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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 182**

**The Caledonian Maritime Assets Limited  
(Largs) Harbour Revision Order 2008**

**PART IV**

**HARBOUR REGULATION**

**General byelaws**

**30.**—(1) The Company may from time to time make byelaws for the efficient management and regulation of the harbour and the harbour premises.

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

- (a) regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, quays, piers, jetties, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings in the harbour);
- (b) regulating the admission to, and the movement within, and the departure of vessels from the harbour or the removal of vessels and for the good order and government of vessels whilst within the harbour;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;
- (d) regulating the navigation, berthing and mooring of vessels within the harbour and their speed and manner of navigation, and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessels, goods, vehicles, plants, machinery, property or persons within the harbour;
- (f) regulating the conduct of all persons in the harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
- (g) regulating the placing and maintenance of moorings within the harbour;
- (h) preventing and removing obstructions or impediments within the harbour;
- (i) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour;
- (j) regulating the use of ferries within the harbour;
- (k) regulating in the harbour the use of jet craft, yachts, sailing boats, sail boards, rowing boats, pleasure craft and other small crafts;
- (l) regulating the holding of regattas and other public events in the harbour;
- (m) regulating or prohibiting the activities in the harbour 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 subparagraph (k) above;
- (n) regulating the launching of vessels within the harbour;

- (o) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
  - (p) regulating or preventing the use of fires and lights within the harbour and within any vessels within the harbour;
  - (q) regulating the movement, speed and parking of vehicles within the harbour;
  - (r) regulating the exercise of the powers vested in the harbour master;
  - (s) making the carrying out of specified harbour operations or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
  - (t) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features.
- (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 on summary conviction, fines not exceeding level 4 on the standard scale;
  - (b) relate to the whole of the harbour or to any part thereof;
  - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels.

(4) Where a person is charged with an offence against a byelaw in force under this article it shall be a defence that the offence was not caused or facilitated by any act or neglect on the part of that person or on the part of any person engaged or employed by that person and, if that person was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

### **Confirmation of byelaws**

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

(2) At least one month before an application for confirmation of byelaws is made by the Company to the Scottish Ministers, notice of 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 publicised 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 harbour is situated.
  - (b) not later than the first date on which the notice under sub paragraph (a) above is published, the Company shall send a copy of the notice to the Chief Executive Officer of the local authority within whose area the harbour is situated and to the Scottish Ministers;
  - (c) during a period of at least one month before the 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 a 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.

### **Provisions as to damage**

**32.**—(1) This article applies to any damage caused to any work or property of the Company in the harbour—

- (a) by any person who contravenes any provision of this Order or of any byelaw made in relation to the harbour by the Company; or
- (b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Company may detain any vessel which caused the damage, and any other property belonging to or in charge of the person causing the damage, or belonging to that person's employers, until the cost of the damage has been paid or until reasonable security therefor has been given to the Company.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the costs of the damage.

(4) This article is without prejudice to—

- (a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act or failure to act gave rise to the damage; or
- (b) any right of the Company under any other enactment, agreement, or rule of law; or
- (c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the harbour by the Company.

### **Declaration of draught, etc. of vessel**

**33.**—(1) The master of a vessel entering, leaving or intending to enter or leave the harbour shall, if required to do so by the harbour master, state the overall length and maximum draught of his vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) above without reasonable excuse gives incorrect information shall, without prejudice to any right of the Company to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

### **Obstruction of officers, etc.**

34. Any person who intentionally obstructs an officer of the Company or other person acting in execution of this Order or of any enactment relating to the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Boarding of vessels**

35. Any duly authorised officer of the Company may, on producing if so required his authority, enter and inspect a vessel in the harbour—

- (a) for the purposes of any enactment relating to the Company or any byelaw of the Company including the enforcement thereof; or
- (b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice shall have annexed to it a copy of this article.

### **Vessels adrift**

36.—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

### **Special directions to vessels**

37.—(1) The harbour master may give a direction under this article in respect of a vessel anywhere in the harbour for any of the following purposes:—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at harbour premises;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) as to the use of the motive power of the vessel;
- (f) prohibiting or restricting use of fires or lights;
- (g) as to the use of ballast;
- (h) requiring the removal from any part of the harbour of a vessel if—
  - (i) it is on fire;
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life (including wildlife) or property;
  - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment thereof by other vessels or persons; or
  - (iv) its removal is necessary to enable maintenance or repair work to be carried out at harbour premises or to premises adjacent thereto; and
- (i) requiring its removal outside the harbour if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) In an emergency the harbour master may give special directions applicable to all vessels or to a particular class of vessels for any of the purposes mentioned in paragraph (1) above.

(3) A special direction may be given in any manner considered by the harbour master to be appropriate.

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

**38.**—(1) The master of a vessel who fails to comply with a general direction or special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Without prejudice to any other defence, it shall be a defence to a charge made pursuant to paragraph (1) above that the master had reasonable grounds for believing that to comply with the direction in question would have endangered life or imperilled the safety of any vessel or its cargo, or that for another reason such compliance was impracticable.

#### **Enforcement of special directions**

**39.**—(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 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 a vessel to attend to a special direction, the harbour master may proceed as if the direction had been given and not complied with.

(3) The powers of paragraph (2) above shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

(4) Expenses incurred by the Company in the exercise of the powers conferred by paragraph (1) above shall be recovered by it as if they were a charge of the Company in respect of the vessel.

#### **Master's responsibility in relation to directions**

**40.** 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 that vessel, to persons on board the vessel, to the cargo or any other person or property.

#### **Removal of obstructions other than vessels, vehicles or wreck**

**41.**—(1) Without prejudice to its powers under any other enactment (including one contained in this Order) the Company may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of a harbour area other than—

- (a) a vessel or vehicle; or
- (b) wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(2) If anything removed by the Company under paragraph (1) above is known to the Company to be, or is so marked as to be readily identifiable as, the property of any person, the Company shall within one month of its coming into its custody give notice, in accordance with paragraph (5) below, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in the Company.

(b) if the ownership of anything removed by the Company under paragraph (1) above which is not so known or marked is not within 3 months of its coming into the custody of the Company proved to its reasonable satisfaction, it shall vest in the Company.

(3) The Company may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Company under this article, and if it is sold the proceeds of sale shall be applied by the Company in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

(a) shall be paid to any person who within 3 months from the time when the thing came into custody of the Company proves to its reasonable satisfaction that that person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall vest in the Company.

(4) If anything removed under this article—

(a) is sold by the Company and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or

(b) is unsaleable;

the Company may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Company or who was the owner at the time of its abandonment or loss.

(5) A notice given under paragraph (2)(a) above shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Company possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the date when the notice is served.

(6) The Company shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence given or issued by the Company thereunder.

### **Removal of vehicles**

**42.—**(1) If a vehicle is left without permission of the Company—

(a) in a parking place provided by the Company within the harbour premises for a longer period than 24 hours; or

(b) in any part of the harbour premises where the parking of vehicles is prohibited by notice erected by the Company; or

(c) in any place within the harbour premises where it is likely to obstruct or interfere with the use of the harbour premises,

the Company may cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1) above shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where the Company in exercise of the powers of this article causes a vehicle to be removed the expenses of and incidental to its removal and safe custody shall be recoverable by the Company from the person responsible.

(4) If the Company in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing)

Regulations 1971(1) at that person's last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that the Company has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each entrance to any parking place provided by the Company and at each place where a road accessible to vehicles enters any part of the harbour premises, and shall be endorsed on any tickets issued to persons leaving vehicles in such parking place or elsewhere at the harbour premises.

(6) In paragraph (3) above, "person responsible", in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless that person shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in that place;
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(2).

#### **Power to remove goods**

43.—(1) If any goods are left on or in any part of the harbour premises the Company may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) Notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner in respect of the goods.

(3) In this article, "goods" includes vehicles and equipment.

#### **Power to dispose of harbour estate and enter into agreements**

44. The Company may for such consideration and upon such terms and conditions and subject to such restrictions and for such a period as it thinks fit sell, feu, lease, excamb or otherwise dispose of any part of the harbour or harbour premises which is no longer required for the purposes of the harbour and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

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(1) S.I.1971/450.

(2) 1978 c. 3.