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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 224**

**The Port of Ardersier Harbour Revision Order 2014**

**PART 1**

**PRELIMINARY**

**Citation, commencement and revocation**

1.—(1) This Order may be cited as the Port of Ardersier Harbour Revision Order 2014 and comes into force on the day after the day on which it is made.

(2) The Whiteness Marina Harbour Revision Order 2008(1) is revoked.

**Interpretation**

2.—(1) In this Order, except where the context otherwise requires—

“the 1847 Act” means the Harbours Docks and Piers Clauses Act 1847(2);

“CEMD” means the Construction and Environmental Management Document approved by the Scottish Ministers pursuant to paragraph (1) of article 35, as may be modified from time to time with the approval of the Scottish Ministers;

“the Company” means Port of Ardersier Limited (company no. 296897), which is to be the harbour authority for the harbour in place of the Whiteness Marina Company Limited;

“deposited plans” and “deposited sections” means respectively the plans and sections signed with reference to this Order and marked ‘Plans and Sections referred to in the Port of Ardersier Harbour Revision Order 2014’ of which two copies are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ, and one copy at the offices of the Company;

“enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;

“general direction” means a direction given under article 22(1);

“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(3);

“harbour” means the Port of Ardersier as comprised within the harbour limits;

“harbour limits” means the limits of the harbour as defined in article 17;

“harbour master” means any person appointed pursuant to section 51 of the 1847 Act;

“land” includes buildings and other structures, land covered with water and any right or interest in or over land;

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

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(1) S.S.I. 2008/361.

(2) 1847 c.27.

(3) 1998 c.46.

“limits of deviation” means the limits of deviation shown on the deposited plans;

“master”, in relation to a vessel, means any person for the time being having or taking the command, charge or management thereof;

“OEMD” means the Operational and Environmental Management Document approved by the Scottish Ministers pursuant to paragraph (2) of article 35, as may be modified from time to time with the approval of the Scottish Ministers;

“special direction” means a direction given under article 24(1);

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

“vessel” means a ship, boat, raft or water craft of any description however propelled or moved, and includes a jet-ski, a displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and

“works” means the works authorised by this Order, or as the case may require, any part thereof and includes any works constructed pursuant to article 4 or article 6.

(2) All areas, directions, distances, lengths, widths and heights as stated in any description of works, powers or lands other than article 5 shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width and height and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

(3) Any reference in this Order to works identified by the number of such works shall be construed as a reference to the works of that number authorised by this Order.

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

3.—(1) Sections 1 to 4, 33 to 35, 37 to 39, 42, 51, 54 to 57, 63 to 65 and 69 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 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) Section 69 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(5) 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 the Company and the expression “the harbour, dock, or pier” shall mean the harbour; and

(b) for the definition of the words “lands” and “vessel” in section 3, there shall be substituted the definitions of the words “land” and “vessel” respectively in article 2(1).

### **Power to construct works**

4.—(1) Subject to the provisions of this Order, the Company may in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown thereon and according to the levels shown on the deposited sections, construct and maintain in the Highland Area, Inverness District the works hereinafter described, with all necessary works and conveniences connected therewith—

Works No. 1 (Sheet 1) – Removal of existing sheet piled quay walls between NH 80174 58491 (Point 1) to NH 80216 58464 (Point 2), between NH 80250 58353 (Point 3) to NH 80301 58327 (Point 4) and between NH 81403 57768 (Point 5) to NH 80433 58338 (Point 6). Construction of new piled quay wall commencing at NH 81747 57565 (Point 7) and terminating at a point at NH 79693 58530 (Point 8).

Works No. 2 (Sheet 2) – Construction of slipway system commencing at a point at NH 79707 57874 (Point 1) and terminating at a point at NH 79774 58563 (Point 2).

Works No. 3 (Sheet 3) – Formation of main dredged access channel and dredged access pocket, nominal navigable width 120m plus side slopes, commencing at a point at NH 81772 57603 (Point 1) and terminating at a point at NH 79617 59316 (Point 2).

Works No. 4 (Sheet 4) – Construction of ship lift structure, commencing at a point at NH 79904 58515 (Point 1) and terminating at a point at NH 79964 58509 (Point 2).

(2) The Company may, for the purposes of Work No 1, enclose and reclaim so much of the bed of Whiteness Channel and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) The Company may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, replaced, or re-laid.

### **Power to deviate**

5. In carrying out the works authorised by article 4, the Company may deviate laterally from the lines or situations thereof as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

### **Subsidiary works**

6. The Company may from time to time within the limits of deviation construct, maintain and operate, whether temporarily or permanently, such other works as may be necessary or convenient for the purposes, or in connection with or in consequence, of the construction, maintenance or use of the works or the Company's undertaking; including works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and landing of passengers.

### **Power to dredge**

7.—(1) The Company may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the Moray Firth as lie within the harbour limits and within the approaches and the channels leading to those limits in the area so described and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(4)), from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) 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.

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(4) 1995 c.21, see section 255(1).

### **Obstruction of works**

8. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of or in constructing the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Works to be deemed part of undertaking**

9. The works shall be deemed for all purposes to be part of the undertaking and all byelaws, directions, rules and regulations of the Company for the time being in force relating to the harbour shall apply to the works and may be enforced by the Company accordingly.

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

10.—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed or altered 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 demolished, constructed, renewed, reconstructed or altered 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 the Company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if on the expiration of 30 days from the date when the notice is served upon the Company they have 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
- (c) any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from the Company as a debt.

(3) Paragraph (1) shall not apply to any work authorised by paragraph (1) of article 4 and any related works authorised by article 6.

(4) Subject to paragraph (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(5).

### **Survey of tidal works**

11. 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 construct the works and any expense incurred by them in such a survey and examination shall be recoverable from the Company as a debt.

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

12.—(1) In the 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 for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Company fail to comply in any respect with the provisions of this article, they 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**

**13.—**(1) Where a tidal work is abandoned or suffered to fall into decay the Scottish Ministers may by notice in writing require the Company at their 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 and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall 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 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 they have 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.

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

**14.—**(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Company shall at the outer extremity thereof 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 the Company fail to comply in any respect with a direction given under this article, they 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**

**15.—**(1) After completion of tidal work the Company shall at the outer extremity thereof 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 the Company fail to comply in any respect with a direction given under this article, they 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.

#### **Period for completion of works**

**16.—**(1) Subject to paragraph (2), if the works are not completed within five years from the coming into force of this Order or such extended time as the Scottish Ministers may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

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

(3) As soon as reasonably practicable after a consent is given under paragraph (1), the Company shall arrange for a notice to be published in the Edinburgh Gazette and in a local newspaper

circulating in the area where the port is situated and the notice shall contain a concise summary of that consent.

(4) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (3), a copy of the consent referred to in that notice shall be kept by the Company at the offices of the Company situated at the port and shall at reasonable hours be open to public inspection without payment.

(5) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 1 has been constructed as will enable other works to be constructed, maintained and managed together with that part of Work No. 1 as a harbour for the efficient and economic transport of goods or passengers by sea.