
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 224

The Port of Ardersier Harbour Revision Order 2014

PART 3

MISCELLANEOUS AND GENERAL

Power to lease etc

29. The Company may at any time lease or grant for the purposes of the undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour for such period or periods and on such terms and conditions as may be agreed between the Company and the persons taking the same.

Defence of due diligence

30.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2), it shall be a defence for the Company to prove that they 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—
- article 12 (provision against danger to navigation);
 - article 14 (lights on tidal works during construction); and
 - article 15 (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, the Company shall not, without leave of the court, be entitled to reply on that defence unless, within a period of 7 clear days before the hearing, they have 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 their possession.

Saving for Commissioners of Northern Lighthouses

31. 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.

32. 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.

Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994

33.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994(1) ('the Habitats Regulations') shall not apply to any planning permission which relates to the works

authorised by article 4 or article 6 and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(2) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not disapply regulation 60 of the Habitats Regulations in relation to any planning permission for the works to the extent that the works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Crown rights

34.—(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.

Environmental requirements

35.—(1) The works shall not be commenced until the Scottish Ministers have, following consultation in accordance with paragraphs (3) to (6), approved in writing the CEMD for the works subject to any amendments or further conditions or restrictions which Ministers may require.

(2) The operation of the port shall not be commenced until the Scottish Ministers have, following consultation in accordance with paragraphs (3) to (6), approved in writing the OEMD for the works subject to any amendments or further conditions or restrictions which Ministers may require. Once approved the OEMD shall replace the CEMD which shall cease to have effect.

(3) 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 CEMD or OEMD or the proposed amendment to the CEMD or OEMD, before approving the CEMD or OEMD or any amendment thereto—

- (a) The Highland Council;
- (b) the Scottish Environment Protection Agency;
- (c) Scottish Natural Heritage.

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

(2) [S.I. 1992/223](#).

(5) The period for responses to consultation for the purposes of paragraph (3) 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 CEMD or OEMD until such period has elapsed as they shall consider reasonable for consideration of, and comment upon, the terms of or amendment to the proposed CEMD or OEMD.

(6) The Scottish Ministers shall, prior to determining whether or not to approve (and if so on what terms) a proposed CEMD or OEMD or proposed amendment to the CEMD or OEMD, afford the Company an opportunity to comment on any response received from a body consulted by the Scottish Ministers pursuant to paragraph (3).

(7) For the purpose of ensuring compliance with the obligations set out in the terms of the CEMD or OEMD, 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 the CEMD or OEMD—

- (a) The Highland Council;
- (b) the Scottish Environment Protection Agency.

(8) The Company shall, after receipt of intimation to the Company of the approval by the Scottish Ministers of the CEMD or OEMD or any amendment of the same, send each of the bodies referred to in paragraph (3) a copy of the CEMD or OEMD (or as the case may be, the amended CEMD or OEMD) as so approved.

(9) The Company shall ensure that the works are carried out and the port operated, in accordance with the approved CEMD or OEMD (or any amendment to it).

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

Mitigation

36. The Schedule to this Order shall have effect.