

2005 No. 359

HARBOURS, DOCKS, PIERS AND FERRIES

**The Caledonian MacBrayne (Oban Quay) Harbour Revision
Order 2005**

Made - - - - - *16th June 2005*

Coming into force - - - - - *17th June 2005*

ARRANGEMENT OF REGULATIONS

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Whereas Caledonian MacBrayne Limited has applied in writing for a harbour revision order under section 14 of the Harbours Acts 1964(a);

And whereas the Scottish Ministers(b) have, in pursuance of paragraph 5(b) of Schedule 3 to the said Act(c), determined that the application for this Harbour Revision Order is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(d) on the assessment of the effects of certain public and private projects on the environment but whose characteristics do not require that it should be made subject to an environmental assessment;

And whereas there were objections made to the application which were not withdrawn, and an inquiry was held in accordance with paragraph 18 of Schedule 3 to the Harbours Act 1964;

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c.42), section 63 and Schedule 3, paragraph 1.
(b) The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 3 of the Scotland Act 1998 (c.46).
(c) Schedule 3 was substituted by regulation 15(4) of the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445).
(d) O.J. No. L 175, 5.7.85, p.40; Council Directive 85/337/EEC was amended by Council Directive 97/11/EC (O.J. No. L 73, 14.3.1997, p.5).

And whereas the Scottish Ministers have considered the objections made and not withdrawn and the report of the person holding the inquiry, and are satisfied as mentioned in subsection 14(2)(b) of the Act;

Now therefore, the Scottish Ministers, in exercise of the powers conferred by section 14 of the said Act and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Caledonian MacBrayne (Oban Quay) Harbour Revision Order 2005 and shall come into force on 17th June 2005.

Interpretation

2.—(1) In this Order—

“the Company” means Caledonian MacBrayne Limited;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections signed on behalf of the Scottish Ministers and marked “Plans and sections referred to in the Caledonian MacBrayne (Oban Quay) Harbour Revision Order 2005”, of which copies are deposited with the Scottish Ministers at the Scottish Executive, Victoria Quay, Edinburgh EH6 6QQ, and with the Company at its office at The Pier, Oban, Argyll, PA34 4DB;

“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;

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

“undertaking” means the undertaking of the Company as for the time being authorised; and

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

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

Power to construct works

3.—(1) Subject to the provisions of this Order, the Company may in the District of Argyll and Bute in the situations and lines shown on the deposited plans and within the limits of deviation and according to the levels shown on the deposited sections construct, execute and maintain the following works together with incidental works and conveniences connected therewith:—

Work No. 1

An open piled platform on steel bearing piles with a concrete deck constructed adjacent to the Railway Pier for the purpose of supporting one side of the outer end of the lifting bridge comprising Work No. 4 commencing at reference point NM 85646 29873 and terminating at reference point NM 85640 29879.

Work No. 2

An open piled platform on steel bearing piles with a concrete deck constructed remote from the Railway Pier for the purpose of supporting one side of the outer end of the lifting bridge comprising Work No. 4 and fitted with spring fendering protection commencing at reference point NM 85633 29885 and terminating at reference point NM 85624 29895.

Work No. 3

Two open piled platforms on steel bearing piles with concrete decks constructed remote from the Railway Pier fitted with spring fendering protection for the purpose of protecting the lifting bridge comprising Work No. 4 from contact with vessels, including metal truss access walkways connecting those two platforms with each other and with the Railway

Pier commencing at reference point NM 85609 29858 and terminating at reference point NM 85620 29880.

Work No. 4

A steel lifting bridge supported at its inner end by the platform comprising Work No. 5 and at its outer end by the platforms comprising Works Nos. 1 and 2 having its outer end capable of moving vertically from a level of 2.1 metres above Chart Datum to a level of 7.2 metres above Chart Datum for the purpose of providing vehicular access from the Railway Pier to vessels berthed at Work No. 6 at all states of the tide commencing at reference point NM 85622 29867 and terminating at reference point NM 85640 29886.

Work No. 5

An open piled platform on steel bearing piles with a concrete deck constructed adjacent to the Railway Pier for the purpose of supporting the inner end of the lifting bridge comprising Work No. 4 and providing vehicular access from the Railway Pier to the lifting bridge comprising Work No. 4 commencing at reference point NM 85612 29843 and terminating at reference point NM 85623 29868.

Work No. 6

An open piled platform on steel bearing piles with a concrete deck constructed abutting upon the Railway Pier and fitted with spring fendering protection for the purpose of providing a berth for vessels commencing at reference point NM 85657 29885 and terminating at reference point NM 85694 29918.

Work No. 7

Two open piled platforms on steel bearing piles with concrete decks constructed remote from the Railway Pier fitted with spring fendering protection, including metal truss access walkways connecting those two platforms with each other and with Work No. 6 commencing at reference point NM 85691 29922 and terminating at reference point NM 85718 29945.

Work No. 8

Spring fendering on the face of the Railway Pier to facilitate berthing by vessels commencing at reference point NM 85700 29910, extending for a distance of 30 metres and terminating at reference point NM 85724 29927.

(2) Subject to the provisions of this Order the Company may, within the limits of deviation, reconstruct, renew, replace or otherwise alter temporarily or permanently the works.

Power to deviate

4. Subject to the provisions of this Order, in the construction or execution of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation, and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be necessary or convenient.

Subsidiary works

5. Subject to the provisions of this Order the Company, for the purposes of or in connection with the works, may within the limits of deviation construct, execute and maintain all such subsidiary or incidental works and conveniences as may be necessary or expedient for or in connection with the works.

Fine for obstructing works

6. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works or who damages, 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 the Company as a debt any expenses incurred by them in making good any damages resulting from such obstruction, damage, moving or removal.

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

7.—(1) A tidal work shall not be constructed, executed, renewed, replaced 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.

(2) If a tidal work is constructed, executed, renewed, replaced or altered in contravention of this article—

- (a) the Scottish Ministers may by notice in writing require the Company at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice 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; 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 the Company as a debt.

Lights on tidal works during construction

8.—(1) During the whole time of demolition, construction, renewal or alteration of any tidal work the Company shall at the outer extremity thereof 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 the Company fails to comply in any respect with paragraph (1) 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

9.—(1) After the completion of a tidal work the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Company 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.

Survey of tidal works

10. 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

11.—(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 for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Company fails to comply in 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

12.—(1) Where a tidal work is abandoned or suffered 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 consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered 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 other 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.

Crown rights

13.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing in this Order, shall authorise the Company to take, use, enter upon or in any manner interfere with any land or interest in 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 Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) 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.

NICOL STEPHEN
A member of the Scottish Executive

St Andrew's House,
Edinburgh
16th June 2005

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Caledonian MacBrayne to construct a new Roll-on Roll-off berthing facility at Oban, Argyll.

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**The Caledonian MacBrayne (Oban Quay) Harbour Revision
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£3.00

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 06/05 19593

