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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 353**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Caledonian MacBrayne Limited  
(Kennacraig) Harbour Empowerment Order 2005

*Made* - - - - 14th June 2005

*Coming into force* - - 15th June 2005

Whereas Caledonian MacBrayne Limited, a Company incorporated under the Companies Act 1985<sup>(1)</sup> with the number SC1845, has applied in writing to the Scottish Ministers for a harbour empowerment order under section 16 of the Harbours Act 1964<sup>(2)</sup>:

And whereas no objections to the application made pursuant to paragraph 10(2)(f) of Schedule 3 to the said Act<sup>(3)</sup> have been withdrawn:

And whereas the Scottish Ministers are satisfied as mentioned in subsection (5) of the said section 16; Now therefore, the Scottish Ministers<sup>(4)</sup>, in exercise of the powers conferred by section 16 of the said Act, and of all other powers enabling them in that behalf, hereby make the following Order:

PART I  
PRELIMINARY

**Citation commencement and extent**

1.—(1) This Order may be cited as the Caledonian MacBrayne Limited (Kennacraig) Harbour Empowerment Order 2005 and shall come into force on 15th June 2005.

(2) This Order extends to Scotland only.

**Interpretation**

2.—(1) In this Order—

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- (1) 1985 c. 6.  
(2) 1964 c. 40; section 16 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 2.  
(3) Paragraph 10(2)(f) was inserted by the Harbour Works (Environment Impact Assessment) Regulations (S.I. 1999/3445), regulation 15(4) and Schedule 3.  
(4) The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(5);

“the Company” means Caledonian MacBrayne Limited, a Company incorporated in Scotland with registered number SC1845 and having its registered office at The Ferry Terminal, Gourock, PA19 1QP;

“the deposited plan” means the plan signed on behalf of the Scottish Ministers and marked “Plan referred to in the Caledonian MacBrayne (Kennacraig) Harbour Empowerment Order 2005” of which copies are deposited at the offices of the Scottish Ministers at the Scottish Executive, Victoria Quay, Edinburgh EH6 6QQ and with the Company;

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

“the harbour” means the harbour of Kennacraig, the area of which is described in article 4 and Schedule 1 to this Order;

“the harbour map” means the map referred to in article 4 below;

“the harbour master” means any person appointment 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;

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

“harbour undertaking” means the harbour undertaking of the Company, authorised by this Order;

“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;

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

“sail board” 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 26 below;

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

“vessel” means every description of vessel, however propelled or moved, and includes any thing constructed or used to carry persons or goods by water, a seaplane in or on the water, a hovercraft and a hydrofoil.

(2) All areas, dimensions, directions, distances, lengths, points, situations and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each area, dimension, direction, distance, lengths, point, situation or other measurement.

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

(4) 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 1847 Act**

3.—(1) The 1847 Act except sections 5 to 19, 22 to 26, 28, 47, 49, 50, 60, 66, 67, 79 to 91 and 93 to 103, so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with and forms part of this Order.

(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 harbour;
- (d) the meaning of the word “vessel” as defined in article 2 above shall be substituted for the meaning assigned to that word by section 3 of the 1847 Act;
- (e) section 63 shall be read and have effect as if for the words from “penalty” to the end of the section there were substituted the words “be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;
- (f) 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 2 on the standard scale”;
- (g) 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**

#### **Harbour Jurisdiction**

4.—(1) The Company shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 and the powers of the harbour master shall be exercisable within the area the boundaries of which are described in Schedule 1 to this Order and shown in red on the harbour map together with so much of the harbour premises as are not situated within that area.

(2) In the event of any discrepancy between the boundaries as described in paragraph (1) above and in Schedule 1 and the boundaries shown on the harbour map, the harbour map shall prevail.

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

5.—(1) The Company may take such steps from time to time as it considers necessary or expedient for the improvement, maintenance and management of the harbour and the accommodation and facilities afforded therein or in connection therewith.

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

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide accommodation and harbour facilities therein;
- (b) construct, alter, demolish and reconstruct structures and works in the harbour;
- (c) lend money to any person for the purposes of any undertaking carried on by that person or, where that person is a body corporate, any undertaking carried on by a subsidiary of that body corporate;
- (d) maintain such reserve funds as it thinks fit;
- (e) invest any sums not immediately required for the purposes of the harbour undertaking; and

- (f) do all other things which in its opinion are necessary or expedient to facilitate the proper carrying on or development of the harbour 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 harbour fill up, raise, enclose and reclaim land from the sea and the bed and the foreshore of the harbour 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—
  - (a) in relation to any land not owned by it unless it first obtains the consent in writing of the owner thereof; or
  - (b) in relation to any part of the harbour in front of or adjoining land belonging to Her Majesty in right of Her Crown or to a government department or held in trust for Her Majesty for the purposes of a government department and protected by article 39 (Crown Rights) below, without the consent in writing of the Crown Estate Commissioners or, as the case may be, the government department.

### **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 harbour for the purpose of affording the uninterrupted means of access to the harbour or any part of it for the accommodation of vessels.

(2) Subject 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 Merchant Shipping Act 1995)<sup>(6)</sup> from time to time dredged by it from the harbour.

- (3) No material referred to in this article shall—
  - (a) be disposed of in contravention of in any enactment relating to the disposal of waste; or
  - (b) be deposited below the level of high-water except in such places and in accordance with 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 harbour—
  - (a) alter, renew or maintain any works; or
  - (b) dredge,

unless that person is licensed to do so, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 9 or, as the case may require, article 10 below.

(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

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(6) 1995 c. 21.

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.

(4) Nothing in this article shall affect the powers of a public telecommunications operator under the Telecommunications Act 1984(7).

### **Licensing of works**

9.—(1) The Company may upon such terms and conditions as it thinks fit grant to any person a licence to maintain, alter or renew works within a harbour area on, under or over tidal waters or tidal land below the level of high-water, notwithstanding any interference with public rights of navigation or other public rights by such works as maintained, altered or renewed.

(2) Application for a works licence shall be made in writing to the Company and shall—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable the applicant to enjoy the benefits of the licence and, if not, the action taken or to be taken to enable the applicant to obtain such rights if the licence is granted; and
- (c) be accompanied by a copy of a notice published in a newspaper circulating in the locality of the harbour stating that it is intended to make the application, containing a general description of the nature of the works for which application is being made and of the land affected thereby, specifying a place where a copy of the plans, sections and particulars of the proposed works may be inspected at all reasonable hours and stating that any person who desires to object to the Company to the grant of the application should do so in writing stating the grounds of that person's objection before the expiration of the period of 28 days from the day of the publication.

(3) In deciding whether or not to grant a works licence or as to the terms and conditions to be included in the licence the Company shall take into consideration any objection made to it in accordance with paragraph (2)(c) above (hereinafter in this article and in article 11 below referred to as a competent objection) and in granting a licence the Company may require modifications in the plans, sections and particulars submitted to it by the applicant.

(4) If the Company decides to grant a works licence it shall give notice of its decision to the applicant and to any person who has made a competent objection and has not withdrawn it.

(5) If within 3 months from the date of the making of an application under paragraph (2) above the Company does not notify to the applicant its decision whether to grant a works licence, it shall be deemed to have refused the application.

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

(7) The grant of a licence under this section has effect for the purposes of article 8 above and confers no other authority for the carrying out of the operations covered by the licence.

(8) In the execution of any works to which a works licence relates, the licensee shall not damage or injuriously affect any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989) belonging to, or used or maintained by, Scottish Hydro-Electric plc or without the consent of that company, interfere with or adversely affect the operation of any such line or work.

### **Licensing of dredging**

10.—(1) The Company may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of a harbour area.

(2) Application for a dredging licence shall be made in writing to the Company and shall be accompanied by—

- (a) plans, sections and particulars defining the nature, extent and manner of the operations in respect of which application is made; and
- (b) a copy of a notice published in a newspaper circulating in the locality of the harbour stating that it is intended to make the application containing a general description of the position, nature, extent and manner of those operations specifying a place where a copy of the plans, sections and particulars of the proposed operations may be inspected at all reasonable hours and stating that any person who desires to object to the Company to the grant of the application should do so in writing stating the grounds of his objection before the expiration of the period of 28 days from the date of publication of the notice.

(3) In deciding whether or not to grant a dredging licence or as to the terms and conditions to be included in the licence the Company shall take into consideration any objection made to it in accordance with paragraph (2)(b) above (hereinafter in this article and in article 11 below referred to as a competent objection) and in granting a licence the Company may require modifications in the plans, sections and particulars submitted to it by the applicant.

(4) If the Company decides to grant a dredging licence it shall give notice of its decision to the applicant and to any person who has made a competent objection and has not withdrawn it.

(5) If within 3 months from the date of making an application under paragraph (2) above the Company does not notify the applicant of its decision whether to grant a dredging licence it shall be deemed to have refused the application.

(6) Unless otherwise agreed between the Company and the licensee any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995) taken up or collected by means of dredging in pursuance of a dredging licence shall, in so far as they are not the property of the Company before being taken up or collected become the property of the Company and the provisions of paragraph (2) of article 7 above shall apply to such materials which are or become the property of the Company.

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

(8) The grant of a licence under this section has effect for the purposes of article 8 above and confers no other authority for the carrying out of the operations covered by the licence.

(9) In the execution of any works to which a dredging licence relates the holder of the licence shall not damage or injuriously affect any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989<sup>(8)</sup>) belonging to or used or maintained by Scottish Hydro Electric plc or, without the consent of that company, interfere with or adversely affect the operation of any such line or work.

### **Appeals in respect of works or dredging licence**

**11.—**(1) Where—

- (a) the Company has refused to grant a works licence of a dredging licence and the applicant for the licence is aggrieved by the refusal, or
- (b) the Company has granted such a licence and any person who has made a competent objection and has not withdrawn it is aggrieved by the grant, or
- (c) the Company has granted such a licence upon terms or conditions or has required modifications to be made in the plans, sections and particulars submitted by the applicant, and the applicant or any such person is aggrieved by the Company's decision as to such terms or conditions, or as to such modifications,

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(8) 1989 c. 29.

the person aggrieved may within 28 days from the date on which the Company gives notice of its decision or the date on which it is under paragraph (5) of article 9 or of article 10 deemed to have refused the application, as the case may be, appeal to the Scottish Ministers.

(2) An appeal under this article shall be made by notice in writing, stating the grounds of the appeal.

(3) A person who appeals to the Scottish Ministers under this article shall at the same time send a copy of his statement of appeal to the Company and the Company shall as soon as practicable thereafter furnish the Scottish Ministers with all relevant documents, and may within 28 days from the receipt of the statement of appeal furnish the Scottish Ministers with its observations on the appeal.

(4) On an appeal under this article the Scottish Ministers may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including the amendment of the terms and conditions or modification of the plans, sections and particulars.

(5) The Company shall give effect to any decision or requirement given or made by the Scottish Ministers under paragraph (4) above.

#### **Survey of tidal works**

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

#### **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 forthwith 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.

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

**14.—(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 authorised by this Order 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.

### **Power to lay down moorings**

15. The Company may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as it considers necessary or desirable for the convenience of vessels.

### **Licensing of moorings**

16.—(1) The Company may from time to time grant a licence to any person to place, lay down, maintain, renew or use moorings, buoys and similar apparatus for vessels in the harbour.

(2) Any licence granted under paragraph (1) above shall be valid for a period of no longer than three years commencing with the date on which it takes effect.

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

### **Offences as to moorings, etc.**

17. Any person who, without reasonable excuse, shall place, lay down, maintain, renew or use a mooring, buoy or similar apparatus for vessels within the harbour except under and in accordance with the terms and conditions of a licence granted under article 16 above 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**

18.—(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 a harbour area 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 any offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Power to licence pleasure craft**

19.—(1) The Company may grant, upon such terms and conditions as it thinks fit, licences for pleasure craft to be let for hire to the public in the course of trade or business or to be used for carrying passengers for hire within the harbour, and to the boatmen or persons assisting in the charge or navigation of such craft.

(2) Any such licence may be granted for such period as the Company may think fit, and may be suspended or revoked by the Company whenever it shall deem such suspension or revocation to be necessary or desirable in the interests of the public.

(3) The existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

(4) A person shall not be within the harbour—

(a) let for hire to be public a pleasure craft which is not licensed in accordance with this article;  
or

(b) carry, or permit to be carried, passengers for hire in a pleasure craft unless the craft, and the boatmen in charge thereof and the navigator, are so licensed.

(5) This article shall not be taken to require a person to be licensed as a boatman who takes on hire a pleasure craft for purposes other than for profit.



(6) A licence under this article shall not be required for any craft which has a passenger certificate issued by the Maritime and Coastguard Agency and valid for the voyage intended or, in the case of hovercraft within the meaning of the Hovercraft Act 1968<sup>(9)</sup>, a certificate of safety valid for the voyage intended.

(7) A person shall not carry or permit to be carried in any pleasure craft a greater number of passengers for hire than shall be specified in the licence applying to such craft, and every owner of any such craft shall before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than three centimetres in height and one half centimetre in breadth, on a conspicuous part of the said craft, their own name and also the number of persons which it is licensed to carry, in the form “Licensed to carry persons”.

(8) Any person who shall act in contravention of paragraph (4) or (7) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Any person aggrieved by the withholding, suspension or revocation of any licence or by any term or condition subject to which a licence has been granted under the provisions of this article may appeal to the sheriff.

(10) In this article “pleasure craft” means any vessel of not more than 100 tonnes gross used wholly or mainly for recreation or for the carriage of passengers for reward and includes pleasure boats.

### **Parking places**

**20.** 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 and may make reasonable charges for the use of such facilities.

## **PART III**

### **HARBOUR REGULATION**

#### **General byelaws**

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

(2) Without prejudice to the generality of paragraph (1) above, byelaws may be made under this article for the following purposes—

- (a) regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, quays, piers, jetties, warehouses, sheds, landing places, locks, sluices, 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, including marine creatures of any type, within the harbour;
- (d) regulating the navigation, berthing and mooring of vessels within the harbour and their speed and manner of navigation, and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessels, goods, vehicles, plants, machinery, property or persons within the harbour;

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(9) 1968 c. 59.

- (f) regulating the conduct of all persons in the harbour not being members of a police force or officers or servants of the Crown whilst in the exercise 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) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour;
  - (j) regulating the use of ferries within the harbour;
  - (k) regulating in the harbour the use of jet craft, yachts, sailing boats, sail boards, rowing boats, pleasure craft and other small crafts;
  - (l) regulating the holding of regattas and other public events in the harbour;
  - (m) 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 subparagraph (k) above;
  - (n) regulating the launching of vessels within the harbour;
  - (o) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
  - (p) regulating or preventing the use of fires and lights within the harbour and within any vessels within the harbour;
  - (q) regulating the movement, speed and parking of vehicles within the harbour;
  - (r) regulating the exercise of the powers vested in the harbour master;
  - (s) 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 authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction; and
  - (t) for 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.
- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons offending against them or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 4 on the standard scale;
  - (b) relate to the whole of the harbour or to any part thereof; and
  - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels.

(4) Where a person is charged with an offence against a byelaw in force under this article it shall be a defence that the offence was not caused or facilitated by any act or neglect on the part of that person or on the part of any person engaged or employed by that person and, if that person was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

### **Confirmation of byelaws**

**22.**—(1) The provisions of subsections (4) to (8), (10) and (12) of section 202 and section 203 of the Local Government (Scotland) Act 1973(10) shall apply to any byelaws made by the Company

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(10) 1973 c. 65.

under this Order as if the Company were a local authority, and in the application of the provisions of the said Act of 1973 the Scottish Ministers shall be the confirming authority.

(2) Where the Scottish Ministers propose to exercise the power of modification conferred on them by subsection (10) of the said section 202 and the modification appears to them to be substantial, they shall inform the Company and require it to take any steps they consider necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as they think reasonable for consideration of, and comment upon, the proposed modification by the Company and by other persons who have been informed of it.

### **Provisions as to damage**

**23.**—(1) This article applies to any damage caused to any work or property of the Company in the harbour—

- (a) by any person who contravenes any provision of this Order or of any byelaw made in relation to the harbour by the Company; or
- (b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Company may detain any vessel which caused the damage, and any other property belonging to or in charge of the person causing the damage, or belonging to that person's employers, until the cost of the damage has been paid or until reasonable security therefor has been given to the Company.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the costs of the damage.

(4) This article is without prejudice to—

- (a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act or failure to act gave rise to the damage; or
- (b) any right of the Company under any other enactment, agreement, or rule of law; or
- (c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the harbour by the Company.

### **General directions to vessels**

**24.**—(1) The Company may after consultation with the Royal Yachting Association give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation and the safety of persons and property in the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) for designating areas, routes or fairways in the harbour which vessels are to use or refrain from using for movement, mooring or anchorage;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) for prohibiting—
  - (i) entry into the harbour by a vessel by which for any reason would be or likely to become a danger to other vessels in the harbour, or to persons, property, flora or fauna in the harbour or within the harbour premises; and
  - (ii) entry into or navigation within any of the main fairways during any temporary obstruction thereof; and

(iii) requiring the master of a vessel to give the harbour master information relating to the vessel reasonably required by the harbour master for effecting any of the purposes of this paragraph.

(2) A direction under this article may apply—

- (a) to all vessels or to a class of vessels designated in the direction; or
- (b) to the whole of the harbour or a part designated in the direction; or
- (c) at all times or at times designated 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 revoke or amend any general direction.

### **Publication of general directions**

**25.**—(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 a newspaper circulating in the locality of the harbour, and if the notice relates to the giving or amendment of a direction, 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 considered by the Company to be appropriate.

### **Special directions to vessels**

**26.**—(1) The harbour master may give a direction under this article in respect of a vessel anywhere in the harbour for any of the following purposes—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at harbour 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;
- (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 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 thereof by other vessels or persons; or
  - (iv) its removal is necessary to enable maintenance or repair work to be carried out at harbour premises or to premises adjacent thereto; and
- (i) requiring its removal outside the harbour 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) In an emergency 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.

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

27.—(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 3 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 or imperilled the safety of any vessel or its cargo, or that for another reason such compliance was impracticable.

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

28.—(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) The powers of paragraph (2) above shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

(4) Expenses incurred by the Company in the exercise of the powers conferred by paragraph (1) above shall be recovered by it as if they were a charge of the Company in respect of the vessel.

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

29. 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.

#### **Power to dispose of harbour estate and enter into agreements**

30. The Company may for such consideration and upon such terms and conditions and subject to such restrictions and for such a period as it thinks fit sell, feu, lease, excamb or otherwise dispose of the whole or any part of the lands which from time to time form the harbour and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

## **PART IV CHARGES**

#### **Liability for charges**

31.—(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**

**32.**—(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 Harbours Act 1964 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 the said list.

### **Security for charges**

**33.** 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 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**

**34.**—(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 placed, etc.**

**35.** 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**

**36.**—(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 Customs and Excise 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 Customs and Excise in respect of a vessel or goods under customs seizure;
- (c) troops landed at the harbour premises or a person employed by the Secretary of State for Defence while in execution of that person's duties; and
- (d) goods or stores belonging to the Secretary of State for Defence.

(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 harbour without mooring or making use of any facilities provided by the Company.

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

**37.**—(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) above the terms and conditions may prescribe the time when the charge falls due for payment and may require such information to be given by the Company to 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**

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

**38.** 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, freezing plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

#### **Crown rights**

**39.**—(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 Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

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

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St Andrew's House, Edinburgh  
14th June 2005

*DAVID M HART*  
A member of the staff of the Scottish Ministers



SCHEDULE 1

Article 4

HARBOUR LIMITS

An area within West Loch Tarbert enclosed on its seaward sides by imaginary straight lines—

- (a) from a point at latitude 55°48'50"North, longitude 005°29'12"West to a point at latitude 55°48'72"North, longitude 005°29'81"West,
- (b) from a point at latitude 55°48'72"North, longitude 005°29'81"West to a point at latitude 55°48'41"North, longitude 005°29'40"West, and
- (c) from a point at latitude 55°48'41"North, longitude 005°29'40"West to a point at latitude 55°48'20"North, longitude 005°29'75",

and on its landward sides by the level of high water within the area so enclosed.

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Points

- 1 05°29.12'W 55°48.50'N
- 2 05°29.81'W 55°48.72'N
- 3 05°29.40'W 55°48.41'N
- 4 05°29.75'W 55°48.20'N

