

2008 No. 361

HARBOURS, DOCKS, PIERS AND FERRIES

The Whiteness Marina Harbour Revision Order 2008

Made - - - - - *6th November 2008*

Coming into force - - - *7th November 2008*

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Whiteness Marina Company Limited have applied for a harbour revision order under section 14 of the Harbours Act 1964(a) (“the Act”);

The Scottish Ministers(b) having, in pursuance of paragraph 4 of Schedule 3 (“the Schedule”) to the Act(c), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(d) (“the Directive”) 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, have directed the applicant to supply them with the information referred to in Annex IV to the Directive;

Notices have been published by the Company in accordance with paragraph 10 of the Schedule(e);

The Scottish Ministers have in accordance with paragraph 15 of the Schedule(f), furnished bodies appearing to them to have environmental responsibilities with the information supplied to them under paragraph 8 of the Schedule and have consulted such bodies;

No objection was made to the application and no representations relating to the environmental statement have been made pursuant to paragraph 10(2)(f) of the Schedule. In accordance with paragraph 19(1)(g) of the Schedule they have considered the information supplied under paragraph 4 of the Schedule, the environmental statement supplied under paragraph 8(1) of the Schedule(h), the further information falling within paragraph 10A(2)(i) and the result of consultations under paragraph 15 of the Schedule and are satisfied as mentioned in section 14(2)(b) of the Act;

(a) 1964 c.40; section 14 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 1.

(b) 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).

(c) 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.

(d) 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. L73, 14.3.1997, p.5) and by Council Directive 2003/35/EC (O.J. No. L156, 25.6.2003, p.17).

(e) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8) section 25(5)(b) and (c).

(f) Paragraph 15 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8) section 25(5)(e).

(g) Paragraph 19(1) of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(i).

(h) Paragraph 8 of Schedule 3 was substituted by S.I. 1999/3445.

(i) Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).

The Scottish Ministers in exercise of the powers conferred by section 14 of the Act hereby make the following Order:

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^(a) 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^(b);

“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^(c);

“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;

“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

^(a) 1975 c.xxiv.

^(b) 1847 c.27.

^(c) 1998 c.46.

“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(a)), 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.

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.

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

(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).

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 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.

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(a) (“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)

(a) S.I. 1994/2716.

(Scotland) Order 1992(a) 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.

ALASTAIR WILSON

A member of the staff of the Scottish Ministers

St Andrew's House,
Edinburgh
6th November 2008

(a) S.I. 1992/223.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals the McDermott Scotland Order Confirmation Act 1975 and empowers Whiteness Marina Company Limited to construct and maintain a marina and other facilities at Whiteness Head in the area of the Carse of Ardersier in the Highland Area, Inverness District.

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

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£5.00