

2014 No. 224

HARBOURS, DOCKS, PIERS AND FERRIES

The Port of Ardersier Harbour Revision Order 2014

Made - - - - *18th August 2014*

Coming into force - - *19th August 2014*

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SCHEDULE MITIGATION MEASURES

The Scottish Ministers (“the Ministers”) make the following Order in exercise of the powers conferred by section 14(1) of the Harbours Act 1964^(a) and all other powers enabling them to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act^(b).

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to the Ministers by Port of Ardersier Ltd. (“the applicant”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) the Ministers are satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and facilitating the efficient and economic transport of goods or passengers by sea.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

In accordance with paragraph 4 of Schedule 3 to that Act^(c), Ministers have decided that the application relates to a project which falls within Annex II to Council Directive 85/337/EEC^(d), as

(a) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “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).

(b) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(c) Schedule 3 was substituted by S.I. 1999/3445 and relevantly amended by the Transport (Scotland) Act 2005 (asp 12), section 46(5) and by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5).

(d) O.J. L 175, 5.7.1985, p.40. This Directive has now been replaced by Directive 2011/92/EU (O.J. L26, 28.1.2012, p.1).

relevantly amended by Council Directive 97/11/EC^(a) and Council Directive 2003/35/EC^(b), on the assessment of the effects of certain public and private projects on the environment and, taking into account the criteria set out in Annex III to that Directive, that the project is a relevant project.

In accordance with paragraph 6 of that Schedule, the Ministers have—

- (a) informed the applicant of that decision, and the reasons for it; and
- (b) given an opinion to the applicant about the extent of the information referred to in Annex IV to that Directive which the applicant would be required to supply in the environmental statement and—
 - (i) in giving that opinion the Ministers have taken into account the matters in sub-paragraph (3) of that paragraph; and
 - (ii) before giving that opinion the Ministers have consulted the applicant and such bodies with environmental responsibilities as Ministers thought appropriate.

In accordance with paragraph 8 of that Schedule, the Ministers have directed the applicant to supply them with an environmental statement and, as required by paragraph 9 of that Schedule, the applicant has complied with that direction.

Notices have been published by the applicant in accordance with the requirements of paragraph 10 of that Schedule.

In accordance with paragraph 15 of that Schedule, the Ministers have—

- (a) consulted; and
- (b) sent the environmental statement to;

such bodies who were likely to have an interest in the project by reason of their environmental responsibilities as the Ministers thought appropriate.

The provisions of paragraph 17 of that Schedule have been satisfied.

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

- (a) the environmental statement;
- (b) the result of the consultations under paragraph 15 of that Schedule;
- (c) any objections made and not withdrawn;
- (d) any representations made under paragraph 10(2)(f) of that Schedule; and
- (e) any written representations submitted to the Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection.

In accordance with paragraph 19(2) of that Schedule, the Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

(a) O.J. L 73, 14.3.1997, p.5.
(b) O.J. L 156, 25.6.2003, p.17.

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(a) 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(b);

“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(c);

“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;

“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

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

(b) 1847 c.27.

(c) 1998 c.46.

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(a)), 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.

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.

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

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(a).

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.

(a) S.I. 2007/1518.

(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.

PART 2

HARBOUR REGULATION

Limit of harbour

17.—(1) The harbour limits within which the Company shall exercise jurisdiction and the harbour master shall exercise his powers shall be the area bounded by a line commencing at a point at NH8163757277 (point 1), thence extending generally in a westerly direction following the line of the drain to a point at NH7937257576 (point 2), thence extending in a straight line in a northerly direction to a point at NH7957759850 (point 3), thence extending in a straight line in an easterly direction to a point at NH8049760110 (point 4), thence extending in a straight line in an easterly direction to a point at NH8148759908 (point 5), thence extending in a straight line in a south easterly direction to a point at NH8204259526 (point 6), thence extending in a straight line in a southerly direction to a point at NH8198157788 (point 7), thence extending in a straight line in a south westerly direction and terminating at the point of commencement.

(2) The area described in paragraph (1) is, for the purposes of identification only, shown edged red on Sheet 5 of the deposited plans and, in the event that there is any discrepancy between the description of that area and the area shown on that sheet, the description shall prevail.

General powers of Company in respect of harbour

18.—(1) The Company may improve, maintain, regulate, manage, mark and light the harbour and provide accommodation and harbour facilities therein.

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

Moorings

19.—(1) The Company may within the harbour provide, place, lay down, maintain, use and have moorings for vessels—

- (a) on land owned or leased by the Company or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbour.

(2) The Company may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Company such charges as the Company may from time to time prescribe.

(3) The Company may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Company may give notice in writing to the person having the control of any vessel using any mooring in the harbour at the date this Order comes into force requiring that person within 28 days to remove the mooring so as to enable the Company to provide, place or lay down moorings in accordance with paragraph (1).

(5) If any person fails to comply with a notice given by the Company under paragraph (2), the Company may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

(6) The Company may from time to time grant to a person a licence to place, lay down, maintain, use and have existing and future moorings, for vessels in the harbour.

(7) Nothing in any such licence shall entitle a person to place, lay down, maintain, use and have any mooring on land not owned or leased by that person or by the Company or in which that person has no appropriate interest.

(8) Any such licence shall, unless otherwise stated in the licence in question, be valid for a period of one year commencing with its date.

(9) The Company may charge for such a licence such fee as the Company may from time to time prescribe.

(10) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out moorings; or
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part thereof; or
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Company under this article or at a quay, jetty, slipway or other works or to land owned or leased by the Company; or
- (d) places, lays down or maintains in the harbour any mooring not provided or licensed by the Company under this article;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) If any person places, lays down or maintains in the harbour any mooring not provided or licensed by the Company under this article, the Company may remove the mooring in question and recover from that person the expenses incurred in doing so.

(12) In this article—

“mooring” includes any buoy, pile, post, chain, pillar, jetty for use as an appurtenance to a dwelling or like apparatus or structure used for the mooring of vessels; and

“vessel” does not include a houseboat.

General byelaws

20.—(1) The Company 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), in constructing byelaws made under this article the Company must establish a management plan defining protocols between the Company and the Ministry of Defence in respect of the Fort George Ranges Byelaws and the rights retained by the Secretary of State for Defence to make bye-laws relating to the area used for military firing practices.

(3) 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, 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 within the harbour;
- (d) regulating the navigation, berthing and mooring of vessels within the harbour and their speed and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessel, 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;
- (h) preventing and removing obstructions or impediments within the harbour;

- (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the harbour;
 - (j) regulating the use of ferries within the harbour;
 - (k) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
 - (l) 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 paragraph (k);
 - (m) regulating the launching of vessels within the harbour;
 - (n) prohibiting persons working or employed in or entering the harbour or any part thereof, from smoking therein;
 - (o) regulating the use of fires and lights within the harbour and within any vessel within the harbour;
 - (p) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without condition), control or direction of the harbour master, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
 - (q) the conservation of the fauna, avifauna and flora in the harbour.
- (4) 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, fines on summary conviction not exceeding level 3 on the standard scale;
 - (b) relate to the whole of the harbour or to any part thereof;
 - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles.

Confirmation of byelaws

21.—(1) An application to the Scottish Ministers to confirm byelaws must be accompanied by notification of the prior approval of the Secretary of State for Defence.

(2) At least one month before an application for confirmation of byelaws is made by the Company to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and time 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, the Company shall send a copy of the notice to the Chief Executive 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 at the office of the harbour master and shall at reasonable hours be open to public inspection without payment.

(5) The Company 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 the Company and require them 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 the Company and by other persons who have been informed of it.

(9) A copy of the byelaws when confirmed shall be printed and deposited at the office of the harbour master and shall at all reasonable hours be open to public inspection without payment, and a copy thereof shall on application be furnished to any person on payment of such reasonable sum as the Company may determine.

General directions to vessels

22.—(1) The Company may, after consultation with the Secretary of State for Defence, Chamber of Shipping and the Royal Yachting Association in each case of an exercise of the powers, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation or for the conservation of fauna, avifauna and flora in the harbour and the approaches and channels leading thereto and, without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) for designating areas, routes or channels in the harbour and the approaches thereto which vessels are to use, or refrain from using, for movement or mooring;
- (b) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for the purposes of this paragraph.

(2) Directions given under paragraph (1) may apply—

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
- (b) to the whole of the harbour and the approaches and channels leading thereto, or to a part designated, or the designation of which is provided for, in the direction; and
- (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction given under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) The Company, may, after consultation with the Secretary of State for Defence, the Chamber of Shipping and the Royal Yachting Association, revoke or amend directions given under this article.

Publication of general directions

23.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Company as soon as practicable once in Lloyd's List or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice 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 of any amendment or revocation of a general direction may be given in any manner the Company consider appropriate.

Special directions to vessels

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

- (a) requiring a vessel anywhere within the harbour limits to comply with a requirement made in or under a general direction;
- (b) 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;

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

(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

25. 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 his vessel, persons on board, its cargo or any other person or property.

Failure to comply with directions

26. The master of a vessel who fails without reasonable excuse to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Enforcement of special directions

27.—(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, 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 he shall not do so unless, after reasonable inquiry has been made, the master cannot be found.

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

Charges

28.—(1) The Company may levy charges for any services performed by it in the exercise and performance of its statutory powers and duties at the port.

(2) The Company may confer total or partial exemption from, allow rebates to or make compositions with any person with respect to, charges and may vary or extinguish any such exemption or composition.

(3) In this article "charges" means any charges other than ship, passenger and goods dues.

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(a) ('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(b) 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) S.I. 1994/2716.

(b) S.I. 1992/223.

- (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.

(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.

St Andrew's House,
Edinburgh
18th August 2014

JOHN NICHOLLS
A member of the staff of the Scottish Ministers

SCHEDULE

Article 36

MITIGATION MEASURES

Permitted development rights

1.—(1) In their application to the works, article 3 of, and Class 29 in Part II of Schedule 1 to, the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (which permits development authorised by a harbour revision order designating specifically both the nature of the development authorised and the land on which it may be carried out) have effect as if the planning permission granted by that Order—

- (a) were subject to the restrictions contained in this Schedule; and
- (b) did not apply to any permanent alteration, enlargement, replacement, relaying, extension or reconstruction authorised by article 4(3) that may in the opinion of the planning authority have significant adverse effects on the environment.

(2) In their application to other development carried out on land which falls to be treated as operational land of a dock or harbour undertaker by virtue of this Order, article 3 of, and Class 35 in Part II of Schedule 1 to the 1992 Order, have effect as if planning permission granted by that Order were subject to the restrictions contained in this Schedule.

(3) Except to the extent specified, the restrictions contained in this Schedule do not apply to temporary construction activity.

(4) For the purpose of the Town and Country Planning (Scotland) Act 1997, the restrictions contained in paragraphs 2 and 3 of this Schedule are deemed to be conditions imposed on the grant of planning permission.

Implementation of mitigation measures

2.—(1) Prior to the commencement of development, the Company shall establish, implement and organise an Ecological Management Group co-ordinated by an Ecological Clerk of Works.

(2) The Group will advise the harbour authority in delivering the implementation of mitigation measures set out in the CEMD and OEMD (as approved or amended subject to the provisions of article 35) during the construction and operation of the harbour.

(3) The Group is to comprise representation as appropriate from regulatory and statutory bodies, including—

- (a) Scottish Natural Heritage;
- (b) the Scottish Environment Protection Agency;
- (c) the Ardersier and Petty Community Council;
- (d) the Sea Mammal Research Unit;
- (e) the Royal Society for the Protection of Birds;
- (f) Whale and Dolphin Conservation;
- (g) the Ministry of Defence; and
- (h) any other parties or successor organisations as may be deemed to require consultation by the Scottish Ministers in agreeing the final CEMD/OEMD.

(4) The Ecological Management Group will support the harbour authority in its requirement to establish, implement and organise the delivery of the CEMD and OEMD.

Construction and Environmental Management Document

3. The CEMD referred to in article 35 shall include—

- (a) an updated schedule of mitigation, including all mitigation proposed in support of the Order and associated consents, other relevant agreed mitigation (e.g. as required by agencies) and mitigation set out in the relevant planning conditions;
- (b) processes to control and action changes from the agreed schedule of mitigation;
- (c) the following specific Construction and Environmental Management Plans, including zoning plans where appropriate—
 - (i) habitat management plan that will—
 - (aa) protect water bodies from marine non-native species;
 - (bb) minimise the risk of spreading freshwater invasive species;
 - (ii) spit habitat protection and enhancement plan that will be designed to avoid disturbance to key breeding, roosting and feeding sites on the spit and the bay to the west of the site and provide opportunity to create and enhance new breeding habitat and roost sites;
 - (iii) marine mammal protection plan, including a seal injury avoidance scheme, a comprehensive scheme for understanding the potential fragmentation impact on the bottlenose dolphin resulting from underwater noise associated with construction activities and proposals for monitoring of marine mammals during construction (the seal injury avoidance scheme should include no use of ducted propellers for maintenance and capital dredging operations during the harbour seal breeding season (June – August inclusive));
 - (iv) pollution prevention plan;
 - (v) dust management plan;
 - (vi) noise and vibration mitigation plan (including hours of operation);
 - (vii) site waste management plan; and
 - (viii) sediment transport monitoring plan, including monitoring the dispersal of sediments disposed of at the spoil ground (the findings of the sediment transport monitoring plan should inform on-going dredging operations);
- (d) details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities;
- (e) methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Scottish Ministers and other relevant parties; and
- (f) statement of responsibility to ‘stop the job or activity’ if a potential breach of a mitigation measure or legislation occurs.

Operational and Environmental Management Document

4. The OEMD referred to in article 35 shall include—

- (a) an updated schedule of mitigation relevant to the operational phases, including all mitigation proposed in support of the planning application, other relevant agreed mitigation (e.g. as required by agencies) and mitigation set out in the relevant planning conditions;
- (b) processes to control and action changes from the agreed schedule of mitigation;
- (c) the following specific Operational and Environmental Management Plans, including zoning plans where appropriate—
 - (i) habitat protection and enhancement plan, including measures to—
 - (aa) protect and safeguard SPA bird habitat at the end of the spit, the roost sites in particular, from on-going disturbance, in general accordance with the spit habitat protection and enhancement plan (this shall include zonation and/or timing of activities within the harbour coupled with screening and directional lighting);

- (bb) create additional suitable bird roost and nest sites, including the provision of nesting rafts for terns and measures to reduce fox predation;
- (cc) remove invasive non-native species *Crassula Helmsii*;
- (dd) protect and enhance existing wetlands;
- (ee) manage the stockpiled dredged material to protect the wader roost from human disturbance and wind-blow and increase shelter from certain wind directions; and
- (ff) monitor use of habitat by SPA birds, and adapt management as required;
- (ii) marine mammal protection plan, including a seal injury avoidance scheme;
- (iii) access management plan;
- (iv) noise mitigation plan, including measures to deal with night-time noise;
- (v) sediment transport monitoring plan; and
- (vi) vessel movement plan;
- (d) details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities;
- (e) methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Scottish Ministers and other relevant parties; and
- (f) statement of responsibility to ‘stop the job/activity’ if a potential breach of a mitigation measure or legislation occurs.

Restrictions on construction

5.—(1) The works specified in article 4 are to be carried out in accordance with the descriptions given in that article and as shown on the deposited plans, subject to the limits of deviation specified in article 5.

(2) In constructing and operating the works, the Company shall implement the measures on its part set out in and from time to time agreed pursuant to the CEMD.

(3) No dredging shall take place from November to March (inclusive) with dredging operations only taking place in October with the prior approval of the Scottish Ministers.

(4) A protocol between the Company and the Ministry of Defence shall be established and implemented as required in article 20(2).

(5) Impact piling shall not be used as a method for any element of the marine works.

(6) The construction and operational phase lighting must be designed, deployed, constructed and maintained in accordance with the aviation lighting scheme approved by The Highland Council.

(7) The ‘pipe spool quay’ shall be located at least 250m from the roost site at the end of the spit as re-formed by this application.

(8) Decommissioning shall be undertaken in accordance with the Decommissioning and Restoration Plan approved by The Highland Council.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals the Whiteness Marina Harbour Revision Order 2008 and empowers the Port of Ardersier Limited to construct and maintain a harbour and other facilities at Whiteness Head in the area of the Carse of Ardersier in the Highland Area, Inverness District.

The Order also confers power on Port of Ardersier Limited to maintain and operate their undertaking at Whiteness Head as a statutory harbour undertaking and defines the limits of jurisdiction of the harbour.

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