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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 196**

**The Tobermory Harbour Empowerment Order 2017**

**PART 3**

**HARBOUR REGULATION**

**Limits of harbour**

**8.—**(1) The limits of the harbour within which the Company shall exercise jurisdiction as the harbour authority within the meaning of section 57 of the 1964 Act and within which the powers of the harbour master shall be exercisable, shall extend over the area the boundaries of which are described in the Schedule to this Order and shown on the harbour map.

(2) The area described in the Schedule to this Order is shown on the harbour map and, in the event that there is any discrepancy between the description of that area and the area shown on the harbour map, the description shall prevail.

**Moorings**

**9.—**(1) The Company may provide, place, lay down, maintain, renew, use, have or remove such moorings within the harbour as it considers necessary or desirable for the convenience of vessels.

(2) The Company may demand, receive and recover in respect of any vessel using any of the moorings provided by the Company under paragraph (1), or moored to land owned or leased by the Company, such reasonable 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 from time to time grant a licence to any person to place, lay down, maintain, renew, use and have moorings within the harbour for vessels.

(5) Nothing in any such licence shall entitle a person to place, lay down, maintain, use and have any moorings on land not owned or leased by that person or by the Company or in which that person or the Company has no appropriate interest.

(6) Any licence granted under paragraph (4) shall, unless otherwise stated in the licence in question, be valid for a period of one year commencing with the date on which it takes effect.

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

(8) Any existing moorings shall be maintained in good and serviceable condition and repair at all times by the party who has the appropriate legal interest thereto. If following the elapse of a period of 3 months after the service of notice by the Company on that party specifying a want of repair in relation to an existing mooring, the existing mooring has not been brought into a good and serviceable condition and repair, the Company may thereafter remove the mooring in question and recover from that person as a debt any expenses incurred by it in doing so.

(9) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part thereof;
- (c) without reasonable excuse, causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Company under this article or an existing mooring or at a quay, jetty, slipway or other works or to land owned or leased by the Company;
- (d) without reasonable excuse, places, lays down, maintains, renews, uses or has any mooring (other than an existing mooring) within the harbour 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.

(10) If any person, without reasonable excuse, places, lays down, maintains, renews, uses or has in the harbour any mooring (other than an existing mooring) not provided or licensed by the Company under this article, the Company may remove the mooring in question and recover from that person as a debt any expenses incurred by it in doing so.

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

**10.**—(1) No person other than the Company shall in the harbour—

- (a) construct, place, 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 from that person as a debt any expenses incurred by it in doing so.

### **Parking places**

**11.** The Company may provide facilities within the harbour premises for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences for the use of the public, may delineate parking areas, operate access control systems and may make reasonable charges for the use of such facilities.

### **Power to appropriate parts of harbour, etc**

**12.**—(1) Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Company may from time to time set apart and appropriate any land, works, buildings, machinery, equipment or other property within the harbour owned or managed by the Company for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Company may think fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any land, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbour master, and—

- (a) the harbour master may order any person or vessel making use thereof without such consent to leave or be removed from the site of the contravention; and
  - (b) the provisions of section 58 of the 1847 Act shall extend and apply with appropriate modifications in relation to any such vessel.
- (3) In exercising its powers to appropriate or set apart any part of the harbour under paragraph (1), the Company shall have regard to the facilitation of—
- (a) the public right of navigation in the harbour; and
  - (b) any public rights of way affecting the harbour,
- such that the Company shall not restrict such rights more than is necessary for the purpose for which the part of the harbour is appropriated or set apart.

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

**13.** The Company may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the harbour 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 harbour.

### **General byelaws**

**14.—(1)** Subject to article 39 (*saving for CMAL and the ferry operator*), the Company may, from time to time, make byelaws for the efficient management and regulation of the harbour.

(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 harbour and the berths, quays, jetties, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the harbour;
- (b) regulating the admission to, and the movement within, and the departure of vessels from, the harbour, or the removal of vessels and for the good order and government of vessels whilst within the harbour;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;
- (d) regulating the berthing and mooring of vessels within the harbour and the use of tugs within the harbour;
- (e) preventing damage or injury to any goods, vehicle, plant, machinery, property or person within the harbour;
- (f) regulating the conduct of all persons within the harbour 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 execution of their duties;
- (g) regulating the placing and maintenance of moorings within the harbour;
- (h) preventing and removing obstructions or impediments within the harbour;
- (i) regulating the use of cruise ships and ferries within the harbour;
- (j) regulating in the harbour 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 harbour 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 harbour;
  - (m) prohibiting persons in or entering the harbour, or any part of the harbour, from smoking in open spaces in the harbour designated as “no smoking areas” by the Company by way of signage in the interests of health and safety;
  - (n) regulating the movement and parking of vehicles on private roads within the harbour;
  - (o) regulating the exercise of the powers vested in the Company;
  - (p) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising the Company to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
  - (q) regulating the hours during which any gates, entrances or outlets to or from the harbour or any part of the harbour shall be open;
  - (r) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the harbour;
  - (s) 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;
  - (t) regulating the holding of regattas and other public events in the harbour;
  - (u) regulating or preventing the use of fires and lights within the harbour;
  - (v) the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features; and
  - (w) the conservation, preservation or redevelopment of any buildings, plant or other artificial features of the harbour of historic or architectural significance.
- (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 harbour or to any part of the harbour;
  - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles.

### **Confirmation of byelaws**

**15.—**(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 proposed byelaws shall be open to inspection shall be published as follows—

- (a) once in the Edinburgh Gazette; and
- (b) once in each of the two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) Such notice shall include reference to the right to make objection or representation referred to in paragraph (7).

(4) 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 Argyll & Bute Council and to the Scottish Ministers.

(5) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the proposed 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.

(6) The Company shall supply a copy of the proposed byelaws or of part of the proposed byelaws to any person who shall apply for it on payment of a reasonable charge.

(7) During the period of one month following the last date of publication of the notices required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the proposed byelaws to which the notice relates.

(8) Subject to paragraph (9), the Scottish Ministers may confirm the proposed byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(9) 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 proposed 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.

(10) 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**

**16.**—(1) Subject to article 39 (*saving for CMAL and the ferry operator*), 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 general directions for any of the following purposes—

- (a) for securing the admission to, and movement within, and the departure of vessels only at certain times or during certain periods;
- (b) for designating areas, routes or channels in the harbour which vessels are to use, or refrain from using, for movement, mooring or anchorage;
- (c) for securing that vessels move only at certain times or during certain periods;
- (d) for regulating the use of the motive power of vessels anywhere within the harbour;
- (e) for securing that vessels make use of appropriate aids to navigation required to comply with general directions;
- (f) prohibiting entry into or navigation within any of the main channels during any temporary obstruction thereof;
- (g) 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 harbour
- (h) for specifying the precautions to be taken in respect of apparatus, machinery and equipment; and
- (i) for prohibiting or restricting use of fires or lights.

- (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 harbour, or to a part designated in the direction; and
  - (c) at all times or at times designated in the direction,

and every general 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) Subject to article 39 (*saving for CMAL and the ferry operator*), the Company may, after consultation with the Chamber of Shipping and the Royal Yachting Association, revoke or amend general directions given under this article.

### **Publication of general directions**

17.—(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**

18.—(1) Subject to article 39 (*saving for CMAL and the ferry operator*), the harbour master may give a special direction under this article—

- (a) requiring a vessel anywhere within the harbour to comply with a requirement made in or under a general direction;
- (b) regulating the time at which and the manner in which a vessel shall enter into, go out of, or lie in or at the harbour;
- (c) regulating or requiring the movement, berthing, mooring or unmooring of a vessel;
- (d) regulating or requiring the loading, unloading, embarking, disembarking, discharging, storing and safeguarding of a vessel's cargo, fuel, water, stores, passengers or ballast and the dispatch of business at harbour premises;
- (e) requiring the removal from any part of the harbour 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 harbour or interfering with the reasonable use or enjoyment of the harbour by other vessels or persons;
  - (iv) its removal is necessary to enable maintenance or repair work to be carried out at harbour premises or to premises adjacent thereto; and
- (f) requiring the removal outside the harbour of a 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) 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**

19. 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**

20. 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**

21.—(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) Reasonable 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.

### **Obstruction of officers, etc**

22. Any person who intentionally obstructs an officer of the Company or other person acting in execution of this Order or of any enactment relating to the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Boarding of vessels**

23. Any duly authorised officer of the Company may, on producing if so required his authority, enter and inspect a vessel in the harbour—

- (a) for the purposes of any enactment relating to the Company or any byelaw of the Company including the enforcement thereof; or
- (b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice shall have annexed to it a copy of this article.

### **Vessels adrift**

24.—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary convictions to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under this paragraph (1) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

**Removal of obstructions other than vessels, vehicles or wreck**

**25.**—(1) Without prejudice to its powers under any enactment (including one contained in this Order) the Company may remove anything which is causing or is likely to become an obstruction or impediment to the proper use of any part of a harbour area other than—

- (a) a vessel or a vehicle; or
- (b) a wreck within the meaning of Part IX of the 1995 Act.

(2) If—

- (a) anything removed by the Company under paragraph (1) above is known to the Company to be, or is marked as to be readily identifiable as, the property of any person, the Company shall within one month of its coming into the custody of the Company give notice, in accordance with paragraph (5) below, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in the Company;
- (b) the ownership of anything removed by the Company under paragraph (1) above which is not so known or marked is not within 3 months of its coming into the custody of the Company proved to its reasonable satisfaction, it shall vest in the Company.

(3) The Company may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Company under this article, and if it is sold the proceeds of sale shall be applied to the Company in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

- (a) shall be paid to any person who within 3 months from the time when the thing came into custody of the Company proves to its reasonable satisfaction that that person was the owner thereof at that time; or
- (b) if within the said period no person proves ownership at the said time, shall vest in the Company.

(4) If anything removed under this article:

- (a) is sold by the Company and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or
- (b) is unsaleable,

the Company may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Company or who was the owner at the time of its abandonment or loss.

(5) A notice given under paragraph (2)(a) above shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Company possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the day the notice is served.

(6) The Company shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence given or issued by the Company.

**Removal of vehicles**

**26.**—(1) If a vehicle is left without permission of the Company—

- (a) in a parking place provided by the Company within the harbour for a longer period than 24 hours or such other period as may be specified by notice erected by the Company;



- (b) in any part of the harbour where the parking of vehicles is prohibited by notice erected by the Company; or
- (c) in any place within the harbour where it is likely to obstruct or interfere with the use of the harbour,

the Company may, at the risk of the owner, cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1) above shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where the Company in exercise of the powers of this article causes a vehicle to be removed the expenses of and incidental to its removal and safe custody shall be recoverable by the Company from the person responsible as a debt.

(4) If the Company in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002 at that person's last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that the Company has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each entrance to any parking place provided by the Company and at each place where a road accessible to vehicles enters any part of the harbour, and shall be endorsed at the harbour,

(6) In paragraph (3) above, "person responsible", in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless that person shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in that place;
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978.

### **Power to remove goods**

**27.**—(1) If any goods are left on or in any part of the harbour the Company may require the owner of the goods to remove them; and if the goods are not so removed within six hours of such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store; and such removal shall be carried out at the expense and the risk of the owner of the goods.

(2) Notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner thereof in respect of the goods.

(3) In this article "goods" includes equipment.

### **Charges**

**28.**—(1) The Company may demand, take and recover such reasonable charges for any services and facilities provided by it or on its behalf in relation to the harbour as the Company may from time to time determine.

(2) In this article "charges" means any charges other than ship, passenger and goods dues.

### **Liability for charges**

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

- (a) a vessel, shall be payable by the owner or 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.
- (3) In this article “goods” includes vehicles and equipment

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

**30.**—(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) 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**

**31.** 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 harbour or goods on or in harbour 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**

**32.**—(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**

**33.** 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**

**34.**—(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; or
  - (ii) in the service of the Commissioners of HM 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 HM 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.

**Conditions as to payment of charges**

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

(2) Without prejudice to the preceding 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.