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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 353**

**The Caledonian MacBrayne Limited  
(Kennacraig) Harbour Empowerment Order 2005**

**PART II**

**DUTIES AND POWERS OF THE COMPANY**

**Harbour Jurisdiction**

4.—(1) The Company shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 and the powers of the harbour master shall be exercisable within the area the boundaries of which are described in Schedule 1 to this Order and shown in red on the harbour map together with so much of the harbour premises as are not situated within that area.

(2) In the event of any discrepancy between the boundaries as described in paragraph (1) above and in Schedule 1 and the boundaries shown on the harbour map, the harbour map shall prevail.

**General powers and duties in respect of harbour**

5.—(1) The Company may take such steps from time to time as it considers necessary or expedient for the improvement, maintenance and management of the harbour and the accommodation and facilities afforded therein or in connection therewith.

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

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide accommodation and harbour facilities therein;
- (b) construct, alter, demolish and reconstruct structures and works in the harbour;
- (c) lend money to any person for the purposes of any undertaking carried on by that person or, where that person is a body corporate, any undertaking carried on by a subsidiary of that body corporate;
- (d) maintain such reserve funds as it thinks fit;
- (e) invest any sums not immediately required for the purposes of the harbour undertaking; and
- (f) do all other things which in its opinion are necessary or expedient to facilitate the proper carrying on or development of the harbour undertaking.

(3) This article is without prejudice to any powers of the Company under or by virtue of any other enactment (including any other provision of this Order).

**Reclamation of land**

6.—(1) Subject to the provisions of this Order, the Company may, within the harbour fill up, raise, enclose and reclaim land from the sea and the bed and the 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 the Company deems necessary.

- (2) The Company shall not exercise the powers conferred by paragraph (1) above—
- (a) in relation to any land not owned by it unless it first obtains the consent in writing of the owner thereof; or
  - (b) in relation to any part of the harbour in front of or adjoining land belonging to Her Majesty in right of Her Crown or to a government department or held in trust for Her Majesty for the purposes of a government department and protected by article 39 (Crown Rights) below, without the consent in writing of the Crown Estate Commissioners or, as the case may be, the government department.

### **Power to dredge**

7.—(1) Subject to the provisions of this Order, the Company may from time to time deepen, dredge, scour, cleanse, alter and improve the harbour for the purpose of affording the uninterrupted means of access to the harbour or any part of it for the accommodation of vessels.

(2) Subject paragraph (3) below the Company may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995)(1) from time to time dredged by it from the harbour.

- (3) No material referred to in this article shall—
- (a) be disposed of in contravention of in any enactment relating to the disposal of waste; or
  - (b) be deposited below the level of high-water except in such places and in accordance with such conditions and restrictions as may be approved or directed by the Scottish Ministers.

### **Restriction of works and dredging**

8.—(1) No person other than the Company 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 9 or, as the case may require, article 10 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) The Company 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 the Company may carry out the works so required and may recover the cost of so doing from that person.

(4) Nothing in this article shall affect the powers of a public telecommunications operator under the Telecommunications Act 1984(2).

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(1) 1995 c. 21.

(2) 1984 c. 12.

## **Licensing of works**

**9.—**(1) The Company 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 the Company 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, specifying a place where a copy of the plans, sections and particulars of the proposed works maybe inspected at all reasonable hours and stating that any person who desires to object to the Company 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 the Company shall take into consideration any objection made to it in accordance with paragraph (2)(c) above (hereinafter in this article and in article 11 below referred to as a competent objection) and in granting a licence the Company may require modifications in the plans, sections and particulars submitted to it by the applicant.

(4) If the Company 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 the Company does not notify to the applicant its decision whether to grant a works licence, it shall be deemed to have refused the application.

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

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

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

## **Licensing of dredging**

**10.—**(1) The Company may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of a harbour area.

(2) Application for a dredging licence shall be made in writing to the Company 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 description 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 the Company to the grant of the application should do so in writing stating the grounds of his objection before the expiration of the period of 28 days from the date of publication of the notice.

(3) In deciding whether or not to grant a dredging licence or as to the terms and conditions to be included in the licence the Company shall take into consideration any objection made to it in accordance with paragraph (2)(b) above (hereinafter in this article and in article 11 below referred to as a competent objection) and in granting a licence the Company may require modifications in the plans, sections and particulars submitted to it by the applicant.

(4) If the Company 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 the Company 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 the Company 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 the Company before being taken up or collected become the property of the Company and the provisions of paragraph (2) of article 7 above shall apply to such materials which are or become the property of the Company.

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

(8) The grant of a licence under this section has effect for the purposes of article 8 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<sup>(3)</sup>) belonging to or used or maintained by Scottish Hydro Electric 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**

**11.—**(1) Where—

- (a) the Company has refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal, or
- (b) the Company has 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) the Company has 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 the Company's decision as to such terms or conditions, or as to such modifications,

the person aggrieved may within 28 days from the date on which the Company gives notice of its decision or the date on which it is under paragraph (5) of article 9 or of article 10 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 the Company and the Company shall as soon as practicable

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(3) 1989 c. 29.

thereafter furnish the Scottish Ministers with all relevant documents, and may within 28 days from the receipt of the 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 modification of the plans, sections and particulars.

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

### **Survey of tidal works**

**12.** The Scottish Ministers may at any time they deem it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct and execute the work and any expenditure incurred by them in such survey or examination shall be recoverable from the Company.

### **Provision against danger to navigation**

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

(2) If the Company 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**

**14.—(1)** Where a tidal work is abandoned or allowed to fall into decay the Scottish Ministers may by notice in writing require the Company at its 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 consisting partly of a tidal work and partly of works on or over land above the level of high-water is abandoned or allowed to fall 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 the 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 the Company, it has 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 the Company as a debt.

### **Power to lay down moorings**

**15.** The Company 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.

### **Licensing of moorings**

**16.—(1)** The Company may from time to time grant a licence to any person to place, lay down, maintain, renew or use moorings, buoys and similar apparatus for vessels in the harbour.

(2) Any licence granted under paragraph (1) above shall be valid for a period of no longer than three years commencing with the date on which it takes effect.

(3) The Company may charge a reasonable fee for the grant of a licence under this article.

#### **Offences as to moorings, etc.**

**17.** 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 article 16 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 tugs**

**18.—(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 a harbour area except under and in accordance with the terms and conditions of a licence granted by the Company in that behalf.

(2) The Company 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 any offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Power to licence pleasure craft**

**19.—(1)** The Company 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 the Company may think fit, and may be suspended or revoked by the Company 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 be within the harbour—

(a) let for hire to be 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 passenger 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<sup>(4)</sup>, 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

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(4) 1968 c. 59.

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) 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.

### **Parking places**

**20.** The Company may provide facilities within the harbour premises for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.