STATUTORY INSTRUMENTS

1984 No. 803 (S. 76)

HARBOURS, DOCKS, PIERS AND FERRIES

Mallaig Harbour Revision Order 1984

Approved by both Houses of Parliament

Made - - - -	26*th March* 1984
Laid before Parliament	9*th April* 1984
Coming into Operation	13*th June* 1984

The Secretary of State, in exercise of the powers conferred by section 14 of the Harbours Act 1964 (**a**) and of all other powers enabling him in that behalf, and on the application of the Mallaig Harbour Authority, and being satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economic manner, hereby makes the following order:—

Citation and commencement

1.—(1) This order may be cited as the Mallaig Harbour Revision Order 1984 and shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965 (**b**).

(2) The Mallaig Harbour Revision Order 1968 (**c**), the Mallaig Harbour Order 1970 (**d**), the Mallaig Harbour Order 1975 (**e**) and this order may be cited together as the Mallaig Harbour Orders 1968 to 1984.

Interpretation

2. In this order:—

"the Authority" means the Mallaig Harbour Authority constituted under the Order of 1968;

"deposited plans and sections" means the plans and sections signed on behalf of the Secretary of State and marked "Plans and sections referred to in the Mallaig Harbour Revision Order 1984" of which copies are deposited with the Mallaig Harbour Authority, Harbour Offices, Mallaig and "deposited plans" and "deposited sections" shall be construed accordingly;

"the extended limits" means the limits referred to as the extended limits in article 14 of this order;

"harbour" has the meaning assigned to it by the Order of 1968 and includes the works authorised by the Order of 1970, the Order of 1975 and this order;

(**a**) 1964 c.40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4.
(**b**) 1945 c.18 (9 & 10 Geo. 6) and 1965 c.43.
(**c**) S.I. 1968/1202.
(**d**) *See* 1970 c.xxxiii.
(**e**) *See* 1975 c.xxxiii.

"level of high water" means the level of mean high-water springs;

"limits of deviation" means the limits of deviation shown on the deposited plans;

"Order of 1968" means the Mallaig Harbour Revision Order 1968;

"Order of 1970" means the Mallaig Harbour Order 1970;

"Order of 1975" means the Mallaig Harbour Order 1975;

"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 undertaking of the Authority as for the time being authorised;

"the works" means the works authorised by this order or as the case may require any part thereof.

Abandonment of works authorised by Order of 1975

3. The Authority shall abandon the construction of the works Nos. 1, 5, 6 and 7 authorised by the Order of 1975.

Power to construct works

4.—(1) Subject to the provisions of this order the Authority may in the parish of Glenelg within the Highland Region and the district of Lochaber and on the foreshore and in the sea adjoining the same in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans 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. *(a)* An extension of the existing steamer pier in solid construction commencing from the west corner of the north end of the said steamer pier and extending in an east north easterly direction for a distance of 130 metres (426.51 feet) or thereby and there terminating at the same surface level as the existing pier and with a top width of 15.24 metres (50 feet) or thereby.

Work No. 2. *(b)* A sloping slipway or ramp of either solid construction or of open piled construction with a concrete deck, commencing at a point on the eastern face adjacent to the north eastern corner of the steamer pier at the pier surface level and extending in an east north easterly direction for a distance of 61 metres (200.13 feet) or thereby terminating at a level 0.7 metres (2.3 feet) below mean low water spring tide or thereby.

Work No. 3. *(c)* A solid face wall of steel piling and concrete construction commencing at the seaward corner of the existing marshalling area and extending in an easterly direction for a distance of 90 metres (295.28 feet) or thereby to the western corner of Work No. 1 and there terminating together with the reclamation by infilling and surfacing the area enclosed between the said Work No. 1 and the said marshalling area and steamer pier and to the same surface level.

(2) The Authority may within the limits of deviation reconstruct, renew, enlarge and alter temporarily or permanently the works.

(3) The works shall be deemed for all purposes to be within the parish of Glenelg and within the Highland Region and the district of Lochaber.

Subsidiary works

5. Subject to the provisions of this order, the Authority may within the limits of deviation from time to time erect, construct and maintain, whether temporarily or permanently, all such necessary works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

Power to deviate

6. Subject to the provisions of this order, in constructing the works the 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 section to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

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

7.—(1) A tidal work shall not be constructed, reconstructed, renewed, enlarged 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, reconstructed, renewed, enlarged or altered 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 Authority 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 thirty days from the date when the notice is served upon the Authority 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 a debt due from the Authority to the Crown and shall be recoverable accordingly.

Survey of tidal works

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 Authority 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 a debt due from the Authority to the Crown and shall be recoverable accordingly.

Provision against danger to navigation

9.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Authority 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 Authority fail to comply in any respect with any provision of this section, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand pounds (a) and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

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 Authority 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 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 thirty days from the date when a notice under this section is served upon the Authority 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 a debt due from the Authority to the Crown and shall be recoverable accordingly.

Lights on tidal works during construction

11.—(1) The Authority shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, enlargement 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 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 one thousand pounds and on conviction on indictment to a fine.

Permanent lights on tidal works

12.—(1) After the completion of a tidal work the Authority shall at the outer extremity thereof every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the 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 one thousand pounds and on conviction on indictment to a fine.

(a) 1964 c.40; section 14(3) (which prescribes a maximum penalty for offences) was amended by the Transport Act 1981 (c.56), Schedule 6, paragraph 14.

Work to form part of undertaking and application of byelaws

13.—(1) The works shall for all purposes form part of the undertaking.

(2) All byelaws and regulations of the Authority for the time being in force relating to the undertaking shall as far as applicable apply to the works and may be enforced by the Authority accordingly.

Extension of limits of harbour

14.—(1) As from the commencement of this order the harbour limits within which in terms of article 5(2) of the Order of 1968 the Authority has authority by virtue of any function conferred or imposed or transferred to them by the Order of 1968 and within which may be exercised the powers of any Harbour Master they may appoint (hereinafter referred to as "the 1968 limits of jurisdiction") shall comprise (so far as not already comprised in the 1968 limits of jurisdiction) the area of the sea in Loch Nevis between a line drawn from Rubha Na H–Acairseid 57° 00.46′ N, 05° 49.77′ W to An Fhoachag 57° 03.92′ N, 05° 47.78′ W and the parallel of latitude 57° N and up to the level of high water which limits (in this order referred to as "the extended limits") are shown by two broken red lines on the map marked "The Mallaig Harbour Revision Order 1984 — extended limits of Mallaig Harbour" signed and sealed with reference to this order and deposited in accordance with paragraph (3) of this article.

(2) In the event of any discrepancy between the extended limits defined in the last foregoing paragraph and the limits shown on the map referred to in that paragraph the map shall be deemed to be correct and shall prevail.

(3) The map referred to in paragraph (1) of this article has been deposited in the office of the Department of Agriculture and Fisheries for Scotland, Chesser House, Gorgie Road, Edinburgh, and certified copies thereof have been deposited in the Office of the Highland Regional Council, County Buildings, Inverness, at both of which offices the said map or a copy thereof may be inspected at all reasonable hours. Further certified copies thereof have been deposited in the Offices of the Secretary of State for Scotland and the Secretary of State for Transport.

(4) Nothing in this order shall empower the Authority in an area which is within the extended limits to levy ship, passenger or goods dues (as defined in section 57 of the Harbours Act 1964) in respect of any vessel being—

(a) a pleasure craft, whether on hire or not, which is owned by a person ordinarily resident in any parish bounded by Loch Nevis

(b) any other craft not exceeding a length overall of 18.5 metres which is not engaged in that area in the transshipping of fish.

Byelaws

15. The byelaws made by the Authority on 18th October 1968 and confirmed by the Secretary of State on 5th February 1969 which, immediately before the coming into operation of this order applied with respect to the harbour limits within which the Authority then had authority shall, until revoked, apply with any necessary modification and, except so far as they relate only to any specified part of those limits, with respect to the limits prescribed by section 5 of the Order of 1968 as amended by this order.

Provided

(a) that, notwithstanding the provisions of this order, byelaws 10, 12 and 24 of the said byelaws shall continue to apply only with respect to the

limits prescribed by the Order of 1968 as originally made; and

(b) that the said byelaws shall not apply to any pier, quay or jetty undertaking carried on by any person other than the Authority within the extended limits without the prior agreement of the undertakers.

Saving for Dumping at Sea Act 1974

16. Nothing in this order shall affect the operation of the Dumping at Sea Act 1974(**a**).

Saving for Coast Protection Act 1949

17. Nothing in this order shall exempt the Authority from the provisions of Part I of the Coast Protection Act 1949(**b**).

Saving for Control of Pollution Act 1974

18. Nothing in this order shall affect the operation of the Control of Pollution Act 1974(**c**).

Saving for Harbours Act 1964

19. Nothing in this order shall exempt the Authority or any other person from the provisions of sections 9 and 10 of the Harbours Act 1964(**d**).

Saving for Town and Country Planning

20.—(1) Section 274 of the Town and Country Planning (Scotland) Act 1972(**e**) (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the session of Parliament held during the regnal years 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this order as if it had been passed during that session; and accordingly the Town and Country Planning (Scotland) Act 1972 and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this order.

(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(**f**) (which permit development authorised by any local or private Act or by any order approved by both Houses of Parliament or by any other order made under section 14 or section 16 of the Harbours Act 1964, being an Act or order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this order were limited to development begun within ten years after the coming into operation of this order.

Crown rights

21.—(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 Authority or any licensee of the Authority to take, use, enter upon or in any manner interfere with any land or interest in land or any

(**a**) 1974 c.20. (**b**) 1949 c.74. (**c**) 1974 c.40.
(**d**) 1964 c.40. (**e**) 1972 c.52. (**f**) S.I. 1981/830.

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.

Costs of order

22. The costs, charges and expenses of and incidental to the preparing and obtaining of this order, (other than costs, charges and expenses which any person is lawfully ordered to pay by the Secretary of State or a Joint Committee of both Houses of Parliament for any costs incurred in opposing this order), shall be paid by the Authority.

George Younger,
Secretary of State.

New St Andrews House,
Edinburgh.
26th March 1984.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This order authorises the Mallaig Harbour Authority to construct an extension to the steamer pier with a sloping ramp in solid construction and an infilling and surfacing of an adjacent area in the place of certain works authorised by the Mallaig Harbour Order 1975.

The order also authorises extensions of the limits of the harbour.

The order being subject to special parliamentary procedure, the provisions of the Statutory Orders (Special Procedure) Acts of 1945 and 1965 determine the date upon which it comes into operation.

The Applicants for this order are the Mallaig Harbour Authority, Harbour Offices, Mallaig.