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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 358**

**The Clydeport (COP 26 etc.) Harbour Revision Order 2021**

**PART 3**

**HARBOUR REGULATION**

**Power to make general directions as to use of the port, etc.**

5.—(1) Subject to paragraph (4), the Company may, after consultation with the UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland and such other persons or organisations as it considers appropriate for the purposes of the application of this provision, give general directions in order to promote or secure conditions conducive to the ease, convenience or safety of navigation, the safety of persons, or for the conservation of fauna, avifauna and flora in the port (and during the COP 26 period, the temporary additional area) and, without limitation to the scope of the foregoing, for any of the following purposes—

- (a) designating areas, routes or fairways in the port and the approaches to the port which vessels are to use, or refrain from using, for movement, mooring or anchorage,
  - (b) securing that vessels move within the port only at certain times or during certain periods,
  - (c) securing that vessels make use of descriptions of aids to navigation specified in the direction,
  - (d) prohibiting entry into or navigation within any of the main fairways within the port or the approaches leading to it during any temporary obstruction of the fairways,
  - (e) regulating the admission to, and the movement within, and the departure of vessels from, the port, or the removal of vessels, and for the good order and government of vessels whilst within the port,
  - (f) prohibiting entry into or movement in the port by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no such direction shall prevent the entry into the port or the approaches of any vessel seeking refuge from stress of weather,
  - (g) regulating the navigation, berthing, mooring and speed of vessels within the port,
  - (h) regulating the use of ferries within the port,
  - (i) regulating the use within the port of yachts, sailing boats, sailboards, rowing boats, rowing punts, jet bikes, personal watercraft, pleasure craft and other small craft,
  - (j) regulating the launching of vessels within the port,
  - (k) regulating the use of tugs within the port,
  - (l) 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) A direction under this article may apply—
- (a) to all vessels or to a class of vessels,
  - (b) to persons designated in the direction,

- (c) to the whole of the port or to a part, or
- (d) at all times or at certain times or at certain states of the tide,

and every direction must specify the extent of its application in relation to the matters referred to in sub- paragraphs (a), (b), (c), and (d).

(3) The Company may, after consultation with the UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland and such other persons as the Company considers appropriate for the purposes of the application of this provision, revoke or amend any general direction.

(4) The consultation requirements in paragraphs (1) and (3) do not apply where in the interests of navigational safety, or safety of persons, the Company proposes to give, amend or revoke a general direction—

- (a) in an emergency, or
- (b) relating to an intended, potential or actual activity or operation within the port or the temporary additional area which is expected to commence or occur within the COP 26 period,

and the Company considers that the giving, amending or revocation of that general direction is required, taking into account other activities or operations in the port and, during the COP 26 period, the temporary additional area, which may be affected.

(5) Any general direction made or amended without consultation will be in force only for the period of the emergency, or the COP 26 period.

(6) During the COP 26 period reference to the ‘port’ in sub-paragraphs (1)(a) to 1(l) and 2(c) is extended to include the temporary additional area.

### **Publication of general directions**

6.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Company as soon as practicable, once in one or more newspapers circulating in the locality in which the port is situated.

(2) The Company shall also make the notice available for inspection on a website maintained by the Company 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 website 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 the Company considers appropriate.

### **Special directions**

7.—(1) The harbour master may give a special direction in respect of a vessel anywhere in the port or, during the COP 26 period, the temporary additional area, for any of the following purposes—

- (a) requiring a person to comply with a requirement made in or under a general direction,
- (b) regulating or requiring the movement, anchorage, berthing, mooring or unmooring of the vessel,
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores, and the dispatch of its business at the port premises,
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment,

- (e) prohibiting or restricting the use of fires or lights,
  - (f) regulating the use of ballast,
  - (g) requiring the removal of the vessel from any part of the port or the temporary additional area if the vessel—
    - (i) is on fire,
    - (ii) is in such condition as to be liable to become immobilised or waterlogged, to sink or to constitute a danger to life or property,
    - (iii) is making an unlawful use of the port or interfering with the reasonable use or enjoyment of the port by other vessels or persons or the dispatch of business in the port, or
    - (iv) needs to be removed to enable maintenance or repair work to be carried out to the port premises,
  - (h) requiring the vessel be removed to a place outside the port or the temporary additional area if such removal is considered by the harbour master to be necessary in order to avoid danger or potential danger to life (including wildlife) or to property.
- (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.

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

**8.—(1)** A person who fails to comply with a general direction or 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) In any proceedings for an offence under paragraph (1) it is a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) In addition to the defence in paragraph (2), in any proceedings for an offence under paragraph (1) related to failure to comply with a special direction given under article 7(1)(h), it is a defence for the person charged to prove that they had reasonable excuse for failing to comply with that special direction.

#### **Enforcement of directions**

**9.—(1)** If a special direction is not complied with within a reasonable time, the harbour master may 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) This does not restrict the use of any other remedy available to the Company.

(3) If there is no one on board a 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 cannot be found.

(4) Expenses incurred by the Company in the exercise of the powers conferred by paragraph (1) are recoverable by the Company as if they were a charge of the Company in respect of the vessel.

#### **Master's responsibility in relation to directions**

**10.** The giving of a general or special direction does 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 the vessel, to persons on board the vessel, to the cargo or any other person or property.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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**Saving for existing directions, byelaws etc.**

11. Any harbour direction, special direction, byelaw, regulation, licence, lease, consent or other agreement made, issued, entered into or granted by the Company in relation to the port undertaking and in force immediately on or before the date on which this Order comes into force, shall, notwithstanding the amendments set out in articles 3 and 12 of this Order, continue to have effect.