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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 27**

**The Port Babcock Rosyth Harbour Empowerment Order 2009**

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Port Babcock Rosyth Harbour Empowerment Order 2009 and shall come into force on 29th January 2009.

**Interpretation**

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(1);

“the 1964 Act” means the Harbours Act 1964(2);

“the 1995 Act” means the Merchant Shipping Act 1995(3);

“the Company” means Port Babcock Rosyth Limited, a Company incorporated in Scotland with registered number SC173116 and having its registered office at Rosyth Business Park, Rosyth, Dunfermline, Fife, KY11 2YD;

“the Forth” means the River and Firth of Forth;

“general direction” means a direction given under article 22 below;

“government department” includes any part of or any member of the staff of the Scottish Administration which shall have the meaning defined in section 126(6) of the Scotland Act 1998(4);

“the harbour master” means any person appointed as such by the Company, and includes that person’s deputies and assistants and any other person for the time being authorised by the Company to act, either generally or for a specific purpose, in the capacity of harbour master;

“jet craft” means any watercraft (not normally used in navigation and not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

- (a) by means of a handlebar operated linkage system (with or without a rudder at the stern);  
or
- (b) by the person or persons riding the craft using his or their body weight for the purpose; or
- (c) by a combination of the methods referred to respectively in sub-paragraphs (a) and (b) above.

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(1) 1847 c. 27.  
(2) 1964 c. 40.  
(3) 1995 c. 21.  
(4) 1998 c. 46.

“land” includes land covered by water, any interest in land and any servitude or right in, to or over land;

“the level of high-water” means the level of mean high-water springs;

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

“port” means the port limits and the port premises;

“port limits” means the limits of the port as defined in article 4 (Limits of port) of this Order;

“the port map” means the map referred to in article 4 below, two copies of which have been deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ and one copy of which has been deposited at the registered office of the Company;

“port premises” means the quays, berths, landing places, and all other works, land and buildings within the port limits for the time being vested in or occupied or administered by the Company as part of the port undertaking;

“port undertaking” means the port related business activities of the Company;

“sailboard” means a raft with a sail or sails designed to be operated by a person or persons standing upright thereon;

“special direction” means a direction given under article 24 below;

“tidal work” means so much of any work as is on, under or over tidal waters or tidal lands below the level of high-water including such works as are existing at the commencement of this Order; and

“vessel” means a ship, boat, raft or water craft of any description, however propelled or moved, and includes any thing constructed or used to carry persons or goods by water and shall include but not be limited to a displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily).

(2) All areas, directions, distances, lengths, widths and heights and other measurements or references to situations stated in this Order shall be construed as if the words “or thereabouts” were inserted after each area, direction, distance, length, width, height, other measurement or reference.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid Reference points.

### **Incorporation of the 1847 Act**

3.—(1) Sections 1 to 4, 27, 29, 32, 34, 35, 37 to 41, 43 to 46, 51, 53 to 59, 61 to 66, 68 to 74 and 92 of the 1847 Act, so far as applicable to the purposes and not inconsistent with the provisions of this Order, are hereby incorporated with and form part of this Order subject to the modifications stated in paragraph (2) below.

(2) For the purposes of the 1847 Act, as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expression “the undertakers” means the Company;
- (c) the expression “the harbour, dock or pier” means the port;
- (d) the meaning of the word “vessel” as defined in article 2(1) of this Order shall be substituted for the meaning assigned to that word by section 3 of the 1847 Act;
- (e) section 53 shall have effect subject to the modifications that, for the word “made” and for the expression “after notice of such direction by the harbour master served upon him”,

- there shall be substituted respectively the word “given” and the expression “after being given any such direction by the harbour master”;
- (f) section 56 shall be read as if the word “wreck” shall not include a vessel which is sunk, stranded or abandoned;
  - (g) section 63 shall be read and have effect as if for the words from “be liable to” to the end of the section there were 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”;
  - (h) section 69 shall be read and have effect as if for the words from “forfeit” to the end of the section there were substituted the words “be liable on summary conviction to a fine not exceeding level 4 on the standard scale”;
  - (i) sections 69 and 70 shall be read and have effect as if the words “or on the deck of any vessel” were delete;
  - (j) section 71 shall be read and have effect as if the phrase “in any vessel” were delete whenever it appears in that section;
  - (k) section 71 shall be read and have effect as if the words “every person who shall bring any loaded gun” to the end of that section were deleted; and
  - (l) section 73 shall be read and have effect as if for “level 1” there were substituted “level 2”.

## PART II

### DUTIES AND POWERS OF THE COMPANY

#### **Limits of port**

4.—(1) The limits of the port within which the Company shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the 1964 Act, and the powers of the harbour master shall be exercisable within, shall be the area the boundaries of which are described in the Schedule to this Order and shown outlined in red on the port map. References in the Schedule to this Order to points are references to the boundary location points, the respective eastings and northings of which are stated in the table on the port map.

(2) In the event of any discrepancy between the boundaries as described in the Schedule to this Order and the boundaries shown outlined in red on the port map, the port map shall prevail.

#### **General powers and duties in respect of port**

5.—(1) The Company may improve, maintain, regulate, manage, mark and light the port and provide accommodation and port facilities therein.

(2) For those purposes, and without prejudice to the generality of paragraph (1) above, the Company may—

- (a) subject to the provisions of article 10, construct, alter, demolish and reconstruct structures and works in the port;
- (b) do all other things which in its reasonable opinion are necessary or expedient to facilitate the proper carrying on or development of the port undertaking.

(3) This article is without prejudice to any powers of the Company under or by virtue of any other enactment (including any other provision of this Order).

### **Reclamation of land**

6.—(1) Subject to the provisions of this Order, the Company may, within the port fill up, raise, enclose and reclaim land from the sea and the bed and the foreshore of the port and for that purpose may place such piles and construct such groynes, retaining walls and other works in and upon the seabed and foreshore as the Company deems necessary.

(2) The Company shall not exercise the powers conferred by paragraph (1) above in relation to any land not owned by it unless it first obtains the consent in writing of the owner thereof.

### **Power to dredge**

7.—(1) Subject to the provisions of this Order, the Company may from time to time deepen, dredge, scour, cleanse, alter and improve the port and so much of the bed, shores and channels of the Forth as lie within the port limits and within the approaches and channels leading to the port limits and may blast rock in the area so described for the purpose of affording the uninterrupted means of access to the port or any part of it for the accommodation of vessels or the egress from the port of vessels.

(2) Subject to paragraph (3) below the Company may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the 1995 Act<sup>(5)</sup>) from time to time dredged by it.

(3) No material referred to in this article shall be—

- (a) disposed of in contravention of any enactment relating to the disposal of waste; or
- (b) deposited below the level of high-water except in such places and under such conditions and restrictions as may be approved or directed by the Scottish Ministers.

### **Restriction of works and dredging**

8.—(1) No person other than the Company shall in the port—

- (a) alter, renew or maintain any works; or
- (b) dredge;

unless that person has contracted with the Company to do so.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The Company may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice the Company may carry out the works so required and may recover the cost of so doing from that person.

### **Survey of tidal works**

9. The Scottish Ministers may at any time they deem it expedient order a survey or examination of a tidal work or of the site upon which it is proposed to construct tidal works and any expenditure incurred by them in such survey or examination shall be recoverable from the Company as a debt.

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(5) 1995 c. 21, see section 255(1).

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

10.—(1) A tidal work shall not be constructed, executed, altered, demolished, renewed or replaced 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.

(2) If a tidal work is constructed, executed, altered, demolished, renewed or replaced in contravention of 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 on the Company it has 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 works 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.

(3) The work referred to in paragraph (1) shall be deemed to be “harbour works” within the meaning and for the purposes of the Marine Works (Environmental Impact Assessment) Regulations 2007<sup>(6)</sup>.

### **Abatement of works abandoned or decayed**

11.—(1) Where a tidal work is abandoned or allowed to fall into decay the Scottish Ministers may by notice in writing require the Company at its 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 consisting partly of a tidal work and partly of works on or over land above the level of high-water is abandoned or allowed to fall into decay and that part of the work on or over the 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 the 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, it has 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**

12.—(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) 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.

(3) 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.

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<sup>(6)</sup> S.I.2007/1518; “harbour works” is defined in regulation 2(1).

### **Provision against danger to navigation**

13.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Company shall as soon as practicable notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Company fails to comply in any respect with the provisions of this article it 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.

### **Moorings**

14.—(1) The Company may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the port as it considers necessary or desirable for the convenience of vessels.

(2) The Company may from time to time contract with any person to place, lay down, maintain, renew or use moorings, buoys and similar apparatus for vessels in the port.

(3) Any contract entered into under paragraph (2) above shall be valid for a period of no longer than three years commencing with the date on which it takes effect.

(4) The Company may charge a reasonable fee for the grant of a contract under this article.

(5) Any person who, without reasonable excuse, shall place, lay down, maintain, renew or use a mooring, buoy or similar apparatus for vessels within the port except under and in accordance with the terms and conditions of a contract granted 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.

### **Power to licence tugs**

15.—(1) It shall not be lawful for any person, except in an emergency, to operate a vessel exceeding 5 tonnes gross for fee or reward for the purpose of moving or controlling the movement of any other vessel within the port except under and in accordance with the terms and conditions of a licence granted by the Company in that behalf.

(2) The Company may charge a reasonable fee for the grant of any licence under this article.

(3) Any person who contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Parking places**

16. The Company may provide facilities within the port premises for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.

### **Power to appropriate parts of port, etc.**

17.—(1) Notwithstanding anything in this or any other statutory provision of local application, the Company may from time to time set apart or appropriate any part of the port, or any lands, works, buildings, machinery, equipment or other property of the Company in the port, for the exclusive, partial or preferential use or accommodation for any particular trade, activity, person, vessel or class of vessels or goods, subject to the payment of such reasonable charges (other than ship, passenger and goods dues) and to such terms and conditions as the Company thinks fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the port, or any lands, works, buildings, machinery, equipment or other

property, so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Company.

(3) The harbour master or, as the case may be, any such authorised officer may order any person or vessel contravening paragraph (2) above to leave or be removed from the site of the contravention.

(4) Section 58 of the 1847 Act shall extend and apply with appropriate modifications to any vessel moored or otherwise positioned in contravention of paragraph (2) above.

#### **Power to lease, etc.**

18. The Company may at any time lease or grant for the purposes of the port 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 port for such period or periods and on such terms and conditions as may be agreed between the Company and the persons taking the same.

#### **Power to enter into arrangements to provide supplies**

19. The Company may make arrangements for the purpose of providing and supplying fuel and such other requirements as may be made available to vessels using the port and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the port.

## PART III PORT REGULATION

#### **General byelaws**

20.—(1) The Company may from time to time make byelaws which are to apply within the port for the following purposes—

- (a) regulating the use, operation and superintendence of the port and the docks, berths, wharves, quays, piers, jetties, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings) in the port;
- (b) regulating the admission to, and the movement within, and the departure of vessels from the port or the removal of vessels and for the good order and government of vessels whilst within the port;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the port;
- (d) regulating the berthing and mooring of vessels within the port and the use of tugs within the port;
- (e) preventing damage or injury to any goods, vehicles, plant, machinery, property or persons within the port;
- (f) regulating the hours during which any gates, entrances or outlets to or from the port or any part of the port shall be open;
- (g) regulating the conduct of all persons in the port not being members of a police force or officers or servants of the Crown or officers of the Scottish Ministers including the holder of any office in the Scottish Administration or any member of staff of the Scottish Administration whilst in the exercise of their duties;
- (h) regulating the placing and maintenance of moorings within the port;
- (i) preventing and removing obstructions or impediments within the port;

- (j) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the port;
  - (k) regulating the use of cranes, weighing machines, weights and measures belonging to the Company, and the duties and conduct of weighers and meters employed by the Company;
  - (l) regulating the use of ferries within the port;
  - (m) regulating or prohibiting the use in the port of jet craft, yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
  - (n) regulating the holding of regattas and other public events in the port;
  - (o) regulating or prohibiting the activities in the port of divers, surfers, water skiers and other persons engaged in similar pursuits whether for recreation or otherwise;
  - (p) regulating the launching of vessels within the port;
  - (q) prohibiting persons working or employed in or entering the port, or any part thereof, from smoking in open spaces therein;
  - (r) regulating or preventing the use of fires and lights within the port;
  - (s) regulating the movement, speed and parking of vehicles within the port;
  - (t) regulating the exercise of the powers vested in the harbour master;
  - (u) making the carrying out of specified port operations or the conduct of persons in the port, 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;
  - (v) the conservation of the natural beauty of all or any part of the port or of any of the fauna, flora or geological or physiographical features in the port and all other natural features; and
  - (w) the conservation, preservation or redevelopment of any buildings, plant or other artificial features of the port of historic or architectural significance.
- (2) 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 port or to any part thereof;
  - (c) make different provisions for different parts of the port or in relation to different classes of vessels.

### **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 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 port 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 port 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.

### **General directions to vessels**

**22.**—(1) The Company may, after consultation with the Chamber of Shipping, give directions for any of the following purposes—

- (a) designating areas, routes or channels in the port which vessels are to use or refrain from using for movement, mooring or anchorage;
- (b) securing that vessels move only at certain times or during certain periods;
- (c) securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) prohibiting entry into or navigation within any of the main channels during any temporary obstruction thereof; and
- (e) requiring the master of a vessel to give the harbour master information relating to the vessel reasonably required by the harbour master.

(2) A direction under this article may apply—

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; or
- (b) to the whole of the port and the approaches and channels leading thereto, or to a part designated, or the designation of which is provided for, in the direction; or
- (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) of this paragraph.

(3) The Company may, after consultation with the Chamber of Shipping, revoke or amend any general direction 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 an 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 the 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 person or vessel anywhere within the port or the approaches thereto to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of a vessel;
- (c) regulating the loading, discharging, storing and safeguarding of a vessel’s cargo, fuel, water or stores and the dispatch of business at port 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 anywhere within the port or the approaches thereto;
- (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 port 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 port 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 port premises or to premises adjacent thereto; and
- (i) requiring the removal outside the port of any vessel 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) 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.

(4) The harbour master may revoke or amend a special direction.

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

**25.**—(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 4 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, imperilled the safety of any vessel or its cargo or otherwise been impossible to comply.

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

**26.**—(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) Expenses incurred in the exercise of the powers conferred by this article shall be recovered by the Company from the owner of the vessel as if they were a charge of the Company in respect of the vessel.

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

**27.** 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.

## **PART IV CHARGES**

#### **Liability for charges**

**28.**—(1) Charges payable to the Company on or in respect of—

- (a) a vessel, shall be payable by the owner or the master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

(2) Where a charge payable to the Company may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

#### **Exemptions, rebates, etc. in respect of charges**

**29.**—(1) The Company may confer total or partial exemptions 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) Nothing in section 30 of the 1964 Act shall require the Company to include in the list of ship, passenger and goods dues kept at the harbour office as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in that list.

#### **Security for charges**

**30.** The Company may require a person who incurs or is about to incur a charge to deposit with, or to guarantee, such sum of money as is, in the opinion of the Company, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required by the Company, the Company may detain the vessel in the port or goods on or in port premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

### **Liens for charges**

**31.**—(1) A person, who by agreement with the Company collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person's possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not itself liable for the payment of charges may pay or by agreement with the Company give security for charges on goods in its custody, and in that event it shall have a like lien on the goods for the amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

### **Refusal to pay charges for landing place, etc.**

**32.** An officer of the Company may prevent a vessel from using a landing place or any other facilities provided by the Company, if the master of the vessel refuses to pay the charges for such use.

### **Exemptions from charges**

**33.**—(1) Except insofar as may be agreed between the Company and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Company to levy charges shall extend to authorise them to levy charges on—

(a) a vessel—

- (i) belonging to or in the service of Her Majesty or any member of the Royal Family;
- (ii) in the service of the Commissioners of H.M. Revenue & Customs and not carrying goods for reward; or
- (iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or
- (iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;

(b) the Commissioners of H.M. Revenue & Customs in respect of a vessel or goods under customs seizure.

(2) Officers of the Department for Transport and the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the port without mooring or making use of any facilities provided by the Company.

### **Conditions as to payment of charges**

**34.**—(1) Charges shall be payable subject to such terms and conditions as the Company may from time to time specify in its published list of charges.

(2) Without prejudice to the generality of paragraph (1) the terms and conditions may prescribe the time when the charge falls due for payment and may require such information to be given to the Company by the owner or master of a vessel or a person using a service or facility of the Company as the Company may require in connection with the assessment or collection of a charge.

## PART V

### MISCELLANEOUS

#### **Defence of due diligence**

**35.**—(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—

- (a) article 12 (Lights on tidal works); and
- (b) article 13 (Provision against danger to navigation).

(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**

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

#### **Crown rights**

**37.**—(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 to take, use, enter upon or in any manner interfere with, any land or interest in land (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) or any rights of whatsoever description—

- (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;
- (b) belonging to Her Majesty in right of the Crown and not under the management of the Crown estate, without the consent in writing of the government department having management of that land; or
- (c) 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 and shall be deemed to have been given in writing where it is sent electronically.

#### **Saving for other consents**

**38.** The carrying out of any works or operations pursuant to this Order is subject to the Company obtaining any consent, permission or licence required under any other enactment.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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St. Andrew's House,  
Edinburgh  
28th January 2009

*ALASTAIR WILSON*  
A member of the staff of the Scottish Ministers