ELIZABETH II



1982 CHAPTER ii

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

[25th February 1982]

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:—

Confirmation of Order in schedule.

1. The Provisional Order contained in the schedule hereunto annexed is hereby confirmed.

Short title.

2. This Act may be cited as the Western Isles Islands Council (Loch Roag) Order Confirmation Act 1982.

SCHEDULE

WESTERN ISLES ISLANDS COUNCIL (LOCH ROAG)

Provisional Order to impose and confer upon the Western Isles Islands Council duties and powers of a harbour authority in and in the vicinity of Loch Roag on the west coast of Lewis; to provide for the transfer to the Council of the harbour of Carloway; and for other purposes.

Whereas—

1973 c. 65. (1) Under the Local Government (Scotland) Act 1973 the Western Isles Islands Council are the local authority vested with functions of an islands council in respect of the Western Isles Islands Area:

(2) In the exercise of their functions the Council have undertaken substantial research into marine resources of importance to the well-being of the inhabitants of that area and the facilities required in connection therewith, and have under consideration measures designed to conserve such resources and improve such facilities:

(3) Developments are taking place at and in the vicinity of Loch Roag on the west coast of the island of Lewis in the Outer Hebrides due to a resurgence of activities in the fishing industry affecting in particular the area of Loch Roag, and the Highlands and Islands Development Board have been instrumental in constructing a pier, fish-drying plant and other facilities at Breasclete on East Loch Roag, and have applied to the Secretary of State for and have had confirmed by Parliament a Provisional Order in connection therewith:

(4) It is the intention of the said Council to invoke an agreement made with the said board whereby the pier and facilities at Breasclete may be transferred to the Council before 19th January 1989, and the Council already have proposals to improve other marine works in Loch Roag:

1892 c. ccv. (5) The harbour and pier works at Carloway in the island of Lewis were, at the passing of the Carloway Harbour Order 1892, vested in Dame Mary Jane Matheson of the Lewis, but section 33 of that Order provided for the election and incorporation of the Carloway Harbour Trustees as a body corporate with perpetual succession and a common seal, and section 34 required the proprietor to convey to those trustees all lands belonging to her whereon any works authorised by that Order might have been constructed, or which were required as a site whereon to construct such works, together with all the right and interest of the proprietor in the harbour and port of Carloway as defined in that Order:

(6) The said trustees were duly elected, and by feu charter dated 23rd September 1893, there were conveyed to them the aforesaid lands, rights and interests. The trustees owned and managed the harbour works until 1915, but since then have ceased to manage them and despite diligent inquiry the Council have been unable to establish the identity of any existing trustee:

(7) Having regard to the public interest it is desirable that the said works should be properly maintained and their use regulated, and that the said harbour and the lands thereof and the rights and interests pertaining thereto should now be vested in the Council for that purpose:

(8) Within the area of and contiguous to Loch Roag there are other piers and harbours which it is expedient to control and administer, and there is a need for such control and administration to be coordinated under one body:

(9) Other developments, such as the possibility of installations to harness wave energy, have been envisaged, and experience has shown that in the time-scale of modern major development it is desirable to ensure that adequate powers are available to control such developments:

(10) It is expedient that the Council should be invested with the control and administration of pier and harbour facilities and that the powers of a harbour authority should be conferred upon the Council in the said area, including powers of control of marine works, having regard to the general functions and responsibilities of the Council and to their particular responsibilities to provide any necessary roads and infrastructure in the event of significant developments taking place:

(11) A plan of the lands and buildings which may be acquired or used under the powers of this Order, and a book of reference thereto showing the names of the owners or reputed owners, and of the occupiers, of such lands and buildings, were duly deposited, inter alia, at the office of the Clerk of the Parliaments, in the Private Bill Office of the House of Commons, and with the Sheriff-Clerk of the Stornoway Sheriff Court District and at the offices of the Council at Stornoway:

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

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

PART I

PRELIMINARY

1. This Order may be cited as the Western Isles Islands Council (Loch Roag) Order 1982. Short title.

2. In this Order— Interpretation.

"charges" means charges, dues and tolls of every description for the time being payable under any enactment to the Council in relation to the undertaking;

PART I —*cont.*

" the Council " means the Western Isles Islands Council;

" dredging licence " means a licence granted under section 8 (Licence to dredge) of this Order;

" general direction " means a direction given under section 10 (General directions to vessels) of this Order;

" the harbour area " means the area the limits whereof are set out in the Schedule to this Order;

" the harbourmaster " means any person appointed as such pursuant to section 3 (Harbour jurisdiction) of this Order, and includes his deputies and assistants and any person for the time being authorised by the Council to act either generally or for a specific purpose, in the capacity of harbourmaster;

" harbour premises " means the quays, piers, landing places, and all other works, land and buildings for the time being vested in or occupied or administered by the Council as part of the undertaking;

" hovercraft " has the same meaning as in the Hovercraft Act 1968;

1968 c. 59.

" hydrofoil vessel " means a vessel, however propelled, designed to be supported on foils;

" land " includes land covered by water, and any interest in land or any servitude or right in, to or over land;

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

" licensee " means a person in whose favour a works licence, or as the case may be a dredging licence, has been granted and is in operation;

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

" special direction " means a direction given under section 12 (Special directions) of this Order;

" tidal work " means so much of—

(*a*) any work belonging to or vested in the Council; or

(*b*) any other work authorised by or under 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 Council as from time to time authorised in relation to the harbour area;

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

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

PART I —*cont.*

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

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

"works" means works of every description, including, except for the purposes of sections 6 and 7 below, moorings, and includes the reclamation of land reasonably required for the purpose of executing works;

"works licence" means a licence granted under section 7 (Licensing of works) of this Order.

PART II

DUTIES AND POWERS OF THE COUNCIL

Harbour jurisdiction. 1964 c. 40.

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

(2) For and incidental to the performance of their functions under this Order, the Council may employ and appoint a harbourmaster and such other officers and servants as from time to time they deem necessary or desirable.

Power to dredge.

4.—(1) The Council may from time to time, as may appear to them to be necessary or desirable for the purposes of the undertaking, deepen, widen, dredge, scour and improve the bed and foreshore of the harbour area, and may blast any rock in that area.

1894 c. 60.

(2) Subject to the provisions of section 44 (Crown rights) of this Order, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected in the course of such operations shall be the property of the Council and may be used, sold, removed, deposited or otherwise disposed of as the Council may think fit:

Provided that the Council shall not lay down or deposit any materials—

(*a*) below the level of high water except in such position as the Secretary of State may approve and subject to such conditions and restrictions as he may impose; or

(*b*) in such place or manner as to cover any subaqueous cable belonging to or used by British Telecommunications or to impede in any way the inspection, maintenance, removal or renewal of any such cable.

PART II —*cont.*

(3) The Council shall give notice in writing to British Telecommunications as early as possible, and in any event not less than 28 days, before exercising any of the powers conferred by subsection (1) above within a distance of 50 metres, or, in the case of blasting operations, 150 metres, of any subaqueous cable belonging to or used by British Telecommunications.

Moorings.

5.—(1) The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour area as they consider necessary or desirable for the convenience of vessels.

(2) The Council may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the harbour area.

(3) Any person who, without reasonable excuse shall place, lay down, maintain, renew or use a mooring, buoy or similar apparatus for vessels within the harbour area except under and in accordance with the terms and conditions of a licence granted under this section shall be guilty of an offence and liable on conviction in a court of summary jurisdiction to a fine not exceeding £200.

(4) Any licence granted under subsection (2) above shall be valid only for a period of three years commencing with the date on which it takes effect.

(5) The Council may charge a reasonable fee for the grant of a licence under this section.

PART III

REGULATION OF HARBOUR AREA

Restriction of works and dredging.

6.—(1) No person other than the Council shall in the harbour area—

(*a*) construct, place, alter, renew, extend or maintain any works; or

(*b*) dredge;

unless he is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of section 7 (Licensing of works) or, as the case may require, section 8 (Licence to dredge) below.

(2) Any person who contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(3) The Council may by notice require a person who contravenes this section to remove, abate or rectify within a reasonable time specified in the notice any work, operation or omission to which the contravention relates, and to restore the site thereof to its former condition, and if he fails to comply with the notice the Council may carry out the works so required and may recover the cost of so doing from that person.

(4) Nothing in this section shall affect the powers of British Telecommunications under the Telegraph Acts 1863 to 1916.

Licensing works.

7.—(1) The Council may upon such terms and conditions as they think fit grant to any person a licence to construct, place, maintain, alter, renew or extend works within the harbour area on, under or over tidal waters or tidal land below the level of high water, notwithstanding any interference with public rights of navigation or other public rights by such works as constructed, placed, maintained, altered, renewed or extended.

(2) Application for a works licence shall be made in writing to the Council and shall—

(*a*) be accompanied by plans, sections and particulars of the works to which the application relates;

(*b*) specify whether the applicant holds such rights in, under or over land as are necessary to enable him to enjoy the benefits of the licence and, if not, the action taken to enable him to obtain such rights if the licence is granted; and

(*c*) be accompanied by a copy of a notice published in a newspaper circulating in the Western Isles Islands Area stating that it is intended to make the application, containing a general description of the nature of the works for which application is being made and of the land affected thereby, naming a place where a copy of the plans, sections and particulars of the proposed works may be seen at all reasonable hours and stating that any person who desires to object to the Council to the grant of the application should do so in writing stating the grounds of his objection before the expiration of the period of 28 days from the date of the publication.

(3) In deciding whether or not to grant a works licence or as to the terms and conditions to be included in the licence the Council shall take into consideration any objection in writing made to them pursuant to subsection (2) (*c*) above (hereafter in this section and in section 9 (Appeals in respect of works or dredging licence) of this Order referred to as a valid objection) and in granting a licence the Council may

PART III —*cont.*

require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) If the Council decide to grant a works licence they shall give notice of their decision to the applicant and to any person who has made a valid objection and has not withdrawn it.

(5) If within three months from the date of the making of an application under subsection (2) above the Council do not notify to the applicant their decision to grant a works licence, they shall be deemed to have refused the application.

(6) The grant of a works licence shall not confer statutory authority for the carrying out of the operations covered by the licence.

1878 c. 76.

(7) For the purpose of section 7 of the Telegraph Act 1878 any works proposed to be carried out under a works licence shall be deemed to be a work proposed to be done in the execution of an undertaking authorised by an Act of Parliament and the licensee shall be deemed to be the undertakers.

Licence to dredge.

8.—(1) The Council may upon such terms and conditions as they think fit grant to any person a licence to dredge in any part of the harbour area.

(2) Application for a dredging licence shall be made in writing to the Council and shall be accompanied by—

(*a*) plans, sections and particulars defining the nature, extent and manner of the operations to be carried out in the exercise of the powers granted by the licence; and

(*b*) a copy of a notice published in a newspaper circulating in the Western Isles Islands Area stating that it is intended to make the application, containing a general description of the position, nature, extent and manner of the operations in respect of which the application is made, naming a place where a copy of the plans, sections and particulars of the proposed operations may be seen at all reasonable hours and stating that any person who desires to object to the Council to the grant of the application should do so in writing stating the grounds of his objection before the expiration of the period of 28 days from the date of publication of the notice.

(3) In deciding whether or not to grant a dredging licence or as to the terms and conditions to be included in the licence the Council shall take into consideration any objection made to them pursuant to subsection (2) (*b*) above (hereafter in this section and in section 9 (Appeals in respect of works or dredging licence) of this Order referred to as a valid objection) and in granting a licence the Council may

require modifications in the plans, sections and particulars submitted to them by the applicant. PART III —*cont.*

(4) If the Council decide to grant a dredging licence they shall give notice of their decision to the applicant and to any person who has made a valid objection and has not withdrawn it.

(5) If within three months from the date of making an application under subsection (2) above the Council do not notify the applicant of their decision to grant a dredging licence they shall be deemed to have refused the application.

(6) Unless otherwise agreed between the Council and the licensee any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected by means of dredging in pursuance of a dredging licence shall, in so far as they are not the property of the Council before being taken up or collected, but subject to the provisions of section 44 (Crown rights) of this Order, become the property of the Council, and the provisions of subsection (2) of section 4 (Power to dredge) above shall apply to such materials which are or become the property of the Council. 1894 c. 60.

(7) The grant of a dredging licence shall not confer statutory authority for the carrying out of the operations covered by the licence.

(8) Every licensee shall give notice in writing to British Telecommunications as early as possible, and in any event not less than 28 days, before exercising any of the powers contained in the licence within a distance of 50 metres of any subaqueous cable belonging to or used by British Telecommunications.

Appeals in respect of works or dredging licence.

9.—(1) A person who has made a valid objection and has not withdrawn his objection and who is aggrieved by the decision of the Council to grant a works licence or a dredging licence, and an applicant for any such licence who is aggrieved by—

(*a*) the refusal of the Council to grant the licence; or

(*b*) any terms or conditions subject to which the licence is granted; or

(*c*) any modifications required by the Council in the plans, sections and particulars submitted by the applicant;

may within 28 days from the date on which the Council give notice of their decision or the date on which they are under subsection (5) of section 7 (Licensing of works) or of section 8 (Licence to dredge) of this Order deemed to have refused the application, as the case may be, appeal to the Secretary of State.

(2) An appeal under this section shall be made by notice in writing, stating the grounds of the appeal.

PART III —*cont.*

(3) A person who appeals to the Secretary of State under this section shall at the same time send a copy of his statement of appeal to the Council and the Council shall as soon as practicable thereafter furnish the Secretary of State with all relevant documents, and may within 28 days from the receipt of the statement of appeal furnish the Secretary of State with their observations on the appeal.

(4) On an appeal under this section the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including amendment of the terms and conditions or modification of the plans, sections, and particulars.

(5) The Council shall give effect to any decision or requirement given or made by the Secretary of State under subsection (4) above.

General directions to vessels.

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

(*a*) for designating areas, routes or channels within the harbour area which vessels are to use or refrain from using for movement or mooring;

(*b*) for securing that vessels move only at certain times or during certain periods;

(*c*) requiring the master of a vessel to give to the harbourmaster information relating to the vessel reasonably required by him for the purposes of this subsection.

(2) A general direction may apply—

(*a*) to all vessels or to a class of vessel designated, or the designation of which is provided for, in the direction; and

(*b*) to the whole of the harbour area or to a part designated, or the designation of which is provided for, in the direction; and

(*c*) at all times or at times designated, or the designation of which is provided for, in the direction;

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

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

Publication of general directions

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

PART III —*cont.*

Special directions.

12.—(1) The harbourmaster may give a direction under this section in respect of a vessel anywhere in the harbour area for any of the following purposes:—

(*a*) requiring persons to comply with a requirement made in or under a general direction;

(*b*) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;

(*c*) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at harbour premises;

(*d*) specifying the precautions to be taken in respect of apparatus, machinery and equipment;

(*e*) as to the use of the motive power of the vessel;

(*f*) prohibiting or restricting the use of fires or lights;

(*g*) as to the use of ballast;

(*h*) requiring the removal from any part of the harbour area of a vessel if—

(i) it is on fire; or

(ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink; or

(iii) it is making an unlawful use of the harbour area, or interfering with the reasonable use or enjoyment thereof by other vessels or persons; or

(iv) its removal is necessary to enable maintenance or repair work to be carried out to harbour premises or to premises adjacent thereto;

and requiring its removal outside the harbour area if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life (including wildlife) or to property.

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

Failure to comply with directions.

13.—(1) The master of a vessel who fails to comply with a general direction or a special direction shall be guilty of an offence and liable on conviction in a court of summary jurisdiction to a fine not exceeding £200 and in addition to a fine not exceeding £20 for each day on which the offence is continued after conviction thereof.

(2) Without prejudice to any other defence, it shall be a defence to a charge made pursuant to subsection (1) above that the master had reasonable ground for believing that to comply with the direction in question would have endangered life or imperilled the safety of any vessel or its cargo, or that for other reason such compliance was impracticable.

PART III —*cont.*

Enforcement of special directions.

14.—(1) Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the harbourmaster may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board a vessel to attend to a special direction, the harbourmaster may proceed as if the direction had been given and not complied with:

Provided that the powers of this subsection shall not be exercised—

(*a*) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or

(*b*) in relation to a lighter unless it is obstructing or interfering with navigation.

(3) Expenses incurred by the Council in the exercise of the powers conferred by subsection (1) above shall be recoverable by them as if they were a charge of the Council in respect of the vessel.

Master's responsibility in relation to directions.

15. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel affected in relation to that vessel, to persons on board, to its cargo or to any other person or property.

General byelaws.

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

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

(*a*) prescribing parts of the harbour area—

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

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

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

(*c*) preventing pollution or nuisances in or near the harbour area;

(*d*) making the carrying out of specified harbour operations, or the conduct of persons in the harbour area, subject to the approval (with or without conditions), control or direction of the harbourmaster, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction.

PART III —*cont.*

(3) Byelaws made under this section may—

(*a*) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed or given thereunder, fines not exceeding in any one case £200;

(*b*) relate to the whole of the harbour area or to any part thereof;

(*c*) make different provisions for different parts of the harbour area or in relation to different classes of vessels.

(4) Where a person is charged with an offence against a byelaw in force under this section, it shall be a defence that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and, if he was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

Byelaws as to dangerous goods.

17.—(1) The Council may make byelaws as to the loading and discharging by vessels within the harbour area of dangerous goods and as to the bringing, handling, transport and storage of such goods within the area, and generally as to the precautions to be observed with respect to such goods while within the area.

(2) Byelaws made under this section may in particular provide—

(*a*) for regulating the places at which vessels are to load or discharge dangerous goods and the time and mode of, and the precautions to be taken on, such loading and discharging;

(*b*) for regulating the places at which vessels carrying dangerous goods are to be moored;

(*c*) for the due enforcement of the byelaws; and

(*d*) for imposing on persons offending against them fines not exceeding £500.

(3) Where a person is charged with an offence against a byelaw in force under this section, it shall be a defence that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and, if he was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

(4) In this section "dangerous goods" means any goods defined as dangerous goods by rules for the time being in force under section 23 of the Merchant Shipping (Safety Convention) Act 1949, but does not include dangerous goods to which byelaws made by the Council under the Explosives Act 1875 or the Petroleum (Consolidation) Act 1928 for the time being apply.

1949 c. 43.

1875 c. 17.

1928 c. 32.

Confirming authority for byelaws.

18. For byelaws made by the Council under this Part of this Order, the confirming authority for the purposes of section 202 of the Local Government (Scotland) Act 1973 shall be the Secretary of State.

1973 c. 65.

PART III —*cont.*

Offenders to make good damage.

19.—(1) Any person offending against or committing a breach or contravention of any of the provisions of this Order or of any byelaw or direction thereunder made or given by or on behalf of the Council shall, in addition to any fine thereby incurred, be liable to repay to the Council the cost of repairing or making good any damage directly or indirectly occasioned thereby to the property of the Council.

(2) The Council may recover from any such person the cost of repairing or making good any such damage, and may detain any vessel or other property belonging to or in charge of such person or belonging to his employers until the cost has been paid or until reasonable security therefor has been given to the Council.

Repair of piers, landing places, etc.

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

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

(*b*) injurious to the condition of the harbour area as a navigable waterway; or

(*c*) a hindrance to the navigation of the harbour area;

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

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

(*a*) he shall be guilty of an offence and liable on conviction in a court of summary jurisdiction to a fine not exceeding £50; and

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

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

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

PART IV

CHARGES

Charges other than ship, passenger and goods dues.
1964 c. 40.

21.—(1) The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined by section 57 of the Harbours Act 1964, entering, using or leaving the harbour area such charges as they think fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this subsection as they apply to ship, passenger and goods dues.

(2) The Council may demand, take and recover in respect of anything done or provided by them or on their behalf such reasonable charges as they may determine.

(3) In subsection (2) above "charges" does not include ship, passenger and goods dues as defined by section 57 of the said Act of 1964 or charges authorised by subsection (1) above.

Liability for charges.

22.—(1) Charges on or in respect of—

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

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

(2) Where a charge payable to the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

Exemptions, rebates, etc., in respect of charges.

23.—(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to, charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

Security for charges.

24. The Council may require a person who incurs or is about to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Council may detain the vessel in the harbour area, or goods on or in harbour premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

Refusal of customs clearance

25.—(1) A customs officer may refuse—

(*a*) to receive a report inwards or to grant a clearance outwards to a vessel; and

PART IV —*cont.*

(*b*) to pass an entry for imported goods liable to charges;

unless he is satisfied that all charges payable to the Council in respect of that vessel or of those goods, as the case may be, have been paid or that a sum of money or guarantee in respect thereof has been deposited with, or given to, the Council.

(2) Where a person who has paid, or by agreement with the Council given security or deposited a guarantee for, a charge on or in respect of a vessel or goods, requests a certificate of his having done so for production to a customs officer in order to prevent a refusal under subsection (1) above, the Council shall give him such a certificate in such form as they shall determine.

Liens for charges.

26.—(1) A person who by agreement with the Council collects charges on their behalf and who pays or gives security for the payment of charges on goods in his possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in his custody, and in that event he shall have a like lien on the goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place.

27. An officer of the Council may prevent a vessel from using a landing place provided by the Council, if the master of the vessel refuses to pay the charges for such use.

Exemptions from charges.

28.—(1) Except in so far as may be agreed between the Council and the government department or person concerned or as may be specifically laid down by statute nothing in any enactment authorising the Council to levy charges shall extend to authorise them to levy charges on—

(*a*) a vessel—

(i) belonging to or in the service of Her Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or

(iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;

(*b*) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(*c*) troops landed at the harbour premises or a person employed by the Secretary of State for Defence while in the execution of his duty;

(*d*) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department of Trade in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

PART IV —*cont.*

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the harbour area without mooring or making use of any facilities provided by the Council.

Conditions as to payment of charges.

29.—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in their published list of charges.

(2) Without prejudice to the generality of subsection (1) above the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

PART V

MISCELLANEOUS

Carloway harbour.

1892 c. ccv.

30.—(1) On the commencement of this Order the harbour at Carloway on and adjacent to the island of Lewis, including the lands, rights and interests conveyed to the Carloway Harbour Trustees pursuant to section 34 of the Carloway Harbour Order 1892, shall by virtue of this Order vest in the Council.

(2) The Carloway Harbour Order 1892 is hereby repealed.

Works deemed to be within Western Isles Islands Area.

31. So much of any work now or hereafter constructed or placed pursuant to this Order as is not within the Western Isles Islands Area shall be deemed for all purposes to be within that area.

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

32.—(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.

(2) If a tidal work is constructed in contravention of this section—

(*a*) the Secretary of State may by notice in writing require the Council at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Council, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

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

PART V —*cont.*

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

Lights on tidal works during construction.

33.—(1) The Council shall at or near a tidal work during the whole time of the construction, alteration or extension 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 conviction in a court of summary jurisdiction to a fine not exceeding £200 and on conviction on indictment to a fine.

Permanent lights on tidal works.

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

(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 conviction in a court of summary jurisdiction to a fine not exceeding £200 and on conviction on indictment to a fine.

Survey of tidal works.

35. 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 the work and any expenditure incurred by him in such survey and examination shall be recoverable from the Council.

Provision against danger to navigation.

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

(2) If the Council fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on conviction in a court of summary jurisdiction to a fine not exceeding £200 and on conviction on indictment to a fine.

Abatement of works abandoned or decayed.

37.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

PART V —*cont.*

(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 Council, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

Penalty on harbourmaster for misbehaviour.

38. If the harbourmaster, without reasonable cause, or in an unreasonable or unfair manner, exercises any of the powers conferred on him by this Order he shall be guilty of an offence and liable on conviction in a court of summary jurisdiction to a fine not exceeding £50.

Saving for fishing vessels at Carloway harbour.

39.—(1) Except to the extent that the Council are put to expense in order to provide or maintain facilities required by vessels and persons using the harbour at Carloway, the Council shall not levy charges in respect of vessels at that harbour which are solely employed for fishing and are owned by persons who at the commencement of this Order have their principal residence within a distance of two miles from the primary school at Carloway.

(2) The Council shall not refuse to issue a licence under section 5 (Moorings) of this Order, nor charge any fee therefor, in respect of any mooring at Carloway harbour which is at the commencement of this Order held, and which continues to be held, for the use of any of the vessels referred to in subsection (1) above.

Saving for marine works. 1937 c. 28.

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

(2) The Council shall not exercise the powers conferred upon them by section 4 (Power to dredge), section 7 (Licensing of works) or section 8 (Licence to dredge) of this Order in such way as to affect or prejudice the rights of any person in respect of a marine work (as defined in section 57 of the Harbours Act 1964) without the consent in writing of the Secretary of State. 1964 c. 40.

Saving for existing harbour undertakings.

41. Without prejudice to any restriction imposed by any other provision of this Order, the Council shall not exercise any of their powers (including their power to levy charges), other than the power conferred by section 20 (Repair of piers, landing places, etc.) of this Order, within the limits for the time being established by or under any enactment of any harbour, pier or dock undertaking carried on

PART V —*cont.*

wholly or partly within the harbour area by any person other than the Council without the prior agreement of the undertakers, except so far as may be necessary or expedient for the purpose of maintaining, improving, protecting or regulating the navigation within the harbour area outside, or between points outside, those limits, and any dispute arising under this section shall be referred to and determined by the Secretary of State whose decision shall be binding on all parties.

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

42. Nothing in this Order affects the operation of Part I of the Coast Protection Act 1949, or affects the operation of sections 34 and 36 of that Act in their application to operations carried out by virtue of section 8 of this Order.

Saving for certain enactments, etc.
1964 c. 40.
1974 c. 20.
1974 c. 40.
1975 c. 8.
1974 c. 37.

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

(*a*) sections 9 and 10 of the Harbours Act 1964;

(*b*) the Dumping at Sea Act 1974;

(*c*) the Control of Pollution Act 1974;

(*d*) the Offshore Petroleum Development (Scotland) Act 1975;

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

1972 c. 52.

(2) The provisions of the Town and Country Planning (Scotland) Act 1972 and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

(3) Subsection (1) of section 80 (repeal or modification of certain provisions by regulations) of the Health and Safety at Work etc. Act 1974 shall apply to any provision of this Order and to any byelaw made under such provision as it applies to any provision mentioned in subsection (2) of that section.

(4) Nothing in this Order shall prejudice or derogate from, or in any way alter, affect or interfere with, the jurisdiction or authority of the Commissioners of Northern Lighthouses.

Crown rights.

44. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown, and in particular nothing in this Order shall authorise the Council or any licensee to take, use or interfere with any land or rights—

(*a*) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate 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 the said commissioners or, as the case may be, that department.

SCHEDULE

LIMITS OF HARBOUR AREA

Section 2.

1. In this Schedule " the seaward limit " means a series of imaginary straight lines commencing at the northernmost tip of Gallan Head (latitude 58° 14′ 41″ N, longitude 7° 01′ 23″ W), proceeding to the northernmost tip of Stac nam Baig by the island of Old Hill (latitude 58° 17′ 02″ N, longitude 6° 55′ 26″ W), thence to the northernmost tip of Mas Sgeir (latitude 58° 17′ 35″ N, longitude 6° 52′ 43″ W) and thence to a point on the headland of Aird Mhor at latitude 58° 18′ 17″ N, longitude 6° 48′ 11″ W.

2. The limits of the harbour area shall comprise the area covered by tidal waters and bounded on the one hand by the seaward limit and on the other by the shores of East Loch Roag and West Loch Roag, and shall include—

(*a*) the navigable waters of all rivers, streams and creeks connecting therewith; and

(*b*) the harbour premises.

PRINTED IN ENGLAND BY OYEZ PRESS LIMITED
FOR W. J. SHARP
Controller and Chief Executive of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

£2·30 net

ISBN 0 10 510282 2

Western Isles Islands Council (Loch Roag) Order Confirmation Act 1982

CHAPTER ii

ARRANGEMENT OF SECTIONS

Section

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

SCHEDULE

WESTERN ISLES ISLANDS COUNCIL (LOCH ROAG)

PART I

PRELIMINARY

1. Short title.
2. Interpretation.

PART II

DUTIES AND POWERS OF THE COUNCIL

3. Harbour jurisdiction.
4. Power to dredge.
5. Moorings.

PART III

REGULATION OF HARBOUR AREA

6. Restriction of works and dredging.
7. Licensing of works.
8. Licence to dredge.
9. Appeals in respect of works or dredging licence.

Section

10. General directions to vessels.
11. Publication of general directions.
12. Special directions.
13. Failure to comply with directions.
14. Enforcement of special directions.
15. Master's responsibility in relation to directions.
16. General byelaws.
17. Byelaws as to dangerous goods.
18. Confirming authority for byelaws.
19. Offenders to make good damage.
20. Repair of piers, landing places, etc.

PART IV

CHARGES

21. Charges other than ship, passenger and goods dues.
22. Liability for charges.
23. Exemptions, rebates, etc., in respect of charges.
24. Security for charges.
25. Refusal of customs clearance.
26. Liens for charges.
27. Refusal to pay charges for landing place.
28. Exemptions from charges.
29. Conditions as to payment of charges.

PART V

MISCELLANEOUS

30. Carloway harbour.
31. Works deemed to be within Western Isles Islands Area.
32. Tidal works not to be executed without approval of Secretary of State.
33. Lights on tidal works during construction.
34. Permanent lights on tidal works.
35. Survey of tidal works.
36. Provision against danger to navigation.
37. Abatement of works abandoned or decayed.
38. Penalty on harbourmaster for misbehaviour.
39. Saving for fishing vessels at Carloway harbour.
40. Saving for marine works.
41. Saving for existing harbour undertakings.
42. Saving for Coast Protection Act 1949.
43. Saving for certain enactments, etc.
44. Crown rights.

SCHEDULE:

Limits of harbour area.