

2011 No. 283

HARBOURS, DOCKS, PIERS AND FERRIES

**The Caledonian Maritime Assets (Port Ellen) Harbour Revision
Order 2011**

Made - - - - - *27th June 2011*

Coming into force - - - - - *28th June 2011*

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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(a) and all other powers enabling Ministers to do so.

(a) 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).

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 authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act(a).

In accordance with section 14(2) of that Act–

- (a) this Order is made following a written application to Ministers by Caledonian Maritime Assets Limited (“CMAL”)(b) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) (except in so far as this Order is made for achieving objects mentioned in section 14(2A) of that 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 and of facilitating the efficient and economic transport of goods and passengers by sea.

In accordance with paragraph 4 of Schedule 3 to that Act(c), Ministers have decided that the application relates to a project which falls within Annex II to Council Directive 85/337/EEC(d), as relevantly amended by Council Directive 97/11/EC(e) and Council Directive 2003/35/EC(f), on the assessment of the effects of certain public and private projects on the environment but, taking into account the criteria set out in Annex III to that Directive, that the project is not a relevant project.

In accordance with paragraph 5 of that Schedule (g), Ministers have informed CMAL in writing that the application relates to a project which falls within Annex II to that Directive but is not a relevant project.

Notice has been published by CMAL in accordance with the requirements of paragraph 10 of that Schedule(h).

The provisions of paragraph 17 of that Schedule(i) have been satisfied.

In accordance with paragraph 19(1) of that Schedule(j), Ministers have considered–

- (a) any objections made and not withdrawn;
- (b) any representations made under paragraph 10(2)(f) of that Schedule; and
- (c) any written representations submitted to Ministers by CMAL or any objector in elaboration of the application or, as the case may be, objection.

(a) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.
(b) Port Ellen was previously vested in the Scottish Transport Group who were the harbour authority for the port. By virtue of article 3(2) of, and Schedule 2 to, the Transport (Scotland) Act 1989 (Transfer of Shipping Companies) Appointed Day Order 1990 (S.I. No. 552 (S.71)), the port became vested in Caledonian MacBrayne Limited which became and remains the harbour authority for the port. On 2nd October 2006, the Registrar of Companies for Scotland gave a certificate that Caledonian MacBrayne Limited having changed its name by special resolution was then incorporated under the name of Caledonian Maritime Assets Limited.
(c) Paragraph 4 of Schedule 3 was substituted by S.I. 1999/3445.
(d) O.J. L 175, 5.7.1985, p.40.
(e) O.J. L 73, 14.3.1997, p.5.
(f) O.J. L 156, 25.6.2003, p.17.
(g) Paragraph 5 of Schedule 3 was substituted by S.I. 1999/3445.
(h) 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). [Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).]
(i) Paragraph 17 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)(g).
(j) Paragraph 19(1) of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(i).

In accordance with paragraph 19(2) of that Schedule(a), Ministers have decided to make this Order in the form of the draft submitted to them.

Citation and commencement

1.—(1) This Order may be cited as the Caledonian Maritime Assets (Port Ellen) Harbour Revision Order 2011 and shall come into force on the day after the day on which it is made.

(2) The Act which received Royal Assent on 26th June 1846 and having the title “An Act for improving and maintaining the harbour of Port Ellen in the County of Argyll(b)”, the Scottish Transport Group (Port Ellen Harbour) Order Confirmation Act 1975(c) and this Order may be cited together as the Port Ellen Harbour Acts and Order 1846 to 2011.

Interpretation

2.—(1) In this Order—

“CMAL” means Caledonian Maritime Assets Limited a company incorporated in Scotland with registered number SC1845;

“the deposited plans, sections and elevations” means the plans, sections and elevations which are bound together and signed in duplicate with reference to this Order and marked “Caledonian Maritime Assets (Port Ellen) Harbour Revision Order 2011 plans, sections and elevations” and which are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ, and at the registered office of CMAL; and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations;

“the harbour” means the harbour at Port Ellen comprised within the harbour limits;

“harbour limits” means the limits within which CMAL are authorised to exercise jurisdiction as defined in section 13 of the 1975 Act;

“level of high water” means the level of mean high water springs;

“limits of deviation” means the limits of deviation shown on the deposited plans, sections and elevations;

“tidal work” means so much of any of the works as is on, under or over tidal waters or tidal lands below the level of high water;

“vessel” means a ship, boat or craft of any description and includes any thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and

“works” means the works authorised by this Order or, as the case may require, any part of any of those works.

(2) All areas, situations and other measurements stated in any plan or description of the works or lands shall be construed as if the words “or thereby” were inserted after each such area, situation and other measurement.

(3) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

Power to construct works

3.—(1) CMAL may in the lines and situations and upon the lands delineated on the deposited plans, sections and elevations and within the limits of deviation and according to the levels shown on the deposited plans, sections and elevations construct and maintain the following works—

(a) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

(b) 1846 c. xciv.

(c) 1975 c. xvi.

Work No.1 - The reclamation and infilling of an area of the bed of Loch Leodamais and the levelling of that area together with the levelling of the adjoining land to form an area of 1.24 hectares and providing access to Works Nos. 2 and 3 and for parking of vehicles and for the site of Work No. 4: to be retained on the seaward limits in part by rock armoured revetments and, as to the remainder, by a solid faced quay wall; the location of which is shown on sheet 2 and the sections of which are shown on sheet 3.

Work No.2 - A mechanically operated single deck linkspan, providing access to and from vessels, extending from the reclaimed area comprising Work No.1, including supporting piled bankseat and lifting frame with supporting dolphin structures; the location of which is shown on sheet 2 and the section of which is shown on sheet 3.

Work No.3 - An open piled jetty structure connecting to Work No.1, the location of which is shown on sheet 2, the section of which is shown on sheet 3, forming the berthing and mooring line, including inner and outer berthing dolphins, accessed via steelwork access ramps from the jetty structure and incorporating a fixed and adjustable passenger access gangway extending from Work No. 4 and extending through Work No.1.

Work No.4 - A one and a half storey terminal building to be constructed over reclaimed land forming part of Work No.1 the location of which is shown on sheet 2 and the ground floor plan and elevations of which are shown on sheet 5; comprising passenger and baggage handling, sales areas, management offices, staff welfare facilities and stores areas.

Work No.5 - A solid faced quay wall (including berths for vessels) extending into the sea to enclose and reclaim an area of 0.085 hectares the location of which is shown on sheet 2 and the section of which is shown on sheet 4; that area to be surfaced and used as a general quayside working space.

(2) CMAL may, for the purposes of the works authorised by paragraph (1) remove any vegetation or other objects or materials and demolish and remove any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the bed of the sea and of the foreshore as lies within the limits of deviation.

(3) CMAL may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) and may maintain and operate those works as reconstructed, extended, enlarged, replaced or relaid.

Power to deviate

4. In carrying out the works authorised by article 3 (Power to construct works) CMAL may deviate laterally from the lines or situations as shown on the deposited plans, sections and elevations to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited plans, sections and elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Subsidiary works

5. CMAL may from time to time within the limits of deviation construct, maintain and operate, whether temporarily or permanently, such other works as may be necessary or convenient for the purposes, or in connection with or in consequence, of the construction, maintenance or use of the works; including works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and landing of passengers.

Power to dredge

6.—(1) CMAL may, for the purposes of maintaining the harbour and of affording access to the harbour by vessels, from time to time dredge, scour and cleanse so much of the bed, shores and channels of the sea as lie within the harbour limits and within the approaches and the channels leading to those limits and may use, appropriate or dispose of the materials (other than wreck

within the meaning of section 255 of the Merchant Shipping Act 1995 (interpretation)(a)), from time to time dredged by it.

(2) No such materials shall be laid down or deposited in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

Obstruction of works

7. Any person who—

- (a) intentionally obstructs any person acting under the authority of CMAL in setting out the lines of or in constructing the works; or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Tidal works not to be executed without approval of the Scottish Ministers

8.—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed or altered except in accordance with plans and sections approved by the Scottish Ministers and subject to any conditions and restrictions imposed by the Scottish Ministers before the work is begun or while work is still in progress.

(2) If a tidal work is demolished, constructed, renewed, reconstructed or altered in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Scottish Ministers may by notice in writing require CMAL at its own expense to remove the tidal work or any part of it and restore the site of the tidal work to its former condition; and if on the expiration of 30 days from the date when the notice is served upon CMAL it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice; or
- (b) if it appears to the Scottish Ministers urgently necessary to do so, they may themselves remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from CMAL as a debt.

(3) Paragraph (1) shall not apply to any work authorised by paragraphs (1) and (2) of article 3 (power to construct works) and any related works authorised by article 5 (subsidiary works).

(4) Subject to paragraph (3), the works referred to in paragraph (1) shall be deemed to be “harbour works” within the meaning and for the purposes of the Marine Works (Environmental Impact Assessment) Regulations 2007(b).

Survey of tidal works

9. The Scottish Ministers may at any time if they deem it expedient order a survey and examination of a tidal work or a site upon which it is proposed to construct the work and any expense incurred by them in such a survey and examination shall be recoverable from CMAL as a debt.

Provision against danger to navigation

10.—(1) In the case of injury to or destruction or decay of a tidal work or any part of it, CMAL shall as soon as reasonably practicable notify the Commissioners of Northern Lighthouses and

(a) 1995 c.21.

(b) S.I. 2007/1518; “harbour works” is defined in regulation 2(1).

shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If CMAL fails to comply in any respect with the provisions of this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

11.—(1) Where a tidal work is abandoned or has fallen into decay the Scottish Ministers may by notice in writing require CMAL at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of the tidal work to its former condition, to such an extent and within such limits as the Scottish Ministers think proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or has fallen into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Scottish Ministers may include that part of the work or any portion of it, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon CMAL it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from CMAL as a debt.

Lights on tidal works during construction

12.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work CMAL shall at the outer extremity of that work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If CMAL fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Permanent lights on tidal works

13.—(1) After completion of a tidal work CMAL shall at the outer extremity of that work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If CMAL fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Period for completion of works

14.—(1) If the works authorised by paragraphs (1) and (2) of article 3 (power to construct works) are not completed within five years from the date of the coming into force of this Order or such extended time as the Scottish Ministers may on the application of CMAL allow by consent given in writing, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to CMAL for making and maintaining those works shall cease except as to so much of those works as is then substantially commenced.

(2) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions.

(3) As soon as reasonably practicable after a consent is given under paragraph (1), CMAL shall arrange for a notice to be published in the Edinburgh Gazette and in a local newspaper circulating

in the area where the harbour is situated and the notice shall contain a concise summary of that consent.

(4) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (3), a copy of the consent referred to in that notice shall be kept by CMAL at the offices of CMAL situated at the harbour and shall at reasonable hours be open to public inspection without payment.

(5) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 1 has been constructed as will enable other works to be constructed, maintained and managed together with that part of Work No. 1 for the efficient and economic transport of goods or passengers by sea.

Operational land and land within area of Argyll and Bute Council

15. The land situated within the harbour limits shall—

- (a) to the extent that it is not already operational land, be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997(a); and
- (b) to the extent that it lies outwith the area of the Argyll and Bute Council, be deemed to be part of that area.

Further provision for the 1846 Act

16.—(1) The giving of a direction by the harbour master under section 31 of the 1846 Act (powers of harbour master to give directions to vessels) 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.

(2) In section 33 of the 1846 Act (penalty on masters not complying with directions of the harbour master), for the words from “liable to a penalty” to the end of the section there shall be substituted the words “guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Notice given by the harbour master to the master of a vessel under section 34 of the 1846 Act (power of harbour master to remove a vessel where the master of the vessel fails to act in accordance with a direction given by the harbour master in writing) need not be in writing but may be given in any manner considered by the harbour master to be appropriate.

(4) In this article, “the 1846 Act” means the Act which received Royal Assent on 26th June 1846 and having the title “An Act for improving and maintaining the Harbour of Port Ellen in the County of Argyll”.

Defence of due diligence

17.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for CMAL to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 10 (provision against danger to navigation);
- (b) article 12 (lights on tidal works during construction); and
- (c) article 13 (permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, CMAL shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days

(a) 1997 c.8; “operational land” is defined in section 215, to which there are amendments not relevant to this Order, which section is subject to section 216.

before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

Saving for Commissioners of Northern Lighthouses

18. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

Saving for other consents etc.

19. The carrying out of any works or operations pursuant to this Order is subject to CMAL obtaining any consent, permission or licence required under any other enactment.

Crown rights

20.—(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 the generality of the foregoing, nothing in this Order authorises CMAL or any licensee to take, use, enter upon or in any manner interfere with any land or interests in 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 Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her 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.

(3) In this article “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(a).

ALASTAIR WILSON

A member of staff of the Scottish Ministers

St Andrew’s House,
Edinburgh
27th June 2011

(a) 1998 c.46.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made following an application by Caledonian Maritime Assets Limited (“CMAL”), empowers CMAL to construct, maintain and operate in Loch Leodamais and on adjacent land at Port Ellen in Argyll and Bute, harbour works and harbour related facilities.

Article 2 makes provision as to interpretation.

Article 3 authorises CMAL to construct works. The main works to be carried out to improve the harbour are at paragraphs (1) and (2). Paragraph (3) makes provision for future works.

Article 4 provides for the limits of deviation for the works and article 5 authorises subsidiary works required in connection with the works under article 3 or the harbour.

Article 6 authorises CMAL to dredge the harbour and the approaches to it. Article 7 creates an offence of obstructing the works. Articles 8 to 13 make provision for the control and regulation of tidal works. Article 14 makes provision as to the time limit for completing the works under article 3(1) and (2).

Article 15 provides for land within the harbour limits (some of which will have been reclaimed from the foreshore and seabed below high water) to be deemed to be operational land for the purposes of the Town and Country Planning (Scotland) Act 1997 and to lie within the area of Argyll and Bute Council if it otherwise would not do so.

Article 16 amends provisions in the Act passed in 1846 for improving and maintaining the harbour of Port Ellen in the County of Argyll relating to directions to be given by the harbour master for the removal of vessels, increasing the penalty for failing to comply with a direction of the harbour master and providing that the responsibility of a master of a vessel is not diminished notwithstanding a direction of the harbour master.

Article 17 provides CMAL with a defence of due diligence against the commission of offences under the Order.

Articles 18 to 20 make saving provisions, including making clear that in carrying out any works or operations pursuant to this Order CMAL must obtain any other consent required for those works or operations under the terms of any other enactment.

The deposited plans, sections and elevations and, for a period of one month after notice of any extension is published in a local newspaper, any consent given by the Scottish Ministers under article 14 allowing an extension to the period for the completion of the works may also be inspected, free of charge, at the offices of CMAL at Municipal Buildings, Fore Street, Port Glasgow PA14 5EQ between 10.00 and 16.00 (Monday to Friday, excluding public holidays).

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£5.75