Western Isles Islands Council (Kallin Pier, Harbour Jurisdiction) Order Confirmation Act 1984

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ELIZABETH II

1984 CHAPTER ii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Western Isles Islands Council (Kallin Pier, Harbour Jurisdiction). [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 Western Isles Islands Council (Kallin Pier, Harbour Jurisdiction) Order Confirmation Act 1984. Short title.

SCHEDULE

WESTERN ISLES ISLANDS COUNCIL (KALLIN PIER, HARBOUR JURISDICTION)

Provisional Order to confer on the Western Isles Islands Council harbour jurisdiction at Kallin on the Island of Grimsay; and for other purposes.

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

And whereas it is the policy of the said Council to stimulate in the said area employment opportunities based on local human and physical resources:

And whereas the fisheries in the waters adjacent to the said Area constitute one of its major resources:

And whereas those fisheries are not properly exploited due to the lack of harbours, piers and other landward facilities:

And whereas the said Council are about to apply to the Secretary of State for authority to construct a pier and ancillary works under the
1937 c. 28. provisions of the Harbours, Piers and Ferries (Scotland) Act 1937 at Kallin on the Island of Grimsay in Uist in order to develop and improve the shellfish and other fisheries in the vicinity:

And whereas it is expedient that the Council should be invested with the control and administration of the said intended pier and that the powers of a harbour authority should be conferred upon the Council in relation thereto:

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

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

PART I

PRELIMINARY

1. This Order may be cited as the Western Isles Islands Council (Kallin Pier, Harbour Jurisdiction) Order 1983. Short title.

2. In this Order, except where the context otherwise requires— 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;

"the Council" means the Western Isles Islands Council;

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

"the harbour" 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;

"the sheriff" means the sheriffs appointed for the sheriffdom of Grampian, Highland and Islands;

"the standard scale" has the same meaning as in section 289G of the Criminal Procedure (Scotland) Act 1975; 1975 c. 21.

PART I —*cont.*

"the undertaking" means the undertaking of the Council as from time to time authorised in relation to the harbour;

"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;

(*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 and includes the reclamation of land reasonably required for the purpose of executing works and (except for the purposes of sections 6 and 7 below) moorings;

"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.

(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, and may blast any rock therein.

(2) Subject to the provisions of section 21 (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:

1894 c. 60.

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.

(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. PART II —*cont.*

Moorings.

5.—(1) The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour 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.

(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 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 summary conviction to a fine not exceeding level 3 on the standard scale.

(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

Restriction of works and dredging.

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

(*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 level 5 on the standard scale.

(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

PART III —*cont.*

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 of 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 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 in accordance with 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 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.

PART III —*cont.*

(6) 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. 1878 c. 76.

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

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.

(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 the publication.

(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 in accordance with 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.

(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 1894 c. 60.

PART III —*cont.*

subject to the provisions of section 21 (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.

(7) 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.

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

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.

(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 byelaws.

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

PART III —*cont.*

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

(*a*) prescribing parts of the harbour—

(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;

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

(*d*) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, 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;

(*e*) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of marine creatures of any type within the harbour;

(*f*) for regulating the movement, speed and parking of vehicles within the harbour.

(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 level 3 on the standard scale;

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

(*c*) make different provisions for different parts of the harbour 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.

Confirming authority for byelaws. 1973 c. 65.

11. For byelaws made by the Council under the preceding section 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.

Offenders to make good damage.

12.—(1) Any person contravening any of the provisions of this Order or of any byelaw thereunder made by 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

PART III —*cont.*

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.

13.—(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;

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

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

to remedy its condition to the satisfaction 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 summary conviction to a fine not exceeding level 2 on the standard scale; 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

MISCELLANEOUS

Works deemed to be within Western Isles Islands Area.

14. So much of any work 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.

Penalty on harbourmaster for misbehaviour.

15. 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 summary conviction to a fine not exceeding level 3 on the standard scale.

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

16.—(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. 1964 c. 40.

Exemption from charges for Department of Transport.

17. Officers of the Department of Transport in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

Saving for marine works. 1937 c. 28.

18.—(1) Subject to subsection (2) below 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) Section 10 (Application of 10 & 11 Vict. c. 27, &c.) of the said Act of 1937 shall not apply to the undertaking of the Council.

(3) 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.

Saving for certain enactments, etc.

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

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

(*b*) the Prevention of Oil Pollution Act 1971; 1971 c. 60.

(*c*) the Dumping at Sea Act 1974; 1974 c. 20.

(*d*) the Control of Pollution Act 1974; 1974 c. 40.

(*e*) the Offshore Petroleum Development (Scotland) Act 1975; 1975 c. 8.

(*f*) the Petroleum and Submarine Pipe-lines Act 1975; 1975 c. 74.

(*g*) any of the relevant statutory provisions as defined in section 53 of the Health and Safety at Work etc. Act 1974. 1974 c. 37.

(2) 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.

(3) 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.

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

20. Nothing in this Order affects the operation of Part I of the Coast Protection Act 1949, or affects the application to any operation of sections 34 to 36 of that Act (which require the consent of the Secretary of State to certain operations and contain other provisions for the safety of navigation).

PART IV —*cont.*

Crown rights.

21. 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

Section 2.

LIMITS OF HARBOUR

1. In this Schedule "the seaward limit" means a series of three imaginary straight lines, the first from a point on the island of Grimsay (latitude 57° 29·043′ N, longitude 7° 12·155′ W) to a point on the island of Garbh Eilean Mor (latitude 57° 29·037′ N, longitude 7° 11·990′ W), the second from a point also on the island of Garbh Eilean Mor (latitude 57° 28·865′ N, longitude 7° 11·860′ W) to a point on the island of Gairbh-eilean Beag (latitude 57° 28·810′ N, longitude 7° 12·020′ W), and the third from a point on Gairbh-eilean Beag (latitude 57° 28·812′ N, longitude 7° 12·057′ W) to a point on the island of Grimsay (latitude 57° 28·865′ N, longitude 7° 12·205′ W).

2. The limits of the harbour shall comprise the area covered by tidal waters and bounded by the seaward limit and by the high-water mark of ordinary spring tides along the shores enclosed by the seaward limit and shall include the harbour premises.

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