31st December 2013, the powers by this Order granted to the Authority for constructing the works shall cease except as to so much thereof as is then substantially commenced.

### **PART III**

#### **MISCELLANEOUS AND GENERAL**

#### **Crown rights**

10.—(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 Authority or any licensee to take, use, enter upon or in any manner interfere with any land or interests in 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 Her Crown and under the management of the Crown Estates 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.

*GORDON BROWN*

A member of the staff of the Scottish Executive

Victoria Quay,  
Edinburgh  
5th November 2004

**EXPLANATORY NOTE**

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

This Order empowers the Mallaig Harbour Authority to construct and maintain a breakwater at Mallaig.





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The Mallaig Harbour Revision Order 2004

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