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Dear Scott

I refer to the application by Argyll and Bute Council (the Council) to make the *Argyll and Bute Council (Oban) Harbour Revision Order 2026* (the Order). This letter conveys the Scottish Ministers' decision following their consideration of the application.

Purpose of the Order

To update existing legislation, expand the harbour limits to bring Oban Bay within the Council's jurisdiction, and confer additional powers on the Council, including powers to lease, to make byelaws, and to issue general and special directions.

Consultation

Public notices were published in the *Edinburgh Gazette* on 1 December 2023, and in the *Oban Times* and the *Lochaber Times* on 30 November and 7 December 2023. The 42-day statutory consultation period concluded on 11 January 2024.

Objections

A total of 112 objections were received in relation to the Order. The objections raised primarily related to the following matters:

- The view that Oban Harbour should be managed through a community-led trust port model, as advocated by the Oban Community Harbour Development Association (OCHDA), rather than by the Council as harbour authority.
- Concerns that the Council, as harbour authority, would acquire excessive powers, particularly in relation to ship moorings.
- Questions as to the adequacy of public consultation and engagement.
- Objections to the timing of the statutory consultation period over the festive period.

Objections were also received from Caledonian Maritime Assets Limited (CMAL) and Royal Yachting Association Scotland (RYAS). CMAL withdrew its objection on 27 August 2024 following discussions with the Council. During the statutory process, OCHDA submitted a number of proposed amendments to the draft Order relating to governance, consultation, moorings and financial matters.

CMAL requested a number of drafting changes, which the Council accepted, addressing concerns regarding future Competent Harbour Authority status. The agreed changes mean that existing berthing arrangements at the railway pier will remain unaffected, as CMAL owns the relevant ferry infrastructure and the charges introduced by the Order will not apply to those facilities.

RYAS supported the Order but raised minor concerns regarding the Ardentrive Bay boundary and proposed drafting changes, which were considered by the Council.

For those objections which were not withdrawn, Ministers approved on 30 July 2024 that the application should proceed to Written Representations. A total of 42 individuals and organisations participated in that process. The Council's response was issued on 17 September 2024 and the process concluded on 7 November 2024.

Proposed modifications

Alongside a number of minor drafting, stylistic and numbering amendments, the modifications set out below have been made to the Order. The modifications are not considered to substantially alter the character of the Order.

Article	Suggested change	Rationale
Article 2 - Interpretation	Removal of "sections and elevations" from the definition of "deposited plans".	Suggested by CMAL – there are no sections and elevations provided with the draft Order.
Article 2	Inclusion of the terms "or any similar replacement service" immediately after "Clyde and Hebrides Ferry Services" in the definitions of "relevant ferry services" and "ferry operator".	Suggested by CMAL – to incorporate any future replacement ferry service.
Article 2	Amendment of the definition of "harbour premises" to remove the term "land", and addition of "within the harbour limits" after "other structures and premises".	This clarifiers that the harbour premises exist within the harbour limits and that the HA only has powers within its harbour area limits.
Article 3(1) – Incorporation of Harbours, Docks and Piers Clauses Act 1847	Addition of section 74 of 1847 Act.	This section of the 1847 Act makes provision for the liability of vessel owners but such liability does not apply where the vessel is in the charge of a duly licensed pilot. As a result, it is now incorporated within the draft Order to clarify the liability of vessel owners.
Article 4 – Limits of harbour	Amended wording describing harbour limits, including amended co-ordinates in respect of the railway (CMAL) pier.	This amendment clarifies the extent of the harbour and makes clear that the railway pier does not fall within the harbour limits.

Article 5(4) – General Powers of the Council	Deletion of the word "unreasonably" before "prevent" and instead to insert "(except in case of emergency)".	This amendment clarifies that the Council will only prevent access to the railway pier in the event of emergency. This offers an assurance to CMAL that the Council will only prevent access to its pier when necessary.
Article 7 – Power to appropriate parts of the harbour, etc.	Removal of "or other duly authorised officer of the Council" from articles 7(2) and (3). The formatting of article 7(5) has been corrected.	The definition of harbour master allows for the Council to appoint persons other than the harbour master to act in the capacity of harbour master. Such wording is therefore unnecessary.
Article 11 – Parking places	Deletion of article.	This is not required. There are no parking places within the harbour limits and the Council has powers under other legislation to provide parking places.
Article 12 (formerly 13) – Provisions as to damage	Removal of "or belonging to that person's employers" from article 12(2). Inclusion of "Subject to any entitlement to limit liability provided in any other enactment,"	These amendments make expressly clear that the Order is not attempting to alter the standard provision concerning liability of shipowners under enactment in respect of damage caused by vessels to the harbour.
Article 15 (formerly article 16) – Moorings	New provisions at articles 15(2) and (6) to provide that the Council will publish on its website notice of applications for mooring licences (or its intention to lay down moorings) in order to allow members of the public and interested parties to make written representations, and to have due regard to such representations.	The provisions clarify that the Council will allow a period for public consultation (including the lodging of objections). The Council will thereafter consider any objections made and any potential hazards to public navigation before reaching a decision. These provisions codify its existing practices.
Article 15(7)	Addition of new provision: "The Council shall not provide, place or lay down moorings, buoys and similar apparatus, or grant a licence for the same purpose, where doing so would impede access to and from the railway pier."	The intention of this provision is to confirm that moorings will not be laid down within the channels used to navigate to the railway pier, and confirms existing practice.
Article 18 (formerly article 19) – publication of Council's annual statement of accounts	Addition of wording requiring the Council to make available a copy of the annual statement of accounts, at the chief offices of the Council and on the Council's website for 12 months.	The intention of the suggested wording is to improve access to the annual statement of accounts by requiring its publication on the Council's website and for it to be made available for 12 months rather than three.
Article 19 (formerly 20) – Byelaws	Deletion of article 19(4).	Removal of provision concerning continuation of existing byelaws – there are no existing byelaws in force. This article is not necessary.
Article 21(1) (formerly article 22) – General directions to vessels	Inclusion of "Scotland" after "Royal Yachting Association". Addition of words "and in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons" in respect of the purposes of general directions. Addition of the term "or other emergency" to article 21(1)(f).	The additions to this article give additional clarity as to the purpose of general directions, allow the Council to make general directions in respect of emergencies resulting other than from stress of weather, and correct the designation of the RYA.

Article 29(1) (formerly article 30) - Charges other than ship, passenger and goods dues	Addition of words "any other vessel" after "drilling rig or floating plant".	This amendment clarifies that the Council will be able to make charges in respect of any vessels which do not meet the definition of "ship" under the 1964 Act and do not otherwise fall within the categories of floating structure already specified within article 29.
Article 36(3) and (4) (formerly article 37) – Exemptions from charges	Replacement of "limits of the harbour" with "harbour limits". Addition of new provision: "(4) Article 36(3) does not apply in respect of vessels passing through the harbour limits to or from the railway pier."	It has always been the intention of the Council not to exempt persons operating ferries passing through the harbour limits to the railway pier from liability for charges. The Council therefore proposes a new article 36(4) to clarify that article 36(3) (which exempts vessels passing through the harbour limits without mooring or utilising harbour facilities) will not apply to vessels passing through the harbour limits to and from the railway pier. The Council and ferry operators will reach separate agreement on the appropriate levels of charges. Other changes are made to reflect existing defined terms.
Article 40(1) (formerly article 41) – Saving for CMAL and ferry operator	Addition of wording "conferred on CMAL by any enactment, including one of local application".	This addition clarifies that the article extends to those privileges, duties and rights conferred on CMAL as HA.

Ministerial consideration

Article 14(2)(b) of the Harbours Act 1964 provides that a Harbour Revision Order may only be made where the appropriate Minister is satisfied that it 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 economical transport of goods or passengers by sea, or in the interests of the recreational use of seagoing ships.

Scottish Ministers are satisfied that the proposed Order meets these requirements and have therefore decided that the Order should be made, subject to the modifications set out in this letter.

The finalised Order will be published on the UK Government legislation website as Scottish Statutory Instrument.

Publication of decision

Once made, the applicant must:

- Publish notice of the making of the Order in the *Edinburgh Gazette* and at least one local newspaper.
- Send copies of the notice to those notified of the original application.
- Provide copies of all notices to Transport Scotland.

A copy of this letter will be sent to all statutory consultees and published on the Transport Scotland website. Supporting documents relating to the Order will also be published online.

Right to challenge decision

Any person wishing to challenge the making of the Order may do so on the grounds that the applicant lacked the power to apply for the Order and/or that a requirement of the Harbours Act 1964 has not been complied with. Any such challenge must be made by application to the Court of Session within 42 days of the date on which notice of the making of the Order is published.

Those considering such a challenge are advised to seek independent legal advice before taking action.

Yours sincerely



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