
SCOTTISH STATUTORY INSTRUMENTS

1999 No. 202

HARBOURS, DOCKS, PIERS AND FERRIES

Scottish Natural Heritage (Rum)
Harbour Empowerment Order 1999

Made - - - - 21st December 1999

Coming into force - - 23rd December 1999

Whereas Scottish Natural Heritage have applied in writing for a harbour empowerment order under section 16 of the Harbours Act 1964(1);

And whereas it appears to the Scottish Ministers(2) in pursuance of paragraph A2 of Schedule 3 to the said Act(3), that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(4) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment;

And whereas the Scottish Ministers have directed the applicant to supply them with the information referred to in Annex III to the Directive in accordance with that paragraph;

And whereas the Scottish Ministers have complied with the requirements of paragraph 3A of Schedule 3 to the said Act(5);

Now, therefore, the Scottish Ministers, in exercise of the powers conferred on them by section 16 of the said Act(6) and of all other powers enabling them in that behalf and being satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, hereby make the following Order:

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- (1) 1964 c. 40; section 16 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 2.
- (2) The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (3) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraph 4(2) to (7) and (12) and by the Transport and Works Act 1992, Schedule 3, paragraph 10. Paragraph A2 was inserted by the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996 (S.I.1996/1946).
- (4) O.J. No. L175, 5.7.85, p.40.
- (5) Paragraph 3A was inserted by the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996 (S.I. 1996/1946).
- (6) Section 57 contains a definition of “the Minister” relevant to the exercise of the powers under which this Order is made.

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Scottish Natural Heritage (Rum) Harbour Empowerment Order 1999 and shall come into force on 23rd December 1999.

Interpretation

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

“Act of 1995” means the Merchant Shipping Act 1995(7);

“deposited plans” and “deposited sections” mean respectively plans and sections which have been deposited in connection with this Order, two copies of which have been deposited at the Scottish Executive and one copy of which has been deposited at the offices of Scottish Natural Heritage;

“government department” includes any part of or any member of the staff of the Scottish Administration which shall have the meaning defined in section 126(6) of the Scotland Act 1998(8);

“harbour limits plan” means the plan showing the limits of jurisdiction in the harbour, two copies of which have been deposited at the Scottish Executive and one copy of which has been deposited at the offices of Scottish Natural Heritage;

“harbourmaster” means any person appointed as such pursuant to article 15(4) of this Order, and includes his deputies and assistants and any person for the time being authorised by Scottish Natural Heritage 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 Scottish Natural Heritage as part of the undertaking;

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

“limits of deviation” means the limits so shown on the deposited plans;

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

“Scottish Natural Heritage” means the body established by the Natural Heritage (Scotland) Act 1991(9);

“undertaking” means the harbour undertaking for the time being of Scottish Natural Heritage on the island of Rum;

“vessel” means a ship, boat or craft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968(10) or any other amphibious vehicle or a seaplane; and

(7) 1995 c. 21.

(8) 1998 c. 46.

(9) 1991 c. 28.

(10) 1968 c. 59.

“works” means the works authorised by the Order, or as the case may require, any part thereof and includes any work constructed pursuant to article 3 (power to carry out works).

(2) All areas, directions, distances, lengths and widths as stated in any description of works, powers or lands other than article 4 (power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length and width and any reference in a description of works to a point shall be a reference to that point on the deposited plan.

(3) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

PART II

WORKS

Power to carry out works

3.—(1) Subject to the provisions of this Order, Scottish Natural Heritage may, in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans and sections, carry out and maintain the following work on the island of Rum, Highland, and on the foreshore and bed of the sea adjacent thereto together with all necessary and proper works and conveniences connected therewith or incidental thereto—

Work No 1: A slipway of solid constructions 15 metres wide and associated access road commencing 200 metres east north east of the north eastern corner of the school house at a point of NM 141124 799098 and extending in a north north easterly direction for a distance of 105 metres to a point NM 141173 799191 and there terminating;

Work No 2: Dredging of an area of seabed 178 metres wide commencing at a point 238 metres east north east of the north eastern corner of the school house at a point at NM 141145 799155 and extending in a north easterly direction for a distance of 132 metres to a point NM 141213 799268 and there terminating;

Work No 3: An alignment structure commencing from the south east side of Work No. 1 at a point at NM 141162 799145 and extending in a north north easterly direction for 80 metres to a point NM 141200 799216 and there terminating.

(2) Scottish Natural Heritage may, within the limits of deviation, maintain, renew, reconstruct and alter temporarily or permanently the works.

Power to deviate

4. Subject to the provisions of this Order, in carrying out the works Scottish Natural Heritage may deviate laterally from the lines or situations thereof as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Subsidiary works

5.—(1) Subject to the provisions of this Order, Scottish Natural Heritage may within the limits of deviation from time to time erect, construct, maintain and operate, whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

(2) The works shall be deemed for all purposes to be within the island of Rum, Highland.

Obstructing works

6. Any person who intentionally obstructs any person acting under the authority of Scottish Natural Heritage in setting out the lines of or in constructing the authorised works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Works to be deemed part of harbour undertaking

7. The works shall be deemed for all purposes to be part of the harbour undertaking and all byelaws, rules and regulations of Scottish Natural Heritage for the time being in force relating to the harbour undertaking shall apply to the works and may be enforced by Scottish Natural Heritage accordingly.

Tidal works not to be executed without approval of the Scottish Ministers

8.—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed or altered except in accordance with plans and sections approved by the Scottish Ministers and subject to any conditions and restrictions imposed by the Scottish Ministers before the work is begun or while work is still in progress.

(2) If a tidal work is demolished, constructed, renewed, reconstructed or altered in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Scottish Ministers may by notice in writing require Scottish Natural Heritage at its 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 Scottish Natural Heritage it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice; or
- (b) if it appears to the Scottish Ministers urgently necessary to do so, they may themselves remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from Scottish Natural Heritage as a debt.

Survey of tidal works

9. The Scottish Ministers may at any time if they deem it expedient order a survey and examination of a tidal work or a site upon which it is proposed to construct the work and any expense incurred by them in such a survey and examination shall be recoverable from Scottish Natural Heritage as a debt.

Provision against danger to navigation

10.—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof, Scottish Natural Heritage 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 Scottish Natural Heritage fails to comply in any respect with the provisions of this article, 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 Scottish Ministers may by notice in writing require Scottish Natural Heritage 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 Scottish Ministers think proper.

(2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Scottish Ministers may include that part of the work or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon Scottish Natural Heritage they have failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from Scottish Natural Heritage as a debt.

Lights on tidal works during construction

12.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work Scottish Natural Heritage 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 Scottish Natural Heritage fails to comply in any respect with a direction given under this article it 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 completion of a tidal work Scottish Natural Heritage 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 Scottish Natural Heritage fails to comply in any respect with a direction given under this article it 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.

Period for completion of works

14. If the works are not completed by 31st December 2009, the powers by this Order granted to Scottish Natural Heritage for constructing the works shall cease except as to so much thereof as is then substantially commenced.

PART III

HARBOUR REGULATION

Harbour jurisdiction

15.—(1) Scottish Natural Heritage shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964⁽¹¹⁾ and the powers of the harbourmaster shall be exercisable within the harbour limits.

(2) The harbour limits shall comprise the harbour premises, together with all waters below the level of high water forming Loch Scresort from the north shore at Rubha na Roinne at a point NG 142306 800171, thence in a south south easterly direction for a distance of 1386 metres to a point NM 142514 798800 on the level of high water.

(3) In the event of any discrepancy between the harbour limits as described in paragraph (2) above and the limits shown on the harbour limits plan, the limits as described in the said paragraph (2) shall be deemed to be correct and shall prevail.

(4) For and incidental to their functions under this Order, Scottish Natural Heritage may employ and appoint a harbourmaster.

Moorings

16.—(1) Scottish Natural Heritage 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) Scottish Natural Heritage 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 article 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 paragraph (2) above shall be valid only for a period of three years commencing with the date on which it takes effect.

(5) Scottish Natural Heritage may charge a reasonable fee for the grant of a licence under this article.

Power to dredge

17.—(1) Scottish Natural Heritage 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, cleanse, alter and improve the bed and foreshore of the harbour, and may blast any rock in that area.

(2) Subject to the provisions of article 33 (Crown rights) below, any materials (other than any wreck within the meaning of Part IX of the Act of 1995 taken up or collected in the course of such operations shall be the property of Scottish Natural Heritage and may be used, sold, removed deposited or otherwise disposed of as Scottish Natural Heritage may think fit.

(3) Subject to the provisions of this Order no materials so dredged shall be deposited below the level of mean high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

(11) 1964 (c. 40)

General byelaws

18.—(1) Scottish Natural Heritage may from time to time make byelaws for the efficient management and regulation of the harbour area and of the undertaking.

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

- (a) regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, quays, piers, jetties, staithes, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings) in the harbour;
- (b) regulating the admission to, and the movement within, and the departure of vessels from, the harbour, or the removal of vessels, and for the good order and government of vessels whilst within the harbour;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;
- (d) regulating the navigation, berthing and mooring of vessels within the harbour area and their speed and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessels, goods, vehicle, plant machinery, property or persons within the harbour;
- (f) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown or officers of the Scottish Ministers including the holder of any office in the Scottish Administration or any member of staff of the Scottish Administration as defined in the Scotland Act 1998(12) whilst in the execution of their duties;
- (g) regulating the placing and maintenance of moorings within the harbour;
- (h) preventing and removing obstructions or impediments within the harbour;
- (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the harbour;
- (j) regulating the use of ferries within the harbour;
- (k) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
- (l) regulating the holding of regattas and other public events in the harbour;
- (m) regulating or prohibiting the activities in the harbour area of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in paragraph (k) above;
- (n) regulating the launching of vessels within the harbour area;
- (o) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
- (p) regulating the use of fires and lights within the harbour, and within any vessel within the harbour;
- (q) regulating the movement, speed and parking of vehicles within the harbour;
- (r) regulating the exercise of the powers vested in the harbourmaster;
- (s) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subjects 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;

(12) 1998 c. 46.

- (t) conserving and enhancing—
 - (i) the flora and fauna;
 - (ii) the geological and physiographical features; and
 - (iii) the natural beauty and amenity,
of 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, made 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.

Confirmation of byelaws

19.—(1) The provisions of subsections (4) to (8), (10) and (12) of section 202 and section 203 of the Local Government (Scotland) Act 1973(**13**) shall apply to any byelaws made by Scottish Natural Heritage under this Order as if Scottish Natural Heritage were a local authority, and in the application of the provisions of the said Act of 1973 the Scottish Ministers shall be the confirming authority.

(2) Where the Scottish Ministers propose to exercise the power of modification conferred on them by subsection (10) of section 202 of the said Act of 1973 and it appears to them that any modification which they propose to make is substantial, they shall inform Scottish Natural Heritage and require them to take any steps they consider necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as they think reasonable for consideration of, and comment upon, the proposed modification by Scottish Natural Heritage and by other persons who have been informed of it.

Power to detain vessels, etc., in certain circumstances

20. If any person contravenes any of the provisions of this Order or of any byelaw made thereunder by Scottish Natural Heritage and any damage is occasioned thereby to the property of Scottish Natural Heritage, they may, in addition to any right they have to recover from any such person the cost of repairing or making good any such damage, 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 Scottish Natural Heritage.

Power to give directions

21.—(1) The harbourmaster may give special directions to the master of a vessel for any of the following purposes—

- (a) for regulating the time at which and the manner in which any vessel shall enter into, leave or lie in the harbour and its berthing, mooring or unmooring whilst therein;
- (b) for regulating the loading, discharging, storing and safeguarding of a vessel's cargo, fuel, water or stores and the embarking or disembarking of passengers or its taking in or delivering ballast at harbour premises;

- (c) for regulating the manner in which any vessel entering a harbour area shall be dismantled, as well for the safety of that vessel as for preventing the injury to other vessels and to harbour premises, and the moorings therein;
- (d) for removing unserviceable vessels and other obstructions from the harbour and keeping the same clear;
- (e) for regulating the quantity of ballast or dead weight in the hold which each vessel in or at harbour premises shall have during the delivery of its cargo or after having discharged the same;
- (f) for regulating the use of the motive power of a vessel whilst within a harbour area;
- (g) for prohibiting or restricting the use of fires or lights at harbour premises;
- (h) for requiring the removal from the harbour or any part of it 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) its removal is necessary to enable maintenance or repair work to be carried out to harbour premises or to premises adjacent thereto; or
 - (iv) its removal is considered by the harbourmaster to be necessary to avoid danger to life (including wildlife) or to property.

(2) In an emergency, the harbourmaster may give general directions applicable to all vessels or to a particular class of vessels for any of the purposes mentioned in paragraph (1) above.

(3) Any special directions given under this article may be given by the harbourmaster orally or otherwise communicated to the master of the vessel on any occasion when it is not reasonably practicable for a written notice to be served on the master; and any general directions shall be communicated in the manner which is appropriate to the emergency.

Failure to comply with directions

22.—(1) The master of a vessel who fails to comply with a direction given under article 21 (power to give directions) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Without prejudice to any other defence it shall be a defence to a charge made pursuant to paragraph (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 any other reason such compliance was impractical.

Enforcement of directions

23.—(1) Without prejudice to any other remedy available to Scottish Natural Heritage, if a direction given under article 21 (power to give directions) above 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 master on board a vessel to attend to a direction, the harbourmaster may proceed as if the direction had been given and not complied with:

Provided that the powers of this paragraph 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 Scottish Natural Heritage in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of Scottish Natural Heritage in respect of the vessel.

Powers with respect to disposal of wrecks

24.—(1) In its application to Scottish Natural Heritage, section 252 of the Act of 1995 shall have effect—

- (a) subject to the provisions of article 25 (protection of Crown interest in wrecks) below; and
- (b) in relation to a vessel sunk, stranded or abandoned before as well as after the making of this Order.

(2) Subject to paragraph (3) below, and to any enactment for the time being in force limiting its liability, Scottish Natural Heritage may recover from the owner of any vessel in relation to which it has exercised its powers under section 252 of the Act of 1995 any expenses reasonably incurred by it under that section in relation to that vessel which are not reimbursed out of the proceeds of sale (if any) within the meaning of that section.

(3) Except in case of emergency, paragraph (2) above shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by section 252 of the Act of 1995, other than the power of lighting and buoying, Scottish Natural Heritage has given to the owner of the vessel not less than 48 hours' notice of their intention to do so; and if before the notice expires Scottish Natural Heritage receive from the owner counter notice in writing that he desires to dispose of the vessel himself, and no direction is served in respect of the vessel under paragraph (2)(b) of article 25 (protection of Crown interest in wrecks) of this Order, he shall be at liberty to do so, and Scottish Natural Heritage shall not exercise the powers aforesaid in relation to that vessel until the expiration of 7 days from the receipt of the counter notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to him by Scottish Natural Heritage.

(4) Notice under paragraph (3) above to the owner of any vessel may be served by Scottish Natural Heritage either by delivering it to him or by sending it to him by special delivery post or the recorded delivery service addressed to him at last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to Scottish Natural Heritage or is not in the United Kingdom, by displaying the notice of the office of the harbourmaster for the period of its duration.

(5) In this article the expression “owner” in relation to any vessel means the present owner or, as the case may require, the person who was the owner of the vessel at the time of the sinking, stranding or abandonment thereof.

Protection of Crown interest in wrecks

25.—(1) Without prejudice to sections 308 and 309 of the Act of 1995, the powers conferred on Scottish Natural Heritage by section 252 of that Act shall not be exercisable—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;
- (b) except with the consent of the Secretary of State for Defence, which may be given with or without such a direction as is referred to in paragraph (2)(b) below, in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel to which section 308 or section 309 of the Act of 1995 applies but which, at the time when the vessel was sunk, stranded or abandoned—

- (i) had been required to be placed at the disposal of Her Majesty or of a government department; and
- (ii) was appropriated to the service, under the direction and control of the Secretary of State for Defence, of Her Majestys' ships of war.

(2) Scottish Natural Heritage shall give notice in writing to the Secretary of State for Defence and to the Secretary of State for the Environment, Transport and the Regions of any decision of Scottish Natural Heritage to exercise in relation to any vessel referred to in paragraph (1)(b) above any of the powers aforesaid other than the power of lighting and buoying and, except in a case which is in the opinion of Scottish Natural Heritage a case of emergency, shall not proceed with the exercise thereof—

- (a) except with the consent of the Secretary of State for Defence and the Secretary of State for the Environment, Transport and the Regions, before the expiration of a period of 14 days from the giving of the notice; or
- (b) if, before the expiration of the said period there is served on Scottish Natural Heritage a direction by the Secretary of State for Defence or the Secretary of State for the Environment, Transport and the Regions that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where in any such case Scottish Natural Heritage proceeds to exercise those powers without the consent and before the expiration of the period mentioned in paragraph (a) above or after a direction has been served on it as aforesaid, it shall not in the exercise of those powers use any explosives and if, before the expiration of that period such a direction is served on them, shall not be entitled to exercise the power of sale conferred by section 252 of the Act of 1995 or the power conferred by paragraph (2) of article 24 (powers with respect to disposal of wrecks) above:

Provided that—

- (i) Scottish Natural Heritage shall not be required to give notice under this paragraph in respect of any vessel in respect of which it has received a consent under paragraph (1) (b) above, but any direction such as is referred to in sub paragraph (b) of this paragraph accompanying that consent shall be deemed for the purposes of this paragraph and of paragraph (3) of article 24 (powers with respect of disposal of wrecks) to have been duly served under sub paragraph (b) of this paragraph;
- (ii) the prohibition on the use of explosives imposed by this paragraph shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may from time to time be approved by the Secretary of State for the purposes of this proviso.

(3) Without prejudice to the power of sale conferred on Scottish Natural Heritage by section 252 of the Act of 1995, Scottish Natural Heritage shall hold and dispose of any wreck within the meaning of Part IX of that Act, raised, removed or recovered under section 252, and any surplus proceeds of sale within the meaning of that section in accordance with such directions (if any) as may be given to them by the receiver of wreck; and on exercising the said power of sale in the case of any property Scottish Natural Heritage shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by Scottish Natural Heritage under that section.

(4) Any limitation on the powers of Scottish Natural Heritage in relation to any vessel arising by virtue of paragraph (1) or paragraph (2) above shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Commissioners of Northern Lighthouses by section 253 of the Act of 1995.

PART IV

CHARGES

Liability for charges

26.—(1) Charges payable to Scottish Natural Heritage 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 Scottish Natural Heritage 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

27.—(1) Scottish Natural Heritage may confer total or partial exemption 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 Scottish Natural Heritage 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 that list.

Security for charges

28. Scottish Natural Heritage may require a person who incurs or is about to incur a charge to deposit with them, or to give security for, such sum of money as is, in the opinion of Scottish Natural Heritage, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or give security for the sum of money required Scottish Natural Heritage may detain the vessel in the harbour 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.

Liens for charges

29.—(1) A person who by agreement with Scottish Natural Heritage 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 Scottish Natural Heritage 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 places

30. The harbourmaster may prevent a vessel from using a landing place provided by Scottish Natural Heritage, if the master of the vessel refuses to pay the charges for such use.

Exemptions from charges

31.—(1) Except in so far as may be agreed between Scottish Natural Heritage and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising Scottish Natural Heritage to levy charges shall extend to authorise them to levy charges in respect of—

- (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) goods or stores belonging to the Secretary of State for Defence.
- (2) Members of staff of the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.
- (3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which—
- (a) merely passes through the limits of the harbour area without mooring or making use of any facilities therein provided by Scottish Natural Heritage; or
 - (b) is forced by stress of weather to make use of a harbour area but without breaking bulk.

Conditions as to payment of charges

32.—(1) Charges shall be payable subject to such terms and conditions as Scottish Natural Heritage may from time to time specify in their published list of charges.

(2) Without prejudice to the generality of paragraph (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 Scottish Natural Heritage by the owner or master of a vessel or a person using a service or facility of Scottish Natural Heritage as Scottish Natural Heritage may require in connection with the assessment or collection of a charge.

PART V

MISCELLANEOUS

Crown rights

33.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises Scottish Natural Heritage or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) above may be given unconditionally or subject to terms and conditions.

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St Andrew's House Edinburgh
21st December 1999

SARAH BOYACK
A member of the Scottish Executive

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers Scottish Natural Heritage to construct and maintain a slipway and other harbour facilities at Rum.

The Order also confers further powers on Scottish Natural Heritage to maintain and operate their undertaking at the harbour as a statutory harbour undertaking and defines the limits of jurisdiction of Scottish Natural Heritage.