Ullapool Harbour Order Confirmation Act 1984

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ELIZABETH II

1984 CHAPTER iii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Ullapool Harbour. [13th March 1984]

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 Order should be confirmed by Parliament: 1936 c. 52.

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 Ullapool Harbour Order Confirmation Act 1984. Short title.

SCHEDULE

ULLAPOOL HARBOUR

Provisional Order to change the name of the Ullapool Pier Trustees; to amend the constitution of the Trustees; and to authorise them to construct works; and for other purposes.

Whereas the Ullapool Pier Trustees (hereinafter in the Preamble to this Order referred to as "the Trustees") were constituted by the
1911 c. clxxxvi. Ullapool Pier Order 1911 for the maintenance and regulation of piers and works at Ullapool in the parish of Lochbroom in the district of Ross and Cromarty in the Highland Region and for other purposes in that Order set forth:

S.I. 1965/1387. 1973 c. xv. And whereas by the Ullapool Pier Order 1965 and the Ullapool Pier Order 1973 further powers were conferred on the Trustees for the improvement and better regulation of their undertaking:

1981 c. xxix. And whereas by the Ullapool Pier Order 1981 the limits of jurisdiction of the Trustees were extended:

And whereas it is expedient to change the name of the Trustees and to amend the constitution of the Trustees as by this Order provided in the light of the extension of those limits:

And whereas it is expedient that the Trustees should be authorised to carry out the work described in this Order for the improvement of Ullapool Pier and the facilities thereat:

And whereas a plan and sections showing the lines or situations and levels of the work to be constructed under the powers of this Order with a book of reference to such plan containing the names of the owners and lessees or reputed owners and lessees of the lands shown on the said plan which may be used under and for the purposes of this Order were in the month of October 1983 deposited with the sheriff clerk of the sheriff court district of Dingwall in substitution for the plan, sections and book of reference so deposited in connection with this Order in November 1982; and such plan, sections and book of reference are respectively referred to in this Order as the deposited plan, sections and book of reference:

And whereas it is expedient that the other provisions contained 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

Short title and citations.

1.—(1) This Order may be cited as the Ullapool Harbour Order 1984.

(2) This Order and the Ullapool Pier Orders 1911 to 1982 may be cited together as the Ullapool Pier and Harbour Orders 1911 to 1984.

Interpretation.

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

"the sheriff" means the sheriff principal of and the sheriffs appointed for the Sheriffdom of Grampian, Highlands and Islands and "the sheriff clerk" means the sheriff clerk of the sheriff court district of Dingwall;

"the statutory maximum" means the prescribed sum as defined in section 289B of the Criminal Procedure (Scotland) Act 1975; 1975 c. 21.

"tidal work" means so much of any of the works authorised by this Order as is on, under or over tidal waters or tidal lands below the level of mean high-water springs;

"the Trustees" means the Ullapool Harbour Trustees.

PART II

NAME AND CONSTITUTION OF TRUSTEES

Name of Trustees.

3.—(1) The name of the Ullapool Pier Trustees is hereby changed to the Ullapool Harbour Trustees.

(2) The change of name effected by subsection (1) above shall not affect the rights or obligations of any persons or render defective any legal proceedings; and any reference to the Ullapool Pier Trustees or to a trustee thereof in any enactment or in any agreement, deed, lease, licence or other instrument in force immediately before the commencement of this Order shall be read as or as including a reference to the Ullapool Harbour Trustees or, as the case may be, to one of them.

Amendment of constitution.

4.—(1) The Trustees in office at the commencement of this Order shall, without prejudice to section 11 (Occasional vacancies among Trustees) of the Ullapool Pier Order 1911 but subject to the 1911 c. clxxxvi.

PART II —*cont.*

provisions of the Ullapool Pier and Harbour Orders 1911 to 1984, remain in office until 30th November 1985.

(2) On and after 1st December 1985 the Trustees shall be—

(*a*) the factor or agent of the estate of Ullapool as an ex-officio Trustee;

(*b*) one Trustee appointed by the Scottish Fishermen's Federation; and

(*c*) seven Trustees ("the Elective Trustees") elected in the manner prescribed by the Schedule to this Order in the month of November 1985 and in November in each fourth year thereafter.

(3) (*a*) A trustee appointed under subsection (2) (*b*) or elected under subsection (2) (*c*) above shall hold office for a period of four years expiring on 30th November 1989 and on 30th November in every fourth year thereafter.

(*b*) Notice in writing of the first appointment of a trustee under subsection (2) (*b*) above shall be given to the clerk to the Trustees by the Scottish Fishermen's Federation not later than 1st November 1985 and, as respects subsequent such appointments, not later than 1st November in each fourth year thereafter.

(*c*) If it appears to the Trustees at any time when an appointment falls to be made under subsection (2) (*b*) above that the Scottish Fishermen's Federation has ceased to have an identifiable existence, then the appointment shall be made by the Trustees after consultation with such persons appearing to the Trustees to be representative of the interests formerly represented by that Federation as the Trustees consider appropriate.

(4) This section shall be construed as one with the Ullapool Pier 1911 c. clxxxvi. Order 1911.

PART III

WORKS AND MISCELLANEOUS

Power to construct work.

5.—(1) Subject to the provisions of this Order, the Trustees 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 work hereinafter described, together with all necessary and proper works and conveniences connected therewith or incidental thereto in the parish of Lochbroom, in the district of Ross and Cromarty, in the Highland Region:—

A pier or jetty commencing by a junction with the southern side of the existing eastern pier at a point 38 metres or thereabouts measured in an easterly direction from its root and terminating at a point 80 metres or thereabouts measured in a south-easterly direction from the point of commencement.

PART III
—*cont.*

(2) Subject to the provisions of this Order, the Trustees may from time to time within the limits of deviation shown on the deposited plan renew the work or any part thereof and make minor alterations and additions thereto.

Power to deviate.

6. Subject to the provisions of this Order, in the construction of the work, the Trustees may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation shown on that plan and may deviate vertically from the level of the work shown on the deposited sections to any extent not exceeding 3 metres upward or downward.

Correction of errors in deposited plan and book of reference.

7.—(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 Trustees 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 in the Private Bill Office, House of Commons, with the sheriff clerk and with the proper officer (within the meaning of section 235 (3) of the Local Government (Scotland) Act 1973) of the Ross and Cromarty District Council 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 Trustees to take the land or a servitude therein (as the case may be) and execute the works in accordance with the certificate. 1973 c. 65.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

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

8.—(1) A tidal work shall not be constructed, renewed, altered or added to, 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, renewed, altered or added to, 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 Trustees 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 Trustees they have failed

PART III —*cont.*

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 to do so, he may 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 Trustees.

Survey of tidal works.

9. 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 Trustees 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 from the Trustees.

Provision against danger to navigation.

10.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Trustees 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 said Commissioners shall from time to time direct.

(2) If the Trustees fail to comply in any respect with the provisions of 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.

11.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Trustees 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 mean high-water springs is abandoned or suffered to fall into decay and that part of the work on or over land above the level of mean high-water springs 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 Trustees 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 Trustees.

Lights on works during construction.

12.—(1) The Trustees shall at or near a tidal work during the whole time of the construction, renewal or alteration thereof or the making of any addition thereto 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.

PART III —*cont.*

(2) If the Trustees 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.

13.—(1) After the completion of a tidal work the Trustees 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 Trustees 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.

Donations.

14. The Trustees may make donations, contributions or subscriptions to such public institutions or charities, and for such purposes specified by the Trustees appearing to them to be of benefit to some or all of the local community in the electoral area (within the meaning of the Schedule to this Order), as the Trustees think fit to an amount not exceeding in any accounting year two per centum of the excess of income over expenditure shown in the accounts for the immediately preceding accounting year of the Trust.

Repeals and amendments.

1911 c. clxxxvi.

15. As from 1st December 1985—

(*a*) the following provisions of the Ullapool Pier Order 1911 shall cease to have effect:—

In subsection (1) of section 3 (Interpretation), the definitions of "The proprietor" and "Electors";

Section 7 (First Trustees named);

Section 8 (Election of future Trustees);

Section 9 (Mode of electing Trustees);

(*b*) the following provisions of the said Order of 1911 shall be amended as follows:—

In section 10 (Re-election, quorum and resignation), at the end of subsection (1) there shall be inserted the words "or reappointed";

In section 11 (Occasional vacancies among Trustees), at the beginning of subsection (1) there shall be inserted the words "Subject to subsection (3) of this section", and at the end of the section there shall be inserted—

"(3) In the case of a vacancy arising by reason of any of the circumstances mentioned in subsection (1) of this section, in the office of the Trustee appointed pursuant to subsection (2) (*b*) of section 4 (Amendment of constitution) of the Ullapool Harbour Order 1984, the Scottish Fishermen's Federation shall as soon as reasonably practicable appoint a person to fill such vacancy, who shall continue in office for the remainder of the period mentioned in subsection (3) (*a*) of that section.";

In section 59 (Annual account to be sent to Board of Trade), in subsection (2) for the words "thirty-first day of March in each year" there shall be substituted the words "such day in each year as the Trustees may from time to time by resolution appoint.".

PART III —*cont.*

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

16.—(1) Section 274 of the Town and Country Planning (Scotland) Act 1972 (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.

S.I. 1981/830 (S.86).

(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 (which permit development authorised by any local or private Act or by any Order approved by both Houses of Parliament, 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 10 years after the passing of the Act confirming this Order.

(3) In this section the reference to article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1981 includes a reference to corresponding provisions of any general order superseding that Order made under section 21 of the Town and Country Planning (Scotland) Act 1972 or any corresponding provision of an Act repealing that section.

Saving for Dumping at Sea Act 1974. 1974 c. 20.

17. Nothing in this Order affects the operation of the Dumping at Sea Act 1974.

Crown rights.

18. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing herein contained shall authorise the Trustees or any licensee of the Trustees to take, use or in any way interfere with any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary or any land, heritages, subjects or rights of whatsoever description—

(*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 on behalf of Her Majesty; 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.

Costs of Order.

19. All costs, charges and expenses of and incidental to the preparing and obtaining of this Order and otherwise incurred in reference thereto shall be paid by the Trustees.

SCHEDULE

Section 4.

ELECTION OF TRUSTEES

1. In this Schedule—

"the electoral area" means so much of the area of the Lochbroom Community Council as constituted at the commencement of this Order as—

(1) in Ward A lies south of the river Kanaird extended by an imaginary straight line drawn due east from the waterfalls at National Grid reference NC 211 028 to the boundary of the said area;

(2) in Ward B lies north of an imaginary line drawn straight from Cailleach Head to Loch an Fhiona at National Grid reference NH 164 850 and thence straight due east to the boundary of the said area;

"elector" means a person on the electoral register and entitled to vote at any election of members of the Lochbroom Community Council as a resident in the electoral area;

"public notice" means notice published once in a newspaper circulating in the electoral area or by means of not less than five notices posted in conspicuous places throughout that area;

"the returning officer" means the officer appointed by the Trustees to act as such for the purposes of this Schedule.

2.—(*a*) The returning officer shall, not later than 15th September in the year 1985 and in each fourth year thereafter, by public notice call for nominations from electors of persons to hold office as the Elective Trustees from 1st December following the election.

(*b*) A person shall not be qualified to be so nominated unless he has been an elector in the electoral area throughout the period of five years immediately preceding his nomination.

3. Each nomination shall be delivered to the returning officer not later than 30th September following the public notice and shall—

(*a*) specify not more than seven persons for election, with sufficient identification;

(*b*) be signed by not less than two electors.

4. If not more than seven persons in all are so nominated, the returning officer shall by public notice declare them duly elected.

5.—(*a*) If more than seven persons in all are so nominated, the returning officer shall arrange for a poll to be taken and each of the electors shall be entitled to one vote for each of the seven offices of the Elective Trustees.

(*b*) The seven candidates receiving the greatest number of votes at any contested election shall be elected and, in the case of an equality of votes, the choice shall be made by the drawing of lots by the returning officer.

SCH. —*cont.*

6. Any question or dispute regarding the election of a candidate shall be summarily determined by the sheriff on the application of any of the electors and the decision of the sheriff shall be final; and, unless and until the sheriff shall otherwise determine, the person declared by the returning officer to be elected shall be elected as one of the Elective Trustees and the acts and proceedings of such trustee shall be valid accordingly.

7. The expenses connected with each election (but not the expenses of any candidate) shall be paid by the Trustees out of the funds of the Trust.

8. Notice of the election of a person as an Elective Trustee shall as soon as reasonably practicable be sent to him in writing by the returning officer together with a notice to attend the first meeting of the Trustees on or after 1st December following the election. Such notice shall state the time and place at which such meeting is to be held.

9. The poll at every contested election shall be taken in such manner, whether by postal vote or by ballot in a meeting convened by the returning officer by public notice for that purpose, as the Trustees may by resolution from time to time determine.

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
£1·75 net
ISBN 0 10 510384 5