
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 6

The Caledonian Maritime Assets
(Brodick) Harbour Revision Order 2015

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Caledonian Maritime Assets (Brodick) Harbour Revision Order 2015 and comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

“1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(1);

“1920 Act” means the Brodick Lamlash Lochranza and Whiting Bay Piers Order Confirmation Act 1920(2);

“1938 Act” means the Island of Arran Piers Order Confirmation Act 1938(3);

“1964 Act” means the Harbours Act 1964(4);

“1965 Act” means the Clyde Port Authority Order Confirmation Act 1965(5) as amended by the Clyde Port Authority Order Confirmation Act 1969(6);

“CMAL” means Caledonian Maritime Assets Limited a company incorporated in Scotland with registered number SC1845;

“deposited plans” means the plans, sections and elevations which are bound together and signed in duplicate with reference to this Order and marked “Caledonian Maritime Assets (Brodick) Harbour Revision Order 2015 plans, sections and elevations” and which are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ, and at the registered office of CMAL; and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations;

“enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;

“general direction” means a direction given by the harbour master under Section 52 of the 1847 Act;

(1) 1847 c.27
(2) 10 & 11 Geo. 5 c. clviii.
(3) 1 & 2 Geo. 6. c. lxxv.
(4) 1964 c.40.
(5) 1965 c. xlv.
(6) 1969 c. xxxi.

“government department” includes any part of, or any member of the staff of, the Scottish Administration which shall have the same meaning as in section 126(6) of the Scotland Act 1998(7);

“harbour” means Brodick Harbour as comprised within the harbour limits;

“harbour limits” means the limits of the harbour as defined in article 4 (limits of harbour) of this Order;

“harbour map” means the map referred to in article 4 of this Order, and forming Schedule 2 to this Order;

“harbour master” means any person appointed as harbour master for the harbour by CMAL and includes that person’s deputies and assistants and any other person for the time being authorised by CMAL to act, either generally or for a specific purpose, in the capacity of harbour master for the harbour;

“level of high water” means the level of mean high water springs;

“limits of deviation” means the limits of deviation shown on the deposited plans, sections and elevations;

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

“mooring” includes buoys and other apparatus provided for the mooring of vessels;

“sail board” means a raft with a sail or sails designed to be operated by a person or persons standing upright thereon;

“special direction” means a direction given by the harbour master under article 35;

“tidal work” means so much of any of the works as is on, under or over tidal waters or tidal lands below the level of high water;

“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

“works” means the works authorised by this Order, or as the case may require, any part of any of those works.

(2) All areas, points, situations and other measurements stated in any plan or description of the works or lands shall be construed as if the words “or thereby” were inserted after each such area, point, situation and other measurement.

(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.

Incorporation of the Harbours, Docks, and Piers Clauses Act 1847

3.—(1) Sections 1 to 4, 27, 29, 33 to 35, 37 to 39, 42, 51 to 53, 55, 56 and 61 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 53 (penalty on shipmasters not complying with directions of the harbour master) shall have effect subject to the substitution of “level 4” for “level 1”.

(3) Section 62 (penalty for wilful cutting of moorings) shall have effect subject to the substitution of “level 3” for “level 1”.

(4) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission) shall have effect subject to the modification that for the words from “be liable to” to the end of

the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(5) Section 65 (harbour master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

(6) In construing the provisions of the 1847 Act, as incorporated with this Order—

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means CMAL and the expression “the harbour, dock or pier” means the harbour; and
- (b) for the definition of the word “vessel” in section 3 (interpretations in this and the special Act) there shall be substituted the definition of that word in article 2 (interpretation).

PART 2

LIMITS OF JURISDICTION

Limits of harbour

4.—(1) The limits of the harbour within which CMAL shall exercise jurisdiction as the harbour authority and within which the powers of the harbour master shall be exercisable shall be the area the boundaries of which are described in Schedule 1 to this Order and shown on the harbour map.

(2) In Schedule 1 to this Order, a reference to—

- (a) a direction shall be construed as if the words “or thereabouts” were inserted after that direction; and
- (b) a point is a reference to that point as shown on the harbour map and to the eastings and northings of that point which are stated in the table in Schedule 1 to this Order.

(3) The area described in Schedule 1 to this Order is shown on the harbour map and, in the event that there is any discrepancy between the boundaries of that area as described in Schedule 1 to this Order and the boundaries shown on the harbour map, the harbour map shall prevail.

(4) At Section 14(2) of the 1965 Act between “the area” and “within the jurisdiction”, insert “forming the harbour limits as defined in The Caledonian Maritime Assets (Brodict) Harbour Order 2015”, or

PART 3

WORKS PROVISIONS

Power to construct works

5.—(1) CMAL may in the lines and situations, upon the lands delineated and within the limits of deviation and according to the levels shown on the deposited plans construct and maintain the following works—

Work No. 1 - an open piled jetty structure connecting to Work No. 2 and shown on Sheets Nos. 2 and 3 of the deposited plans, forming the berthing and mooring line, and incorporating a fixed and adjustable passenger access gangway extending from Work No. 4 and extending through Work No. 2;

Work No. 2 – the reclamation and infilling of an area of the bed of Brodict Bay and the levelling of that area together with the levelling of the adjoining land and providing access to Works

Nos. 1 and 3 and for the marshalling and parking of vehicles and for the site of Works Nos. 4, 5 and 6: to be retained on the seaward limits in part by rock armoured revertments and, as to the remainder, by a solid faced quay wall and shown on Sheets Nos. 2 and 3 of the deposited plans;

Work No. 3 - a mechanically operated single deck linkspan, providing access to and from vessels, extending from the reclaimed area comprising Work No. 2 including supporting piled bankseat and lifting frames with supporting dolphin structures and shown on Sheets Nos. 2 and 3 of the deposited plans;

Work No. 4 - a two storey terminal building to be constructed over reclaimed land forming part of Work No. 2 being the building shown on Sheets Nos. 2, 4 and 5 of the deposited plans; to be used for passenger and baggage handling, sales areas, management offices, staff welfare facilities and stores areas;

Work No. 5 - a single storey split level building being the building shown on Sheets Nos. 2 and 6 of the deposited plans; to be used as ticketing and check-in facilities for passenger and freight vehicles;

Work No. 6 - a water storage tank and pump house building shown on Sheets Nos. 2 and 3 of the deposited plans; to be used for ship supply;

Work No. 7 - lighting columns not exceeding 15 metres in height; and

Work No. 8 - demolition of existing pier and other structures shown hatched black on Sheet No. 2 of the deposited plans.

(2) CMAL may, for the purposes of the works authorised by paragraph (1), remove any vegetation or other objects or materials and demolish and remove any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the bed of the sea and of the foreshore as lies within the limits of deviation and may use and hold the same as part of the harbour undertaking.

(3) CMAL may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

Power to deviate

6. In carrying out the works authorised by article 5 (power to construct works), CMAL may deviate laterally from the lines or situations as shown on the deposited plans, sections and elevations to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited plans, sections and elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Subsidiary works

7.—(1) CMAL may from time to time within the limits of deviation construct, maintain, operate and improve, whether temporarily or permanently, such other works as may be necessary or convenient for the purposes, or in connection with or in consequence, of the construction, maintenance, improvements or use of the works or the harbour; including works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and landing of passengers.

(2) Without prejudice to paragraph (1), CMAL may within the works site provide, construct, maintain and use such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance and use of the works, including:

- (a) works for the accommodation or convenience of vessels (including but not limited to navigation, signals, marks and lights, berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);

- (b) CCTV cameras and security installations; hydrants and drains; paving and surfacing; together with waste water treatment facilities; and a refuelling point with double skinned tank or tanks for storage of diesel and other fuel for the purposes of the operation of the harbour undertaking;
- (c) works to alter the position of apparatus, including mains, sewers, drains, pipes, pipelines, conduits, cables, electrical sub-stations and electrical lines; and
- (d) landscaping, habitat creation and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

Reclamation of land

8.—(1) Subject to the provisions of this Order, CMAL may, within the harbour fill up, raise, enclose and reclaim land from the sea and the bed and foreshore of the harbour and for that purpose may place such piles and construct such groynes, retaining walls and other works in and upon the seabed and foreshore as CMAL deems necessary.

(2) CMAL shall not exercise the powers conferred by paragraph (1) in relation to any land not owned by them unless it first obtains the consent in writing of the owner thereof.

Power to dredge

9.—(1) CMAL may from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the sea as lie within the harbour limits and within the approaches and the channels leading to those limits and may blast any rock in the area so described as may be required for the purpose of forming or maintaining the works or any existing berthing pocket, turning area, channel within or approach or channel leading to the harbour limits, to enable uninterrupted means of access to the harbour by vessels and enabling the use of harbour at all states of the tide.

(2) The power to dredge described in paragraph (1) includes the power to carry out such additional dredging as may be required to provide side slopes or otherwise secure the dredged areas against siltation, scouring or collapse.

(3) Any materials dredged, taken or collected by CMAL in the exercise of the powers of this article (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) shall be the property of CMAL and may be used, sold, deposited or otherwise disposed of as CMAL thinks fit.

(4) No such materials shall be laid down or deposited in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

Obstruction of works

10. Any person who—

- (a) intentionally obstructs any person acting under the authority of CMAL in setting out the lines of or in constructing the works; or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and shall in addition be liable to repay to CMAL as a debt any expenses incurred by it in making good any damage resulting from such obstruction, moving or removal.

Works to be deemed part of undertaking

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

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

12.—(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 CMAL at its own expense to remove the tidal work or any part of it and restore the site of the tidal work to its former condition; and if on the expiration of 30 days from the date when the notice is served upon CMAL 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 CMAL as a debt.

(3) Paragraph (1) shall not apply to any work authorised by paragraphs (1) and (2) of article 5 (power to construct works) and any related works authorised by article 7 (subsidiary works).

Survey of tidal works

13. 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 CMAL as a debt.

Provision against danger to navigation

14.—(1) In the case of injury to or destruction or decay of a tidal work or any part of it, CMAL shall as soon as reasonably practicable 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 CMAL fails to comply in any respect with the provisions of 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.

Abatement of works abandoned or decayed

15.—(1) Where a tidal work is abandoned or has fallen into decay, the Scottish Ministers may by notice in writing require CMAL at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of the tidal work to its former condition, to such an extent and within such limits as the Scottish Ministers think proper.

(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 has fallen into decay and that part of the work on or over the 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 of it, 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 CMAL it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in this notice and any expenditure incurred by them in so doing shall be recoverable from CMAL as a debt.

Lights on tidal works during construction

16.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work CMAL shall at the outer extremity of that work 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 CMAL 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 tidal works

17.—(1) After completion of a tidal work CMAL shall at the outer extremity of that work 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 CMAL 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

18.—(1) If the works authorised by paragraphs (1) and (2) of article 5 (power to construct works) are not substantially commenced within five years from the date of the coming into force of this Order or such extended time as the Scottish Ministers may on the application of CMAL allow by consent given in writing, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to CMAL for making and maintaining those works shall cease except as to so much of those works as is then substantially commenced.

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

(3) As soon as reasonably practicable after a consent is given under paragraph (1), CMAL shall arrange for a notice to be published in the Edinburgh Gazette and in a local newspaper circulating in the area where the port is situated and the notice shall contain a concise summary of that consent.

(4) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (3), a copy of the consent referred to in that notice shall be kept by CMAL at the registered office of CMAL and shall at reasonable hours be open to public inspection without payment.

(5) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 1 has been constructed as will enable other works to be constructed, maintained and managed together with that part of Work No. 1 for the efficient and economic transport of goods or passengers by sea.

Operational land and land within area of North Ayrshire Council

19. The land situated within the harbour limits shown edged red on the harbour map shall—

- (a) be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997(8); and
- (b) to the extent that it lies outwith the area of the North Ayrshire Council, be deemed to be part of that area.

PART 4

HARBOUR REGULATION

General power of CMAL in respect of harbour

20.—(1) CMAL may improve, maintain, regulate, manage, mark and light the harbour and provide accommodation and harbour facilities in the harbour.

(2) For those purposes, and without prejudice to the generality of paragraph (1) above, CMAL may—

- (a) subject to the provisions of article 12 (tidal works not to be executed without approval of Scottish Ministers) above construct, alter, demolish and reconstruct structures and works in the harbour; and
- (b) do all other things which in its opinion are necessary or expedient to facilitate the proper carrying on or development of the harbour.

(3) The powers conferred by this article are without prejudice to any powers of CMAL under or by virtue of any other enactment (including any other provision of this Order).

Power to appropriate parts of harbour, etc.

21.—(1) Notwithstanding anything in this or any other statutory provision of local application, CMAL may from time to time set apart or appropriate any part of the harbour, or any lands, works, buildings, machinery, equipment or other property of CMAL in the harbour, for the exclusive, partial or preferential use or accommodation for any particular trade, activity, person, vessel or class of vessels or goods, subject to the payment of such reasonable charges (other than ship, passenger and goods dues) and to such terms and conditions as CMAL thinks fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the harbour, or any lands, works, buildings, machinery, equipment or other property, so set apart or appropriated without the consent of the harbour master or other duly authorised officer of CMAL.

(3) The harbour master or, as the case may be, any such authorised officer may order any person or vessel contravening paragraph (2) above to leave or be removed from the site of the contravention.

(4) Section 58 of the 1847 Act shall extend and apply with appropriate modifications to any vessel moored or otherwise positioned in contravention of paragraph (2) above.

(5) In exercising its powers to appropriate or set apart any part of the harbour under paragraph (1), CMAL shall have regard to the facilitation of—

- (a) the public right of navigation in the harbour; and
- (b) any public rights of way affecting the harbour,

such that CMAL shall not restrict such rights more than is necessary for the purpose for which the part of the harbour is appropriated or set apart.

(8) 1997 c.8; “operational land” is defined in section 215, to which there are amendments not relevant to this Order, which section is subject to section 216.

Power to lease, etc.

22. CMAL may at any time lease or grant the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour for such period or periods and on such terms and conditions as may be agreed between CMAL and the persons taking the same. Any such lease or grant shall be subject to any existing public rights of way affecting the subject area of such lease or grant.

Power to enter into arrangements to provide supplies

23. CMAL may make arrangements for the purpose of providing and supplying fuel and such other requirements as may be made available to vessels using the harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

Parking places

24. CMAL may provide facilities within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences.

Moorings

25.—(1) CMAL may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as it considers necessary or desirable for the convenience of vessels.

(2) CMAL 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, places, lays down, maintains, renews or uses 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) shall be valid only for a period of one year commencing with the date on which it takes effect.

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

Restriction of works and dredging

26.—(1) No person other than CMAL shall in the harbour—

- (a) alter, renew or maintain any works; or
- (b) dredge,

unless that person is licensed to do so, 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 article 27 or, as the case may require, article 28 below.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) CMAL may by notice require a person who contravenes this article 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 that person fails to comply with the notice CMAL may carry out the works so required and may recover the cost of so doing from that person.

Licensing of works

27.—(1) CMAL may upon such terms and conditions as it thinks fit grant to any person a licence to maintain, alter or renew works within a 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 maintained, altered or renewed.

- (2) Application for a works licence shall be made in writing to CMAL 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 the applicant to enjoy the benefits of the licence and, if not, the action taken or to be taken to enable the applicant 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 locality of the harbour 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, and specifying a place where a copy of the plans, sections and particulars of the proposed works may be inspected at all reasonable hours and stating that any person who desires to object to CMAL to the grant of the application should do so in writing stating the grounds of that person's objection before the expiration of the period of 28 days from the day 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 CMAL shall take into consideration any objection made to them in accordance with paragraph (2)(c) above (hereinafter in this article and in article 29 below referred to as a competent objection) and in granting a licence CMAL may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) If CMAL decides to grant a works licence it shall give notice of its decision to the applicant and to any person who has made a competent objection and has not withdrawn it.

(5) If within 3 months from the date of the making of an application under paragraph (2) above CMAL does not notify to the applicant its decision whether to grant a works licence, it shall be deemed to have refused the application.

(6) CMAL may charge a reasonable fee for the grant of a licence under this article.

(7) The grant of a licence under this article has effect for the purposes of article 26 above and confers no other authority for the carrying out of the operations covered by the licence.

Licensing of dredging

28.—(1) CMAL may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of the harbour.

(2) Applications for a dredging licence shall be made in writing to CMAL and shall be accompanied by—

- (a) plans, sections and particulars defining the nature, extent and manner of the operations in respect of which application is made; and
- (b) a copy of a notice published in a newspaper circulating in the locality of the harbour stating that it is intended to make the application containing a general direction of the position, nature, extent and manner of those operations specifying a place where a copy of the plans, sections and particulars of the proposed operations may be inspected at all reasonable hours and stating that any person who desires to object to CMAL 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 CMAL shall take into consideration any objection made to them in accordance with paragraph (2)(b) above (hereinafter in this article and in article 29 below referred to as a competent objection) and in granting a licence CMAL may require modification in the plans, sections and particulars submitted to them by the applicant.

(4) If CMAL decides to grant a dredging licence it shall give notice of its decision to the applicant and to any person who has made a competent objection and has not withdrawn it.

(5) If within 3 months from the date of making an application under paragraph (2) above CMAL does not notify the applicant of its decision whether to grant a dredging licence it shall be deemed to have refused the application.

(6) Unless otherwise agreed between CMAL and the licensee any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995) 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 CMAL before being taken up or collected become the property of CMAL and the provisions of paragraph (3) of article 9 above shall apply to such materials which are or become the property of CMAL.

(7) CMAL may charge a reasonable fee for the grant of a licence under this article.

(8) The grant of a licence under this article has effect for the purposes of article 26 above and confers no other authority for the carrying out of the operations covered by the licence.

(9) In the execution of any works to which a dredging licence relates the holder of the licence shall not damage or injuriously affect any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989(9)) belonging to or used or maintained by Scottish Power plc or, without the consent of that company, interfere with or adversely affect the operation of any such line or work.

Appeals in respect of works or dredging licence

29.—(1) Where CMAL has—

- (a) refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal;
- (b) granted such a licence and any person who has made a competent objection and has not withdrawn it is aggrieved by the grant; or
- (c) granted such a licence upon terms or conditions or has required modifications to be made in the plans, sections and particulars submitted by the applicant, and the applicant or any such person is aggrieved by CMAL's decision as to such terms and conditions, or as to such modifications,

the person aggrieved may within 28 days from the date on which CMAL gives notice of its decision or the date on which it is under paragraph (5) of article 27 or of article 28 deemed to have refused the application, as the case may be, appeal to the Scottish Ministers.

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

(3) A person who appeals to the Scottish Ministers under this article shall at the same time send a copy of his statement of appeal to CMAL and CMAL shall as soon as practicable thereafter furnish the Scottish Ministers with all relevant documents, and may within 28 days of the receipt of that statement of appeal furnish the Scottish Ministers with its observations on the appeal.

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

(9) 1989 c.29.

(5) CMAL shall give effect to any decision or requirement given or made by the Scottish Ministers under paragraph (4) above.

Power to licence tugs

30.—(1) It shall not be lawful for any person, except in an emergency, to operate a vessel exceeding 5 tonnes gross for fee or reward for the purpose of moving or controlling the movement of any other vessel within the harbour except under and in accordance with the terms and conditions of a licence granted by CMAL in that behalf.

(2) CMAL may charge a reasonable fee for the grant of any licence under this article.

(3) Any person who contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to licence pleasure craft

31.—(1) CMAL may grant, upon such terms and conditions as it thinks fit, licences for pleasure craft to be let for hire to the public in the course of trade or business or to be used for carrying passengers for hire within the harbour, and to the boatmen or persons assisting in the charge or navigation of such craft.

(2) Any such licence may be granted for such period as CMAL may think fit, and may be suspended or revoked by CMAL whenever it shall deem such suspension or revocation to be necessary or desirable in the interests of the public.

(3) The existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

(4) A person shall not within the harbour—

- (a) let for hire to the public a pleasure craft which is not licensed in accordance with this article; or
- (b) carry, or permit to be carried, passengers for hire in a pleasure craft unless the craft, and the boatmen in charge thereof and the navigator, are so licensed.

(5) This article shall not be taken to require a person to be licensed as a boatman who takes on hire a pleasure craft for purposes other than for profit.

(6) A licence under this article shall not be required for any craft which has a relevant certificate issued by the Maritime and Coastguard Agency and valid for the voyage intended or, in the case of hovercraft within the meaning of the Hovercraft Act 1968⁽¹⁰⁾, a certificate of safety valid for the voyage intended.

(7) A person shall not carry or permit to be carried in any pleasure craft a greater number of passengers for hire than shall be specified in the licence applying to such craft, and every owner of any such craft shall before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than three centimetres in height and one half centimetre in breadth, on a conspicuous part of the said craft, their own name and also the number of persons which it is licensed to carry, in the form “Licensed to carry [] persons”.

(8) Any person who shall act in contravention of paragraph (4) or (7) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Any person aggrieved by the withholding, suspension or revocation of any licence or by any term or condition subject to which a licence has been granted under the provisions of this article may appeal to the sheriff.

(10) 1968 c.59.

(10) In this article “pleasure craft” means any vessel of not more than 100 tonnes gross used wholly or mainly for recreation or for the carriage of passengers for reward and includes pleasure boats.

Byelaws

32.—(1) CMAL may from time to time make byelaws for the efficient management and regulation of the harbour.

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

- (a) regulating the use, operation and superintendence of the harbour and the berths, quays, piers, warehouses, sheds, landing places, 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;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;
- (d) regulating the berthing and mooring of vessels within the harbour;
- (e) preventing damage or injury to any goods, vehicle, plant, machinery, property or person 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 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 deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour;
- (j) regulating the use of ferries within the harbour;
- (k) regulating the holding of regattas and other public events in the harbour;
- (l) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
- (m) regulating or prohibiting the activities in the harbour 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 sub-paragraph (l);
- (n) regulating the launching of vessels within the harbour;
- (o) regulating or preventing the use of fires and lights within the harbour and within any vessels within the harbour;
- (p) prohibiting persons in or entering the harbour, or any part of the harbour, from smoking in open spaces in the harbour;
- (q) regulating the movement and parking of vehicles within the harbour;
- (r) regulating the exercise of the powers vested in the harbour master;
- (s) 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 harbour master, and for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction; and
- (t) the conservation of the fauna and flora in the harbour.

- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;
 - (b) relate to the whole of the harbour or to any part of the harbour;
 - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles.

Confirmation of byelaws

33.—(1) Byelaws made by CMAL under this Order shall not come into operation until they have been confirmed by the Scottish Ministers.

(2) At least one month before an application for confirmation of byelaws is made by CMAL to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows—

- (a) once in the Edinburgh Gazette;
- (b) once in each of the two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) Such notice shall include reference to the right to make objection or representation referred to in paragraph (7).

(4) Not later than the first date on which the notice under paragraph (2) is published, CMAL shall send a copy of the notice to the Chief Executive Officer of North Ayrshire Council and to the Scottish Ministers.

(5) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by CMAL at the office of the harbour master and shall at reasonable hours be open to public inspection without payment.

(6) CMAL shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it on payment of a reasonable charge.

(7) During the period of one month after completion of the publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

(8) Subject to paragraph (8), the Scottish Ministers may confirm the byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(9) Where the Scottish Ministers propose to make a modification that appears to them to be substantial, they shall inform CMAL and require it to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not confirm the byelaws until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by CMAL and by other persons who have been informed of it.

(10) A copy of the byelaws when confirmed shall be printed and deposited by CMAL at the office of the harbour master and shall at all reasonable hours be open to public inspection without payment, and a copy of the byelaws shall on application be furnished to any person on payment of such reasonable sum as CMAL may determine.

Publication of general directions

34.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by CMAL as soon as practicable once

in Lloyd's List or some other newspaper specialising in shipping news; and if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies thereof may be inspected and bought and the price thereof.

(2) In an emergency, notice of the giving of a general direction or the amendment or revocation of a general direction may be given in any manner CMAL consider appropriate.

Special directions to vessels

35.—(1) The harbour master may give a direction under this article—

- (a) for regulating the time at which and the manner in which a vessel shall enter into, go out of, or lie in or at the harbour;
- (b) for securing that a vessel moves only at certain times or during certain periods in the harbour;
- (c) prohibiting the mooring of a vessel in any particular part or parts of the harbour;
- (d) regulating or requiring the movement, mooring or unmooring of a vessel in the harbour; and
- (e) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship) passengers, cargo, fuel, water, ship's stores or ballast in the harbour.

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

(3) The harbour master may revoke or amend a special direction.

Master's responsibility to be unaffected

36. 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 to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

Failure to comply with special directions

37. The master of a vessel who fails without reasonable excuse to comply with a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Enforcement of special directions

38.—(1) Without prejudice to any other remedy available to CMAL, if a special direction is not complied with within a reasonable time, the harbour master may, where practicable, 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 the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but the harbour master shall not do so unless, after reasonable inquiry has been made, the master of the vessel cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article shall be recoverable by CMAL from the owner of the vessel as if they were a charge of CMAL in respect of the vessel.

Declaration of draught, etc, of vessel

39.—(1) The master of a vessel entering, leaving or intending to enter or leave the harbour shall, if required to do so by the harbour master, state the overall length and maximum draught of his vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) above without reasonable excuse gives incorrect information shall, without prejudice to any right of CMAL to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

Obstruction of officers, etc

40. Any person who intentionally obstructs an officer of CMAL or other person acting in execution of this Order or of any enactment relating to the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Boarding of vessels

41. Any duly authorised officer of CMAL may, on producing if so required his authority, enter and inspect a vessel in the harbour—

- (a) for the purposes of any enactment relating to CMAL or any byelaw of CMAL including the enforcement thereof; or
- (b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice shall have annexed to it a copy of this article.

Vessels adrift

42.—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

Removal of obstructions other than vessels, vehicles or wreck

43.—(1) Without prejudice to its powers under any enactment (including one contained in this Order) CMAL may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of a harbour area other than—

- (a) a vessel or vehicle; or
- (b) wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(2) If—

- (a) anything removed by CMAL under paragraph (1) above is known to CMAL to be, or is marked as to be readily identifiable as, the property of any person, CMAL shall within one month of its coming into its custody give notice, in accordance with paragraph (6) below, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in CMAL;
- (b) the ownership of anything removed by CMAL under paragraph (1) above which is not so known or marked is not within 3 months of its coming into the custody of CMAL proved to its reasonable satisfaction, it shall vest in CMAL.

(3) CMAL may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in CMAL under this article, and if it is sold the proceeds of sale shall be applied by CMAL in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

(a) shall be paid to any person who within 3 months from the time when the thing came into custody of CMAL proves to its reasonable satisfaction that that person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall vest in CMAL.

(4) If anything removed under this article—

(a) is sold by CMAL and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or

(b) unsaleable.

(5) CMAL may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of CMAL or who was the owner at the time of its abandonment or loss.

(6) A notice given under paragraph (2)(a) above shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of CMAL possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the day when the notice is served.

(7) CMAL shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence given or issued by CMAL.

Removal of vehicles

44.—(1) If a vehicle is left without permission of CMAL—

(a) in a parking place provided by CMAL within the harbour for a longer period than 24 hours;

(b) in any part of the harbour where the parking of vehicles is prohibited by notice erected by CMAL; or

(c) in any place within the harbour where it is likely to obstruct or interfere with the use of the harbour.

CMAL may cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1) above shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where CMAL in exercise of the powers of this article causes a vehicle to be removed the expenses of and incidental to its removal and safe custody shall be recoverable by CMAL from the person responsible.

(4) If CMAL in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002⁽¹¹⁾ at that person's last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that CMAL has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each entrance to any parking place provided by CMAL and at each place where a road accessible to vehicles enters any part of the harbour, and shall be endorsed at the harbour .

(11) [S.I. 2002/2742](#)

- (6) In paragraph (3) above, “person responsible”, in relation to a vehicles, means—
- (a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless that person shows that he was not concerned in and did not know of its being put there;
 - (b) any person by whom it was put in that place;
 - (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(12).

Power to remove goods

45.—(1) If any goods are left on or in any part of the harbour CMAL may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement CMAL may cause them to be removed to CMAL’s or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) Notwithstanding such removal on behalf of CMAL, the goods shall be subject to a lien for the cost of removal, and for any charges payable to CMAL by the owner in respect of the goods.

(3) In this article, “goods” includes vehicles and equipment.

Defence of due diligence

46.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for CMAL to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 14 (provision against danger to navigation);
- (b) article 16 (lights on tidal works during construction); and
- (c) article 17 (permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, CMAL shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

PART 5

CHARGES

Charges

47.—(1) CMAL may levy charges for any services performed by it in the exercise and performance of its powers and duties at the harbour.

(2) CMAL 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 in section 57 of the 1964 Act, entering, using or leaving the harbour such charges as CMAL thinks fit, and sections 30 and 31 of the 1964 Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods due.

(3) CMAL may make such charges for services and facilities provided by it or on its behalf in relation to the harbour as CMAL may from time to time determine.

(4) In this article “charges” means any charges other than ship, passenger and goods dues.

Liability for charges

48.—(1) Charges payable to CMAL on or in respect of—

- (a) a vessel, shall be payable by the owner or the master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

(2) Where a charge payable to CMAL 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

49.—(1) CMAL 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 1964 Act shall require CMAL 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

50. CMAL may require a person who incurs or is about to incur a charge to deposit with, or to guarantee, such sum of money as is, in the opinion of CMAL, 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 by CMAL, CMAL may detain the vessel in the harbour or goods on or in harbour, 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

51.—(1) A person, who by agreement with CMAL collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person’s 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 itself liable for the payment of charges may pay or by agreement with CMAL give security for charges on goods in its custody, and in that event it shall have a like lien on the goods for the amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place, etc.

52. An officer of CMAL may prevent a vessel from using a landing place or any other facilities provided by CMAL, if the master of the vessel refuses to pay the charges for such use.

Exemptions from charges

53.—(1) Except insofar as may be agreed between CMAL and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising CMAL 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;
 - (ii) in the service of the Commissioners of H.M Revenue & Customs and not carrying goods for reward;
 - (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; or
- (b) the Commissioners of H.M Revenue & Customs in respect of a vessel or goods under customs seizure.

(2) Officers of the Department for Transport and 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 merely passes through the limits of the harbour without mooring or making use of any facilities provided by CMAL.

Conditions as to payment of charges

54.—(1) Charges shall be payable subject to such terms and conditions as CMAL may from time to time specify in its published list of charges.

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

PART 6

MISCELLANEOUS AND GENERAL

Saving for Commissioners of Northern Lighthouses

55. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

Saving for other consents etc.

56. The carrying out of any works or operations pursuant to this Order is subject to CMAL obtaining any consent, permission or licence required under any other enactment.

Crown rights

57.—(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 that generality, nothing in this Order authorises CMAL or any licensee to take, use, enter upon or in any manner interfere with any 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 the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;

- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having the management of that land; or
 - (c) 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) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Repeals

58. The Acts specified in Columns (1) and (2) of Schedule 2 to this Order are hereby repealed to the extent specified in Column (3) of that Schedule.

St Andrew's House,
Edinburgh
13th January 2015

JOHN NICHOLLS
A member of the staff of the Scottish Ministers