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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 31**

**The Loch Ryan Port (Harbour Empowerment) Order 2009**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Loch Ryan Port (Harbour Empowerment) Order 2009 and comes into force on the day after the day on which it is approved by resolution of the Scottish Parliament.

**Interpretation**

2.—(1) In this Order—

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

“the Company” means Stena Line Ports (Loch Ryan) Limited a company incorporated in Scotland with registered number SC286272;

“deposited plans, sections and elevations” means the plans, sections and elevations which are bound together and signed in duplicate with reference to this Order and marked “Loch Ryan Port (Harbour Empowerment) Order 2009 plans, sections and elevations” and which are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ, and at the offices of the Company situated at the port; and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations;

“general direction” means a direction given by the Company under article 21 (general directions to vessels);

“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(2);

“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;

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

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

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(1) 1847 c.27.

(2) 1998 c.46.

“port” means Loch Ryan Port as comprised within the port limits;

“port limits” means the limits of the port as defined in article 17 (limits of port);

“special direction” means a direction given by the harbour master under article 23 (special directions to vessels);

“tidal work” means so much of any of the works as is on, under or over tidal waters or tidal lands below the level of high water;

“vessel” means a ship, boat, or craft of any description and includes 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 of any of those works.

(2) 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 the Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) Sections 1 to 4, 34, 35, 37 to 39, 42, 51, 54, 55 and 63 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission)(3) 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 65 (harbour master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

(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 port; and

(b) for the definition of the word “vessel” in section 3 (interpretations in this and the special Act) there shall be substituted the definition of that word in paragraph (1) of article 2 (interpretation).

## **PART 2**

### **WORKS PROVISIONS**

#### **Power to construct works**

4.—(1) The Company may in the lines and situations and upon the lands delineated on the deposited plans, sections and elevations and within the limits of deviation and according to the levels shown on the deposited plans, sections and elevations, construct and maintain the following works—

Work No. 1 - The reclamation and infilling of an area of the bed of Loch Ryan, and the levelling of that area, together with the levelling of the adjoining land to form hardstanding for trailers, marshalling, parking, port exit and entrance roads, and sites for Works Nos. 6 to 11, comprising a total area of approximately 11.18 hectares to be retained on the seaward limits in part by rock armoured revetments and, as to the remainder, by the solid faced quay wall comprising

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(3) There are amendments to section 63 not relevant to this Order.

Work No. 4; the location of which is shown on sheet no. 2 and sections of which are shown on sheets nos. 6 and 7;

Work No. 2 - A mechanically operated double deck linkspan and approach structure supported on a reinforced concrete bankseat at the landward extremity and two reinforced concrete lifting dolphins at the seaward extremity, providing access to and egress from vessels, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 6;

Work No. 3 - A jetty of open piled construction comprising a concrete deck supported on steel tubular bearing piles (commencing on the solid faced quay wall to be constructed as Work No. 4), having a covered walkway for pedestrian access to and egress from vessels, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 7;

Work No. 4 - A solid faced quay wall of steel sheet piled construction with a reinforced concrete capping beam, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 7;

Work No. 5 - A roundabout to form a junction with the Girvan to Stranraer section of the M77/A77 Glasgow to Stranraer trunk road, including associated footway, cycle track ("footway" and "cycle track" having the same meaning as in the Roads (Scotland) Act 1984)<sup>(4)</sup> and road widening to the north and south of the junction to provide an entrance to and exit from the port for vehicular traffic, the location of which is shown on sheet no. 4 and sections of which are shown on sheets nos. 6 and 7;

Work No. 6 - A two storey building comprising a maintenance workshop, offices with accommodation for maintenance staff including toilets and a storage yard for vehicles, fuel and port waste to be constructed on part of the site of Work No. 1, the location of which is shown on sheet no. 5 and the plans and elevations of which are shown on sheet no. 8;

Work No. 7 - A two storey terminal building comprising passenger and baggage handling facilities, sales areas, management offices, toilets, police holding areas and offices, canteen, locker rooms and accommodation for staff engaging in docking vessels to be constructed on part of the site of Work No. 1, the location of which is shown on sheet no. 5 and the plans and elevations of which are shown on sheet no. 9;

Work No. 8 - A series of single storey buildings (having a canopy and incorporating two weighbridges) comprising ticketing and check-in facilities for passenger and freight vehicles to be constructed on part of the site of Work No. 1, the locations of which are shown on sheet no. 5 and the plans and elevations of which are shown on sheet no. 10;

Work No. 9 - An entrance and exit gate security building comprising facilities for the inspection and search of vehicles, offices, staff accommodation, toilets, search and interview rooms to be constructed on part of the site of Work No. 1, the location of which is shown on sheet no. 5 and the plans and elevations of which are shown on sheet no. 11;

Work No. 10 - A pump house incorporating pumping equipment and a water tank and an adjacent water tank to supply fresh water to the port, the location of which is shown on sheet no. 5 and the plans and elevations of which are shown on sheet no. 11; and

Work No. 11 - Security fences intersected by buildings, comprising respectively Works Nos. 7 and 9, and having a height not exceeding 3.5 metres, to be constructed along the lines shown on sheet no. 5 and an elevation and section of which are shown on sheet no. 11.

(2) The Company may, for the purposes of the works authorised by paragraph (1), remove any vegetation or other objects or materials and demolish and remove any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the bed of Loch Ryan and of the foreshore as lies within the limits of deviation.

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(4) 1984 c.54; "footway" and "cycletrack" are defined in section 151(2).

(3) The Company may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) and may maintain and operate those works as reconstructed, extended, enlarged, replaced or relaid.

(4) Nothing in paragraph (1) shall in respect of the construction of Work No. 5 constitute the consent of the roads authority in terms of section 56 of the Roads (Scotland) Act 1984 (control of works and excavations)(5).

### **Power to deviate**

5.—(1) In carrying out the works authorised by article 4 (power to construct works), other than Work No. 11, the Company may deviate laterally from the lines or situations as shown on the deposited plans, sections and elevations to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited plans, sections and elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

(2) In carrying out Work No. 11, the Company may deviate vertically up to 0.5 metres above the height specified in article 4 (power to construct works) and laterally from the lines or situations shown on the deposited plans, sections and elevations to any extent not exceeding 10 metres in any direction.

### **Subsidiary works**

6. 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 port; 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 port by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of Loch Ryan as lie within the port 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 section 255 of the Merchant Shipping Act 1995 (interpretation)(6)), from time to time dredged by it.

(2) The Company shall not lay down or deposit such materials 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—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out the lines of or in constructing the works; or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out,

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(5) Section 56 was amended by the New Roads and Street Works Act 1991 (c.22), Schedule 8, paragraph 83. See section 151(1) of the Roads (Scotland) Act 1984 for the definition of “roads authority”. That definition is relevantly amended by S.I. 2001/1400.

(6) 1995 c.21.

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

9.—(1) The Company shall not demolish, construct, renew, reconstruct or alter a tidal work 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.

(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 its own expense to remove the tidal work or any part of it and restore the site of the tidal work to its former condition; and if on the expiration of 30 days from the date when the notice 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; 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,
- (c) and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from the Company as a debt.

(3) Paragraph (1) shall not apply to any work authorised by paragraph (1) of article 4 (power to construct works) and any related works authorised by article 6 (subsidiary works).

(4) Subject to paragraph (3), the works 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(7).

### **Survey of tidal works**

10. 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**

11.—(1) In the case of injury to or destruction or decay of a tidal work or any part of it, the Company shall as soon as reasonably practicable 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 may 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.

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

12.—(1) Where a tidal work is abandoned or has fallen 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 of it, or to remove the work and restore the site of the tidal work to its former condition, to such an extent and within such limits as the Scottish Ministers think proper.

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

(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 has fallen 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 of it, 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 during construction**

**13.**—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Company shall at the outer extremity of that work 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 may from time to time direct.

(2) If the Company fails to comply in any respect with a direction given under 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.

#### **Permanent lights on tidal works**

**14.**—(1) After completion of a tidal work the Company shall at the outer extremity of that work 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 may from time to time direct.

(2) If the Company fails to comply in any respect with a direction given under 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.

#### **Period for completion of works**

**15.**—(1) If the works authorised by paragraphs (1) and (2) of article 4 (power to construct works) are not completed within five years from the date of the coming into force of this Order or such extended time as the Scottish Ministers may on the application of the Company allow by consent given in writing, 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 those works shall cease except as to so much of those works as is then substantially commenced.

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

(3) As soon as reasonably practicable after a consent is given under paragraph (1), the Company shall arrange for a notice to be published in the Edinburgh Gazette and in a local newspaper circulating in the area where the port is situated and the notice shall contain a concise summary of that consent.

(4) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (3), a copy of the consent referred to in that notice shall be kept by the Company at the offices of the Company situated at the port and shall at reasonable hours be open to public inspection without payment.

(5) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 1 has been constructed as will enable other works to be

constructed, maintained and managed together with that part of Work No. 1 as a harbour for the efficient and economic transport of goods or passengers by sea.

### **Operational land and land within area of Dumfries and Galloway Council**

16. The land situated within the port limits shown edged black on sheet no. 13 shall—
- (a) be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997<sup>(8)</sup>; and
  - (b) to the extent that it lies outwith the area of the Dumfries and Galloway Council, be deemed to be part of that area.

## PART 3 PORT REGULATION

### **Limits of port**

17.—(1) The limits of the port within which the Company shall exercise jurisdiction as the harbour authority and within which the powers of the harbour master shall be exercisable shall be the area bounded by an imaginary line commencing at a point (A) at 54°59.28'N, 05°02.03'W thence extending in a straight line in a westerly direction to a point (B) at 54°59.28'N, 05°02.46'W thence extending in a straight line in a north-westerly direction to a point (C) at 54°59.57'N, 05°02.82'W thence extending in a straight line in a south-westerly direction to a point (D) at 54°59.52'N, 05°02.88'W thence extending in a straight line in a southerly direction to a point (E) at 54°59.40'N, 05°02.88'W thence extending in a straight line in a south-westerly direction to a point (F) at 54°59.28'N, 05°02.94'W thence extending in a straight line in a south-easterly direction to a point (G) at 54°58.68'N, 05°01.98'W thence extending in a straight line in a north-easterly direction to a point (H) at 54°58.77'N, 05°01.71'W thence following the western boundary of the Girvan to Stranraer section of the M77/A77 Glasgow to Stranraer trunk road to the point of commencement.

- (2) In paragraph (1), a reference to—
- (a) a direction shall be construed as if the words “or thereabouts” were inserted after that direction;
  - (b) a point is a reference to that point as shown on sheet no. 12; and
  - (c) a co-ordinate is a reference to World Geodetic System 1984 datum<sup>(9)</sup>.

(3) The area described in paragraph (1) is, for the purpose of identification only, shown edged by a broken green line on sheet no. 12 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.

### **Moorings**

18.—(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 grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the port.

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<sup>(8)</sup> 1997 c.8; “operational land” is defined in section 215, to which there are amendments not relevant to this Order, which section is subject to section 216.

<sup>(9)</sup> World Geodetic System 1984 (often noted as WGS84) is an Earth fixed global reference frame currently in use worldwide as one of the datums to which latitude and longitude are referred. The official publication of the standard is *NIMA Technical Report TR8350.2* and can be viewed at: [http://earth-info.nga.mil/GandG/publications/tr8350.2/tr8350\\_2.html](http://earth-info.nga.mil/GandG/publications/tr8350.2/tr8350_2.html).

(3) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the port except under and in accordance with the terms and conditions of a licence 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.

(4) Any licence granted under paragraph (2) shall be valid only for a period of one year commencing with the date on which it takes effect.

### **General byelaws**

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

(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 port and the berths, quays, piers, warehouses, sheds, landing places, 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,
  - (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the port;
  - (d) regulating the berthing and mooring of ships within the port;
  - (e) preventing damage or injury to any goods, vehicle, plant, machinery, property or person within the port;
  - (f) regulating the conduct of all persons within the port 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 port;
  - (h) preventing and removing obstructions or impediments within the port;
  - (i) regulating the use of ferries within the port;
  - (j) regulating in the port the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
  - (k) regulating or prohibiting the activities in the port 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 sub-paragraph (j);
  - (l) regulating the launching of vessels within the port;
  - (m) prohibiting persons in or entering the port, or any part of the port, from smoking in open spaces in the port;
  - (n) regulating the movement and parking of vehicles within the port;
  - (o) regulating the exercise of the powers vested in the harbour master;
  - (p) 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 for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
  - (q) the conservation of the fauna and flora in the port.
- (3) Byelaws made under this article may—



- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;
- (b) relate to the whole of the port or to any part of the port;
- (c) make different provisions for different parts of the port or in relation to different classes of vessels or vehicles.

### **Confirmation of byelaws**

20.—(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; and
- (b) once in each of two successive weeks in a newspaper circulating in the area in which the port 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 Dumfries and Galloway 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 by the Company 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 it 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 by the Company at the office of the harbour master and shall at all reasonable hours be open to public inspection without payment, and a copy of the byelaws shall on application be furnished to any person on payment of such reasonable sum as the Company may determine.

### **General directions to vessels**

21.—(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 any of the following purposes—

- (a) for designating areas, routes or channels in the port and the approaches to the port 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 to identify the vessel, its cargo and its likely time of arrival at and departure from the port.
- (2) Directions given under paragraph (1) may apply—
  - (a) to all vessels or to a class of vessels designated in the direction;
  - (b) to the whole of the port and the approaches and channels leading to the port, or to a part designated in the direction; and
  - (c) at all times or at times designated in the direction,
  - (d) 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**

**22.**—(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 of the direction or the amended direction (as the case may be) may be inspected and bought, and the price of the direction or amended direction (as the case may be).

(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 considers appropriate.

### **Special directions to vessels**

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

- (a) requiring any vessel anywhere within the port or the approaches to the port to comply with a requirement made in or under a general direction;
- (b) regulating the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the port;
- (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 port;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel; and
- (f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship) passengers, cargo, fuel, water, ship’s stores or ballast in the port.

(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**

**24.** 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, persons on board, its cargo or any other person or property.

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

25. 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 4 on the standard scale.

### **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, 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 the harbour master shall not do so unless, after reasonable inquiry has been made, the master of the vessel 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.

### **Charges**

27.—(1) The Company may levy charges for any services performed by it in the exercise and performance of its statutory powers and duties at the port.

(2) 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.

(3) In this article “charges” means any charges other than ship, passenger and goods dues.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

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

28. The Company may at any time lease or grant for the purposes of the port 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.

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

29.—(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 it 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 11 (provision against danger to navigation);
- (b) article 13 (lights on tidal works during construction); and
- (c) article 14 (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, it has 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 its possession.

### **Saving for Commissioners of Northern Lighthouses**

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

### **Saving for other consents etc.**

**31.** 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.

### **Crown rights**

**32.**—(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 that generality, nothing in this Order authorises the Company or any licensee to take, use, enter upon or in any manner interfere with any 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 forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having the 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.

### **Environmental requirements**

**33.**—(1) Subject to paragraph (2), in constructing the works, the Company shall act in accordance with the commitments given in—

- (a) the Environmental Statement being the Environmental Statement dated 19th December 2008 together with the Non-technical Summary and the Appendices (lettered A to N) to the Environmental Statement, a copy of which was submitted with the application made for this Order to the Scottish Ministers; and
- (b) the Addendum Report dated September 2009 a copy of which was submitted to the Scottish Ministers,

and a further copy of each document has been deposited at the offices of the Company situated at the port.

(2) Nothing in paragraph (1) shall exempt the Company from fulfilling any requirement imposed on the Company by any rule of law or which arises from any commitment which is binding on the Company.

St Andrew's House,  
Edinburgh  
14th December 2009

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