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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 361**

**The Whiteness Marina Harbour Revision Order 2008**

**PART 1**

**PRELIMINARY**

**Citation, commencement and repeal**

1.—(1) This Order may be cited as the Whiteness Marina Harbour Revision Order 2008 and comes into force on 7th November 2008.

(2) The McDermott Scotland Order Confirmation Act 1975(1) is repealed.

**Interpretation**

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

“1847 Act” means the Harbours Docks and Piers Clauses Act 1847(2);

“the Company” means Whiteness Marina Company Limited (Company No. 312873);

“deposited plans” and “deposited sections” mean respectively the plans and sections signed with reference to this Order and marked “Plans and sections referred to in the Whiteness Marina Harbour Revision Order 2008” of which two copies are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ, and one copy 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 same meaning as in section 126(6) of the Scotland Act 1998(3);

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

“land” includes buildings and other structures, land covered with water and any right or interest in 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;

“marina” means the marina limits;

“marina limits” means the limits of the marina as defined in article 17 (limits of marina);

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

“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 marina undertaking of the Company as authorised by this Order;

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(1) 1975 c.xxiv.

(2) 1847 c. 27.

(3) 1998 c. 46.

“vessel” means a ship, boat, raft or water craft of any description however propelled or moved, and includes a jet-ski, a displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel 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).

(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) shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width and height 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.

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

**3.—**(1) The 1847 Act (except sections 6 to 25, 27, 28, 31, 33, 49, 50, 52, 53, 67, 83 to 90, 92 and 101), 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).

(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 1847 Act 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 marina; and
- (b) for the definition of the words “lands” and “vessel” in section 3 of the 1847 Act there shall be substituted the definitions of the words “land” and “vessel” respectively in article 2(1).

### **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, construct and maintain in the Highland Area, Inverness District the works hereinafter described, with all necessary works and conveniences connected therewith—

Work No. 1 – Removal of the existing sheet piling at the quay face and replacing that sheet piling by constructing a rock armoured revetment and extending the rock armoured revetment along the south side of the Whiteness Channel to form a small boat harbour commencing at a point at NH8180657528 and terminating at a point at NH8043258336.

Work No. 2 – Piled moorings with a pontoon system connected to Work No. 1 by a series of linkbridges commencing at a point at NH8147457681 and terminating at a point at NH8045058368.

Work No. 3 – A slipway of solid construction, extending into the small boat harbour forming part of Work No. 1, commencing by a junction with that work at a point at NH8148557681 and terminating at a point at NH8142057719.

(2) Subject to the provisions of this Order, the Company may, for the purposes of Work No. 1, enclose and reclaim so much of the bed of Whiteness Channel 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) and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

### **Power to deviate**

5. Subject to the provisions of this Order, in carrying out the works authorised by article 4 (power to construct works) 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 to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

### **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) 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 the Moray Firth as lie within the marina limits 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 Merchant Shipping Act 1995(4)), 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 marina shall apply to the works and may be enforced by the Company accordingly.

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(4) 1995 c. 21, see section 255(1).

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

**10.**—(1) Unless construction has commenced within one year of the coming into force of this Order, 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 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), 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) shall apply to any works carried out under paragraph (2) of article 4 (power to construct works) or article 6 (subsidiary works).