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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**The Loch Ryan Port (Harbour Empowerment) Order 2009**

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Power to lease etc.**

**28.** The Company may at any time lease or grant for the purposes of the port 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 port for such period or periods and on such terms and conditions as may be agreed between the Company and the persons taking the same.

**Defence of due diligence**

**29.—(1)** In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for the Company 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 11 (provision against danger to navigation);
- (b) article 13 (lights on tidal works during construction); and
- (c) article 14 (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, the Company 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.

**Saving for Commissioners of Northern Lighthouses**

**30.** 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.**

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

**Crown rights**

**32.—(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 the Company 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.

### **Environmental requirements**

**33.**—(1) Subject to paragraph (2), in constructing the works, the Company shall act in accordance with the commitments given in—

- (a) the Environmental Statement being the Environmental Statement dated 19th December 2008 together with the Non-technical Summary and the Appendices (lettered A to N) to the Environmental Statement, a copy of which was submitted with the application made for this Order to the Scottish Ministers; and
- (b) the Addendum Report dated September 2009 a copy of which was submitted to the Scottish Ministers,

and a further copy of each document has been deposited at the offices of the Company situated at the port.

(2) Nothing in paragraph (1) shall exempt the Company from fulfilling any requirement imposed on the Company by any rule of law or which arises from any commitment which is binding on the Company.