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SCOTTISH STATUTORY INSTRUMENTS

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**1999 No. 203**

**The Highland Council (Muck)  
Harbour Empowerment Order 1999**

**PART III**

**LAND**

**Power to take lands**

**11.** Subject to the provisions of this Order, the Council may compulsorily enter upon, take and use all or any of—

- (a) the lands shown on the annexed map and the deposited plans and described in the deposited book of reference which they may require for the purposes of the works; including for the improvement and development of any lands fronting or abutting on or adjacent to the harbour or for the purposes of recoupment, reinstatement or exchange or for any other purposes of this Order; and
- (b) so much of the land specified in columns (1) and (2) of the Schedule to this Order (being land shown on the annexed map and the deposited plans as within the limits of land to be acquired or used) as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

**Power to acquire servitudes compulsorily in certain areas**

**12.** Notwithstanding anything in this Order or in any Act wholly or partly incorporated herewith, the Council may, instead of acquiring any land that they are authorised to acquire compulsorily under this Order, purchase and acquire compulsorily such servitudes or rights over or in any such lands as they may require for the purpose of constructing and using or removing the works or for the purpose of obtaining access to the works, by creating as well as purchasing such servitudes or other rights already in existence, without the Council being obliged or compelled to purchase any greater interest in, under or over the same, and the provisions of the Lands Clauses Acts shall extend and apply to such servitudes and rights as if the same were lands within the meaning of those Acts.

**Temporary possession of land for maintenance of works**

**13.—(1)** At any time during the maintenance period relating to any of the works authorised by this Order the Council may—

- (a) enter upon and take temporary possession of any land which is—
  - (i) within 20 metres from that work; and
  - (ii) within the limits of deviation for the works or the limits of land to be acquired or used,

if such possession is reasonably required for the purpose of, or in connection with maintaining the work, or any ancillary works connected with it; and

- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonable necessary for that purpose.
- (2) Paragraph (1) above shall not authorise the Council to take temporary possession of—
  - (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Council shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Council may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the Council shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Council shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6) above, or as to the amount of the compensation, shall be determined in accordance with the provisions of the Land Compensation Act.
- (8) Without prejudice to article 29 (no double recovery) of this Order, nothing in this article shall affect any liability to pay compensation under any enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6) above.
- (9) Where the Council take possession of land under this article, they shall not be required to purchase the land or any interest in it.
- (10) In this article—
  - (a) “the maintenance period” in relation to any of the authorised works, means the period of 15 years beginning with the date on which that work is opened for use; and
  - (b) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

#### **Persons under disability may grant servitudes, etc.**

**14.—**(1) Persons empowered by the Land Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and of this Order, grant to the Council any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for any of the purposes of this Order in, over or affecting any such lands.

(2) The provisions of the said Acts with respect to lands and feu duties or ground annuals so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

#### **Extinguishment of rights of way over lands acquired**

**15.—**(1) All rights of way, servitudes and rights of access over any lands which may under the powers of this Order be acquired compulsorily shall be extinguished as from the date of such acquisition whether compulsorily or by agreement, or on the entry on the land under article 17 (power of entry on lands compulsorily acquired) of this Order whichever is the sooner.

(2) The Council shall make compensation to all parties interested in respect of any such rights.

(3) Such compensation, in the case of difference, shall be determined in accordance with the provisions of the Land Compensation Act.

### **Power to enter upon lands and buildings for searching and boring**

**16.**—(1) Subject to the provisions of this Order, the Council and their surveyors and officers, and any other person duly authorised in writing under the hand of the Head of Legal Services of the Council, may at all reasonable times in the day upon giving on the first occasion not less than 7 days' and on subsequent occasions not less than 3 days' previous notice in writing to the occupier, enter upon and into the lands and buildings by this Order authorised to be taken or used or any of them, for the purpose of searching and boring in order to ascertain the nature of the subsoil or the presence of minerals therein.

(2) In the exercise of the powers conferred by this article, the Council shall cause as little detriment and inconvenience to any person as circumstances allow and shall make compensation to the owners and occupiers of any lands or the owners of any services injuriously affected by the exercise of such powers, such compensation in case of difference to be determined in accordance with the provisions of the Land Compensation Act.

### **Power of entry on lands compulsorily acquired**

**17.** Subject to the provisions of this order, where the Council are by this Order authorised to purchase land compulsorily then at any time after notice to treat has been served, they may, after giving to the owner and occupier of the land not less than 14 days' notice in writing, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with the provisions of sections 83 to 88 of the Lands Clauses Consolidation (Scotland) Act 1845<sup>(1)</sup>, but subject to payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

### **Disregard of recent improvements and interests**

**18.** In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land or of rights or servitudes in or over land under this Order, the tribunal shall not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land, by reason of any building erected, works executed or improvement or alteration made (whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned),

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works, or the making of the improvement or alteration, as the case may be, was not reasonably necessary.

### **Compensation in respect of depreciation in value of interest in land subject to standard security**

**19.**—(1) Where an interest in land is subject to a standard security—

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(1) 1845 c. 19.

- (a) any compensation which is payable under this Order in respect of the depreciation in value of that interest shall be calculated as if the interest were not subject to the standard security;
- (b) a claim for the payment of any such compensation may be made by the heritable creditor under a standard security granted before the happening of the event giving rise to the compensation, but without prejudice to the making of a claim by any other person; and
- (c) any such compensation payable in respect of the interest in land subject to the standard security shall be paid to the heritable creditor or where there is more than one heritable creditor, to the first ranking heritable creditor, and shall in either case be treated by the heritable creditor as if it were received as proceeds of sale and applied in the order of priority specified in section 27 of the Conveyancing and Feudal Reform (Scotland) Act 1970<sup>(2)</sup>.

(2) In this article “standard security” includes a bond and disposition in security and any other real right in the nature of a security.

### **Set off of betterment against compensation**

**20.** In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

- (a) he has an interest in any land contiguous with or adjacent to the land so acquired; and
- (b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the works authorised by this Order or any of them,

the amount of the enhancement in value shall be set off against the compensation or purchase money.

### **Agreements with owners of property**

**21.** Subject to the provisions of this Order, and in connection with the powers granted to them thereby, the Council may enter into agreements with any owners of property or other persons interested in lands, houses or property with respect to the purchase by the Council of any such lands, houses or property or any rights or servitudes in, over or affecting the same for such consideration, being a sum of money in gross or a grant of land or partly money and partly land, as may be agreed upon between the Council and such owners or other persons.

### **Power to reinstate owners of property**

**22.** The Council may enter into agreements with the owners of, or other persons interested in, any land which may be acquired under the provisions of this Order, or which may be in the neighbourhood of any of the works, with respect to the reinstatement of such owners or other persons and with respect to the exchange of lands for that purpose and the Council may pay or receive money for equality of exchange.

### **Period for compulsory purchase of lands**

**23.—(1)** The powers of the Council under article 11 (power to take lands) of this Order for the compulsory purchase of lands for the purposes of this Order shall cease on 31st December 2004.

(2) The powers of the Council for the compulsory acquisition of such lands and servitudes shall, for the purposes of this article, be deemed to have been exercised if before 31st December 2004 notice to treat has been served in respect of those lands and servitudes.

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(2) 1970 c. 35.

### **Power as to acquisition and use of additional lands**

**24.**—(1) In addition to the lands which the Council are authorised to acquire by article 11 (power to take lands) of this Order the Council may acquire, by agreement, any lands required for the purposes of the works.

(2) The Council may be authorised by the Scottish Ministers to purchase compulsorily any lands for the purposes mentioned in paragraph (1) of this article and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947<sup>(3)</sup> shall apply in relation to any such compulsory purchase as if this article had been contained in a public general Act in force immediately before the commencement of that Act.

(3) The Council may use any lands acquired by them in pursuance of the provisions of paragraphs (1) or (2) of this article, or any other land vested in them, for such purposes and for the purposes of article 7 (subsidiary works) of this Order.

### **Power to retain, sell etc., lands**

**25.**—(1) Notwithstanding anything to the contrary contained in the Lands Clauses Consolidation (Scotland) Act 1845<sup>(4)</sup>, the Council may retain, hold and use for such time as they think fit or may from time to time sell, feu, lease, excamb or otherwise dispose of any lands vested in or belonging to them for the purpose of the works or that may be acquired under the provisions of this Order and that on such terms, conditions, reservations and restrictions as regards its use (not inconsistent with any condition, restriction or obligation binding on the Council and their successors in title) as the Council may deem fit.

(2) The proceeds of the sale of any lands by the Council shall be applied only to purposes to which capital is properly applicable including the redemption of debt.

### **Correction of errors in deposited plans and book of reference**

**26.**—(1) If the deposited plans, or the deposited book of reference, are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Council, after giving not less than 10 days' notice to the owner, lessee or occupier of the land in question, may apply to the sheriff for the correction thereof.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake or inadvertence, he shall certify the fact accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the Scottish Executive and a copy thereof in the offices of the Council, and with the sheriff clerk and with the Head of Legal Services of the Council and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Council to take the land or, as the case may be, a right over the land and execute the works in accordance with the certificate.

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

### **Application of the Act of 1997**

**27.**—(1) Section 195 of, and Schedule 15 to, the Act of 1997 shall apply as if this Order were a compulsory purchase order.

(a) (2) (a) In its application by virtue of paragraph (1) above, Schedule 15 to the Act of 1997 shall have effect with the following modifications.

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(3) 1947 c. 42

(4) 1845 c. 19.

(b) For paragraph 2 there shall be substituted—

“2.—(1) Before making a general vesting declaration with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in sub paragraph (2) below in a notice which is—

- (a) served on every person with a relevant interest in the land with respect to which the declaration is to be made (other than a heritable creditor who is not in possession); and
- (b) published in the Edinburgh Gazette.

(2) The particulars to be included in the notice are—

- (a) such a statement of the effect of paragraphs 1 to 8 as may be prescribed; and
- (b) a notification to the effect that every person who, if a general vesting declaration were made in respect of all the land comprised in the Order in respect of which notice to treat has not been given, would be entitled to claim compensation in respect of any such land is invited to give information to the authority making the declaration in the prescribed form with respect to his name and address and the land in question.

(3) For the purposes of this paragraph, a person has a relevant interest in land if he is the owner, lessee or occupier (except tenants for a month or any period less than a month) of the land.”

- (c) In sub paragraph (1) of paragraph 3, after “publication” there shall be inserted “in the Edinburgh Gazette”.
- (d) In paragraph 6 the words “and of section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (both as incorporated by Schedule 2 to the Acquisition Act 1947)” shall be omitted.
- (e) References to the Lands Clauses Act shall be construed as references to that Act as incorporated with this Order by article 4 (incorporation of Lands Clauses Acts) of this Order.