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SCHEDULE

COMHAIRLE NAN EILEAN SIAR (ERISKAY CAUSEWAY)

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Provisional Order to authorise Comhairle Nan Eilean Siar to construct a causeway for pedestrian and vehicular traffic between the islands of South Uist and Eriskay in na h'Eileanan an Iar; to acquire lands; and for connected purposes.

WHEREAS—

- (1) Under the Local Government etc. (Scotland) Act 1994 Comhairle Nan Eilean Siar (hereinafter called “the Comhairle”) are the local authority vested with the functions of a council in respect of the administrative area known as na h'Eileanan an Iar which includes the islands of South Uist and Eriskay:
- (2) The inhabitants of the island of Eriskay suffer hardship and difficulty due to the lack of proper communication across the Sound of Eriskay between that island and the island of South Uist and accordingly experience difficulty in transporting building materials, equipment, livestock and vehicles to and from the island of Eriskay:
- (3) It is the Comhairle’s policy to maintain remote communities and to procure that wherever possible they have reasonable access to the more populated and better provided-for localities within the islands:
- (4) The Comhairle are the body statutorily responsible for the provision of roads in na h'Eileanan an Iar:
- (5) The Comhairle accordingly desire to construct between the islands of South Uist and Eriskay a causeway across waters now lying below the level of low water and related works which will, in their opinion, help to maintain the present population of Eriskay and will also relieve hardship:
- (6) A plan and sections showing the lines or situations and levels of the works proposed to be authorised by this Order, such plan showing also the lands which may be compulsorily acquired or used under the powers of this Order, together with a book of reference to the said plan containing the names of the owners or reputed owners, lessees or reputed lessees and occupiers of all such lands, have been deposited with the sheriff-clerk of the sheriff court district of Lochmaddy at Lochmaddy:
- (7) 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:

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

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PART I

PRELIMINARY

Short title

1 Short title

This Order may be cited as the Comhairle Nan Eilean Siar (Eriskay Causeway) Order 2000.

Interpretation

2 Interpretation

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

“the authorised works” means the works (or any of them) authorised by section 4 below and includes such works as renewed, replaced or altered under section 5 below, and any works constructed or executed under section 7 below;

“the Comhairle” means the Comhairle Nan Eilean Siar;

“the deposited plan”, “the deposited sections” and “the deposited book of reference” mean respectively the plan, sections and book of reference duly deposited in Parliament, with the proper officer of the Comhairle and with the sheriff-clerk of the sheriff court district of Lochmaddy in connection with the application for this Order;

“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;

“reference point” means Ordnance Survey National Grid reference point; and

“tidal work” means so much of any of the authorised works as are on, under or over tidal waters or tidal lands below the level of high water.

(2) All directions, distances, lengths and widths stated in any description of works, powers or lands in this Order shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, length and width.

(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.

(4) References in this Order to points identified by letters shall be construed as references to the points so lettered on the deposited plan.

(5) References in this Order to access to any place shall include reference to egress from that place.

Incorporation of Lands Clauses Acts

3 Incorporation of Lands Clauses Acts

The Lands Clauses Acts, except sections 120 to 124 and 127 of the Lands Clauses Consolidation (Scotland) Act 1845, are hereby incorporated with this Order and in construing the provisions so incorporated the expression “the special Act” shall mean this Order.

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PART II

WORKS

Power to construct works, etc

4 Power to construct works, etc

Subject to the provisions of this Order, the Comhairle 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 in the Lochboisdale and Eriskay Electoral Division, parish of South Uist in na h'Eileanan an Iar the works described in Schedule 1 to this Order with all necessary works and conveniences connected therewith.

Power to renew, etc., works

5 Power to renew, etc., works

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

Power to deviate

6 Power to deviate

Subject to the provisions of this Order, in the construction or execution of the authorised works the Comhairle 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 any extent downwards.

Subsidiary works

7 Subsidiary works

Subject to the provisions of this Order, the Comhairle, for the purposes of or in connection with the authorised works, may within the limits of deviation construct, execute and maintain all such subsidiary works and conveniences as may be necessary or expedient for or in connection with the authorised works.

Works deemed to be within na h'Eileanan an Iar

8 Works deemed to be within na h'Eileanan an Iar

So much of the authorised works constructed or executed pursuant to this Order as are not within na h'Eileanan an Iar shall be deemed for all purposes to be within that area.

Temporary use of land

9 Temporary use of land

The provisions set out in Schedule 2 to this Order shall have effect with respect to the temporary use of land by the Comhairle.

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PART III

LAND

Power to acquire land

10 Power to acquire land

Subject to the provisions of this Order, the Comhairle may enter upon, take and use all or any of the lands within the limits of deviation and described in the deposited book of reference which they may require for the purposes of the authorised works or for any other purposes of this Order.

Period of compulsory purchase

11 Period of compulsory purchase

The powers of the Comhairle for the compulsory purchase of lands under section 10 above shall cease on the tenth anniversary of the passing of the Act confirming this Order.

Private rights of way over lands taken compulsorily

12 Private rights of way over lands taken compulsorily

- (1) All private rights of way and rights of access over any lands which under the powers of this Order are acquired compulsorily shall as from the date of such acquisition be extinguished.
- (2) All rights of way and rights of access over any lands of which the Comhairle may take temporary possession under this Order shall be suspended and unenforceable against the Comhairle for as long as the Comhairle shall remain in lawful possession of the land.
- (3) The Comhairle shall make compensation to all parties interested in respect of any such rights and such compensation shall be assessed, failing agreement, in the manner provided by the Land Compensation (Scotland) Act 1963 for determining disputed compensation for lands authorised to be acquired compulsorily.

Powers of entry

13 Powers of entry

At any time after notice to treat has been served for any land which the Comhairle are authorised by this Order to purchase compulsorily the Comhairle 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.

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Further powers of entry

14 Further powers of entry

- (1) Subject to the provisions of this Order, the Comhairle and any person duly authorised in writing by the Comhairle, may at all reasonable times in the day upon giving on the first occasion not less than seven days' and on subsequent occasions not less than three days' notice in writing to the occupier, enter upon and into the lands by this Order authorised to be taken or used or any of them, for the purpose of—
 - (a) surveying and valuing the said lands; and
 - (b) searching and boring for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein.
- (2) The powers of subsection (1)(b) above shall not be exercised with respect to any land unless notice of the intention of the Comhairle to do so has been included, and the site location and the nature of the operations proposed to be carried out have been specified, in the notice required to be given to the occupier of the land pursuant to subsection (1) above and in any such case the Comhairle shall not be required to give further notice in respect of any subsequent entry on the land for the purposes of carrying out the operations specified in the notice.
- (3) In the exercise of the powers conferred by this section, the Comhairle shall cause as little detriment and inconvenience to any person as circumstances allow and shall make compensation to the owners and occupiers of any lands or the owners of any services injuriously affected by the exercise of such powers, such compensation in case of difference to be determined in accordance with the provisions of the Land Compensation (Scotland) Act 1963.

Power to acquire servitudes of rights

15 Power to acquire servitudes of rights

- (1) Instead of acquiring any land that may be acquired compulsorily under this Order the Comhairle may acquire compulsorily such servitudes and rights in or over that land as they may require for the purposes of this Order.
- (2) The Comhairle may give notice to treat in respect of any such servitude or right describing the nature thereof, and the provisions of the Lands Clauses Acts shall apply in relation to the acquisition of such servitudes and rights as if they were lands within the meaning of those Acts.
- (3) Where the Comhairle have acquired a servitude or right in or over any land under this section—
 - (a) they shall not be required (except by agreement) to fence off or sever that land from adjoining land; and
 - (b) the owner or occupier of the land for the time being shall, subject to the servitude or right, have the same right to use and cultivate the land as if this Order had not been made.
- (4) If in his particulars of claim the owner of any land in respect of which notice to treat for a servitude or right is given under this section requires the Comhairle to acquire the land, the Comhairle shall not be entitled to acquire the servitude or right unless the Lands Tribunal for Scotland determines that the servitude or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house.

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- (5) A notice to treat given under this section shall be endorsed with notice of the effect of subsection (4) above.
- (6) References in this Order to the acquisition of new rights are references to the acquisition of rights (whether real or personal) to be created in favour of the Comhairle.

Correction of errors in deposited plan and book of reference

16 Correction of errors in deposited plan and book of reference

- (1) If the deposited plan or the deposited book of reference is inaccurate in its description of any land or in its statement or description of the ownership or occupation of any land, the Comhairle, after giving not less than 10 days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof.
- (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 respectively in the Private Bill Office, House of Commons, with the sheriff-clerk of the sheriff court district of Lochmaddy and with the Proper Officer of the Comhairle within the meaning of section 235 of the Local Government (Scotland) Act 1973, 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 Comhairle to take the land or a servitude therein (as the case may be) 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.
- (5) In this section “the sheriff” means the sheriff principal of, or any sheriff appointed for, the Sheriffdom of Grampian, Highland and Islands.

Disregard of recent improvements and interests

17 Disregard of recent improvements and interests

In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land or of rights or servitudes in or over land under this Order, the Lands Tribunal for Scotland shall not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land, by reason of any building erected, works executed or improvement or alteration made (whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned);

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works, or the making of the improvement or alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

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PART IV

MISCELLANEOUS

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

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

- (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 Comhairle 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 Comhairle, 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 from the Comhairle.

Lights on tidal works during construction

19 Lights on tidal works during construction

- (1) The Comhairle 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.
- (2) If the Comhairle 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 tidal works

20 Permanent lights on tidal works

- (1) After the completion of a tidal work the Comhairle shall 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.
- (2) If the Comhairle 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.

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Survey of tidal works

21 Survey of tidal works

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 Comhairle.

Provision against danger to navigation

22 Provision against danger to navigation

- (1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Comhairle 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.
- (2) If the Comhairle 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.

Abatement of works abandoned or decayed

23 Abatement of works abandoned or decayed

- (1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Comhairle 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.
- (2) Where a work 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 Comhairle, 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 Comhairle.

Saving for certain enactment, etc

24 Saving for certain enactment, etc

- (1) Nothing in this Order affects the operation of—
 - (a) the Control of Pollution Act 1974;
 - (b) any of the relevant statutory provisions as defined in section 53 of the Health and Safety at Work etc. Act 1974;
 - (c) Part II of the Food and Environment Protection Act 1985;

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- (d) the Environmental Protection Act 1990;
 - (e) the Environment Act 1995.
- (2) Nothing in this Order affects prejudicially the jurisdiction or authority of the Commissioners of Northern Lighthouses.

Saving for Coast Protection Act 1949

25 Saving for Coast Protection Act 1949

Nothing in this Order exempts the Comhairle from the provisions of Part I of the Coast Protection Act 1949.

For protection of Scottish and Southern Energy plc

26 For protection of Scottish and Southern Energy plc

- (1) For the protection of Scottish and Southern Energy plc the following provisions shall, save to the extent that the company may release the Comhairle therefrom, apply and have effect.

- (2) In this section unless the subject or context otherwise requires—

“apparatus” means—

- (a) any electrical plant or electric line as respectively defined in section 64 of the Electricity Act 1989; and
- (b) any meter used for ascertaining the quantity of electricity supplied to any premises, not being a meter which is under the control of a consumer;

“the company” means Scottish and Southern Energy plc;

“in” in a context referring to apparatus includes under, over, across, along or upon;

“plan” includes a section and description; and

“position” includes depth.

- (3) (a)

Nothing in this Order relieves the Comhairle from liability for damage caused by them to any apparatus in the exercise of the powers conferred on them by this Order and the Comhairle shall indemnify the company against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the company by reason or in consequence of any damage done by the Comhairle to any apparatus or of any interruption in the supply by the company of electricity which may without the written authority of the company be in any way occasioned either by reason of the exercise of any of the powers of this Order or by the acts or defaults (in, or in connection with, such exercise) of the Comhairle.

- (b) If in consequence of the exercise by the Comhairle of the powers of this Order the access to any apparatus is materially obstructed, the Council shall provide an alternative means of access to such apparatus.

- (4) If the Comhairle in exercise of the powers of section 4, 5 or 7 above require to cross over or under, remove, alter or otherwise interfere with any apparatus, or if the exercise of such powers is likely to affect any apparatus, the Comhairle shall—

- (a) give to the company not less than 28 days' prior notice in writing of such requirement or (as the case may be) of their intention to exercise such powers,

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together with a plan of the work proposed, and shall execute the work only in accordance with such plans and in accordance with such reasonable requirements as may within 21 days of the receipt of the plan be made by the company, and the company may under such requirements alter or otherwise protect the apparatus or provide alternative apparatus adequate to enable them to fulfil their statutory functions not less efficiently than before (hereinafter referred to as “alternative apparatus”);

- (b) afford to the company, where possible, any necessary facilities and rights for the construction, use, maintenance, repair, renewal and inspection of any alternative apparatus;
- (c) pay to the company the expense reasonably incurred by them in and in connection with removing, re-laying, replacing, altering or protecting the apparatus or providing alternative apparatus less (in a case where alternative apparatus is provided) the value of any apparatus removed pursuant to this section.

(5) Alternative apparatus, if provided under this section shall be constructed in such manner and in such line or position as may be agreed between the Comhairle and the company, and no apparatus shall be removed, altered or interfered with until any protective works required have been carried out or until alternative apparatus required has been provided and is operating to the reasonable satisfaction of the company.

(6) (a)

Any difference arising between the Comhairle and the company under this section shall be referred to and determined by an arbiter to be mutually agreed upon, or failing such agreement be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers.

- (b) In settling any difference under this section the arbiter shall have regard to any duties or obligations which the company may be under in respect of any apparatus and may if he thinks fit require the Comhairle to execute within the limits of deviation any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

No double recovery

27 No double recovery

Compensations shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or rule of law.

Crown rights

28 Crown rights

- (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 Comhairle to take, use, enter upon or in any manner interfere with, any land or hereditament (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—

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- (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 conditions.

SCHEDULES

SCHEDULE 1

Section 4

THE AUTHORISED WORKS

Work No. 1 A causeway providing an accessway for pedestrian and vehicular traffic between the islands of South Uist and Eriskay commencing on the island of South Uist at reference point NF 078128 813920, extending over the Sound of Eriskay in a generally southerly direction to Eel Rocks, across Eel Rocks then through a curve in a generally south-south easterly direction over the Sound of Eriskay and along the shore of the island of Eriskay and terminating at reference point NF 078885 812095, having a width at the level of the metalled carriageway generally of 10 metres but increasing to 11 metres on its curved sections and surrounded on both its seaward faces by breakwaters of broken rock construction and incorporating—

- (a) a marine culvert (the northern culvert) at a point 340 metres south of the commencement of the causeway, having a span of not less than 10 metres and a headway beneath its soffit of not less than 1.8 metres above chart datum; and
- (b) a marine culvert (the southern culvert) at a point 1330 metres south of the commencement of the causeway, having a span of not less than 5 metres and a headway beneath its soffit of not less than 1.8 metres above chart datum.

Work No. 2 An approach road on the island of South Uist, commencing by a junction with the existing road known as the Kilbride/Glendale Road at reference point NF 077884 814237, extending in a generally south-easterly direction for a distance of 470 metres and terminating at the point of commencement of Work No. 1.

Work No. 3 An approach road on the island of Eriskay, commencing at the point of termination of Work No. 1, extending in a generally south-easterly direction for a distance of 180 metres and terminating by a junction with the existing road known as the Eriskay Township Road at reference point NF 078969 811939.

SCHEDULE 2

Section 9

TEMPORARY WORKING SITE

- 1 In this Schedule “the designated land” means so much of the land numbered 3 on the deposited plan as lies within a line marked “Limit of land to be used”.

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- 2 The Comhairle, in connection with the construction of Works Nos. 1, 2 and 3 and after giving to the owners and occupiers of the designated land not less than 28 days' notice in writing of intended entry, may—
 - (a) enter upon and take possession temporarily of the designated land;
 - (b) remove any structures and vegetation on the designated land;
 - (c) construct on the designated land such temporary works or structures as may be required by them; and
 - (d) use the designated land as a working site and for the deposit and storage of materials.
- 3 The Comhairle may form and lay out a temporary means of access to the land numbered 3 at point A.
- 4 The Comhairle shall not, by reason of the exercise of the powers of paragraph 2 or 3 above, be required to purchase any part of the designated land.
- 5 On the exercise of the powers conferred by paragraph 2 or 3 above, the following provisions shall have effect:—
 - (1) The Comhairle shall not, without the agreement of the owners and occupiers of the designated land, remain in possession of any part thereof after a period of one year from the completion of the works for which such possession has been taken;
 - (2) Before giving up possession of the designated land, the Comhairle shall—
 - (a) remove all temporary works or structures subject to any agreement to the contrary with the owners and occupiers; and
 - (b) restore the designated land to the reasonable satisfaction of the owners and occupiers thereof;
 - (3) The Comhairle shall compensate the owners and occupiers of the designated land for any loss or damage which may result to them by reason of the exercise of the powers of this Schedule;
 - (4) Nothing in this Schedule shall relieve the Comhairle from liability to compensate under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under sub-paragraph (3) above;
 - (5) Any dispute as to a person's entitlement to compensation under sub-paragraph (3) above or as to the amount thereof shall be determined by the Lands Tribunal for Scotland."