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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 6**

The Caledonian Maritime Assets  
(Brodick) Harbour Revision Order 2015

PART 4

HARBOUR REGULATION

**General power of CMAL in respect of harbour**

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

(2) For those purposes, and without prejudice to the generality of paragraph (1) above, CMAL may—

- (a) subject to the provisions of article 12 (tidal works not to be executed without approval of Scottish Ministers) above construct, alter, demolish and reconstruct structures and works in the harbour; and
- (b) do all other things which in its opinion are necessary or expedient to facilitate the proper carrying on or development of the harbour.

(3) 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).

**Power to appropriate parts of harbour, etc.**

**21.**—(1) Notwithstanding anything in this or any other statutory provision of local application, CMAL may from time to time set apart or appropriate any part of the harbour, or any lands, works, buildings, machinery, equipment or other property of CMAL in the harbour, for the exclusive, partial or preferential use or accommodation for any particular trade, activity, person, vessel or class of vessels or goods, subject to the payment of such reasonable charges (other than ship, passenger and goods dues) and to such terms and conditions as CMAL thinks fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the harbour, or any lands, works, buildings, machinery, equipment or other property, so set apart or appropriated without the consent of the harbour master or other duly authorised officer of CMAL.

(3) The harbour master or, as the case may be, any such authorised officer may order any person or vessel contravening paragraph (2) above to leave or be removed from the site of the contravention.

(4) Section 58 of the 1847 Act shall extend and apply with appropriate modifications to any vessel moored or otherwise positioned in contravention of paragraph (2) above.

(5) In exercising its powers to appropriate or set apart any part of the harbour under paragraph (1), CMAL shall have regard to the facilitation of—

- (a) the public right of navigation in the harbour; and
- (b) any public rights of way affecting the harbour,

such that CMAL shall not restrict such rights more than is necessary for the purpose for which the part of the harbour is appropriated or set apart.

#### **Power to lease, etc.**

**22.** CMAL may at any time lease or grant 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 CMAL and the persons taking the same. Any such lease or grant shall be subject to any existing public rights of way affecting the subject area of such lease or grant.

#### **Power to enter into arrangements to provide supplies**

**23.** CMAL may make arrangements for the purpose of providing and supplying fuel and such other requirements as may be made available to vessels using the harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

#### **Parking places**

**24.** CMAL may provide facilities within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences.

#### **Moorings**

**25.—(1)** CMAL may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as it considers necessary or desirable for the convenience of vessels.

(2) CMAL may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the harbour.

(3) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the harbour except under and in accordance with the terms and conditions of a licence granted 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.

(4) Any licence granted under paragraph (2) shall be valid only for a period of one year commencing with the date on which it takes effect.

(5) CMAL may charge a reasonable fee for the grant of a licence under this article.

#### **Restriction of works and dredging**

**26.—(1)** No person other than CMAL shall in the harbour—

- (a) alter, renew or maintain any works; or
- (b) dredge,

unless that person is licensed to do so, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 27 or, as the case may require, article 28 below.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) CMAL may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which

the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice CMAL may carry out the works so required and may recover the cost of so doing from that person.

### **Licensing of works**

27.—(1) CMAL may upon such terms and conditions as it thinks fit grant to any person a licence to maintain, alter or renew works within a harbour area on, under or over tidal waters or tidal land below the level of high-water, notwithstanding any interference with public rights of navigation or other public rights by such works as maintained, altered or renewed.

(2) Application for a works licence shall be made in writing to CMAL and shall—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable the applicant to enjoy the benefits of the licence and, if not, the action taken or to be taken to enable the applicant to obtain such rights if the licence is granted; and
- (c) be accompanied by a copy of a notice published in a newspaper circulating in the locality of the harbour stating that it is intended to make the application, containing a general description of the nature of the works for which application is being made and of the land affected thereby, and specifying a place where a copy of the plans, sections and particulars of the proposed works may be inspected at all reasonable hours and stating that any person who desires to object to CMAL to the grant of the application should do so in writing stating the grounds of that person's objection before the expiration of the period of 28 days from the day of the publication.

(3) In deciding whether or not to grant a works licence or as to the terms and conditions to be included in the licence CMAL shall take into consideration any objection made to them in accordance with paragraph (2)(c) above (hereinafter in this article and in article 29 below referred to as a competent objection) and in granting a licence CMAL may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) If CMAL decides to grant a works licence it shall give notice of its decision to the applicant and to any person who has made a competent objection and has not withdrawn it.

(5) If within 3 months from the date of the making of an application under paragraph (2) above CMAL does not notify to the applicant its decision whether to grant a works licence, it shall be deemed to have refused the application.

(6) CMAL may charge a reasonable fee for the grant of a licence under this article.

(7) The grant of a licence under this article has effect for the purposes of article 26 above and confers no other authority for the carrying out of the operations covered by the licence.

### **Licensing of dredging**

28.—(1) CMAL may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of the harbour.

(2) Applications for a dredging licence shall be made in writing to CMAL and shall be accompanied by—

- (a) plans, sections and particulars defining the nature, extent and manner of the operations in respect of which application is made; and
- (b) a copy of a notice published in a newspaper circulating in the locality of the harbour stating that it is intended to make the application containing a general direction of the position, nature, extent and manner of those operations specifying a place where a copy

of the plans, sections and particulars of the proposed operations may be inspected at all reasonable hours and stating that any person who desires to object to CMAL to the grant of the application should do so in writing stating the grounds of his objection before the expiration of the period of 28 days from the date of publication of the notice.

(3) In deciding whether or not to grant a dredging licence or as to the terms and conditions to be included in the licence CMAL shall take into consideration any objection made to them in accordance with paragraph (2)(b) above (hereinafter in this article and in article 29 below referred to as a competent objection) and in granting a licence CMAL may require modification in the plans, sections and particulars submitted to them by the applicant.

(4) If CMAL decides to grant a dredging licence it shall give notice of its decision to the applicant and to any person who has made a competent objection and has not withdrawn it.

(5) If within 3 months from the date of making an application under paragraph (2) above CMAL does not notify the applicant of its decision whether to grant a dredging licence it shall be deemed to have refused the application.

(6) Unless otherwise agreed between CMAL and the licensee any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995) taken up or collected by means of dredging in pursuance of a dredging licence shall, in so far as they are not the property of CMAL before being taken up or collected become the property of CMAL and the provisions of paragraph (3) of article 9 above shall apply to such materials which are or become the property of CMAL.

(7) CMAL may charge a reasonable fee for the grant of a licence under this article.

(8) The grant of a licence under this article has effect for the purposes of article 26 above and confers no other authority for the carrying out of the operations covered by the licence.

(9) In the execution of any works to which a dredging licence relates the holder of the licence shall not damage or injuriously affect any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989<sup>(1)</sup>) belonging to or used or maintained by Scottish Power plc or, without the consent of that company, interfere with or adversely affect the operation of any such line or work.

### **Appeals in respect of works or dredging licence**

**29.**—(1) Where CMAL has—

- (a) refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal;
- (b) granted such a licence and any person who has made a competent objection and has not withdrawn it is aggrieved by the grant; or
- (c) granted such a licence upon terms or conditions or has required modifications to be made in the plans, sections and particulars submitted by the applicant, and the applicant or any such person is aggrieved by CMAL's decision as to such terms and conditions, or as to such modifications,

the person aggrieved may within 28 days from the date on which CMAL gives notice of its decision or the date on which it is under paragraph (5) of article 27 or of article 28 deemed to have refused the application, as the case may be, appeal to the Scottish Ministers.

(2) An appeal under this article shall be made by notice in writing, stating the grounds of the appeal.

(3) A person who appeals to the Scottish Ministers under this article shall at the same time send a copy of his statement of appeal to CMAL and CMAL shall as soon as practicable thereafter furnish

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(1) 1989 c.29.

the Scottish Ministers with all relevant documents, and may within 28 days of the receipt of that statement of appeal furnish the Scottish Ministers with its observations on the appeal.

(4) On an appeal under this article the Scottish Ministers may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including the amendment of the terms and conditions or modifications of the plans, section or particulars.

(5) CMAL shall give effect to any decision or requirement given or made by the Scottish Ministers under paragraph (4) above.

### **Power to licence tugs**

**30.**—(1) It shall not be lawful for any person, except in an emergency, to operate a vessel exceeding 5 tonnes gross for fee or reward for the purpose of moving or controlling the movement of any other vessel within the harbour except under and in accordance with the terms and conditions of a licence granted by CMAL in that behalf.

(2) CMAL may charge a reasonable fee for the grant of any licence under this article.

(3) Any person who contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Power to licence pleasure craft**

**31.**—(1) CMAL may grant, upon such terms and conditions as it thinks fit, licences for pleasure craft to be let for hire to the public in the course of trade or business or to be used for carrying passengers for hire within the harbour, and to the boatmen or persons assisting in the charge or navigation of such craft.

(2) Any such licence may be granted for such period as CMAL may think fit, and may be suspended or revoked by CMAL whenever it shall deem such suspension or revocation to be necessary or desirable in the interests of the public.

(3) The existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

(4) A person shall not within the harbour—

(a) let for hire to the public a pleasure craft which is not licensed in accordance with this article; or

(b) carry, or permit to be carried, passengers for hire in a pleasure craft unless the craft, and the boatmen in charge thereof and the navigator, are so licensed.

(5) This article shall not be taken to require a person to be licensed as a boatman who takes on hire a pleasure craft for purposes other than for profit.

(6) A licence under this article shall not be required for any craft which has a relevant certificate issued by the Maritime and Coastguard Agency and valid for the voyage intended or, in the case of hovercraft within the meaning of the Hovercraft Act 1968(2), a certificate of safety valid for the voyage intended.

(7) A person shall not carry or permit to be carried in any pleasure craft a greater number of passengers for hire than shall be specified in the licence applying to such craft, and every owner of any such craft shall before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than three centimetres in height and one half centimetre in breadth, on a conspicuous part of the said craft, their own name and also the number of persons which it is licensed to carry, in the form “Licensed to carry [ ] persons”.

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(2) 1968 c.59.

(8) Any person who shall act in contravention of paragraph (4) or (7) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Any person aggrieved by the withholding, suspension or revocation of any licence or by any term or condition subject to which a licence has been granted under the provisions of this article may appeal to the sheriff.

(10) In this article “pleasure craft” means any vessel of not more than 100 tonnes gross used wholly or mainly for recreation or for the carriage of passengers for reward and includes pleasure boats.

## **Byelaws**

**32.**—(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;
- (h) preventing and removing obstructions or impediments within the harbour;
- (i) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour;
- (j) regulating the use of ferries within the harbour;
- (k) regulating the holding of regattas and other public events in the harbour;
- (l) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
- (m) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers, and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (l);
- (n) regulating the launching of vessels within the harbour;
- (o) regulating or preventing the use of fires and lights within the harbour and within any vessels within the harbour;
- (p) prohibiting persons in or entering the harbour, or any part of the harbour, from smoking in open spaces in the harbour;
- (q) regulating the movement and parking of vehicles within the harbour;
- (r) regulating the exercise of the powers vested in the harbour master;

- (s) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and 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
  - (t) 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**

**33.**—(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 the two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) Such notice shall include reference to the right to make objection or representation referred to in paragraph (7).

(4) 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 North Ayrshire Council and to the Scottish Ministers.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

### **Publication of general directions**

**34.**—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by CMAL 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 general 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 the amendment or revocation of a general direction may be given in any manner CMAL consider appropriate.

### **Special directions to vessels**

**35.**—(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**

**36.** The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

### **Failure to comply with special directions**

**37.** 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**

**38.**—(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.

#### **Declaration of draught, etc, of vessel**

**39.**—(1) The master of a vessel entering, leaving or intending to enter or leave the harbour shall, if required to do so by the harbour master, state the overall length and maximum draught of his vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) above without reasonable excuse gives incorrect information shall, without prejudice to any right of CMAL to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

#### **Obstruction of officers, etc**

**40.** Any person who intentionally obstructs an officer of CMAL or other person acting in execution of this Order or of any enactment relating to the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **Boarding of vessels**

**41.** Any duly authorised officer of CMAL may, on producing if so required his authority, enter and inspect a vessel in the harbour—

- (a) for the purposes of any enactment relating to CMAL or any byelaw of CMAL including the enforcement thereof; or
- (b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice shall have annexed to it a copy of this article.

#### **Vessels adrift**

**42.**—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

#### **Removal of obstructions other than vessels, vehicles or wreck**

**43.**—(1) Without prejudice to its powers under any enactment (including one contained in this Order) CMAL may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of a harbour area other than—

- (a) a vessel or vehicle; or
- (b) wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(2) If—

- (a) anything removed by CMAL under paragraph (1) above is known to CMAL to be, or is marked as to be readily identifiable as, the property of any person, CMAL shall within one

month of its coming into its custody give notice, in accordance with paragraph (6) below, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in CMAL;

- (b) the ownership of anything removed by CMAL under paragraph (1) above which is not so known or marked is not within 3 months of its coming into the custody of CMAL proved to its reasonable satisfaction, it shall vest in CMAL.

(3) CMAL may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in CMAL under this article, and if it is sold the proceeds of sale shall be applied by CMAL in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

- (a) shall be paid to any person who within 3 months from the time when the thing came into custody of CMAL proves to its reasonable satisfaction that that person was the owner thereof at that time; or
- (b) if within the said period no person proves ownership at the said time, shall vest in CMAL.

(4) If anything removed under this article—

- (a) is sold by CMAL and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or
- (b) unsaleable.

(5) CMAL may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of CMAL or who was the owner at the time of its abandonment or loss.

(6) A notice given under paragraph (2)(a) above shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of CMAL possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the day when the notice is served.

(7) CMAL shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence given or issued by CMAL.

### **Removal of vehicles**

**44.—**(1) If a vehicle is left without permission of CMAL—

- (a) in a parking place provided by CMAL within the harbour for a longer period than 24 hours;
- (b) in any part of the harbour where the parking of vehicles is prohibited by notice erected by CMAL; or
- (c) in any place within the harbour where it is likely to obstruct or interfere with the use of the harbour.

CMAL may cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1) above shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where CMAL in exercise of the powers of this article causes a vehicle to be removed the expenses of and incidental to its removal and safe custody shall be recoverable by CMAL from the person responsible.

(4) If CMAL in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations

2002(3) at that person's last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that CMAL has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each entrance to any parking place provided by CMAL and at each place where a road accessible to vehicles enters any part of the harbour, and shall be endorsed at the harbour .

(6) In paragraph (3) above, "person responsible", in relation to a vehicles, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless that person shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in that place;
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(4).

### **Power to remove goods**

45.—(1) If any goods are left on or in any part of the harbour CMAL may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement CMAL may cause them to be removed to CMAL's or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) Notwithstanding such removal on behalf of CMAL, the goods shall be subject to a lien for the cost of removal, and for any charges payable to CMAL by the owner in respect of the goods.

(3) In this article, "goods" includes vehicles and equipment.

### **Defence of due diligence**

46.—(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 14 (provision against danger to navigation);
- (b) article 16 (lights on tidal works during construction); and
- (c) article 17 (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.

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(3) S.I. 2002/2742  
(4) 1978 c.3.