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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 27**

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

**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>(1)</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.

### **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;

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

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(2).

#### **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.

#### **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.

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

## **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.