
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

The Aberdeen Harbour Revision Order 2016

PART 4

MISCELLANEOUS & GENERAL

Defence of due diligence

24.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2), it shall be a defence for the Board 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 10 (provision against danger to navigation);
- (b) article 12 (lights on tidal works during construction); and
- (c) article 13 (permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or default of another person, the Board 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, they have 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 their possession.

Saving for Commissioners of Northern Lighthouses

25. 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.

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

Crown rights

27.—(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 Board 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 of 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

28.—(1) The works shall not be commenced until the Ministers have, following consultation in accordance with paragraphs (4) to (7), approved in writing the CEMD for the works (amendments to which may be approved by the Ministers from time to time).

(2) The operation of the harbour facilities constituted by the works shall not be commenced until the Ministers have, following consultation in accordance with paragraphs (4) to (7), approved in writing the OEMD for the works (amendments to which may be approved by the Ministers from time to time).

(3) The approved OEMD shall supersede the CEMD with the latter then ceasing to have effect.

(4) Before approving the CEMD or the OEMD or any proposed amendment to them, the Ministers shall consult the following bodies in so far as each has an interest in the subject matter—

- (a) Aberdeen City Council;
- (b) the Scottish Environment Protection Agency;
- (c) Scottish Natural Heritage.

(5) The consultation responses of those bodies shall be without prejudice to the respective statutory rights and powers of the consultees.

(6) The period for responses to consultation under paragraph (4) shall be determined by the Ministers taking into account the extent to which they consider that they require advice on appropriate and necessary mitigation for construction and operational procedures, and the Ministers shall have regard to such responses before making any decision on whether to approve the CEMD or the OEMD (or any amendment to either document).

(7) Before making any decision on whether to approve the CEMD or the OEMD (or any amendment to either document) the Ministers shall allow the Board an opportunity to comment on any response received from a body consulted by the Ministers under paragraph (4) and shall have regard to any such comment.

(8) For the purpose of ensuring compliance with the obligations set out in the CEMD or OEMD, the following statutory bodies shall have the power to approve on behalf of the Ministers those matters delegated to each of them by the Ministers and upon which an application is submitted by or on behalf of the Board to them for approval under the CEMD or OEMD—

- (a) Aberdeen City Council;
- (b) the Scottish Environment Protection Agency.

(9) The Board shall, after receipt of intimation to the Board of the approval by the Ministers of the CEMD or OEMD or any amendment of the same, send each of the bodies referred to in paragraph (4) a copy of the CEMD or OEMD (or, as the case may be, the amended CEMD or OEMD) as approved.

(10) The Board shall ensure that the works are carried out and then operated as part of the harbour in accordance with the CEMD or the OEMD (or any amendment to either document) then in effect.

Mitigation

29. The schedule of this Order shall have effect.

Repeals

- 30.** Sections 52, 82 and 91 to 95 of the 1960 Order are repealed.