

PURPOSE AND EFFECT NOTES – OBAN HARBOUR REVISION ORDER 2022

PART I – PRELIMINARY

1 Article 1 – Citation and commencement

Article 1 provides that the Order may be cited as the Oban Harbour Revision Order 2022 and comes into force on the day after the day on which it was made.

2 Article 2 – Interpretation

Article 2 provides interpretation of defined terms within the Order.

3 Article 3 – Incorporation of the Harbours, Docks and Piers Clauses Act 1847

Article 3 incorporates selected clauses of the Harbours, Docks and Piers Clauses Act 1847 ("the 1847 Act").

PART II – POWERS

4 Article 4 – Harbour jurisdiction

4.1 Article 4(1) provides for the Council to exercise jurisdiction as harbour authority within the harbour's bounds as described within Schedule 1 of the Order.

4.2 Article 4(2) provides that the description of the boundaries of the harbour as contained within Schedule 1 shall prevail over those shown on the first harbour maps in the event of any discrepancy.

4.3 Article 4(3) provides that the Council shall not exercise jurisdiction as a harbour authority within the area described within Schedule 2 of the Order.

5 Article 5 – General powers and duties in respect of the harbour

5.1 Article 5(2) provides for the Council to exercise certain general powers within the harbour, and to provide harbour facilities.

5.2 Article 5(2) provides that the Council may carry out works (including the construction, alteration, demolition and reconstruction of structures) within the harbour bounds, subject to possession of all required consents and heritable rights.

5.3 Article 5(3) provides that the provisions of Article 5 are without prejudice to any other statutory powers of the Council.

6 Article 6 – Powers with respect to land, buildings, harbour facilities etc.

- 6.1 Article 6(1) provides that the Council may dispose of property belonging to it which is no longer required for the purposes of the harbour, for such price and upon such terms and conditions as it sees fit.
- 6.2 Article 6(2) provides that the Council may utilise land either belonging to it or leased by it for the purposes of the harbour undertaking.

7 Article 7 – Power to dredge

- 7.1 Article 7(1) provides that the Council may dredge the bed, foreshore, and seaward approaches of the harbour, and undertake related activities.
- 7.2 Article 7(2) provides for the disposal of material by the Council dredged or removed from the harbour.
- 7.3 Article 7(3) places limitation on the disposal and placement of dredged materials.

8 Article 8 – Restriction of works and dredging

- 8.1 Article 8(1) provides that no person other than the Council shall construct, place, alter, renew or maintain any works or dredge in the harbour unless contracted or licensed by the Council to do so.
- 8.2 Article 8(2) provides that any person who contravenes Article 8(1) shall be guilty of an offence.
- 8.3 Article 8(3) provides that the Council may require a person who contravenes Article 8(1) to remove, abate or rectify the work and restore the site to its former condition. Failure to do so will allow the Council to carry out the rectification themselves and recover the expenses of doing so.
- 8.4 Article 8(4) provides that Article 8(1) shall not apply to dredging carried out by CMAL or its contractors or agents. CMAL shall consult with the Council before carrying out any dredging.

9 Article 9 – Parking places

Article 9 provides that the Council may provide facilities within the harbour premises, and may make reasonable charges for the use of such facilities.

10 Article 10 – Declaration of draught, etc. of vessel

- 10.1 Article 10(1) provides that the master of a vessel who fails to provide such information as required, or provides incorrect information, without reasonable excuse, is guilty of an offence.
- 10.2 Article 10(2) provides for interpretation of the term "draught".

11 Article 11 – Provisions as to damage

- 11.1 Article 11(1) provides that Article 11 applies to damage caused to any work or property of the Council in the harbour by persons contravening a provision of the Order or any other harbour enactment, or by a vessel.
- 11.2 Article 11(2) provides that the Council may detain a vessel causing damage or any property belonging to a person who causes damage, or that person's employers, until the cost of the damage has been paid, or security provided to by the Authority.
- 11.3 Article 11(3) provides that the owner of any vessel and the master (where the damage was caused through his fault) shall bear liability for the cost of the damage.
- 11.4 Article 11(4) states that Article 11 does not affect certain rights of owners or masters of vessels, the Council, or criminal liability under the Order or other harbour enactment is guilty of an offence.

12 Article 12 – Obstruction of harbour master, etc.

Article 12 provides that any person who intentionally obstructing the harbour master or other person carrying out duties under the Order or other harbour enactment is guilty of an offence.

13 Article 13 – Boarding of vessels

Article 13 provides for the harbour master to enter and inspect vessels within the harbour for certain purposes, with prior written notice having been given at least 24 hours in advance.

14 Article 14 – Vessels adrift

Article 14 provides that the owner or master of a vessel adrift in the harbour is guilty of an offence. It also provides that it shall be a defence for the owner or master to prove that the vessel did not become adrift as a result of any fault of that person.

15 Article 15 – Power to appropriate parts of the harbour, etc.

- 15.1 Article 15(1) provides that the Council may appropriate any part of the harbour or property within the harbour that is owned or managed by the Council for certain purposes, subject to payment of reasonable charges and terms, conditions and regulations as the Council sees it.
- 15.2 Article 15(2) provides that no person or vessel may make use of the harbour or property which has been so appropriated without the consent of the harbour master, other than in accordance with the appropriation, and provides that the harbour master may order such person or vessel to leave or be removed. Section 58 of the 1847 Act applies in respect of such vessels.
- 15.3 Article 15(3) provides that the Council must have regard to the public right of navigation in the harbour, any public rights of way affecting the harbour, and access to relevant ferry services where exercising

its powers under Article 15(1). Any restriction of such rights should be no more than is necessary for the purpose of the appropriation.

16 Article 16 – Power to enter into arrangements to provide supplies

Article 16 provides that the Council may enter into arrangements for the provision of supplies to vessels using the harbour, and to lay down such apparatus as may be required for that purpose.

17 Article 17 – Moorings

Article 17 provides for the Council to place such moorings or buoys as it considers necessary or desirable within the harbour. It provides that the Council may recover reasonable charges in respect of the use by a vessel of any such moorings. Provision is also made for the granting of licences for the placing, maintenance etc. of moorings subject to reasonable fees and to a time period of one year or such period as the Council considers may in the circumstances be desirable, and that any person doing so without a licence is guilty of an offence.

18 Article 18 – General directions

Article 18 provides that the Council, after consultation with the Royal Yachting Association, the UK Chamber of Shipping, CMAL, the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency, and other harbour users, gives directions for certain purposes and as applying to all or certain classes of vessels, for all or part of the harbour and at all or at specified times. Provision is also made for the revocation of any such directions after consultation with the aforementioned organisations and harbour users.

19 Article 19 – Publication of general directions

Article 19 provides for the publication of notice of general directions, and the amendment or revocation of the same, in a newspaper circulating in the locality of the harbour and on a website maintained by the Council.

20 Article 20 – Special directions to vessels

Article 20 provides that the harbour master may give special directions in respect of specific vessels for certain purposes.

21 Article 21 – Failure to comply with special directions

Article 21 provides that a master of a vessel who fails to comply with a special direction without reasonable excuse is guilty of an offence.

22 Article 22 – Enforcement of special directions

Article 22 makes provision as to enforcement of special directions by the harbour master, and for recovery of reasonable expenses by the Authority in respect of said enforcement.

23 Article 23 – Master's responsibility in relation to directions

Article 23 provides that the giving of general or special directions does not diminish or affect the responsibility of the master of the vessel in respect of the vessel, person on board, its cargo or any other person or property.

24 Article 24 – Removal of obstructions other than vessels, vehicles or wreck

Article 24 makes provision as to the removal of items causing or likely to become an obstruction to the proper use of any part of the harbour, where those items are not a vessel or vehicle, or a wreck. Provision is made as to the return of any such items to their owners as may be marked as such or known to the Council. Provision is made for any such items where ownership is not proven or known to become property of the Council. Provision is made for the disposal of items of a specified nature by the Council, and the recovery of the expense of removing the item from the owner of the item.

25 Article 25 – Power to remove goods

Article 25 makes provision for the Council to require the owner of goods left within the harbour premises to remove them, and where the goods are not so removed by the owner, to remove them. The expenses and risk of any such removal shall be borne by the owner of the goods. Provision is made for such goods to be subject to a lien for the cost of removal and any charges payable to the Council under Part III of the Order.

26 Article 26 – Power to make byelaws, etc.

Article 26 provides that the Council may make byelaws for the efficient management and regulation of the harbour, and for specified purposes. Provision is made for byelaws to impose penalties upon persons found guilty of offending against the provisions of those byelaws. Existing byelaws are to remain in place.

27 Article 27 – Confirmation of byelaws

27.1 Article 27(1) provides that byelaws must be confirmed by the Scottish Ministers before they may come into operation.

27.2 Article 27(2) – (5) makes provision for the notification of byelaws within the Edinburgh Gazette and a local newspaper, and for the notification of objections or representations to the Scottish Ministers.

- 27.3 Article 27(6) – (9) provides for the confirmation of the byelaws by the Scottish Ministers, subject to any modification as they see fit, or their refusal. Where the Scottish Ministers propose any modification, they must notify the Council and require the Council to notify any persons concerned with the modification. In doing so, the Scottish Ministers must allow time for any comments to be made in respect of the modification and shall have regard to any such comments. Once confirmed, any byelaws shall be made available by the Council for inspection without payment.

PART III – CHARGES

28 Article 28 – Charges other than ship, passenger and goods dues

Article 28 provides that the Council may make reasonable charges in respect of objects such as dracone, floating docks, cranes, rigs, drilling rigs, or floating plants, which are not ships, entering, using or leaving the harbour. The Council may make such reasonable charges for services and facilities provided by it in relation to the harbour, where such charges are not ships, passenger or goods dues as defined by section 57 of the Harbours Act 1964.

29 Article 29 – Liability for charges

Article 29 provides that charges payable to the Council are payable by the owner or master of the vessel, in respect of a vessel or the owner, consignee or shipper of goods, in respect of goods. Where a charge payable to the Council may be recovered from more than one person, such persons shall be jointly and severally liable.

30 Article 30 – Power to grant exemptions, rebates., in respect of charges

Article 30 permits the Council to grant exemptions (where total or partial) to allow rebates or make compositions in respect of any person with respect to charges. Such arrangements do not require to be required to be entered onto the list of ship, passenger and goods dues kept at the harbour office.

31 Article 31 – Account of goods

Article 31 requires the master of a vessel with goods to be unshipped or shipped within the harbour to provide an account of such goods or bill of lading or manifest. In respect of goods which are to be unshipped within the harbour the master must additionally provide the name of the consignee of the goods, along with the time such goods are to be unshipped. Provision is made for the resolution of disputes as to the weight or quantities of such goods in respect of which charges may be payable. A person who fails to comply with any part of the provisions of Article 31 is guilty of an offence.

32 Article 32 – Security for charges

Article 31 provides that the Council may require the deposit or guarantee of a sum of money as security in respect of charges which are incurred or are about to be incurred by a person. Where such deposit

or guarantee is not made, the Council may detain the vessel or goods in the harbour or harbour premises until the deposit or guarantee is made or until the charge is paid.

33 Article 33 – Liens for charges

Article 33 makes provision for a right of lien in respect of certain persons.

34 Article 34 – Refusal to pay charges for landing place, etc.

Article 34 provides that the Council may prevent a vessel from using facilities provided by the Council where the master of the vessel refuses to pay charges.

35 Article 35 – Exemptions from charges

Article 35 provides for exemptions from charges levied by the Authority in respect of certain categories of vessels, passengers or goods, or officers of the Department of Transport or Scottish Ministers in execution of their duty.

36 Article 36 – Conditions as to payment of charges

Article 36 provides that the Council may specify terms and conditions in respect of the payment of charges, including the time when the charge falls due for payment and the provision of information to the Council.

PART IV – MISCELLANEOUS

37 Article 37 – Reserve funds

Article 37 provides that the Council may carry a reasonable amount forward to the reserve fund if the revenue generated by the harbour exceeds the expense of it in any financial year.

38 Article 38 – Saving for Commissioners of Northern Lighthouses

Article 38 provides a saving in respect of the provisions of the Order for the rights, duties and privileges of the Commissioner of Northern Lighthouses, and provides that the Council must consult with the Commissioners when the Council seeks to exercise its powers under articles 5, 7, 18 or 26 in a manner that is likely to materially affect the Commissioners' regular operations.

39 Article 39 – Saving for CMAL and ferry operator

Article 39 provides a saving in respect of the provisions of the order for the rights, duties and privileges of CMAL, and provides that the Council must consult with the Commissioners when the Council seeks to exercise its powers under articles 5, 7, 18 or 26 in a manner that is likely to materially affect the Commissioners' regular operations.

40 Article 40 – Crown rights

Article 40 provides a saving in respect of the provisions of the Order for the estate, right, power, privilege, authority or exemption of the Crown. It provides that any land or rights of whatsoever description belonging to His Majesty in right of the Crown or held by a government department or held in trust for His Majesty for the purposes of a government department shall not be interfered with by the Authority without consent in writing from Crown Estate Scotland, relevant government department or relevant person.

41 Article 41 Repeal

Article 45 specifies the enactments that the enactments mentioned in Schedule 5 to the Order are repealed to the extent specified in that same schedule.

SCHEDULE 1 – HARBOUR LIMITS

Schedule 1 specifies the limits of the harbour.

SCHEDULE 2 – RAILWAY PIER LIMITS

Schedule 2 specifies the limits of the railway pier, which is not subject to the Council's jurisdiction as harbour authority under this Order.

SCHEDULE 3 – FIRST HARBOUR MAP

Schedule 3 contains a map showing the boundaries of the harbour.

SCHEDULE 4 – SECOND HARBOUR MAP

Schedule 4 contains a map showing the boundaries of the railway pier.

SCHEDULE 5 – REPEALS AND REVOCATIONS

Schedule 5 specifies the enactments subject to repeal and the extent of such repeal.