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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 46**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Caledonian Maritime Assets (Lochaline Ferry Services Slipway) Harbour Empowerment Order 2013**

*Made* - - - - *12th February 2013*

*Coming into force* - - *13th February 2013*

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 16(1) and (6) of the Harbours Act 1964<sup>(1)</sup> and all other powers enabling Ministers to do so.

In accordance with section 16 (1) of that Act Caledonian Maritime Assets Limited (“CMAL”) has made a written application to Ministers for the making by Ministers of this harbour empowerment order.

In accordance with section 16(5) of that Act Ministers are satisfied that the making of this harbour empowerment order is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea.

In accordance with paragraph 5 of Schedule 3 to that Act<sup>(2)</sup>, Ministers have informed the applicant in writing that the application does not relate to a project which falls within Annex I or II to Council Directive 85/337/EEC<sup>(3)</sup>, as relevantly amended by Council Directive 97/11/EC<sup>(4)</sup> and Council Directive 2003/35/EC<sup>(5)</sup>, on the assessment of the effects of certain public and private projects on the environment.

Notice has been published by CMAL in accordance with the requirements of paragraph 10 of that Schedule<sup>(6)</sup>.

In accordance with paragraph 15 of that Schedule<sup>(7)</sup>, Ministers have consulted such bodies who were likely to have an interest in the project by reason of their environmental responsibilities as Ministers thought appropriate.

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(1) 1964 c.40; section 16(1) and (6) was relevantly amended by S.I. 1970/1681, the Transport Act 1981 (c.56), Schedule 6, paragraphs 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 2. See sections 57(1) of the Harbours Act 1964 for the definitions of “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) Paragraph 5 of Schedule 3 was substituted by S.I. 1999/3445.

(3) O.J. L 175, 5.7.1985, p.40.

(4) O.J. L 73, 14.3.1997, p.5.

(5) O.J. L 156, 25.6.2003, p.17.

(6) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c). [Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).]

(7) Paragraph 15 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(e).

The provisions of paragraph 17 of that Schedule(8) have been satisfied.

In accordance with paragraph 19(1) of that Schedule(9), Ministers have considered—

- (a) the result of the consultations under paragraph 15 of that Schedule;
- (b) any objections made and not withdrawn;
- (c) any representations made under paragraph 10(2)(f) of that Schedule.

In accordance with paragraph 19(2) of that Schedule(10), Ministers have decided to make this Order with modifications which appear to Ministers substantially to affect the character of the Order and they have—

- (a) taken such steps as appear to them to be sufficient and reasonably practicable for informing CMAL and other persons likely to be concerned; and
- (b) not made this Order until such period for consideration of, and comment upon, the proposed modifications by CMAL and those other persons as they thought reasonable has expired,

both in accordance with paragraph 21 of that Schedule(11).

### **Citation and commencement**

1. This Order may be cited as the Caledonian Maritime Assets (Lochaline Ferry Services Slipway) Harbour Empowerment Order 2013 and comes into force on the day after the day on which it is made.

### **Interpretation**

2. In this Order—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(12);

“CMAL” means Caledonian Maritime Assets Limited, a company incorporated in Scotland with registered number SC1845;

“harbour” means Lochaline harbour as comprised within the harbour limits;

“harbour limits” means the limits, within which CMAL are authorised to exercise jurisdiction, defined in article 12;

“harbour master” means any person appointed as such by CMAL and includes that person’s deputies and assistants and any other person for the time being authorised by CMAL to act, either generally or for a specific purpose, in the capacity of harbour master;

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

“special direction” means a direction given by the harbour master under article 16;

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

“vessel” means a ship, boat or craft of any description and includes any thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and

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(8) Paragraph 17 of Schedule 3 was substituted by [S.I. 1999/3445](#) and is amended by the Transport and Works (Scotland) Act 2007 ([asp 8](#)), section 25(5)(g).

(9) Paragraph 19(1) of Schedule 3 was substituted by [S.I. 1999/3445](#) and is amended by the Transport (Scotland) Act 2005 ([asp 12](#)), section 46 and the Transport and Works (Scotland) Act 2007 ([asp 8](#)), section 25(5)(i).

(10) Paragraph 19(2) of Schedule 3 was substituted by [S.I. 1999/3445](#).

(11) Paragraph 21 of Schedule 3 was substituted by [S.I. 1999/3445](#).

(12) [1847 c.27](#).

“works” means the existing ferry pier, the approach road leading to the pier and the buildings, facilities and works associated with the pier and the approach road.

### **Incorporation of the Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) Sections 1 to 4, 33 to 35, 37 to 39, 42, 51, 54 to 56 and 63 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission)(13) shall have effect subject to the modification that for the words from “be liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Section 65 (harbour master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

(4) In construing the provisions of the 1847 Act as incorporated with this Order—

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means CMAL and the expression “the harbour, dock, or pier” shall mean the harbour; and
- (b) for the definition of the word “vessel” in section 3 (interpretations in this and the special Act) there shall be substituted the definition of that word in article 2 (interpretation).

### **Power to maintain, etc. works**

4. CMAL may maintain and operate the works and may within the harbour limits reconstruct, replace or relay the works and may maintain and operate the works as reconstructed, replaced or relaid.

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

5.—(1) A tidal work shall not be reconstructed, replaced or relaid except in accordance with plans and sections approved by the Scottish Ministers and subject to any conditions and restrictions imposed by the Scottish Ministers before the work is begun or while work is still in progress.

(2) If a tidal work is reconstructed, replaced or relaid in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Scottish Ministers may by notice in writing require CMAL at its own expense to remove the tidal work or any part of it and restore the site of the tidal work to its former condition; and if on the expiration of 30 days from the date when the notice is served upon CMAL it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice; or
- (b) if it appears to the Scottish Ministers urgently necessary to do so, they may themselves remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from CMAL as a debt.

(3) The works referred to in paragraph (1) shall be deemed to be “harbour works” within the meaning, and for the purposes of the Marine Works (Environmental Impact Assessment) Regulations 2007(14).

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

(14) S.I. 2007/1518; “harbour works” is defined in regulation 2(1).

### **Survey of tidal works**

6. The Scottish Ministers may at any time if they deem it expedient order a survey and examination of a tidal work or a site upon which it is proposed to reconstruct, replace or relay a tidal work and any expense incurred by them in such a survey and examination shall be recoverable from CMAL as a debt.

### **Provision against danger to navigation**

7.—(1) In the case of injury to or destruction or decay of a tidal work or any part of it, CMAL shall as soon as reasonably practicable notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If CMAL 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**

8.—(1) Where a tidal work is abandoned or has fallen into decay the Scottish Ministers may by notice in writing require CMAL at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of the tidal work to its former condition, to such an extent and within such limits as the Scottish Ministers think proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or has fallen into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Scottish Ministers may include that part of the work or any portion of it, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon CMAL 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 CMAL as a debt.

### **Lights on tidal works during construction**

9.—(1) During the whole time of the reconstruction, replacing or relaying of a tidal work CMAL shall at the outer extremity of that work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If CMAL fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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

10.—(1) After completion of the reconstruction, replacing or relaying of a tidal work CMAL shall at the outer extremity of that work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If CMAL fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **General powers of CMAL in respect of harbour**

**11.**—(1) CMAL may regulate, manage, mark and light the harbour and provide accommodation and harbour facilities in the harbour.

(2) The powers conferred by this article are without prejudice to any powers of CMAL under or by virtue of any other enactment (including any other provision of this Order).

### **Harbour limits**

**12.** The harbour limits within which CMAL shall exercise jurisdiction as the harbour authority and within which the powers of the harbour master shall be exercisable shall be—

- (a) the seaward limits, that is to say the area shown stippled black on the plan contained in the Schedule to this Order; and
- (b) the harbour land and jetty limits, that is to say the land and jetty limits now vested in or administered by CMAL as part of the harbour and shown hatched black and bordered by a heavy black line on that plan.

### **Power to dredge**

**13.**—(1) CMAL may, for the purposes of maintaining the existing ferry pier and of affording access to the harbour by vessels, from time to time dredge, scour and cleanse so much of the bed, shores and channels of the sea as lie within the harbour limits and within the approaches and the channels leading to those limits and may use, appropriate or dispose of the materials (other than wreck within the meaning of section 255 of the Merchant Shipping Act 1995 (interpretation)(15)), from time to time dredged by it.

(2) No such materials shall be laid down or deposited in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

### **General byelaws**

**14.**—(1) CMAL 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, 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;
- (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;
- (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 whilst in the execution of their duties;
- (g) regulating the placing and maintenance of moorings within the harbour;

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(15) 1995 c.21.

- (h) preventing and removing obstructions or impediments within the harbour;
  - (i) regulating the use of 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 subparagraph (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;
  - (n) regulating the movement and parking of vehicles within the harbour;
  - (o) regulating the exercise of the powers vested in the harbour master;
  - (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 harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction; and
  - (q) the conservation of the fauna and flora in the harbour.
- (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 CMAL 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 CMAL to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows:—

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

(3) Not later than the first date on which the notice under paragraph (2) is published, CMAL shall send a copy of the notice to the Chief Executive Officer of The Highland Council and to the Scottish Ministers.

(4) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by CMAL at the office of the harbour master and shall at reasonable hours be open to public inspection without payment.

(5) CMAL shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it on payment of a reasonable charge.

(6) During the period of one month after completion of the publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

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

(8) Where the Scottish Ministers propose to make a modification that appears to them to be substantial they shall inform CMAL and require it to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not confirm the byelaws until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by CMAL and by other persons who have been informed of it.

(9) A copy of the byelaws when confirmed shall be printed and deposited by CMAL 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 CMAL may determine.

### **Special directions to vessels**

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

- (a) for 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;
- (b) for securing that a vessel moves only at certain times or during certain periods in the harbour;
- (c) prohibiting the mooring of a vessel in any particular part or parts of the harbour;
- (d) regulating or requiring the movement, mooring or unmooring of a vessel in the harbour; and
- (e) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship) passengers, cargo, fuel, water, ship's stores or ballast in the harbour.

(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**

**17.** The giving of 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**

**18.** The master of a vessel who fails without reasonable excuse to comply with 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**

**19.**—(1) Without prejudice to any other remedy available to CMAL, if a special direction is not complied with within a reasonable time the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but the harbour master shall not do so unless, after reasonable inquiry has been made, the master of the vessel cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article shall be recoverable by CMAL from the owner of the vessel as if they were a charge of CMAL in respect of the vessel.

### **Defence of due diligence**

**20.**—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for CMAL to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 7 (provision against danger to navigation);
- (b) article 9 (lights on tidal works during construction); and
- (c) article 10 (permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, CMAL shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

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

**21.** 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.**

**22.** The carrying out of any works or operations pursuant to this Order is subject to CMAL obtaining any consent, permission or licence required under any other enactment.

### **Crown rights**

**23.**—(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 CMAL 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; or
- (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(16).

St Andrew’s House,  
Edinburgh  
12th February 2013

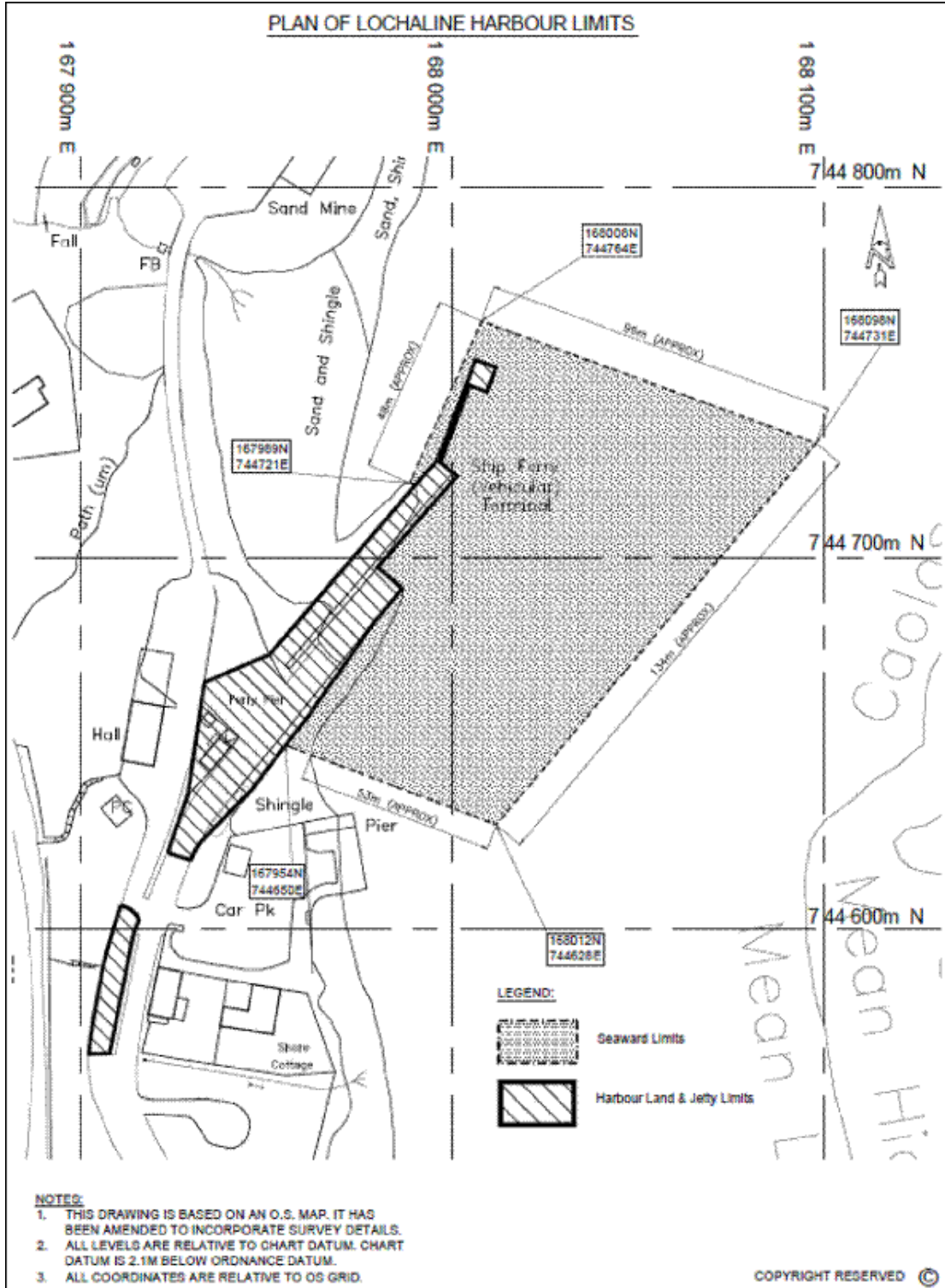
*JOHN NICHOLLS*  
A member of the staff of the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Article 12

HARBOUR LIMITS



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, made following an application by Caledonian Maritime Assets Limited (“CMAL”), empowers CMAL to maintain and operate at Lochaline in the Highland Region the harbour and harbour related facilities.

Article 2 makes provision as to interpretation.

Article 3 incorporates, with modifications, certain provisions of the Harbours, Docks, and Piers Clauses Act 1847.

Article 4 empowers CMAL to maintain and operate the works in the harbour and, within the harbour limits, to reconstruct, replace and relay the works.

Article 5 to 10 make provision for the control and regulation of tidal works.

Article 11 empowers CMAL to regulate, manage, mark and light the harbour and provide accommodation and harbour facilities.

Article 12 identifies the harbour limits.

Article 13 authorises CMAL to dredge the harbour and the approaches to it.

Article 14 empowers CMAL to make byelaws subject to those being confirmed by the Scottish Ministers under article 15.

Article 16 enables the harbour master to issue special directions to vessels. Article 17 provides that the responsibilities of the master of a vessel are not affected by the giving of special directions and articles 18 and 19 provide for the enforcement of directions.

Article 20 provides CMAL with a defence of due diligence against the commission of offences under the Order.

Articles 21 to 23 make saving provisions, including making clear that in carrying out any works or operations pursuant to this Order CMAL must obtain any other consent required for those works or operations under the terms of any other enactment.