

**Draft – November 2022**

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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. [ ]**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Argyll and Bute Council (Oban) Harbour Revision Order 2022

*Made* 2022

*Coming into force* 2022

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964<sup>(1)</sup> and all other powers enabling Ministers 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 Council in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act<sup>2</sup>.

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

- (a) this Order is made following a written application to Ministers by Argyll and Bute Council (“the Council”) being the Council engaged in improving, maintaining or managing the harbour; and
- (b) except in so far this Order is made for achieving objects mentioned in section 14(2A) of the Act, 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.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

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<sup>(1)</sup> 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).

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

[Notice has been published by the Council in accordance with the requirements of paragraph 10 of Schedule 3 of that Act<sup>3</sup>. No objections to the application have been made.]

[In accordance with paragraph 19(2) of that Schedule<sup>4</sup>, Ministers have decided to make this Order in the form of the draft submitted to them.]

## PART I PRELIMINARY

### **Citation and commencement**

1. This Order may be cited as the Argyll & Bute Council (Oban) Harbour Revision Order 202[x] and comes into force on the day after the day on which it was made.

### **Interpretation**

2. In this Order—

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847<sup>5</sup>;

"CMAL" means Caledonian Maritime Assets Limited, a company incorporated in Scotland with registered number SC001854 and having its registered office at Municipal Buildings, Fore Street, Port Glasgow, Renfrewshire, PA14 5EQ;

"the Council" means Argyll and Bute Council;

"ferry operator" means the operator (if any), from time to time, of the Clyde and Hebrides Ferry Services on behalf of the Scottish Ministers;

"general direction" means a direction given by the Council under article 19;

"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;

"harbour" means the harbour at Oban comprised within the harbour limits;

"harbour limits" means the limits of the harbour as described in article 4 and Schedule 1 to this Order and shown on the first harbour map;

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<sup>(3)</sup> 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).

<sup>(4)</sup> Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

<sup>5</sup> 1847 c.27.

"first harbour map" means the map referred to in article 4(1), and forming Schedule 3 to this Order;

"second harbour map" means the map referred to in article 4, and forming Schedule 4 to this Order;

"harbour master" has the definition provided for under section 2 of the 1847 Act;

"harbour premises" means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises from time to time vested in or occupied or administered by the Council as part of the harbour undertaking, including the existing works which are all situated within the harbour limits;

"harbour undertaking" means the harbour undertaking of the Council at Oban;

"land" includes land covered by water, any interest in land and any servitude or right in, to or over land;

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

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

"railway pier" means the harbour at Oban within the limits defined in Schedule 2 to this order and shown on the second harbour map

"relevant ferry services" means any services associated with the delivery of the Clyde Hebrides Ferry Services on behalf of the Scottish Ministers;

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

"special direction" means a direction given by the harbour master under article 21;

"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.

### **Incorporation of the Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) Sections 1 to 4, 34, 35, 37 to 39, 42, 51, 54, 55, 63 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) In construing the provisions of the 1847 Act as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expression “the undertakers” means the Council and the expression “the harbour, dock, or pier” shall mean the harbour; and

(b) for the definition of the word “vessel” in section 3 (*interpretations in this and the special Act*) there shall be substituted the definition of that word in article 2;

(c) section 63 shall be read and have effect as if for the words from “be liable to” to the end of the section there were substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”

(d) section 65 (harbour master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

## PART II - POWERS

### **Harbour jurisdiction**

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 within the area described in schedule 1 of this Order, and shown on the first harbour map together with the harbour premises as shown on the first harbour map.

(2) In the event of any discrepancy between the boundaries of the harbour as described in schedule 1 of this Order and the boundaries shown on the first harbour map, the description shall prevail.

(3) For the avoidance of doubt the Council shall not exercise jurisdiction as a harbour authority within the area described in schedule 2 of this Order, and shown on the second harbour map.

### **General powers and duties in respect of the harbour**

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

(2) For these purposes and without prejudice to the generality of paragraph (1) the Council may construct, alter, demolish and reconstruct structures and works in the harbour, subject to having all necessary consents and the rights over any land required.

(3) This article is without prejudice to any powers of the Council under or by virtue of any other enactment (including any other provisions within this Order).

### **Powers with respect to land, buildings, harbour facilities etc.**

6.—(1) The Council may for such price and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to it which is no longer required by the Council for the purposes of the harbour.

(2) The Council may for the purposes of the harbour undertaking manage, use or develop land belonging to it (whether under its ownership or lease) ,as it thinks fit.

### **Power to dredge**

7.—(1) The Council may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the harbour and the seaward approaches thereto.

(2) The Council may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>6</sup>) from time to time dredged or removed by it from the harbour.

(3) No dredged materials shall be 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 mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

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

8.—(1) No person other than the Council shall in the harbour—

(a) construct, place, alter, renew or maintain any works; or

(b) dredge,

unless that person has contracted with or been licensed by the Council to do so.

(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) The Council 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 the Council may carry out the works so required and may recover from that person as a debt any expenses incurred by it in doing so.

(4) This article shall not apply to dredging carried out by CMAL, its contractors or agents in the approaches to the railway pier, but before carrying out any dredging in the approaches to the railway pier, CMAL shall consult with the Council.

### **Parking places**

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<sup>6</sup> 1995 c. 21

9. The Council may provide facilities within the harbour premises for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences for the use of the public, may delineate parking areas, operate access control systems and may make reasonable charges for the use of such facilities.

**Declaration of draught, etc. of vessel**

10.—(1) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse fails to give the information or gives incorrect information shall, without prejudice to any right of the Council 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.

(2) 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.

**Provisions as to damage**

11.—(1) This article applies to any damage caused to any work or property of the Council in the harbour—

(a) by any person who contravenes any provision of this Order or any other enactment relating to the harbour; or

(b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Council may detain any vessel which caused the damage, and any other property belonging to or in charge of the person who caused the damage, or belonging to that person’s employers, until the cost of the damage has been paid or until reasonable security has been given to the Council.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article does not affect—

(a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act, or failure to act, gave rise to the damage;

(b) any right of the Council under any other enactment, agreement or rule of law; or

(c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the harbour by the Council.

**Obstruction of harbour master, etc.**

**12.** Any person who intentionally obstructs the harbour master or any other person carrying out duties under this Order or 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**

**13.** The harbour master 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 the Council or of any byelaw of the Council relating to its functions as the harbour authority in respect of the harbour undertaking, 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 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 written notice shall have annexed to it a copy of this article.

### **Vessels adrift**

**14.—(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 the part of that person.

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

**15.—(1)** Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Council may from time to time set apart and appropriate any part of the harbour or any land, works, buildings, machinery, equipment or other property within the harbour owned or managed by the Council for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Council may think 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, land, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbour master, and—

(a) the harbour master may order any person or vessel making use thereof without such consent to leave or be removed from the site of the contravention; and

(b) the provisions of section 58 of the 1847 Act shall extend and apply with appropriate modifications in relation to any such vessel.

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

- (a) the public right of navigation in the harbour;
- (b) any public rights of way affecting the harbour; and
- (c) access to relevant ferry services,

such that the Council 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 enter into arrangements to provide supplies**

16. The Council may make arrangements for the purpose of providing and supplying fuel, ice 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.

### **Moorings**

17.—(1) The Council 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) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided by the Council under paragraph (1), or moored to land owned or leased by the Council, such reasonable charges as the Council may from time to time prescribe.

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

(4) The Council 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.

(5) 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.

(6) Any licence granted under paragraph (4) shall be valid only for a period of one year, or such longer period as seems to the Council to be desirable in the circumstances, commencing with the date on which it takes effect.



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

### **General directions**

**18.—**(1) The Council may after consultation with the Royal Yachting Association, the UK Chamber of Shipping, CMAL, the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency and such other persons as the Council considers are representative of users to the harbour, give directions for any of the following purposes:—

- (a) designating areas, routes or fairways in the harbour which vessels are to use, or refrain from using for movement, mooring or anchorage;
- (b) securing that vessels move 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 during any temporary obstruction thereof;
- (e) requiring the master of a vessel entering, leaving or intending to enter or leave the harbour to state the length overall and draught maximum of their vessel;
- (f) prohibiting entry into or movement in the harbour 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 harbour or the approaches of any vessel seeking refuge from stress of weather;
- (g) regulating the navigation, berthing, mooring and speed of vessels within the harbour;
- (h) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (i) prohibiting or restricting use of fires or lights;
- (j) 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;
- (k) regulating the use of ferries within the harbour;
- (l) regulating the use within the harbour of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft, personal watercraft, tugs and other small craft;
- (m) regulating the launching of vessels within the harbour; and
- (n) 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;

(2) A general direction under this article may apply—

(a) to all vessels or to a class of vessels designated, or for which the designation is provided for, in the direction;

(b) to the whole of the harbour or to a part designated, or for which the designation is provided for, in the direction; or

(c) at all times or at times designated, or for which the designation is provided for, in the direction,

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

(3) The Council may after consultation with the Royal Yachting Association, the UK Chamber of Shipping, CMAL, the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency and such other persons as the Council considers are representative of users of the harbour revoke or amend any general direction.

#### **Publication of general directions**

**19.**—(1) Except in an emergency, the Council shall publish notice of the giving of a general direction and of any amendment or revocation of a general direction as soon as practicable once in a newspaper circulating in the locality of the harbour, and on a website maintained by the Council, and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies of the general direction or the amended general direction (as the case may be) may be inspected and bought, and the price of the general direction or amended general direction (as the case may be).

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Council to be appropriate.

#### **Special directions to vessels**

**20.**—(1) The harbour master may give a special direction under this article—

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

(b) regulating the time at which, the manner in which and speed at which a vessel shall enter into, go out of, move within or lie in or at the harbour;

(c) for securing that a vessel move only at certain times or during certain periods;

- (d) prohibiting the mooring of a vessel in any particular part or parts of the harbour;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel;
- (f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship or ship to ship) passengers, cargo, fuel, water, ship's stores or ballast in the harbour; and
- (g) requiring the removal from any part of the harbour of a vessel if—
  - (i) it is on fire;
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life (including wildlife) or property;
  - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other vessels or persons;
  - (iv) its removal is necessary to enable maintenance or repair work to be carried out at harbour premises or to premises adjacent thereto.

(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 special directions**

**21.** 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**

**22.—(1)** Without prejudice to any other remedy available to the Council, 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 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 enquiry has been made, the master of the vessel cannot be found.

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

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

**23.** 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.

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

**24.—**(1) The Council may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the harbour other than—

(a) a vessel or vehicle; or

(b) a wreck within the meaning of Schedule 11ZA of the Merchant Shipping Act 1995.

(2) If anything removed by the Council under paragraph (1) is known to the Council to be, or is so marked as to be readily identifiable as, the property of any person, the Council shall within one month of its coming into its custody give notice, in accordance with paragraph (6), 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 become the property of the Council.

(3) If the ownership of anything removed by the Council under paragraph (1) is not so known or marked and the ownership cannot within 3 months of its coming into the custody of the Council be proved to the Council's reasonable satisfaction, it shall become the property of the Council.

(4) The Council 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 the Council under this article, and if it is sold the proceeds of sale shall be applied by the Council 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 the Council proves to its reasonable satisfaction that such person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall become the property of the Council.

(5) If anything removed under this article—

(a) is sold by the Council 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,

the Council 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 the Council or who was the owner at the time of its abandonment or loss.

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

(7) The Council 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.

### **Power to remove goods**

**25.—**(1) If any goods are left on or in any part of the harbour premises the Council may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement the Council may cause them to be removed to the Council 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 the Council, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Council by the owner in respect of the goods under Part III (Charges) of this Order.

(3) In this article, "goods" includes equipment of any description.

### **Powers to make byelaws, etc.**

**26.—**(1) The Council 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 docks, berths, wharves, quays, piers, jetties, landing places, equipment, works and conveniences (including moorings);
- (b) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;
- (c) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the harbour;
- (d) regulating the conduct of all persons in the harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
- (e) preventing and removing obstructions or impediments within the harbour;

- (f) regulating the holding of regattas and other public events in the harbour;
- (g) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits;
- (h) prohibiting persons in or entering the harbour, or any part thereof, from smoking therein;
- (i) regulating the movement and parking of vehicles within the harbour;
- (j) regulating the exercise of the powers vested in the harbour master, as provided for in the 1847 Act, this Order and any other relevant enactment;
- (k) regulating the hours during which any gates, entrances or outlets to or from the harbour or any part of the harbour shall be open;
- (l) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the harbour;
- (m) regulating the use of cranes, weighing machines, weights and measures belonging to the Council, and the duties and conduct of weighers and meters employed by the Council;
- (n) regulating the holding of regattas and other public events in the harbour;
- (o) regulating or preventing the use of fires and lights within the harbour;
- (p) the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features; and
- (q) the conservation, preservation or redevelopment of any buildings, plant or other artificial features of the harbour of historic or architectural significance.

(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 thereunder on summary conviction, fines not exceeding level 3 on the standard scale;
- (b) relate to the whole of the harbour or harbour premises, or to any part thereof; or
- (c) make different provisions for different parts of the harbour or harbour premises, or in relation to different classes of vessels.

(4) Existing byelaws in respect of the harbour will remain in place as if they had been made under this order.

**Confirmation of byelaws**

**27.—**(1) Byelaws made by the Council 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 the Council 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; and

(b) once in each of two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) 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 the Council at the principal office of the Council and at the harbour office and will be available for inspection without payment.

(4) The Council shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it.

(5) During the period of one month after the date of first 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.

(6) Subject to paragraph (7), 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.

(7) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaw they shall inform the Council 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 make decision under paragraph (6) until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

(8) In making a decision under paragraph (6) the Scottish Ministers shall have regard to any comments that may have been received under paragraph (7).

(9) A copy of the byelaws when confirmed shall be printed and deposited by the Council at the principal office of the Council 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 request.

### PART III CHARGES

#### **Charges other than ship, passenger and goods dues**

**28.**—(1) The Council 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 by section 57 of the Harbours Act 1964, entering, using or leaving the harbour such reasonable charges as it thinks fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

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

(3) In paragraph (2) “charges” does not include ship, passenger and goods dues as defined by section 57 of the Harbours Act 1964.

### **Liability for charges**

**29.**—(1) Charges payable to the Council on or in respect of—

(a) a vessel, shall be payable by the owner 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 the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

### **Power to grant exemptions, rebates, etc., in respect of charges**

**30.**—(1) The Council 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 Harbours Act 1964 shall require the Council 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 the said list.

### **Account of goods**

**31.**—(1) When goods are to be unshipped within the harbour the master of the vessel containing them shall—

(a) within 24 hours of the arrival of the vessel within the harbour, deliver to the harbour master the name of the consignee of the goods and a copy of the bill of lading or manifest or, if part only of the cargo is to be unshipped, a sufficient account in writing of the goods to be unshipped;

(b) if required so to do by the harbour master, give to the harbour master 12 hours' notice of the time at which any such goods are to be unshipped.



(2) If any difference arises between the harbour master and a master or the owner of goods or consignee concerning the weight or quantities of goods in respect of which charges may be payable, the harbour master may cause the goods to be weighed or measured and may detain a vessel containing such goods until the goods have been so weighed or measured.

(3) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2), or with any requirement made under paragraph (1)(b), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Security for charges**

**32.** The Council may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, 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 the Council may detain the vessel in the harbour or goods on or in harbour premises, 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**

**33.—**(1) A person who by agreement with the Council 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 the amount.

(2) A wharfinger or carrier who is not liable for the payment of charges may pay or by agreement with the Council 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.**

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

### **Exemptions from charges**

**35.—**(1) Except in so far as may be agreed between the Council and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to levy charges shall extend to authorise it to levy charges on—

(a) a vessel—

(i) belonging to or in the service of His Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or

(iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(c) troops landed at the harbour premises or a person employed by the Secretary of State for Defence while in the execution of his duty;

(d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department for Transport and of the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the harbour without mooring or making use of any facilities provided by the Council.

#### **Conditions as to payment of charges**

**36.**—(1) Charges shall be payable subject to such terms and conditions as the Council 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 a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

#### **PART IV MISCELLANEOUS**

##### **Reserve funds**

**37.**—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the harbour undertaking exceed the moneys expended or applied by it in respect thereof, the Council may in respect of that year carry to the credit of a reserve fund in respect of the harbour undertaking such a sum as it considers reasonable not exceeding the amount of such excess.

(2) Moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which officers are for the time being authorised to invest moneys including debenture stock or other security created by the Council.

(3) Any reserve fund provided under this article may be applied—

(a) in making good to the regional rate fund any deficiency at any time arising in the income of the Council from the harbour undertaking;

(b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the harbour undertaking;

(c) in defraying any expenditure in connection with the harbour undertaking for which capital is properly applicable or in providing money for repayment of loans;

(d) in defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing buildings, works, plant, vessels, equipment or articles forming part of the harbour undertaking; or

(e) for any purpose which in the opinion of the Council is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea to or from the harbour.

(4) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the harbour undertaking and any other similar undertaking of the Council, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.

(5) Any monies held in any combined reserve fund referred to in paragraph 4 may be applied for the purposes of any of the Council's harbour undertakings.

### **Saving for Commissioners of Northern Lighthouses**

**38.**—(1) Nothing in this Order shall prejudice or derogate from any of the rights, duties, or privileges of the Commissioners of Northern Lighthouses. (2) Where any exercise by the Council of its powers under article 5 (power to maintain etc. the harbour), article 7 (power to dredge), article 18 (general directions) or article 26 (power to make byelaws) is likely to affect materially on the regular operations of the Commissioners of Northern Lighthouses, the Council shall, prior to exercising such powers, consult with the Commissioners of Northern Lighthouses and shall have due regard to any representations made by the Commissioners of Northern Lighthouses.

(3) For the avoidance of doubt, this Order does not affect the exercise or existence of any power, duty or right held by the Commissioners of Northern Lighthouses to maintain aids to navigation within the harbour.

### **Saving for CMAL and ferry operator**

**39.**—(1) Nothing in this order shall prejudice or derogate from any of the rights, duties, or privileges of CMAL.

(2) Where any exercise by the Council of its powers under article 4 (power to maintain etc. the harbour), article 7 (power to dredge), article 18 (general directions) or article 26 (power to make byelaws) is likely to impact materially on the regular operations of CMAL or the ferry operator within the harbour limits in connection with the operation of the relevant ferry services, within the harbour limits, the Council shall, prior to exercising such powers, consult with CMAL and the ferry operator and shall have due regard to any representations made by CMAL and/or the ferry operator.

### **Crown rights**

**40.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Council 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 His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of Crown Estate Scotland;

(b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having 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 His 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.

### **Repeal**

**41.** The enactment mentioned in the first and second columns of schedule 5 is repealed to the extent specified in the third column of that schedule.

SCHEDULE 1 – HARBOUR LIMITS

SCHEDULE 2 – RAILWAY PIER LIMITS

SCHEDULE 3 – FIRST HARBOUR MAP

SCHEDULE 4 – SECOND HARBOUR MAP



## SCHEDULE 5 – REPEALS and REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent and time of repeal or revocation</i>
[ ]	Pier and Harbour Orders Confirmation Act 1862	Articles [ ]
[ ]	Pier and Harbour Orders Confirmation Act 1864	
[ ]	Piers and Harbour Orders Confirmation (No.5) Act, 1896	Articles [ ] Articles 2, 4 – 28, 30 – 59 and First and Second Schedules in so far as applicable to the harbour.

## EXPLANATORY NOTE

This Order updates the existing legislation for Oban harbour in line with the current needs of Argyll and Bute Council as the harbour authority for Oban harbour and Oban harbour users from the date it comes into force. This Order also repeals those parts of the Pier and Harbour Orders Confirmation Act 1862, the Pier and Harbour Orders Confirmation Act 1864, and the Piers and Harbour Orders Confirmation (No.5) Act, 1896 which are no longer relevant.