
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 361

The Whiteness Marina Harbour Revision Order 2008

PART 3

MISCELLANEOUS AND GENERAL

Power to lease etc.

29. 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 marina 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

30.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) 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) 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) 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

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

Disapplication of Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994

32.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽¹⁾ (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by article 4 (power to construct works) or article 6 (subsidiary works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) (Scotland) Order

(1) S.I.1994/2716.

1992(2) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not disapply regulation 60 of the Habitats Regulations in relation to any planning permission for the works to the extent that the works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

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 the Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions.