

Sir/Madam,

The Royal Yachting Association (RYA) and its home country association, the Royal Yachting Association (Scotland) (RYAS), have been made aware of the Oban Draft Harbour Order (26/8/22). It is understood that the proposals are early drafts for discussion, however, feedback will be crucial in allowing further develop of the proposals. With that in mind RYA and RYAS wish to make the following observations:

1. Article 2 / Schedule 1. It is noted that the harbour limits have yet to be defined. These will need to be looked at carefully when they emerge in due course;
2. Article 11. This clause appears to impose strict liability on a vessel owner for any damage caused by their vessel, regardless of whether that owner (or the vessel's master) was at fault. There is a provision which preserves the owner's right to claim from a third party where the damage was actually caused as a result of the actions (or omissions) of that third party but there may well be circumstances in which damage is caused by no-one's fault (e.g. extreme weather, gear failure, medical emergency). In such circumstances, it is unreasonable for the Council to have the right to recover any outlay from the vessel owner – the Council and the vessel owner should each be insured against the risk of no-fault damage being sustained by their own property.

Also, there is a provision in article 11(2) which would enable the Council to recover the cost of any damage from the vessel owner's employers, even if the incident has nothing to do with the vessel owner's employment. If this provision is to remain at all, it should apply only where the damage to the Council's property is caused while the vessel owner is acting in the course of their employment.

3. Article 13(a). The Council's power to board to enforce any enactment or byelaw relating to the Council should be limited to such enactments or byelaws that relate to the Harbour Undertaking. It would be unreasonable for the Council to have the power as harbour authority to board vessels to enforce enactments or byelaws that are entirely unrelated to the harbour.

4. Article 13. This provision follows the form of the equivalent provision in the Eyemouth HRO, which the RYA and RYAS accepted.

5. Article 18. This provision follows the form of the equivalent provision in the Eyemouth HRO, which the RYA and RYAS accepted, with one caveat. In the Eyemouth HRO 2021 the power to give general directions for the specified purposes was expressed to be in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons (see <https://www.legislation.gov.uk/ssi/2021/118/article/24/made>). It would be preferable if the wording were to mirror that in the Eyemouth HRO 2021.

6. Article 27(2)(p). It is a fundamental principle that a byelaw-making authority cannot by means of a byelaw vest in itself powers beyond those conferred on it by statute. A byelaw that purported to authorise a harbour master "to take such action as may be reasonably required" would confer on the harbour master a power that did not otherwise exist and would thus infringe this principle. Byelaws should be confined to prohibiting specified behaviour.

The words "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" should be omitted from the end of article 27(2)(p). If the Council wishes the harbour master to have the power "to take such action as may be reasonably required" and the Council is able to justify the conferring of such a power on the harbour master then such power should be set out on the face of the order. The effect is the same but it upholds the principle that the Council's powers should be set out in the order

itself, not in byelaws made under the order. The wording should mirror that in the Eyemouth HRO 2021 (see <https://www.legislation.gov.uk/ssi/2021/118/article/22/made>).

Also, article 27(2)(t) duplicates article 27(2)(k).

In addition, in article 27(3), it would be preferable if the definition of “personal watercraft” were to mirror that to be found in the Recreational Craft Regulations 2017 (<https://www.legislation.gov.uk/uksi/2017/737/regulation/2/made>).

7. Article 41. Articles 41(3) & (4) should both be omitted.

There is no reason why special directions should not apply to ferries that are navigating through the harbour. Special directions are used to manage safety on a direct and immediate basis (which may or may not amount to an “emergency”) and it may well be necessary for the harbour master to direct a ferry in order to avert or respond to a particular situation.

Equally, there is no reason why vessels accessing the Railway Pier should have a statutory exemption from harbour dues. It is in the interests of all users of the harbour that the harbour is managed safely and all user should be expected to contribute to the cost of doing so. It might well be the case that the Council chooses to discount or waive the harbour dues which would otherwise be payable by vessels accessing the Railway Pier, which it would be entitled to do (subject to the right of objection under section 31 of the Harbours Act 1964), but if vessels accessing the Railway Pier have a statutory exemption from harbour dues then the Council cannot levy harbour dues on such vessels in the future without a further harbour order.

The RYA and RYAS note that this is a draft proposal to advise stakeholders and to invite feedback. If the draft proceeds to a formal consultation then the RYA and RYAS would be grateful if they could be kept informed.