

ELIZABETH II



1987 CHAPTER i

An Act to confirm a Provisional Order under the Private
Legislation Procedure (Scotland) Act 1936, relating to
Gairloch Harbour. [19th January 1987]

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 Gairloch Harbour Order Short title.
Confirmation Act 1987.

SCHEDULE

GAIRLOCH HARBOUR

Provisional Order to authorise the Highland Regional Council to acquire lands; to carry out works for the improvement of the harbour at Gairloch in the district of Ross and Cromarty; and for other purposes.

1973 c. 65.
S.I. 1975/659. Whereas by virtue of the provisions of the Local Government (Scotland) Act 1973, the Local Authorities (Property etc.) (Scotland) Order 1975 and a lease between the Crown Estate Commissioners and the Highland Regional Council (hereinafter called "the Council") dated 30th March and 30th June and registered in the Books of Council and Session on 7th July, all 1976, the Council acquired right to the piers at Gairloch in the parish of Gairloch in the Highland Region:

1979 c. vii. And whereas by the Gairloch Piers Order 1979 the Council were authorised to exercise jurisdiction as a harbour authority:

And whereas it is expedient that the Council should be authorised to acquire lands and to carry out the works hereinafter described for the improvement of the harbour:

And whereas it is expedient that the further powers mentioned in this Order should be conferred on the Council:

And whereas estimates have been prepared in relation to the following purposes in respect of which the Council are authorised to borrow money and such estimates are as follows:—

Purchase of lands, minerals and permanent rights . . . £ 5,000
For the construction of Works Nos. 1 to 5 . . . £2,018,000:

And whereas in the month of March, 1985, a plan and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order and a book of reference to such plan, showing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken or used for the purpose of or under the powers of this Order, were duly deposited with the sheriff-clerk of the sheriff court district of Dingwall and the clerk to the Ross and Cromarty district council:

And whereas it is expedient that the pier limits as defined in section 4 (Pier limits) of the Gairloch Piers Order 1979 should be redefined and extended:

And whereas it is expedient that the other provisions in this Order should be enacted:

And whereas the purposes aforesaid 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 last-mentioned Act the Secretary of State orders as follows:—

PART I

PRELIMINARY

1.—(1) This Order may be cited as the Gairloch Harbour Order Short title. 1986.

(2) This Order and the Gairloch Piers Order 1979 may be cited together as the Gairloch Harbour Orders 1979 to 1986.

2. In this Order, unless the context otherwise requires— Interpretation.

“Council” means the Highland Regional Council;

“deposited plan”, “deposited sections” and “deposited book of reference” mean respectively the plan, sections and book of reference deposited on or before 20th March 1985 in Parliament, with the proper officer of the Ross and Cromarty district council and with the sheriff-clerk of the sheriff court district of Dingwall in connection with the application for this Order;

“harbour” means the area referred to in section 23 (Harbour limits) of this Order and includes 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;

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

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

“Order of 1979” means the Gairloch Piers Order 1979; 1979 c. vii.

“piers” means the piers at Gairloch existing at the commencement of this Order;

“pier limits” means the piers and so much of the area of the sea as shown on the deposited plan and marked “pier limits”;

“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;

“undertaking” means the undertaking of the Council as from time to time authorised in relation to the harbour; and

“works” means the works authorised by this Order or as the case may be any part thereof.

3.—(1) The Lands Clauses Acts (with the exception of sections 120 to 127 of the Lands Clauses Consolidation (Scotland) Act 1845 relating to the sale of superfluous lands) are hereby incorporated with this Order. Incorporation of enactment. 1845 c. 19.

(2) For the purposes of the incorporation of the said Acts the expression “the special Act” in those Acts shall mean this Order.

PART II

WORKS

Power to
construct works.

4. Subject to the provisions of this Order, the Council may in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plan and sections construct and maintain the works hereinafter described together with all necessary and proper works and conveniences connected therewith or incidental thereto, that is to say:—

Work No. 1

An extension 8.8 metres wide from the southern end of the existing west pier of open construction and extending in a generally east-south-easterly direction for a distance of 44 metres and there terminating.

Work No. 2

Berthing steps 3 metres wide of solid construction commencing 26 metres north of the fixed point shown on the deposited plan extending south-south-eastwards for a distance of 20 metres and there terminating.

Work No. 3

A berthing quay of solid construction commencing from the east face of Work No. 2 at a point 8 metres from its commencement and extending 70 metres in an easterly direction and thence turning in a northerly direction for a distance of 19 metres and there terminating and the construction over part thereof of necessary buildings together with a reclamation of the seabed by infilling, levelling and surfacing.

Work No. 4

The demolition of the existing open construction leg of the east pier and its incorporation in and replacement by an extension of the quay in Work No. 3 in solid construction commencing at a point 63 metres east of the commencement of Work No. 3 and extending 18 metres in a south-south-easterly direction and thence turning in a east-north-easterly direction for a distance of 54 metres and there terminating and the construction over part thereof of necessary buildings together with a reclamation of the seabed by infilling, levelling and surfacing.

Work No. 5

A repair berth on the east side of the east pier formed by infilling the seabed for a width of 6 metres commencing at the north end of the existing masonry wall at the level of high water and extending in a southerly direction for a distance of 40 metres and there terminating and the construction over part of the existing harbour wall of necessary buildings.

Subsidiary
works.

5. Subject to the provisions of this Order, the Council may within the limits of deviation from time to time erect, construct and maintain, 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.

PART II
—cont.

6. Subject to the provisions of this Order, in constructing the works the Council may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Power to deviate.

7.—(1) A tidal work shall not be constructed, 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.

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

(2) If a tidal work is constructed, in contravention of this section or of any condition or restriction imposed under 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;

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

8. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work constructed by the Council or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable by him from the Council.

Survey of tidal works.

9.—(1) In 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 shall 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.

10.—(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

Abatement of works abandoned or decayed.

PART II
—cont.

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.

(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 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 by him from the Council.

Lights on works during construction.

11.—(1) The Council shall at or near a tidal work during the whole time of the construction 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.

(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.

Permanent lights on works.

12.—(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 steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(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.

Works to be in parish of Gairloch.

13. The works shall be deemed for all purposes to be within the parish of Gairloch and district of Ross and Cromarty.

PART III

POWER TO ACQUIRE LANDS

Power to acquire lands.

14. Subject to the provisions of this Order, the Council may enter upon, take and use such of the lands shown on the deposited plan and described in the deposited book of reference as may be required for the purposes of this Order.

Powers of entry.

15. At any time after notice to treat has been served for any land which the Council are authorised by this Order to purchase compulsorily the Council may, after giving to the owner and occupier

of the land not less than 28 days' notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act 1845 but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

PART III
—cont.

1845 c. 19.

16. Notwithstanding anything in this Order or in any Act wholly or partly incorporated herewith, the Council may purchase and acquire such servitudes or rights as they may require for the purposes of this Order without the Council being obliged or compellable to purchase any greater interest in, under or over the lands to which they relate, and the provisions of the Lands Clauses Acts shall extend and apply to such servitudes and rights as if they were lands within the meaning of those Acts.

Power to acquire servitudes compulsorily in certain cases.

17. All private rights of way over any lands which, under the powers of this Order, are acquired compulsorily shall, as from the date of such acquisition, be extinguished:

Extinction of private rights of way.

Provided that the Council shall make compensation to all persons interested in respect of any such rights and the compensation shall be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.

18.—(1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, the Council, after giving 10 days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof.

Correction of errors in deposited plan and book of reference.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake, he shall certify the fact accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, and with the sheriff-clerk of the sheriff court district of Dingwall, and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Council to take the land and execute the works in accordance with the certificate.

(4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

19. Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and of this Order, grant to the Council any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for the purposes of this Order in, over or affecting any such lands, and the provisions of the said Acts with respect to lands and

Servitudes, etc., by agreement.

PART III
—cont.

rentcharges or feu duties so far as they are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

Set-off of
betterment
against
compensation.

20. In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

- (a) he has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the execution of the works authorised by this Order or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money.

Power to retain,
sell, etc., lands.
1845 c. 19.

21.—(1) Notwithstanding anything to the contrary contained in the Lands Clauses Consolidation (Scotland) Act 1845, the Council may retain, hold and use for such time as they think fit, or may from time to time sell, feu, lease, excamb or otherwise dispose of any land vested in or belonging to them for the purpose of the works or that may be acquired under the provisions of this Order and that on such terms, conditions, reservations and restrictions as regards its use (not inconsistent with any condition, restriction or obligation binding on the Council and their successors in title) as to the Council may seem fit, provided that all liabilities and obligations appertaining to any such land shall continue to apply.

(2) The proceeds of the sale of any lands by the Council shall be applied only to purposes to which capital is properly applicable including the redemption of debt.

Service of
notices, etc.
1947 c. 42.

22. Paragraph 19 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply and have effect with respect to any notice or other document required or authorised to be served under or by virtue of this Order as if such notice or other document were required or authorised to be served under that Schedule.

PART IV

MISCELLANEOUS

Harbour limits.

23.—(1) The limits within which the Council shall exercise jurisdiction as a harbour authority and within which the powers of the harbour-master may be exercised shall comprise the piers and so much of the area of the sea as is described in the Schedule to this Order.

(2) The deposited plan showing the said limits as described in the Schedule to this Order and shown on the deposited plan marked “pier limits” was deposited on or before 20th March 1985 in Parliament, with the sheriff-clerk of the sheriff court district of Dingwall, with the proper officer of the Ross and Cromarty district council, at the office of the Secretary of State in Edinburgh and at the Department of Transport.

(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 plan, the limits as described in the said Schedule shall be deemed to be correct and shall prevail.

PART IV
—cont.

24. Whereas by a Minute of Agreement between the Trustees of the late Sir Kenneth John Mackenzie and David MacBrayne (1928) Limited dated 29th November 1932 and registered in the Books of Council and Session on 20th September 1934 it was provided that the Tenants of the Salmon Netting Fishings belonging to the Estate of the late Sir Kenneth John Mackenzie which Estate is now owned by John Alexander Mackenzie of Gairloch (hereinafter called "the Estate") should continue to enjoy the facilities therein more particularly referred to and exercised by them before the date of the said agreement including the right to make use of the landings steps at the end of the then existing stone pier and that no pier dues were to be levied on the Estate or their shooting tenants.

Saving for
existing rights.

Now it is hereby declared that nothing contained in this Order shall—

- (1) prejudice, alter or in any way affect; or
- (2) confer on the Council or any other person any powers which are inconsistent with;

the terms of the said Agreement or of any rights thereby conferred so far as the same are subsisting at the commencement of this Order.

25. All bye-laws of the Council made under section 7 (Bye-laws respecting piers) of the Order of 1979 shall so far as applicable apply to the works and within the harbour limits and may be enforced by the Council accordingly.

Bye-laws.

26. Nothing in this Order shall exempt the Council or any other person from the provisions of Part I of the Coast Protection Act 1949.

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

27. Nothing in this Order shall affect the operation of the Food and Environment Protection Act 1985.

Saving for Food
and Environment
Protection Act
1985 c. 48.

28.—(1) The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions of 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.

Saving for
Town and
Country
Planning Acts.
1972 c. 52.

(2) In their application to development authorised by 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 were limited to development begun within 10 years.

29.—(1) Nothing in this Order shall affect 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 herein contained shall authorise the Council or any licensee

Crown rights.

PART IV
—cont.

of the Council to take, use, enter upon or in any manner interfere with any land or interest 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)—

(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

HARBOUR AREA

The area of water in Loch Gairloch below the level of high water and bounded as follows:—

Commencing at a point latitude $57^{\circ} 42.677'$ N, longitude $5^{\circ} 41.100'$ W on the level of high water 60 metres west of the west pier;

thence in a straight line due SSE for a distance of 140 metres to a point latitude $57^{\circ} 42.608'$ N, longitude $5^{\circ} 41.033'$ W;

thence in a straight line due SE for a distance of 107 metres to a point latitude $57^{\circ} 42.580'$ N, longitude $5^{\circ} 40.935'$ W;

thence in a straight line due NE for a distance of 114 metres to a point latitude $57^{\circ} 42.633'$ N, longitude $5^{\circ} 40.882'$ W;

thence in a straight line due ENE for a distance of 69 metres to a point latitude $57^{\circ} 42.650'$ N, longitude $5^{\circ} 40.817'$ W;

thence in a straight line due N for a distance of 129 metres to a point latitude $57^{\circ} 42.733'$ N, longitude $5^{\circ} 40.813'$ W on the level of high water NE of east pier;

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

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

£2.70 net

ISBN 0 10 510187 7



Gairloch Harbour Order Confirmation Act 1987

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SCHEDULE

GAIRLOCH HARBOUR

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SCHEDULE.