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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 296**

**The Caledonian Maritime Assets (East  
Loch Tarbert) Harbour Revision Order 2019**

**PART 4**

**HARBOUR REGULATION**

**Byelaws**

**25.**—(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 shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour,
- (c) preventing damage or injury to any vessel, goods, property or persons within the harbour,
- (d) 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,
- (e) preventing and removing obstructions or impediments within the harbour (other than anything falling within article 39 (power to remove goods)),
- (f) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the harbour (other than from any vessel within the meaning of section 255 of the 1995 Act),
- (g) prohibiting persons in or entering the harbour or any part of the harbour, from smoking within the harbour,
- (h) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers, kite surfers, swimmers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in article 27(1)(h) (general directions to vessels),
- (i) regulating the use of fires, lights and pyrotechnics within the harbour (other than on any vessel within the meaning of section 255 of the 1995 Act),
- (j) regulating the type of vehicles which may enter or be within the harbour and the movement, parking, use, loading or unloading of vehicles within the harbour, and giving powers to officers or employees of CMAL in relation to such regulation,
- (k) regulating the holding of regattas and other public events in the harbour,
- (l) prohibiting or regulating fishing within the harbour,

- (m) prohibiting or regulating the sale of articles or the provision of services within the harbour,
  - (n) making the carrying out of specified activities, 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 approval, condition, control or direction, and
  - (o) the conservation of the fauna and flora in the harbour.
- (3) Byelaws made under this article may—
- (a) provide for fines on summary conviction not exceeding level 3 on the standard scale for breach of any approval, condition, direction or requirement imposed under the byelaws,
  - (b) relate to the whole of the harbour or to any part thereof, and
  - (c) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles or different specified activities.
- (4) Any power for CMAL to make byelaws in relation to the harbour under any of the following provisions shall cease to have effect—
- (a) section 83 of the 1847 Act,
  - (b) section 11 of the Harbours, Piers and Ferries (Scotland) Act 1937, and
  - (c) section 6 of the 1984 Order.
- (5) Before making byelaws under this section CMAL shall consult with such persons as CMAL considers are representative of users of the harbour.

### **Confirmation of byelaws**

**26.**—(1) Byelaws made by CMAL under this Order shall not come into operation until they have been confirmed by the Ministers.

(2) Not later than one month before an application for confirmation of byelaws is made by CMAL to the 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, and
- (b) once in each of two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) Not later than the first date on which the notice under paragraph (2) is published, CMAL shall send a copy of the notice to the Chief Executive of Comhairle nan Eilean Siar and to the Ministers.

(4) For a period of at least one month before application is made for confirmation of byelaws, CMAL shall keep a copy of the byelaws open to public inspection, without payment, at its principal office at all reasonable hours.

(5) CMAL shall supply a copy of the byelaws or of part of the byelaws to a person on request.

(6) During the period of one month beginning with the last date of publication of any notice required by paragraph (2), any person may make, in writing to the Ministers, any objection to or representation about the byelaws to which the notice relates.

(7) The Ministers may confirm the byelaws (with or without modifications) or may refuse to confirm them.

(8) Where the Ministers propose to make a modification that appears to them to substantially affect the character of the byelaws, they shall inform the CMAL and require them to take any steps the Ministers consider necessary for informing persons likely to be concerned with the modification.

(9) For the purposes of paragraph (8), the Ministers shall give the CMAL and any person who is to be informed of a proposed modification the opportunity to make representations in writing about that proposed modification during a period determined by the Ministers and the Ministers shall take such representations into account before making a decision under paragraph (7).

(10) CMAL shall—

- (a) keep a copy of confirmed byelaws open to public inspection at all reasonable hours, without payment, at CMAL's principal office (and at the office of the harbour master), and
- (b) provide a copy of the byelaws to a person on request.

### **General directions to vessels**

**27.**—(1) CMAL may, after consultation with the UK Chamber of Shipping, the Royal Yachting Association, the Royal Yachting Association Scotland and such persons as CMAL considers are representative of users of the harbour, give general directions to vessels for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of vessels within the harbour or entering or leaving the harbour 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 to the harbour which vessels are to use, or refrain from using, for movement, mooring or anchorage,
- (b) for securing that vessels move within the harbour only at certain times or during certain periods,
- (c) for securing that vessels within the harbour make use of descriptions of aid to navigation specified in the directions,
- (d) for prohibiting entry into or navigation within any of the main channels within the harbour or the approaches leading to it during any temporary obstruction of the channels,
- (e) for 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,
- (f) for regulating the navigation, berthing, mooring and speed of vessels within the harbour,
- (g) for regulating the use of ferries within the harbour,
- (h) for regulating the use within the harbour of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft,
- (i) for regulating the launching of vessels within the harbour,
- (j) for regulating the use of tugs within the harbour,
- (k) 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 vessel designated, or the designation of which is provided for, in the direction,
- (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) to (c).

(3) CMAL may, after consultation with the UK Chamber of Shipping, the Royal Yachting Association, the Royal Yachting Association Scotland and such persons as CMAL considers are representative of users of the harbour, revoke or amend directions given under this article.

### **Publication of general directions**

**28.**—(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 CMAL as soon as practicable, once in one or more newspapers circulating in the locality in which the harbour is situated.

(2) CMAL shall also make the notice available for inspection on a web-site maintained by CMAL together with, if the notice relates to the giving or amendment of a general direction, a copy of the direction or the direction as amended.

(3) If the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies may be obtained and particulars of the web-site where a copy of the direction or the direction as amended may be viewed.

(4) 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 CMAL considers appropriate.

### **Special directions to vessels**

**29.**—(1) The harbour master may give a special direction—

- (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 in the harbour 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, berthing, mooring or unmooring of a vessel in the harbour, and
- (f) 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**

**30.** 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**

**31.**—(1) A person who fails without reasonable excuse to comply with a special direction is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) A person who fails without reasonable excuse to comply with a general direction, or who breaches an approval, condition or requirement of a general direction, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Enforcement of special directions**

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

(3) Reasonable 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**

**33.**—(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) 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.**

**34.** 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**

**35.** Any duly authorised officer of CMAL may enter and inspect a vessel in the harbour, subject to producing his authority where requested—

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

but, except in an emergency, no entry shall be made under this article without prior written notice first having been given to the owner or the person appearing to have charge of the vessel, at least 24 hours in advance; and the notice shall have annexed to it a copy of this article.

### **Vessels adrift**

**36.**—(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) 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**

37.—(1) Without affecting its powers under this Order or any other enactment 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 vehicle,
  - (b) a vessel (within the meaning of section 255 of the 1995 Act) which is sunk, stranded or abandoned or any article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of such a vessel, or
  - (c) wreck within the meaning of section 255 of the 1995 Act.
- (2) If anything removed by CMAL under paragraph (1)—
- (a) at the relevant time is known to CMAL as the property of any person,
  - (b) becomes known to CMAL as the property of any person within the period of 3 months from the relevant time, or
  - (c) is marked as to be readily identifiable as the property of any person,

CMAL shall within one month of the relevant time or, in a case falling within paragraph (b), of the time that the property becomes known to CMAL as the property of any person give notice, in accordance with paragraph (7), to that person.

(3) 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.

- (4) If anything is removed by CMAL under paragraph (1) and —
- (a) its ownership is not known or does not become known or it is not marked as mentioned in paragraph (2)(a), (b) or (c), and
  - (b) its ownership is not proved to the reasonable satisfaction of CMAL within the period of 3 months from the relevant time,

it shall vest in CMAL at the end of that period.

(5) 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 the period of 3 months from the relevant time proves to the reasonable satisfaction of CMAL that that person was the owner of the thing at that time, or
- (b) if within the said period no person proves ownership at the said time, shall vest in CMAL.

- (6) 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) is unsaleable,

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.

(7) A notice given under paragraph (2) 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 in the notice, being not less than 14 days after the day when the notice is served.

(8) 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.

(9) In this article “the relevant time” is the time at which any thing comes into the custody of CMAL under this article.

### **Removal of vehicles**

**38.**—(1) If a vehicle is left—

- (a) in a parking place provided by CMAL within the harbour for a longer period than authorised by CMAL,
- (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)(b) 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 reasonable 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<sup>(1)</sup> at the person’s last known address, the person’s 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) 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 on any tickets issued to persons leaving vehicles in a parking place or elsewhere at the harbour.

(6) In paragraph (3), “person responsible”, in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless the owner of the vehicle shows that the vehicle was put there without that person’s knowledge or involvement,
- (b) any person by whom it was put in that place, or
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978<sup>(2)</sup> in consequence of the putting of the vehicle in that place.

(7) This article does not apply to any part of any public road within the harbour premises.

### **Power to remove goods**

**39.**—(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.

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(1) S.I. 2002/2742.

(2) 1978 c.3.

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(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.