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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 308**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Port of Cairnryan Harbour Empowerment Order 2007**

*Made - - - - 25th May 2007*

*Coming into force in accordance with Article 1*

Whereas the Port of Cairnryan Limited have applied for a harbour empowerment order under section 16 of the Harbours Act 1964(1);

And whereas the Scottish Ministers(2) having, in pursuance of paragraph 4 of Schedule 3 to the said Act(3), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(4) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, has directed the applicant to supply him with the information referred to in Annex IV to the Directive;

And whereas the Scottish Ministers have in accordance with paragraph 15 of the said Schedule, furnished bodies appearing to them to have environmental responsibilities with the information supplied to them under paragraph 8 of that Schedule and have consulted such bodies;

And whereas the Scottish Ministers have considered the information supplied under the said paragraph 4 of Schedule 3, the objections made and not withdrawn and the report of the person holding the inquiry and are satisfied as mentioned in section 14(2)(b) of the said Act;

Now, therefore, the Scottish Ministers in exercise of the powers conferred by section 16 of the said Act, and of all other powers enabling them in that behalf, hereby make the following Order:—

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Port of Cairnryan Harbour Empowerment Order 2007 and shall come into force on the day after the day on which it is made.

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- (1) 1964 c. 40; section 16 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(1) and Schedule 3, paragraph 2.
- (2) The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (3) Schedule 3 was substituted by S.I.1999/3445 as amended by S.I. 2000/2391; paragraph 18 was amended by the Transport (Scotland) Act 2005 (asp 12), section 46.
- (4) 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).

## Interpretation

2.—(1) In this Order, except where the context otherwise requires—

“Act of 1847” means the Harbours Docks and Piers Clauses Act 1847<sup>(5)</sup>;

“Act of 1995” means the Merchant Shipping Act 1995<sup>(6)</sup>;

“the Company” means Port of Cairnryan Limited;

“deposited plans”, “deposited sections” and “deposited elevations” mean respectively the plans, sections and elevations which have been deposited in connection with this Order, two copies of which have been deposited at the Scottish Executive and one copy of which has been deposited at the offices of the Company;

“government department” includes any part of or any member of the staff of the Scottish Administration which shall have the meaning defined in section 126(6) of the Scotland Act 1998<sup>(7)</sup>;

“harbour master” means any person appointed as such pursuant to section 51 of the Act of 1847;

“land” includes land covered by water, any interest in land and any servitude or right in, to or over land;

“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;

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

“port” means the port limits and the port premises;

“port limits” means the limits of the port as defined in article 18 (Limits of port) of this Order;

“port premises” means the quays, berths, landing places, and all other works, land and buildings for the time being vested in or occupied or administered by the Company as part of the undertaking;

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

“undertaking” means the port undertaking for the time being of the Company;

“vessel” means a ship, boat, raft or water craft of any description however propelled or moved, and includes a displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and 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 thereof and includes any work constructed pursuant to article 4 (Power to construct works) or article 6 (Subsidiary works) of this Order.

(2) All areas, directions, distances, lengths, widths and heights as stated in any description of works, powers or lands other than article 5 (Power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length and width and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

(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.

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(5) 1847 c. 27.

(6) 1995 c. 21.

(7) 1998 c. 46.

### **Incorporation of Harbours, Docks and Piers Clauses Act 1847**

3.—(1) The Act of 1847 (except sections 6 to 25, 28, 31, 33, 42, 48 to 50, 67 and 77), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (4) below.

(2) Section 63 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”.

(3) Section 69 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

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

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means the Company and the expression “the harbour, dock, or pier” shall mean the port;
- (b) for the definition of the word “vessel” in section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2(1) of this Order;
- (c) section 52 shall have effect subject to the modification that, after the words “may give directions”, there shall be added the words “(which need not be in writing)”;
- (d) section 53 shall have effect subject to the modification that, for the word “made” and for the expression “after notice of such direction by the harbour master served upon him”, there shall be substituted respectively the word “given” and the expression “after being given any such direction by the harbour master”.

### **Power to construct works**

4.—(1) Subject to the provisions of this Order, the Company may in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown thereon and according to the levels shown on the deposited sections and deposited elevations, construct and maintain in the district of Dumfries and Galloway the works hereinafter described, with all necessary works and conveniences connected therewith—

Work No. 1 – As to part thereof, a solid faced quay wall (including berths for vessels) and, as to the remaining part, a rock armoured revetment with both parts extending into Loch Ryan and together enclosing an area of 2.3 hectares of the bed of Loch Ryan and incorporating part of an existing breakwater and shown on sheet number 2 on the deposited plans; and the enclosed area to be used as hard standing for marshalling and parking vehicles.

Work No. 2 – A jetty of open piled construction comprising a concrete deck supported on bearing piles, commencing on the existing breakwater and shown on sheet number 2 on the deposited plans.

Work No. 3 – A mechanically operated double deck linkspan supported on bearing piles providing access to and from vessels and shown on sheet number 2 on the deposited plans.

Work No. 4 – As to part thereof, a solid faced quay wall (including berths for vessels) and, as to the remaining part, a rock armoured revetment with both parts extending into Loch Ryan and together enclosing an area of 10.1 hectares of the bed of Loch Ryan and shown on sheet number 2 on the deposited plans; and the enclosed area to be used as hard standing for marshalling and parking vehicles and as sites for Works Nos. 7 to 10 and 15, and as part of the site for Work No. 11.

Work No. 5 – A floating single deck linkspan incorporating two elevated passenger walkways together with a jetty and a series of dolphins forming a berthing and mooring line; both

commencing by a junction with Work No. 4 and shown on sheet number 2 on the deposited plans.

Work No. 6 – A roundabout forming a junction with the A77 to provide an entrance and exit to the port for vehicular traffic shown on sheet number 2 on the deposited plans.

Work No. 7 – A four storey terminal building to be constructed over reclaimed land forming part of Work No. 4 being the building shown on sheet number 5 on the deposited plans; to be used for passenger and baggage handling, sales areas, management offices, a police port unit and as a canteen.

Work No. 8 – A two storey building to be constructed over reclaimed land forming part of Work No. 4 being the building shown on sheet number 6 on the deposited plans; to be used as a commercial kitchen with food storage facilities and as management and vessel control offices.

Work No. 9 – A two storey building to be constructed over reclaimed land forming part of Work No. 4 being the building shown on sheet number 7 on the deposited plans; to be used as a maintenance workshop and as accommodation for staff engaged in docking vessels and as offices.

Work No. 10 – A gate security building to be constructed over reclaimed land forming part of Work No. 4 being the building shown on sheet number 8 on the deposited plans; to be used for the inspection and search of vehicles and as offices, staff accommodation, search and interview rooms and toilets.

Work No. 11 – An exit gate security building to be constructed mainly over existing land and partly over reclaimed land forming part of Work No. 4 being the building shown on sheet number 9 on the deposited plans; to be used for the off line inspection of passenger and freight vehicles.

Work No. 12 – A two storey building to be constructed over reclaimed land forming part of Work No. 4 being the building shown on sheet number 10 on the deposited plans; to be used as accommodation for port police and as offices, store rooms and interview and detention rooms, police welfare facilities and reception areas.

Work No. 13 – Security fences intersected by buildings and having a height not exceeding 3.0 metres to be constructed along the lines shown on sheet number 3 on the deposited plans.

Work No. 14 – A two storey building shown on sheet number 11 on the deposited plans; to be used as a workshop with accommodation for maintenance staff and offices.

Work No. 15 – A series of single storey buildings (having a canopy and incorporating two weigh bridges) to be constructed over reclaimed land forming part of Work No. 4 being the buildings shown on sheet number 12 on the deposited plans; to be used as ticketing and check-in facilities for passenger and freight vehicles.

(2) Subject to the provisions of this Order, the Company may, for the purposes of the works authorised by paragraph (1) above, demolish and remove any structures or apparatus lying within the limits of deviation (including, and without prejudice to the generality of the foregoing, the existing linkspan and so much of the existing breakwater as may be deemed necessary or convenient) and enclose and reclaim so much of the bed of Loch Ryan and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) Subject to the provisions of this Order, the Company may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) above and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

(4) Nothing in paragraph (1) above shall in respect of the construction of Work No. 6 constitute the consent of the roads authority in terms of section 56 of the Roads (Scotland) Act 1984<sup>(8)</sup>

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(8) 1984 c. 54.

### **Power to deviate**

5.—(1) Subject to the provisions of this Order, in carrying out the works authorised by article 4 (Power to construct works) of this Order the Company may deviate laterally from the lines or situations thereof as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited sections and deposited elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

(2) In carrying out Work No. 13, the Company may deviate laterally from the lines or situations shown on the deposited plans to an extent not exceeding 10 metres in any direction.

### **Subsidiary works**

6. Subject to the provisions of this Order, the Company may from time to time within the limits of deviation construct, maintain and operate, 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 or use of the works or the Company's undertaking; including works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and landing of passengers.

### **Power to dredge**

7.—(1) Subject to Part 5 of the Schedule to this Order, the Company may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of Loch Ryan as lie within the limits of the port and within the approaches and the channels leading to those limits and may blast any rock in the area so described and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Act of 1995<sup>(9)</sup>), from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) 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 work**

8. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of or in constructing the works, or who 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.

### **Works to be deemed part of undertaking**

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

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

10.—(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

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(9) 1995 c. 21, see section 255(1).

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 the Company at their 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 they have 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.

#### **Survey of tidal works**

**11.** 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 the Company as a debt.

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

**12.—**(1) In the 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 fail to comply in any respect with the provisions of this article, they 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**

**13.—**(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 their 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 and 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 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 they have 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.

#### **Lights on tidal works during construction**

**14.—**(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a 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 fail to comply in any respect with a direction given under this article they 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**

**15.**—(1) After completion of a 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 fail to comply in any respect with a direction given under this article they 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**

**16.**—(1) Subject to paragraph (2) below, if the works are not completed within five years from the coming into force of this Order or such extended time as the Scottish Ministers may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

(2) Nothing in paragraph (1) above shall apply to any works carried out under paragraph (3) of article 4 (Power to construct works) or article 6 (Subsidiary works) of this Order.

#### **Port premises to be within area of Dumfries and Galloway Council**

**17.** The port premises shall, to the extent that they lie outwith the area of the Dumfries and Galloway Council, be annexed to and incorporated within that area.

## **PART 2**

### **PORT REGULATION**

#### **Limits of port**

**18.**—(1) The limits of the port within which the Company shall exercise jurisdiction and the harbour master shall exercise his powers shall be the area bounded by an imaginary straight line commencing at a point (PL1) at 54°58.08'N, 005°00.94'W thence extending in an imaginary straight line to a point (PL2) at 54°58.07'N, 005°01.02'W thence extending in an imaginary straight line to a point (PL3) at 54°58.07'N, 005°01.83'W thence extending in an imaginary straight line to a point (PL4) at 54°57.34'N, 005°01.31'W thence extending in an imaginary straight line to a point (PL5) at 54°57.34'N, 005°00.52'W thence extending in an imaginary straight line to a point (PL6) at 54°57.36'N, 005°00.39'W thence following the western boundary (as existing from time to time) of the A77 trunk road to the point of commencement.

(2) The area described in paragraph (1) above is, for the purpose of identification only, shown edged red on sheet 13 of the deposited plans and, in the event that there is any discrepancy between the description of that area and the area shown on that sheet, the description shall prevail.

### **General powers of Company in respect of port**

19.—(1) The Company may improve, maintain, regulate, manage, mark and light the port and provide accommodation and port facilities therein.

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

### **Moorings**

20.—(1) The Company may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the port as they consider necessary or desirable for the convenience of vessels.

(2) The Company 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 port.

(3) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the port 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) above shall be valid only for a period of one year commencing with the date on which it takes effect.

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

### **General byelaws**

21.—(1) The Company may from time to time make byelaws for the efficient management and regulation of the port and of the undertaking.

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

- (a) regulating the use, operation and superintendence of the port and the berths, quays, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the port;
- (b) regulating the admission to, and the movement within, and the departure of vessels from, the port, or the removal of vessels, and for the good order and government of vessels whilst within the port;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the port;
- (d) regulating the navigation, berthing and mooring of vessels within the port and their speed and the use of tugs within the port;
- (e) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or person within the port;
- (f) regulating the conduct of all persons within the port not being members of a police force or officers or servants of the Crown or officers of the Scottish Ministers including the holder of any office in the Scottish Administration or any member of staff of the Scottish Administration whilst in the execution of their duties;
- (g) regulating the placing and maintenance of moorings within the port;
- (h) preventing and removing obstructions or impediments within the port;
- (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the port;

- (j) regulating the use of ferries within the port;
  - (k) regulating in the port the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
  - (l) regulating or prohibiting the activities in the port 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 paragraph (k) above;
  - (m) regulating the launching of vessels within the port;
  - (n) prohibiting persons working or employed in or entering the port, or any part thereof, from smoking therein;
  - (o) regulating the use of fires and lights within the port, and within any vessel within the port;
  - (p) regulating the movement, speed and parking of vehicles within the port;
  - (q) regulating the exercise of the powers vested in the harbour master;
  - (r) making the carrying out of specified port operations, or the conduct of persons in the port, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction.
- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder, fines not exceeding level 3 on the standard scale;
  - (b) relate to the whole of the port or to any part thereof;
  - (c) make different provisions for different parts of the port or in relation to different classes of vessels or vehicles.
- (4) The powers of this article are in addition to the powers conferred by section 83 of the Act of 1847.

### **Confirmation of byelaws**

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

(2)

- (a) At least one month before an application for confirmation of byelaws is made by the Company 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:—
  - (i) once in the Edinburgh Gazette;
  - (ii) once in each of two successive weeks in a newspaper circulating in the area in which the port is situated.
- (b) Not later than the first date on which the notice under subparagraph (a) above is published, the Company shall send a copy of the notice to the Chief Executive Officer of the Dumfries and Galloway Council and to the Scottish Ministers.
- (c) 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 at the office of the harbour master and shall at reasonable hours be open to public inspection without payment.
- (d) The Company 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.

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

(4) Subject to paragraph (5) below, 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.

(5) Where the Scottish Ministers propose to make a modification that appears to them to be substantial they shall inform the Company and require them 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 the Company and by other persons who have been informed of it.

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

### **General directions to vessels**

**23.**—(1) The Company may, after consultation with the Chamber of Shipping and the Royal Yachting Association in each case of an exercise of the powers, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the port and the approaches and channels leading thereto and, without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) for designating areas, routes or channels in the port and the approaches thereto which vessels are to use, or refrain from using, for movement or mooring;
  - (b) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for the purposes of this paragraph.
- (2) Directions given under paragraph (1) above may apply—
- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
  - (b) to the whole of the port and the approaches and channels leading thereto, or to a part designated, or the designation of which is provided for, in the direction; and
  - (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction given under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) above.

(3) The Company may, after consultation with the Chamber of Shipping and the Royal Yachting Association, revoke or amend directions given under this article.

### **Publication of general directions**

**24.**—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Company 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 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 of any amendment or revocation of a general direction may be given in any manner the Company consider appropriate.

### **Special directions to vessels**

**25.**—(1) In addition to the directions which he may give under section 52 of the Act of 1847 the harbour master may give a direction under this article—

- (a) requiring any vessel anywhere within the port or the approaches thereto to comply with a requirement made in or under a general direction;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) prohibiting the mooring of vessels in any particular part or parts of the port;
- (d) regulating or requiring the movement, mooring or unmooring of a vessel; and
- (e) regulating the manner in which a vessel takes in or discharges passengers, cargo, fuel, water or ship's stores otherwise than at a quay or pier.

(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**

**26.** 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 his vessel, persons on board, its cargo or any other person or property.

### **Failure to comply with directions**

**27.** The master of a vessel who fails without reasonable excuse to comply with a general direction or 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 directions**

**28.**—(1) Without prejudice to any other remedy available to the Company, 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 he shall not do so unless, after reasonable inquiry has been made, the master cannot be found.

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

### **Exemptions, rebates, etc., in respect of charges**

**29.**—(1) The Company may confer total or partial exemption 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 Harbours Act 1964 shall require the Company 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.

## PART 3

### MISCELLANEOUS AND GENERAL

#### **Power to lease etc.**

**30.** The Company may at any time lease or grant for the purposes of the undertaking 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 undertaking 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**

**31.—(1)** In proceedings for an offence under any provision of this Order mentioned in paragraph (2) below it shall be a defence for the Company to prove that they 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) above are—
- article 12 (Provision against danger to navigation);
  - article 14 (Lights on tidal works during construction); and
  - article 15 (Permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) above 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, 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**

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

#### **Crown rights**

**33.—(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 the generality of the foregoing, nothing in this Order authorises the Company or any licensee to take, use, enter upon or in any manner interfere with any land or interests 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) above may be given unconditionally or subject to terms and conditions.

#### **Environmental requirements**

**34.** The Schedule to this Order shall have effect.

St Andrew's House, Edinburgh  
25th May 2007

*STEWART STEVENSON*  
A member of the Scottish Executive

SCHEDULE

Article 34

ENVIRONMENTAL REQUIREMENTS

PART 1

Environmental Statement

In constructing the works, the Company shall act in accordance with the commitments given in the Environmental Statement being the Environmental Statement dated 7 October 2005 together with the Non-technical Summary, the twelve Appendices thereto and the Addendum dated 12 December 2005 and which was submitted with the application made for this Order to the Scottish Ministers and considered at the public inquiry which took place in the Cairnryan Community Centre between 30 November 2006 and 15 December 2006.

PART 2

Protected properties

1. Provided that the consent of the owner of a protected property is first given in writing, the Company shall, as soon as reasonably practicable at their expense, secure that the following works are carried out to each protected property by a contractor nominated by the Company and to the reasonable satisfaction of the owner of each protected property—

- (a) the installation of acoustic glazing in all windows facing the A77 trunk road; and
- (b) the installation of standard double glazing in all other windows.

2.—(1) Subject to subparagraph (2) below if the consent of any body or other third person is required for the installation in a protected property of any glazing mentioned in paragraph 1 above, the Company will at their expense apply for that consent at the request and on behalf of the owner of that protected property.

(2) If the consent referred to in subparagraph (1) above is given subject to a condition that a type of glazing other than that mentioned in paragraph 1 above and defined in paragraph 4 below is to be installed in the protected property in question, the Company shall, if the owner of that protected property so consents in writing, secure the installation of that type of glazing in that protected property and in all other respects the provisions of this Part shall apply to that installation.

3. Any dispute arising between the Company and the owner of a protected property as to whether the works referred to in paragraph 1 above have been carried out to the reasonable satisfaction of that owner shall be referred to and determined by an independent person acting as an expert and who is a specialist in relation to such matters; and that person shall be agreed by the Company or, failing such agreement, shall be appointed by the President or other duly authorised officer of the Institution of Civil Engineers on the application of either the Company or the owner of the protected property in question.

4. In this Part of this Schedule—

“acoustic glazing” means glazing which comprises—

- (a) two panes of glass which are respectively 10 millimetres and 6 millimetres thick and having a gap of 12 millimetres between each of those panes; or
- (b) two panes of glass one of which is 6 millimetres thick and the other being laminated glass which is 6.4 millimetres thick and having a gap of 12 millimetres between each of those panes; or

(c) such other glazing as would have an equivalent noise attenuating effect.

“standard double glazing” means glazing which comprises two panes of glass which are both 4 millimetres thick and having a gap of 16 millimetres between each of those panes; and

“the protected properties” means the following properties situated within the village of Cairnryan and “protected property” means any one of the protected properties–

1. PORTWAY
2. WESTLANDS
3. OLD MANSE
4. RIOGHAINNE
5. GWELFOR
6. LIGHTHOUSE COTTAGE
7. CRAIGAMMIN
8. TUKVAR
9. CAIRN HOUSE WEST
10. CAIRN HOUSE EAST
11. VIRGINIA COTTAGE
12. RYAN COTTAGE
13. BARDOWIE
14. EAGLE VIEW
15. 1 VICTORIA BUILDINGS
16. 2 VICTORIA BUILDINGS
17. 3 VICTORIA BUILDINGS
18. MACHRIDENE
19. AULD HAME COTTAGE
20. ROSE COTTAGE
21. OLD CHURCH
22. ARDATH
23. LARRA
24. NORTH PARK
25. LOCHVIEW
26. LILAC COTTAGE
27. CLAREMONT COTTAGE
28. HARBOUR VIEW
29. AULD CAIRN
30. MERCHANTS HOUSE
31. LOCHSIDE

- 32. RYANBANK
- 33. 4 SOUTH PLACE
- 34. 3 SOUTH PLACE
- 35. 2 SOUTH PLACE
- 36. 1 SOUTH PLACE
- 37. LOCHINE COTTAGE
- 38. OLD POST OFFICE
- 39. CEDAR LODGE
- 40. CAIRNRYAN HOUSE B&B
- 41. 1 CLADDYBURN TERRACE
- 42. 2 CLADDYBURN TERRACE
- 43. 3 CLADDYBURN TERRACE
- 44. 4 CLADDYBURN TERRACE
- 45. 5 CLADDYBURN TERRACE
- 46. 6 CLADDYBURN TERRACE
- 47. 7 CLADDYBURN TERRACE
- 48. 8 CLADDYBURN TERRACE
- 49. 9 CLADDYBURN TERRACE
- 50. 10 CLADDYBURN TERRACE
- 51. 11 CLADDYBURN TERRACE
- 52. 12 CLADDYBURN TERRACE
- 53. 1 CROACH ROAD
- 54. HIGH CROACH FARM
- 55. 13 CLADDYBURN TERRACE
- 56. 14 CLADDYBURN TERRACE
- 57. 15 CLADDYBURN TERRACE
- 58. 16 CLADDYBURN TERRACE
- 59. 17 CLADDYBURN TERRACE
- 60. 18 CLADDYBURN TERRACE
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- 63. 21 CLADDYBURN TERRACE
- 64. 22 CLADDYBURN TERRACE
- 65. 23 CLADDYBURN TERRACE
- 66. 24 CLADDYBURN TERRACE

- 67. WOODBURN
- 68. ROADSIDE COTTAGE
- 69. HOMESTEAD
- 70. BLINKBONNIE
- 71. KILORAN COTTAGE
- 72. TALMA
- 73. BRAEFOOT
- 74. BANKHEAD FARM
- 75. ROSEBANK

### PART 3

#### Majority of bulk fill material to be delivered by sea

The Company shall secure that the majority of the bulk fill material (to be used for reclaiming that part of Loch Ryan and the foreshore as lies within the limits of deviation) shall be delivered to those limits by sea.

### PART 4

#### Scour protection

The Company shall submit to the Scottish Ministers for their written approval—

- (a) a plan showing the extent and location of the scour protection which the Company shall lay adjacent or near to Works Nos. 1 to 5; and
- (b) a description of the dimensions and materials to be used for the fabrication of that scour protection;

and the Company shall not permit Works Nos. 1 to 5 to be used for the provision of ferry services until that approval is given but nothing in this Part shall preclude the Company from permitting the existing Berths Nos. 1 and 2 from continuing to be used for the provision of such services.

### PART 5

#### Restriction as to dredging

The Company shall not carry out any dredging for the purposes of the construction of Works Nos. 1 to 5 in any year during the period commencing 7 June and ending 17 August or such other period as may be agreed in writing between the Company and the Scottish Environmental Protection Agency.

### PART 6

#### Monitoring

- 1. The Company shall prepare and submit to the Scottish Ministers for their written approval—
  - (a) a programme of regular monitoring of, and reporting on, any sediment deposition in the area of the Leffnoll oyster bed to be undertaken at the commencement of any dredging

carried out for the construction of Works Nos. 1 to 5 and to continue thereafter for a period of five consecutive years beginning on the date when Works Nos. 1 to 5 are first brought into operation;

- (b) a programme for monitoring the status of the Leffnoll oyster bed for a period of five continuous years beginning on 1 July 2007;
- (c) a feasibility study of the status of the native oyster population in Loch Ryan and the opportunities that may exist to enhance the density and abundance of that population; and
- (d) the plan referred to in paragraph 3 below.

2. The Company shall not commence the construction of Works Nos. 1 to 5 until the programmes and the study referred to in paragraph 1 above have been approved by the Scottish Ministers and the Company shall, as soon as reasonably practicable after that approval has been given, use their reasonable endeavours to secure that those programmes and that study are carried out and are reported to such interested parties as the Scottish Ministers may specify when giving their approval.

3. In this Part of this Schedule, “the Leffnoll oyster bed” means that part of Loch Ryan to be designated as such by reference to a plan to be submitted by the Company to, and approved by, the Scottish Ministers.

## PART 7

### Vehicular access

During the construction of Works Nos. 1 to 5, the Company shall, subject to obtaining any consent which may be required to be given by the roads authority pursuant to section 56 of the Roads (Scotland) Act 1984<sup>(10)</sup>, secure that a temporary access from the A77 trunk road to the site of those works is provided and located in the vicinity of Work No. 6.

## PART 8

### Cetaceans etc.

For 15 minutes prior to the commencement of any piling operations which are required for the construction of Works Nos. 1 to 5, the Company shall employ and shall use their reasonable endeavours to have available at any requisite time a person having experience of cetacean monitoring to watch for cetaceans and large sharks and, if that person reports that any cetaceans or large sharks are swimming within a one kilometre radius of the site of that proposed piling operation, the Company shall secure that the proposed piling operation shall be delayed until that person reports that he or she is reasonably satisfied that there are no cetaceans or large sharks within that radius.

## PART 9

### Birds

The Company shall—

- (a) when carrying out any piling operations which are required for the construction of Works Nos. 1 to 5, use their reasonable endeavours to avoid disturbance to nesting birds which habituate any part of the limits of deviation; and

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<sup>(10)</sup> 1984 c. 54.

- (b) secure that when the authorised works have been constructed, a reasonably sufficient number of nesting boxes for black guillemots shall be located conveniently for those guillemots on structures within the port limits.

## PART 10

### Otters

To prevent or minimise harm being caused by the construction of any of the authorised works to otters living within, or within the vicinity of, the port limits, the Company shall secure that during the period of the construction of the authorised works—

- (a) all pipelines are closed off and all open trenches ramped over in at least one position at the end of each working day throughout the period of the construction of the authorised works;
- (b) any new roadside fence which is to be erected within 50 metres of the Claddy House Burn shall continue to a depth of 200 millimetres below soil level; and
- (c) similar otter proof fencing is erected where reasonably practicable to exclude otters from the port limits.

## PART 11

### General

Nothing in this Schedule 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.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order empowers Port of Cairnryan Limited to construct and maintain an enlarged port and other port facilities at the Port of Cairnryan in Loch Ryan.

The Order also confers powers on Port of Cairnryan Limited to maintain and operate their undertaking at the Port of Cairnryan as a statutory harbour undertaking and defines the limits of jurisdiction of the Port.