
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

**The Rosyth International Container
Terminal (Harbour Revision) Order 2013**

PART 5

MISCELLANEOUS AND GENERAL

Saving for Commissioners of Northern Lighthouses

14. 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.

15. 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 right

16.—(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.

(3) In this article, “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(1)).

Environmental requirements

17.—(1) The works shall not be commenced until the Scottish Ministers have, following consultation in accordance with paragraphs (2) to (5), approved in writing the CEMP for the works subject to any amendments or further conditions or restrictions which Ministers may require.

(2) The Scottish Ministers shall consult the following bodies, in so far as each has an interest in the subject matter and the terms of the proposed form of the CEMP or the proposed amendment to the CEMP, before approving the CEMP or any amendment thereto—

- (a) Fife Council;
- (b) the Scottish Environment Protection Agency;
- (c) Scottish Natural Heritage;
- (d) Rosyth Community Council;
- (e) Charleston, Limekilns and Pattiesmuir Community Council.

(3) The consultation responses of those bodies shall be without prejudice to the respective rights and powers of the consultees under general legislation.

(4) The period for responses to consultation for the purposes of paragraph (2) of this article shall be determined by the Scottish Ministers taking into account the extent to which they consider that they require advice on appropriate and necessary mitigation for construction or operational procedures, and the Scottish Ministers shall not approve the CEMP until such period has elapsed as they shall consider reasonable for consideration of, and comment upon, the terms of or amendment to the proposed CEMP.

(5) The Scottish Ministers shall, prior to determining whether or not to approve (and if so on what terms) a proposed CEMP or proposed amendment to the CEMP, afford the Company an opportunity to comment on any response received from a body consulted by the Scottish Ministers pursuant to paragraph (2).

(6) For the purpose of ensuring compliance with the obligations set out in Schedule 2 and the terms of the CEMP, the following statutory bodies will have the power to approve on behalf of the Scottish Ministers those matters delegated to each of them and upon which an application is submitted by or on behalf of the Company to them for approval under Schedule 2 or the CEMP—

- (a) Fife Council; and
- (b) the Scottish Environment Protection Agency.

(7) The Company shall, after receipt of intimation to the Company of the approval by the Scottish Ministers of the CEMP or any amendment of the same, send each of the bodies referred to in paragraph (2) a copy of the CEMP (or as the case may be, the amended CEMP) as so approved.

(8) The Company shall ensure that—

- (a) the works are carried out; and
- (b) the port operated,

in accordance with the approved CEMP (or any amendment to it).

(9) Nothing in this article shall exempt the Company from fulfilling the requirements imposed on the Company by any rule of law or which arises from any commitment which is binding on the Company.

(10) No works authorised by this Order are to commence prior to the granting to the Company of a marine licence under Part 4 of the Marine (Scotland) Act 2010(2) in respect of the works authorised by article 8(1)(a).

Mitigation measures

18. Schedule 2 to this Order shall have effect.

Special exemptions

19. Without prejudice to the generality of article 4(5), section 26 (restriction on construction of works and dredging) of the 1969 Act shall apply neither to the exercise by the Company of the powers of article 5 nor article 8 of this Order.

For the protection of Forth Ports

20. Schedule 3 to this Order shall have effect in respect of any works undertaken by the Company in the Forth.

Survey of the river bed

21.—(1) The Scottish Ministers may at any time they deem it expedient in consequence of the construction of any tidal work or the carrying out of any dredging authorised by this Order, order a survey or examination of such areas of the bed of the Forth as they deem expedient, and any expenditure incurred by them in such survey or examination shall be recoverable from the Company as a debt.

(2) Prior to the commencement of the works authorised by article 5, or capital dredging authorised by article 8, the Ministers may require pre-construction survey or examination of such areas of the bed of the Forth as they deem expedient, and any expenditure incurred by them in such survey or examination shall be recoverable from the Company as a debt.

Sedimentation – protective action

22.—(1) If in the opinion of the Scottish Ministers any of the works (including dredging) during construction gives rise to sedimentation or scouring, detrimental to traffic in, or the flow or regime of the Forth, then the Scottish Minister may by notice in writing require the Company at the Company's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under paragraph (1) are such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation or scouring, so far as required by the needs of traffic in, or the flow or regime of, the Forth.

(3) If the Company does not comply with the notice under paragraph (1) or is unable to do so, then the Scottish Ministers may in writing require the Company to take such action as the Scottish Ministers may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

Sedimentation – remedial action

23.—(1) This paragraph applies to the extent that in the opinion of the Scottish Ministers any part of the Forth becomes subject to sedimentation, or scouring, which—

- (a) is during the period beginning with the commencement of the construction of any tidal work or capital dredging undertaken for the purposes of this Order and ending with the expiration of 10 years after the date on which all the tidal works and capital dredging constructed under or for the purposes of this Order are completed, wholly or partly caused by a tidal work or such dredging; and

- (b) for the safety of navigation or the protection of works in the Forth, should be removed or made good.
- (2) The Company must either—
 - (a) carry out the necessary dredging at its own expense and subject to the prior approval of the Scottish Ministers (such prior approval not to be unreasonably withheld or delayed) within such period as Ministers may specify; or
 - (b) defray any additional expense reasonably incurred by Forth Ports in dredging the river to remove the sedimentation or in making good the scouring, so far as (in either case) it is caused by the tidal work.
- (3) The Company shall defray any additional expenses incurred by the Scottish Ministers in carrying out surveys or studies in connection with the implementation of this article.

Exercise of jurisdiction

24.—(1) The Company or its harbour master shall not take any action in the Forth under sections 57, 65 and 69 of the Harbours, Docks and Piers Clauses Act 1847⁽³⁾ as incorporated by article 3 (incorporation of the 1847 Act) of the 2009 Order except with the consent of Forth Ports' harbour master, which consent shall not be unreasonably withheld.

(2) Forth Ports shall consult the Company before making any byelaw under the 1969 Act which directly applies to or which could affect the construction, operation or maintenance of the works or the port premises.

(3) Forth Ports or its harbour master (as appropriate) shall consult the Company before giving any general direction under the 1969 Act which could affect the construction, operation or maintenance of the works or the port premises.

(4) The Company shall consult Forth Ports, in its capacity as statutory harbour authority for the Forth, before making any byelaw under the Port Babcock Rosyth Orders 2009 to 2013.

(5) The Company shall not make any byelaws—

- (a) for the control or regulation of vessels not going to, moored at or departing from the works; or
- (b) that in the reasonable opinion of Forth Ports' harbour master would conflict with any byelaws or directions made by Forth Ports or any powers exercisable by Forth Ports or its harbour master for the regulation of navigation in the Forth.

(6) The Company or its harbour master (as appropriate) shall consult Forth Ports before giving any general direction under the Port Babcock Rosyth Orders 2009 to 2013 which directly affects navigation in the Forth.

(3) 1847 c.27.