

2019 No. 296

HARBOURS, DOCKS, PIERS AND FERRIES

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

Made - - - - - *20th September 2019*

Coming into force - - - - - *21st September 2019*

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The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (3) 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 Ministers by Caledonian Maritime Assets Limited (“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 and passengers by sea.

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 Directive 2011/92/EU(d), of the European Parliament and of the Council 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(e), 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 Ministers have taken into account the matters in sub-paragraph (3) of that paragraph, and
 - (ii) before giving that opinion Ministers have consulted the applicant and such bodies with environmental responsibilities as Ministers thought appropriate.

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

(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) Paragraph 4 of Schedule 3 was substituted by S.I. 1999/3445.

(d) O.J. L 26, 28.1.2012, p.1. Directive 2011/92/EU repealed and recast the provisions contained in Council Directive 85/337/EC (O.J. L 175, 5.7.1985, p.40, as amended by Council Directive 97/11/EC (O.J. L 73, 14.3.1997, p.5) and Directive 2003/35/EC of the European Parliament and of the Council (O.J. L 140, 5.6.2009, p.114)).

(e) Paragraph 6 of Schedule 3 was substituted by S.I. 1999/3445.

(f) Paragraph 8 of Schedule 3 was substituted by S.I. 1999/3445.

(g) Paragraph 9 of Schedule 3 was substituted by S.I. 1999/3445.

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

In accordance with paragraph 15 of that Schedule(b), Ministers have—

- (a) consulted, and
- (b) sent the environmental statement, and any further information falling within paragraph 10A(2) of that Schedule, to,

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

All objections to the application have been withdrawn or paragraph 18(1A) of that Schedule(c) applied in respect of those objections.

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

- (a) the environmental statement and the further information falling within paragraph 10A(2) of that Schedule,
- (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), or 10A(4)(d) of that Schedule, and
- (e) any written representations submitted to 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(e), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

PART 1 PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019 and shall come into force on the day after the day on which it is made.

(2) The 1873 Order and, so far as relating to East Loch Tarbert, the 1984 Order and this Order may be cited together as the East Loch Tarbert Harbour Orders 1873 to 2019.

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- (a) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c). [Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).]
 - (b) Paragraph 15 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(e).
 - (c) Paragraph 18 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(h).
 - (d) Paragraph 19(1) of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(i).
 - (e) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

Interpretation

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

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(a),

“the 1873 Order” means the East Loch Tarbert Pier Order 1873(b),

“the 1964 Act” means the Harbours Act 1964(c),

“the 1984 Order” means the Lochmaddy and East Loch Tarbert (Improvement of Piers &C.) Order 1984(d),

“the 1995 Act” means the Merchant Shipping Act 1995(e),

“CMAL” means Caledonian Maritime Assets Limited a company incorporated in Scotland with registered number SC1854,

“the Commissioners of Northern Lighthouses” means the general lighthouse authority for Scotland, a body corporate constituted by section 193 of, and Schedule 8 to, the Merchant Shipping Act 1995(f),

“deposited plans, sections and elevations” means the plans, sections and elevations which are bound together and signed in duplicate with reference to this Order and marked “The Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019 Plans, Sections and Elevations” and which are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ and at the registered office of CMAL, and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations,

“general direction” means a direction given under article 27,

“goods” includes vehicles and equipment,

“harbour” means the harbour at East Loch Tarbert as comprised within the harbour limits,

“harbour limits” means the limits of the harbour as defined in article 16,

“harbour limits plans” means sheets 2 and 3,

“harbour master” means any person appointed as such by CMAL and includes that person’s deputies and assistants and any person for the time being authorised by CMAL to act, either generally or for a specific purpose, in the capacity of harbour master,

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

“limits of deviation” means the limits of deviation shown on sheet 4,

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

“relevant person” in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998(g) applies means the person who manages that property, or those rights and interests,

“special direction” means a direction given under article 29,

“vessel” means a ship, boat, raft or watercraft of any description however propelled or moved and includes anything constructed, adapted for or used to carry persons or goods by water or for floating on or being submerged in water (whether permanently or temporarily) and shall include but not be limited to a displacement craft, a personal water craft, a sea plane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle, and

(a) 1847 c.27.

(b) Confirmed by the Pier and Harbour Order Confirmation Act 1873 c.lxiii.

(c) 1964 c.40.

(d) Confirmed by the Lochmaddy and East Loch Tarbert (Improvement of Piers &C.) Order Confirmation Act 1984 c.xxx.

(e) 1995 c.21.

(f) 1995 c.21. Schedule 8 was amended by section 55 of the Scotland Act 2016 c.11.

(g) 1998 c.46.

“works” means the works authorised by this Order, or as the case may require, any part thereof and includes any work constructed pursuant to article 3 (power to construct works) or article 5 (subsidiary works).

(2) In this Order, all areas, directions, distances, lengths, widths, heights and grid references as stated in any description of works, powers or lands other than article 4 (power to deviate) shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width, height and grid reference.

(3) Any reference in this Order to a work identified by a number is a reference to the work of that number authorised by this Order.

(4) Any reference in this Order to a numbered sheet is a reference to that numbered sheet in the deposited plans, sections and elevations.

PART 2

WORKS

Power to construct works

3.—(1) CMAL may in the lines and situations and upon the lands delineated on sheet 4 for each work, and within the limits of deviation shown on them and according to the levels shown on the deposited sections or elevations for each work, construct and maintain in East Loch Tarbert the following works, with all necessary works and conveniences connected with them—

Work No. 1 – A pier of open piled construction the location of which is shown on sheet 4 and the section of which is shown on sheet 5.

Work No. 2 – The reclamation and infilling of an area comprising 5,200 square metres of the seabed at East Loch Tarbert and the levelling of that area together with the levelling of the adjoining land to form marshalling, parking and storage areas having rock armoured revetted slopes on the seaward side, the location of which is shown on sheet 4 and a section of which is shown on sheet 5.

Work No. 3 – A single storey terminal building comprising passenger, baggage handling, ticketing and check-in facilities, sales areas, management offices, staff welfare facilities and storage areas the location of which is shown on sheet 4 and the plans and elevations of which are shown on sheet 6.

Work No. 4 – A roundabout forming a junction with the A868 to provide an entrance and exit for vehicular traffic, the location of which is shown on sheet 4.

(2) CMAL may, for the purposes of the works authorised by paragraph (1), demolish and remove the whole or part of any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the bed of the harbour and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the harbour.

(3) Without affecting the general power conferred under paragraph (2), CMAL may in connection with the construction of the works on any land owned by it, demolish and remove so much of—

- (a) the existing Ferry Terminal Building, the location of which is indicated on sheet 4, and
- (b) the existing pier, the location of which is indicated on sheet 4,

as may be required.

Power to deviate

4. In carrying out the works authorised by article 3 (power to construct works) CMAL may deviate laterally from the lines or situations of those works as shown on sheet 4 to any extent not exceeding—

- (a) in respect of Work No. 1, the limits of deviation so shown by a dashed line coloured red,

- (b) in respect of Work No. 2, the limits of deviation so shown by a dashed line coloured partly brown and partly green,
- (c) in respect of Work No. 3, the limits of deviation so shown by a dashed line coloured blue,
- (d) in respect of Work No. 4, the limits of deviation so shown by a dashed line coloured partly green and partly brown, and
- (e) may deviate vertically from the levels of the works as shown on the deposited sections or elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Subsidiary works

5.—(1) CMAL may from time to time within the limits of deviation provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the works or the operation of the harbour, and for this purpose CMAL may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, dolphins, mooring posts, pontoons, catwalks, equipment, signage, machinery and appliances and such other works and conveniences (including levelling of surfaces) as may be necessary or expedient.

(2) Without affecting paragraph (1) CMAL may within the limits of deviation carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and loading of passengers, and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations, electrical lines and telecommunications apparatus.

Power to dredge

6.—(1) Without affecting any other powers which may be exercisable by CMAL within the harbour CMAL 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 the bed, shores and channels of the sea as lie within the limits of the harbour and may use, appropriate or dispose of the materials (other than wreck within the meaning of Section 255 (interpretation) of the 1995 Act), 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

7. Any person who—

- (a) intentionally obstructs any person acting under the authority of CMAL in setting out the lines of or in constructing the works, or
- (b) without reasonable excuse 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 and shall in addition be liable to repay to CMAL as a debt any expenses incurred by it in making good any damage resulting from such obstruction, moving or removal.

Works to be deemed part of the harbour

8. The works shall be deemed for all purposes to be part of the harbour and the East Loch Tarbert Harbour Orders 1873 to 2019 together with all byelaws, directions, rules and regulations of CMAL for the time being in force relating to the harbour shall apply to the works and may be enforced by CMAL accordingly.

Survey of tidal works

9. 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 work and any expense incurred by them in such a survey and examination shall be recoverable from CMAL.

Provision against danger to navigation

10.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof, CMAL shall as soon as practicable 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 CMAL fails to comply in any respect with the provisions of this article, CMAL 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

11.—(1) Where a tidal work is abandoned or allowed to fall into decay the Scottish Ministers may by notice in writing require CMAL at its own expense either to repair and restore the work or any part of it, 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 allowed 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 of it, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon CMAL it has 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 CMAL.

Lights on tidal works during construction

12.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work CMAL 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 CMAL fails to comply in any respect with a direction given under this article it 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

13.—(1) After completion of a tidal work CMAL 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 CMAL 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

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

(2) Nothing in paragraph (1) shall apply to any works carried out under article 5 (subsidiary works) or any works under article 17(2) (general power in respect of harbour) to reconstruct, extend, enlarge, replace or relay works authorised by article 3 (power to construct works).

Works to be within area of Comhairle nan Eilean Siar

15. The works shall, to the extent that they lie outwith the area of the Comhairle nan Eilean Siar, be annexed to and incorporated within that area.

PART 3

DUTIES AND POWERS OF CMAL

Limits of harbour

16.—(1) The limits of the harbour within which CMAL is to exercise jurisdiction as the harbour authority and within which the powers of the Harbour Master are exercisable are—

- (a) the seaward limits, being the area of East Loch Tarbert shown on the harbour limits plans—
 - (i) bounded by a red line following the level of mean high water or, where applicable, the seaward boundary of the harbour land referred to in paragraph (b), and
 - (ii) enclosed by a straight red line commencing at a point 1 at 57° 53.68'N, 06° 46.15'W and extending from there in a south-westerly direction to a point 2 at 57° 53.14'N, 06° 47.02'W, and
- (b) the harbour land being the land (together with existing or future works) now vested in or administered by CMAL as part of the harbour and being the area shown hatched black on the harbour limits plans.

(2) Section 5 (Harbour limits at East Loch Tarbert) of the 1984 Order is revoked.

(3) The harbour land referred to in paragraph (1)(b) shall be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997(a).

(4) The limits within which the provisions of the 1873 Order and, so far as relating to East Loch Tarbert, the 1984 Order are to apply shall comprise the limits of the harbour defined in paragraph (1); and accordingly any reference to the harbour limits contained in the 1873 Order or the 1984 Order (as so relating) or in any byelaws, order or regulations made under them shall be construed as a reference to those limits.

(5) In paragraph (1), any reference to co-ordinates is a reference to World Geodetic System 1984 datum.

(a) 1997 c.8; “operational land” is defined in section 215 to which there are amendments not relevant to this Order, which section is subject to section 216.

General power in respect of harbour

17.—(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 affecting the general power conferred under paragraph (1), CMAL may construct, reconstruct, extend, enlarge, alter, replace, relay or demolish structures and works in the harbour including works authorised by this Order.

(3) The powers conferred by this article are additional to and do not affect 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.

18.—(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) 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.

19.—(1) 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.

(2) Any such lease or grant shall be subject to any existing public rights of way affecting the subject area of such lease or grant.

(3) Any arrangements made under paragraph (1) are, and in their terms must be expressly declared to be, entirely without prejudice to the functions and statutory duties of the Company.

Power to enter into arrangements to provide supplies

20. 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, plant, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

Parking places

21. 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

22.—(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, on such terms and conditions as they think appropriate, give consent 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 consent given 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 consent given 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 giving of a consent under this article.

(6) Consent given by CMAL under this article does not affect any requirement to obtain the consent of the owner of the sea bed; nor does any consent by the owner of the sea bed affect the requirement to obtain CMAL's consent under this article.

Power to licence tugs

23.—(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.

(4) 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.

Power to regulate pleasure craft

24.—(1) A person shall not within the harbour—

(a) let for hire to the public a pleasure craft except with the written approval of CMAL 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 of the craft and the navigator, are approved in writing by CMAL.

(2) Any such approval may be given 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 public safety.

(3) The existence of the power to suspend or revoke the approval shall be stated plainly in the approval itself.

(4) A person taking on hire a pleasure craft for purposes other than for profit does not require to be approved as a boatman.

(5) Approval 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(a), a certificate of safety valid for the voyage intended.

(6) A person shall not carry or permit to be carried in any pleasure craft within the harbour a greater number of passengers for hire than are specified in the approval applying to such craft, and every owner of any such craft shall before permitting the same to be used for carrying passengers for hire within the harbour, permanently display in letters and figures not less than three centimetres in height and one half centimetre in breadth, on a conspicuous part of the craft, their own name and also the number of persons which it is approved to carry, in the form “Approved to carry [] persons”.

(7) Any person who acts in contravention of paragraph (1) or (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Any person aggrieved by the withholding, suspension or revocation of any approval or by any term or condition subject to which an approval has been given under this article may appeal to the sheriff.

(9) 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.

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),

(a) 1968 c.59.

- (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(a) 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(b) 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.

(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.

(a) S.I. 2002/2742.

(b) 1978 c.3.

PART 5 CHARGES

Charges

40.—(1) CMAL may make such reasonable charges for services and facilities provided by it or on its behalf in relation to the harbour as CMAL may from time to time determine.

(2) CMAL may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined in section 57 of the 1964 Act, entering, using or leaving the harbour such reasonable charges as CMAL thinks fit, and sections 30 and 31 of the 1964 Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(3) In this article “charges” means any charges other than ship, passenger and goods dues as defined in Section 57 of the 1964 Act.

Liability for charges

41.—(1) Charges payable to CMAL on or in respect of—

- (a) a vessel shall be payable by the owner, charterer or master of the vessel,
- (b) goods shall be payable by the owner, consignee or shipper of the goods.

(2) Where a charge payable to CMAL may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

Exemptions, rebates, etc. in respect of charges

42.—(1) CMAL may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the 1964 Act shall require CMAL to include in the list of ship, passenger and goods dues kept at the harbour office as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in that list.

(3) This Order shall not subject any person to liability for charges or dues in respect of a recreational craft merely for entering or passing through the harbour; and for this purpose “a recreational craft” is a vessel which has a hull of not more than 24 metres in length and is intended only for sport and leisure use.

Security for Charges

43. CMAL may require a person who incurs or is about to incur a charge to deposit with, or to guarantee, such sum of money as is, in the opinion of CMAL, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required by CMAL, CMAL may detain the vessel in the harbour or goods on or in the harbour, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

Liens for charges

44.—(1) A person, who by agreement with CMAL collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person’s possession shall have a lien on those goods for the amount paid or security given in respect of those goods.

(2) A wharfinger or carrier who is not itself liable for the payment of charges may pay or by agreement with CMAL give security for charges on goods in its custody, and in that event it shall

have a like lien on the goods for the amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place, etc.

45. An officer of CMAL may prevent a vessel from using a landing place or any other facilities provided by CMAL if the master of the vessel refuses to pay the charges for such use.

Conditions as to payment of charges

46.—(1) Charges shall be payable subject to such terms and conditions as CMAL may from time to time specify in its published list of charges.

(2) Without prejudice to the generality of paragraph (1) the terms and conditions may prescribe the time when the charge falls due for payment and may require such information to be given to CMAL by the owner or master of a vessel or a person using a service or facility of CMAL as CMAL may require in connection with the assessment or collection of a charge.

PART 6

MISCELLANEOUS

Defence of due diligence

47.—(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 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—

- (a) article 10 (provision against danger to navigation),
- (b) article 12 (lights on tidal works during construction), and
- (c) article 13 (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, 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

48. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

Crown rights

49.—(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 CMAL or any licensee to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners,
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land or (as the case may be) the relevant person, 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.

(3) In this article, “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^(a)).

MARTIN RITCHIE

A member of the staff of the Scottish Ministers

St Andrew’s House,
Edinburgh
20th September 2019

^(a) 1998 c.46.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers Caledonian Maritime Assets Limited (“CMAL”) to construct and maintain works and other harbour facilities at CMAL’s harbour at East Loch Tarbert, Isle of Harris, Western Isles. The works comprise the reclamation of land, a new roundabout junction with the A868, a pier and the construction of a new ferry terminal building.

The Order also authorises the construction of subsidiary works and confers a power to dredge for the purposes of constructing and maintaining the works.

The Order provides for new harbour limits and confers updated powers on CMAL including powers as regards the making of byelaws and issuing of general and special directions.

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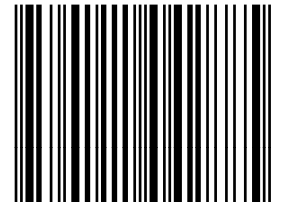
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