

ELIZABETH II



1986 CHAPTER xix

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Western Isles Islands Council (Berneray Harbour).

[21st October 1986]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said 1936 c. 52. Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed. Confirmation of Order in Schedule.
2. This Act may be cited as the Western Isles Islands Council (Berneray Harbour) Order Confirmation Act 1986. Short title.

SCHEDULE

WESTERN ISLES ISLANDS COUNCIL
(BERNERAY HARBOUR)

Provisional Order to authorise the Western Isles Islands Council or the Highlands and Islands Development Board to carry out harbour works at Berneray; to define harbour limits in the vicinity of the works and of the existing ferry terminal and to authorise the exercise of harbour jurisdiction therein by the Council; and for connected purposes.

WHEREAS—

1973 c. 65.

(1) By the Local Government (Scotland) Act 1973 the Western Isles Islands Council (hereinafter called “the Council”) are the local authority vested with the functions of an islands council in respect of the Western Isles Islands Area which area incorporates the island of Berneray in the parish of Harris:

(2) The Council are desirous of promoting and stimulating employment opportunities in the said island of Berneray based on the principal local resource of fishery in and adjacent to Berneray which cannot at present be properly exploited due to the absence of suitable harbour facilities:

1965 c. 46.

(3) By the Highlands and Islands Development (Scotland) Act 1965 the Highlands and Islands Development Board (hereinafter called “the Board”) were established for the purpose of assisting the people of the Highlands and Islands to improve their economic and social conditions and it is part of their general function to prepare and undertake measures for that purpose:

(4) Provided the Council make the necessary land available for the purpose, the Board desire to construct the harbour works more particularly described in this Order out of monies available to them for the purpose but do not wish themselves to be involved in the control and administration of the works once they have been constructed:

(5) It is accordingly expedient that the Council should be vested with the control and administration of the intended harbour and that the powers of a harbour authority should be conferred on the Council in relation thereto:

(6) It is expedient that if the Board for any reason do not construct the said works the Council should be authorised themselves so to do at their own expense:

Western Isles Islands Council (Berneray Harbour) Order Confirmation Act 1986 c. xix

3

(7) The Council have recently constructed a ferry terminal on the island of Berneray under the Western Isles Islands Council (Berneray Ferry) Order 1981 and it is expedient that the powers of a harbour authority should also be conferred on the Council in an area adjacent thereto together with certain other powers as specified in this Order: 1981 c. xi.

(8) A plan and sections showing the lines, situations and levels of the works proposed to be authorised by this Order have been deposited with the sheriff-clerk of the sheriff court district of Lochmaddy at Lochmaddy:

(9) The purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936: 1936 c. 52.

Now therefore, in pursuance of the powers contained in the said Act of 1936, the Secretary of State orders as follows:—

PART I

PRELIMINARY

1. This Order may be cited as the Western Isles Islands Council (Berneray Harbour) Order 1986. Short title.

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

“the appropriate authority” means the Council or, in relation to works constructed by the Board under section 21 or section 24 below, the Board;

“the authorised works” means the works (or any of them) described in, and authorised by, section 21 below and includes such works as renewed, replaced or altered under section 22 below and any works constructed, executed or placed under section 24 below;

“the Board” means the Highlands and Islands Development Board;

“charges” means ship, passenger and goods dues as defined in section 57 of the Harbours Act 1964; 1964 c. 40.

“the Council” means the Western Isles Islands Council;

“the deposited plan” and “the deposited sections” mean respectively the plan and sections deposited on or before 20th March 1985 in Parliament, with the Council and with the sheriff clerk of the sheriff court district of Lochmaddy at Lochmaddy in connection with the application for this Order;

“general direction” means a direction given under section 6 below;

“the harbour” means the areas the respective limits whereof are set out in the Schedule to this Order;

“the harbourmaster” means any person appointed as such pursuant to section 3 below, and includes his deposes and assistants and any person for the time being authorised by

c. xix *Western Isles Islands Council (Berneray Harbour) Order Confirmation Act 1986*

PART I
—cont.

the Council to act, either generally or for a specific purpose, in the capacity of harbourmaster;

“harbour premises” means the quays, piers, landing places and all other works, land and buildings for the time being vested in, or occupied or administered by the 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 plan;

“master”, in relation to a vessel, means any person for the time being having or taking the command, charge or management thereof;

“the sheriff” means any of the sheriffs appointed for the Sheriffdom of Grampian, Highland and Islands;

“special direction” means a direction given under section 8 below;

“tidal work” means so much of any work authorised by this Order 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 on the island of Berneray;

“vessel” means every description of vessel, however propelled or moved, and includes—

(a) any thing constructed or used to carry persons or goods by water;

(b) any rig, platform or other man-made structure on or in navigable water;

(c) a seaplane on or in the water, a hovercraft and a hydrofoil vessel;

“works” means works of every description and includes the reclamation of land reasonably required for the purpose of executing works.

(2) Except in relation to section 23 below all dimensions stated in any description of works or lands in this Order shall be construed as if the words “or thereabouts” were inserted after each such dimension.

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

PART II

HARBOUR REGULATION

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

Western Isles Islands Council (Berneray Harbour) Order Confirmation Act 1986 c. xix

5

PART II
—cont.

(2) Plans showing the areas the respective limits whereof are described in the Schedule to this Order and signed by Gavin Douglas, J.C., Senior Counsel to the Secretary of State under the Private Legislation Procedure (Scotland) Act 1936, shall, within one month after the commencement of this Order, be deposited as follows, that is to say, one copy at the office of the Secretary of State in Edinburgh, one at the Department of Transport, one with the sheriff-clerk of the sheriff court district of Lochmaddy and one at the office of the chief executive of the Council. 1936 c. 52.

(3) In the event of any discrepancy between the harbour limits as described in the Schedule to this Order and the limits shown on the said plans, the limits as described in the said Schedule shall be deemed to be correct and shall prevail.

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

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. Power to dredge.

(2) For the purpose of subsection (1) above the expression “the approaches” means only so much of the approaches to the area specified in paragraph 1 of the Schedule to this Order as lies—

(a) within 500 metres of a point (latitude 57°43.148'N, longitude 7°08.758'W); and

(b) south of the latitude specified in paragraph (a) above.

(3) Subject to the provisions of section 36 below, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) 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. 1894 c. 60.

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.

5.—(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. Moorings.

(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

PART II
—cont.

terms and conditions of a licence granted under this section 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 subsection (2) above shall be valid only for a period of 3 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 section.

General
directions to
vessels.

6.—(1) The Council may, after consultation in each case with the General Council of British Shipping, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) for designating areas, routes or channels within the harbour which vessels are to use or refrain from using for movement or mooring;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) requiring the master of a vessel to give to the harbourmaster information relating to the vessel reasonably required by him for the purposes of this subsection.

(2) A general direction may apply—

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
- (b) to the whole of the harbour or to a part designated, or the designation of which is provided for, in the direction; and
- (c) at all times or at times designated, or the designation of which is provided for, in the direction;

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

(3) The Council may by general direction revoke or amend a general direction.

Publication of
general
directions.

7. Notice of a general direction shall as soon as practicable after it is given or done be published by the Council once in Lloyd's List or some other newspaper specialising in shipping news, and shall state a place at which copies of the direction may be inspected and bought, and the price thereof.

Special
directions.

8.—(1) The harbourmaster may give a direction under this section 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; 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;

and 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) A special direction may be given in any manner considered by the harbourmaster to be appropriate.

9.—(1) The master of a vessel who fails to comply with a general direction or 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. Failure to comply with directions.

(2) Without prejudice to any other defence, it shall be a defence to a charge made pursuant to subsection (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.

10.—(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. Enforcement of special directions.

(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 subsection 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

c. xix *Western Isles Islands Council (Berneray Harbour) Order Confirmation Act 1986*

PART II
—cont.

(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 subsection (1) above shall be recoverable by them as if they were a charge of the Council in respect of the vessel.

General
byelaws.

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

(2) Without prejudice to the generality of subsection (1) above, byelaws made under this section may provide for—

(a) prescribing parts of the harbour—

(i) where vessels, or a specified class of vessels, may not moor or anchor or be otherwise secured;

(ii) which vessels, or a specified class of vessels, may not enter;

(b) promoting the safety of persons and vessels in the harbour;

(c) preventing pollution or nuisance in or near the harbour;

(d) 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 harbourmaster, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction;

(e) for regulating the types of vehicles which may enter or be on harbour premises and the use, placing, loading or unloading, and driving of such vehicles, and giving powers to officers or servants of the Council in relation to such regulation;

(f) the management, control and regulation of the harbour premises and of goods, wares and merchandise using or passing over the harbour premises;

(g) safety precautions to be observed by persons using or being on harbour premises.

(3) Byelaws made under this section 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 2 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 section, 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) For byelaws made under this section the confirming authority for the purposes of section 202 of the Local Government (Scotland) Act 1973 shall be the Secretary of State.

PART II
—cont.
1973 c. 65.

12. If any person contravenes any of the provisions of this Order or of any byelaw made thereunder by the Council 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.

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

13.—(1) The Council may by notice require the owner or occupier of a pier, landing place or embankment which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

Repair of piers,
landing places,
etc.

(a) dangerous to persons or vessels using the harbour; or

(b) a hindrance to the navigation of the harbour;

to remedy its condition to the satisfaction of the Council within a reasonable time specified in the notice.

(2) If a person to whom notice is given under this section fails to comply with it within the time stated in the notice or, if he appeals and the appeal is not allowed, within the time stated in the notice or such other time as the court may substitute therefor—

(a) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale; and

(b) the Council may carry out the works they consider necessary to remedy the condition of the pier, landing place or embankment in question, and may recover the expenses of so doing from the person on whom the notice was served.

(3) A notice under subsection (1) above shall have annexed to it a copy of this section.

(4) A person aggrieved by a notice served by the Council under subsection (1) above may appeal to the sheriff who may confirm, vary or quash the notice as he thinks just, and make such order in the matter as he considers equitable, and the determination of the sheriff on any such appeal shall be binding on all parties, and shall be final.

PART III

CHARGES

14.—(1) Charges payable to the Council on or in respect of—

Liability for
charges.

(a) a vessel, shall be payable by the owner or master thereof;

(b) goods, shall be payable by the owner, consignee or shipper thereof.

PART III
—cont.

(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.

15.—(1) 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.

1964 c. 40.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council 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.

16. 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.

17.—(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 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 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.

18. 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.

19.—(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.

20.—(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. Conditions as to payment of charges.

(2) Without prejudice to the generality of subsection (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

WORKS

21. Subject to the provisions of this Order, the Council or, if the Council shall enter into a written agreement with the Board authorising the Board so to do, the Board may, in the lines and situations and within the limits of deviation shown on the deposited plan 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 Paible Electoral Division, parish of Harris in the Western Isles Islands Area— Power to construct works.

Work No. 1 The construction at Bays Loch of a harbour with protecting breakwaters on its seaward side; commencing at a point 34 metres south-west of the south-eastern extremity of the existing concrete jetty and extending in a south-south-easterly direction for a distance of 200 metres and there terminating; comprising the construction of a generally rectangular tidal basin 27 metres wide by 85 metres long by excavation from solid rock on the foreshore and the land adjacent thereto, bounded on its western, southern and eastern sides by concrete lined walls and a quay in part

PART IV
—cont.

9 metres and in part 11 metres wide; incorporating on the north-western side of the entrance to the said tidal basin an irregularly shaped breakwater of rockfill having an area of 0.04 hectares and bounded on its western, southern and south-eastern sides by concrete facing and, on the south-eastern side of the said entrance, a further irregularly shaped breakwater of rockfill having an area of 0.76 hectares and bounded on a part of its northern side by concrete facing.

Work No. 2 Dredging in an area of irregular shape shown hatched black on the deposited plan and situated generally to the south of the said jetty, being adjacent to and partly within the site of Work No. 1 and having an area of 0.2565 hectares.

Power to renew,
etc., works.

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

Power to
deviate.

23. Subject to the provisions of this Order, in the construction or execution of the authorised works the appropriate authority 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.

Subsidiary
works.

24. Subject to the provisions of this Order the appropriate authority, 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 those works.

Works deemed
to be within
Western Isles
Islands Area.

25. 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.

PART V

MISCELLANEOUS

Tidal works not
to be executed
without
approval of
Secretary of
State.

26.—(1) A tidal work shall not be constructed, executed, renewed, replaced or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, executed, renewed, replaced or altered in contravention of this section—

(a) the Secretary of State may by notice in writing require the Council 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 Council they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

(b) if it appears to the Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

PART V
—cont.

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council.

27.—(1) The appropriate authority shall at or near a tidal work during the whole time of the construction, execution, renewal, replacement or alteration thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation, as the Secretary of State shall from time to time direct.

Lights on tidal works during construction.

(2) If the appropriate authority fail to comply in any respect with a direction given under this section 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.

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

Permanent lights on tidal works.

(2) If the Council fail to comply in any respect with a direction given under this section 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.

29. The Secretary of State may at any time if he deems 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 him in such survey and examination shall be recoverable from the appropriate authority.

Survey of tidal works.

30.—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Council shall forthwith notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

Provision against danger to navigation.

(2) If the Council fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section 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.

31.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council 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 Secretary of State thinks proper.

Abatement of works abandoned or decayed.

PART V
—cont.

(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 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 Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.

(3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Council, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

Saving for
marine works.
1937 c. 28.

32.—(1) Nothing in this Order shall affect the operation of the Harbours, Piers and Ferries (Scotland) Act 1937, and any dispute arising under this section shall be referred to and determined by the Secretary of State whose decision shall be binding on all parties.

(2) Section 10 (Application of 10 & 11 Vict. c. 27, &c.) of the said Act of 1937 shall not apply to the undertaking.

Saving for
certain
enactments, etc.
1971 c. 60.
1974 c. 40.
1975 c. 8.
1974 c. 37.
1985 c. 48.

33.—(1) Nothing in this Order affects the operation of—

(a) the Prevention of Oil Pollution Act 1971;

(b) the Control of Pollution Act 1974;

(c) the Offshore Petroleum Development (Scotland) Act 1975;

(d) any of the relevant statutory provisions as defined in section 53 of the Health and Safety at Work etc. Act 1974;

(e) Part II of the Food and Environment Protection Act 1985.

(2) Nothing in this Order shall affect the jurisdiction or authority of the Commissioners of Northern Lighthouses.

Saving for Coast
Protection Act
1949.
1949 c. 74.

34. Nothing in this Order shall exempt the appropriate authority from the provisions of Part I of the Coast Protection Act 1949.

Saving for town
and country
planning.
1972 c. 52.

35.—(1) The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

1981/830
(S. 86).

(2) In their application to development authorised by Part IV of this Order, article 3 of, and class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1981 shall have effect as if the authority to develop given by this Order in respect of Work No. 1 were limited to development begun within 10 years after the commencement of this Order.

Crown rights.

36.—(1) Nothing in this Order affects prejudicially any estate right, power, privilege, authority or exemption of the Crown and its

particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the appropriate authority 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 of any river, channel, creek, bay or estuary)—

PART V
—cont.

- (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 subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

SCHEDULE

LIMITS OF HARBOUR

1. The tidal waters of Bays Loch on the south-eastern side of the island of Berneray, the seaward boundary whereof is a line commencing at a point (latitude $57^{\circ} 42.704' N$, longitude $7^{\circ} 09.923' W$) on the level of high water on the western side of the said loch at the southern extremity of the promontory known as Rubha Mhanais;

thence in a south-south-easterly direction in a straight line for a distance of 421 metres to a point (latitude $57^{\circ} 42.500' N$, longitude $7^{\circ} 09.743' W$) on the level of low water on the said promontory;

thence in a north-easterly direction in a straight line for a distance of 407 metres to a point (latitude $57^{\circ} 42.670' N$, longitude $7^{\circ} 09.513' W$);

thence in a generally east-north-easterly direction in a straight line for a distance of 957 metres to a point (latitude $57^{\circ} 43.000' N$, longitude $7^{\circ} 08.758' W$);

thence in a generally north-north-westerly direction in a straight line for a distance of 358 metres to a point on high water (latitude $57^{\circ} 43.148' N$, longitude $7^{\circ} 08.982' W$).

2. The area of water in the Sound of Berneray below the level of high water and bounded as follows:—

commencing at a point (latitude $57^{\circ} 42.21' N$, longitude $7^{\circ} 10.94' W$) on the level of high water on the promontory of Aird Ma-Rubhe on the southern shore of Berneray;

thence in a straight line in a generally southerly direction for a distance of 330 metres to a point (latitude $57^{\circ} 42.04' N$, longitude $7^{\circ} 10.94' W$);

thence in a straight line in a generally easterly direction for a distance of 350 metres to a point (latitude $57^{\circ} 42.05' N$, longitude $7^{\circ} 10.57' W$);

thence in a straight line in a generally northerly direction for a distance of 370 metres to a point (latitude $57^{\circ} 42.26' N$, longitude $7^{\circ} 10.59' W$) on the level of high water on the said promontory;

thence by the level of high water to the point of commencement.

3. The harbour premises.

PRINTED IN ENGLAND BY OYEZ PRESS LIMITED
FOR W. J. SHARP

Controller and Chief Executive of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

£2.90 net

ISBN 0 10 5119865



Western Isles Islands Council (Berneray Harbour) Order Confirmation Act 1986

CHAPTER xix

ARRANGEMENT OF SECTIONS

Section

1. Confirmation of Order in Schedule.
2. Short title.

SCHEDULE

WESTERN ISLES ISLANDS COUNCIL (BERNERAY HARBOUR)

PART I

PRELIMINARY

1. Short title.
2. Interpretation.

PART II

HARBOUR REGULATION

3. Harbour jurisdiction.
4. Power to dredge.
5. Moorings.
6. General directions to vessels.
7. Publication of general directions.

c. xix *Western Isles Islands Council (Berneray Harbour) Order Confirmation Act 1986*

Section

8. Special directions.
9. Failure to comply with directions.
10. Enforcement of special directions.
11. General byelaws.
12. Power to detain vessels, etc., in certain circumstances.
13. Repair of piers, landing places, etc.

PART III

CHARGES

Clause

14. Liability for charges.
15. Exemptions, rebates, etc., in respect of charges.
16. Security for charges.
17. Liens for charges.
18. Refusal to pay charges for landing place.
19. Exemptions from charges.
20. Conditions as to payment of charges.

PART IV

WORKS

21. Power to construct works.
22. Power to renew, etc., works.
23. Power to deviate.
24. Subsidiary works.
25. Works deemed to be within Western Isles Islands Area.

PART V

MISCELLANEOUS

26. Tidal works not to be executed without approval of Secretary of State.
27. Lights on tidal works during construction.
28. Permanent lights on tidal works.
29. Survey of tidal works.
30. Provision against danger to navigation.
31. Abatement of works abandoned or decayed.
32. Saving for marine works.
33. Saving for certain enactments, etc.
34. Saving for Coast Protection Act 1949.
35. Saving for town and country planning.
36. Crown rights.

SCHEDULE—Limits of harbour.