
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 353

**The Caledonian MacBrayne Limited
(Kennacraig) Harbour Empowerment Order 2005**

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;
- (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(1) shall apply to any byelaws made by the Company 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.

(1) 1973 c. 65.

(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.