
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 361

The Whiteness Marina Harbour Revision Order 2008

PART 2

MARINA REGULATION

Limits of marina

17.—(1) The marina limits within which the Company shall exercise jurisdiction and the harbour master shall exercise his powers shall be the area bounded by an imaginary line commencing at a point at NH8163757277 (point 1), thence extending generally in a westerly direction following the line of the drain to a point at NH7937257576 (point 2), thence extending in an imaginary straight line in a northerly direction to a point at NH7957759850 (point 3), thence extending in an imaginary straight line in a north easterly direction to a point at NH8049760110 (point 4), thence extending in an imaginary straight line in an easterly direction to a point at NH8148759908 (point 5), thence extending in an imaginary straight line in a south easterly direction to a point at NH8204259526 (point 6), thence extending in an imaginary straight line in a southerly direction to a point at NH8198157788 (point 7), thence extending in an imaginary straight line in a south westerly direction and terminating at the point of commencement.

(2) The area described in paragraph (1) is, for the purpose of identification only, shown edged red on sheet 5 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 marina

18.—(1) The Company may improve, maintain, regulate, manage, mark and light the marina and provide accommodation and marina 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

19.—(1) The Company may within the marina provide, place, lay down, maintain, use and have moorings for vessels—

- (a) on land owned or leased by the Company or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the marina.

(2) The Company may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Company such charges as the Company may from time to time prescribe.

(3) The Company may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Company may give notice in writing to the person having the control of any vessel using any mooring in the marina at the date this Order comes into force requiring him within 28 days

to remove the mooring so as to enable the Company to provide, place or lay down moorings in accordance with paragraph (1).

(5) If any person fails to comply with a notice given by the Company under paragraph (2), the Company may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

(6) The Company may from time to time grant to a person a licence to place, lay down, maintain, use and have existing and future moorings, for vessels in the marina.

(7) Nothing in any such licence shall entitle a person to place, lay down, maintain, use and have any mooring on land not owned or leased by him or by the Company or in which he has no appropriate interest.

(8) Any such licence shall, unless otherwise stated in the licence in question, be valid for a period of one year commencing with its date.

(9) The Company may charge for such a licence such fee as the Company may from time to time prescribe.

(10) Sections 43 to 48 of the 1847 Act shall apply in relation to charges made or fees charged under this article.

(11) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out moorings; or
- (b) intentionally and without lawful authority pulls up or removes any mooring in the marina or any part thereof; or
- (c) without reasonable excuse causes or permits a vessel to be moored in the marina except at a mooring provided or licensed by the Company under this article or at a quay, jetty, slipway or other work or to land owned or leased by the Company; or
- (d) places, lays down or maintains in the marina any mooring not provided or licensed by the Company 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.

(12) If any person places, lays down or maintains in the marina any mooring not provided or licensed by the Company under this article, the Company may remove the mooring in question and recover from that person the expenses incurred in doing so.

(13) In this article—

“mooring” includes any buoy, pile, post, chain, pillar, jetty for use as an appurtenance to a dwelling or like apparatus or structure used for the mooring of vessels; and

“vessel” does not include a houseboat.

General byelaws

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

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

- (a) regulating the use, operation and superintendence of the marina and the berths, quays, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the marina;

- (b) regulating the admission to, and the movement within, and the departure of vessels from, the marina, or the removal of vessels, and for the good order and government of vessels whilst within the marina;
 - (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the marina;
 - (d) regulating the navigation, berthing and mooring of vessels within the marina and their speed and the use of tugs within the marina;
 - (e) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or person within the marina;
 - (f) regulating the conduct of all persons within the marina not being members of a police force or officers or servants of the Crown whilst in the execution of their duties;
 - (g) regulating the placing and maintenance of moorings within the marina;
 - (h) preventing and removing obstructions or impediments within the marina;
 - (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the marina;
 - (j) regulating the use of ferries within the marina;
 - (k) regulating in the marina 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 marina 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);
 - (m) regulating the launching of vessels within the marina;
 - (n) prohibiting persons working or employed in or entering the marina, or any part thereof, from smoking therein;
 - (o) regulating the use of fires and lights within the marina, and within any vessel within the marina;
 - (p) regulating the exercise of the powers vested in the harbour master;
 - (q) making the carrying out of specified marina operations, or the conduct of persons in the marina, 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;
 - (r) the conservation of the fauna, avifauna and flora in the marina.
- (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 on summary conviction not exceeding level 3 on the standard scale;
 - (b) relate to the whole of the marina or to any part thereof;
 - (c) make different provisions for different parts of the marina or in relation to different classes of vessels or vehicles.

Confirmation of byelaws

21.—(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 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—

- (a) once in the Edinburgh Gazette;
- (b) once in each of two successive weeks in a newspaper circulating in the area in which the marina is situated.

(3) Not later than the first date on which the notice under paragraph (2) is published, the Company shall send a copy of the notice to the Chief Executive Officer of the Highland Council and to the Scottish Ministers.

(4) 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.

(5) 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.

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

(7) Subject to paragraph (8), 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.

(8) 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.

(9) 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

22.—(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 or for the conservation of fauna, avifauna and flora in the marina 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 marina 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) 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 marina 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).

(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

23.—(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

24.—(1) The harbour master may give a direction under this article—

- (a) requiring any vessel anywhere within the marina or the approaches thereto to comply with a requirement made in or under a general direction;
- (b) for regulating the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the marina;
- (c) for securing that vessels move only at certain times or during certain periods;
- (d) prohibiting the mooring of vessels in any particular part or parts of the marina;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel;
- (f) regulating the manner in which a vessel takes in or discharges passengers, cargo, fuel, water, ship’s stores or ballast in the marina;
- (g) regulating the manner in which any vessel entering the marina shall be dismantled; and
- (h) removing unserviceable vessels and other obstructions from and keeping clear the marina.

(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

25. 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

26. 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 2 on the standard scale.

Enforcement of special directions

27.—(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

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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

28.—(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) In this article, “charges” means any charges (other than ship, passenger and goods dues) which are exigible by the Company as the harbour authority for the marina.