

2017 No. 196

HARBOURS, DOCKS, PIERS AND FERRIES

The Tobermory Harbour Empowerment Order 2017

Made - - - - *9th June 2017*

Coming into force - - *10th June 2017*

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SCHEDULE — HARBOUR LIMITS

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 16(1) and (6) of the Harbours Act 1964^(a) and all other powers enabling Ministers to do so.

In accordance with section 16(1) of that Act, Tobermory Harbour Association (“the Company”) has made a written application to Ministers for the making by Ministers of this harbour empowerment order.

In accordance with section 16(5) of that Act, Ministers are satisfied that the making of this harbour empowerment order is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea and in the interests of the recreational use of sea-going ships.

Notices have been published by the applicant in accordance with the requirements of paragraph 10 of Schedule 3 of that Act.

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

- (a) the result of the consultations under paragraph 15 of that Schedule;
- (b) any objections made and not withdrawn; and
- (c) any representations made under paragraph 10(2)(f) of that Schedule.

^(a) 1964 c.40.

In accordance with paragraph 19(2) of that Schedule, Ministers have decided to make this Order with modifications which do not appear to the Ministers to substantially affect the character of the Order.

PART 1

Citation and commencement

1. This Order may be cited as the Tobermory Harbour Empowerment Order 2017 and comes into force on the day after the day on which it is made.

Interpretation

2. In this Order:

“1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(a);

“1964 Act” means the Harbours Act 1964(b);

“1995 Act” means the Merchant Shipping Act 1995(c);

“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 and, subject to article 39(4), includes any successor in title of Caledonian Maritime Assets Limited to the ferry pier and slipway;

“the Company” means Tobermory Harbour Association, a company incorporated in Scotland with registered number SC256859 and having its registered office at Taigh Solais, Ledaig, Tobermory, Isle of Mull, Argyll, PA75 6NR;

“existing moorings” means moorings existing within the harbour at the date this Order comes into force;

“existing works” means the piers, pontoons and slipways existing as at the date of this Order within the harbour limits and shown for identification purposes on harbour map;

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

“ferry pier and slipway” means the Mishnish Pier and slipway (or any part thereof) situated within the harbour limits and shown for location purposes shaded blue on the harbour map between points 2 and 3 and includes the fixed mooring owned by CMAL located at 56° 37.241'N 006° 3.664'W;

“general direction” means a direction given by the Company under article 16 (*general directions to vessels*);

“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 area within the harbour limits including the harbour premises;

“harbour limits” means the limits of the harbour as defined in article 8 (*limits of harbour*) of this Order;

“harbour map” means the map referred to in, *inter alia*, article 8 (*limits of harbour*) of this Order, two copies of which have been signed, dated and deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ and one copy of which has been signed, dated and deposited at the registered office of the Company;

(a) 1847 c.27.
(b) 1964 c.40.
(c) 1995 c.21.

“harbour master” means any person appointed as such by the Company and includes that person’s deputies and assistants and any other person for the time being authorised by the Company to act, either generally or for a specific purpose, in the capacity of harbour master;

“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 Company as part of the harbour undertaking, including the existing works which are all situated within the harbour limits;

“harbour undertaking” means the harbour related business activities of the Company;

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

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

“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;

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

“special direction” means a direction given by the harbour master under article 18 (*special directions to vessels*); and

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

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

3.—(1) Sections 1 to 4, 33 to 35, 37 to 39, 42 to 46, 51, 54, 55, 58, 63 to 65 and 74 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 Company 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 paragraph (1) of article 2 (*interpretation*);
- (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 2

EXISTING WORKS PROVISIONS

Power to maintain, etc. the existing works

4. The Company may maintain, use and operate the existing works and may, within the harbour limits, reconstruct, extend, enlarge, replace, re-lay or otherwise alter the existing works, and may maintain, use and operate the existing works as reconstructed, extended, enlarged, replaced, re-laid or otherwise altered.

Power to dredge

5.—(1) The Company may, for the purposes of maintaining the works and of affording access to the harbour by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels 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 Part IX of the 1995 Act(*interpretation*)), from time to time dredged by it.

(2) The Company shall not lay down or deposit such materials 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.

Existing works to be deemed part of undertaking

6. The existing works shall be deemed for all purposes to be part of the harbour undertaking and all byelaws, directions, rules and regulations of the Company for the time being in force relating to the harbour shall apply to the existing works and may be enforced by the Company accordingly.

Operational land and land within area of Argyll and Bute Council

7. The land situated within the harbour limits shown shaded blue, yellow and orange on the harbour map shall—

- (a) 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, if any, that it lies outwith the area of Argyll & Bute Council, be deemed to be part of that area.

PART 3

HARBOUR REGULATION

Limits of harbour

8.—(1) The limits of the harbour within which the Company shall exercise jurisdiction as the harbour authority within the meaning of section 57 of the 1964 Act and within which the powers of the harbour master shall be exercisable, shall extend over the area the boundaries of which are described in the Schedule to this Order and shown on the harbour map.

(2) The area described in the Schedule to this Order is shown on the harbour map and, in the event that there is any discrepancy between the description of that area and the area shown on the harbour map, the description shall prevail.

Moorings

9.—(1) The Company may provide, place, lay down, maintain, renew, use, have or remove such moorings within the harbour as it considers necessary or desirable for the convenience of vessels.

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

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

(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.

(4) The Company may from time to time grant a licence to any person to place, lay down, maintain, renew, use and have moorings within the harbour for vessels.

(5) Nothing in any such licence shall entitle a person to place, lay down, maintain, use and have any moorings on land not owned or leased by that person or by the Company or in which that person or the Company has no appropriate interest.

(6) Any licence granted under paragraph (4) shall, unless otherwise stated in the licence in question, be valid for a period of one year commencing with the date on which it takes effect.

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

(8) Any existing moorings shall be maintained in good and serviceable condition and repair at all times by the party who has the appropriate legal interest thereto. If following the elapse of a period of 3 months after the service of notice by the Company on that party specifying a want of repair in relation to an existing mooring, the existing mooring has not been brought into a good and serviceable condition and repair, the Company may thereafter remove the mooring in question and recover from that person as a debt any expenses incurred by it in doing so.

(9) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part thereof;
- (c) without reasonable excuse, causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Company under this article or an existing mooring or at a quay, jetty, slipway or other works or to land owned or leased by the Company;
- (d) without reasonable excuse, places, lays down, maintains, renews, uses or has any mooring (other than an existing mooring) 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.

(10) If any person, without reasonable excuse, places, lays down, maintains, renews, uses or has in the harbour any mooring (other than an existing mooring) not provided or licensed by the Company under this article, the Company may remove the mooring in question and recover from that person as a debt any expenses incurred by it in doing so.

Restriction of works and dredging

10.—(1) No person other than the Company shall in the harbour—

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

unless that person has contracted with the Company 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 Company 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 Company may carry out the works so required and may recover from that person as a debt any expenses incurred by it in doing so.

Parking places

11. The Company 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.

Power to appropriate parts of harbour, etc

12.—(1) Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Company may from time to time set apart and appropriate any land, works, buildings, machinery, equipment or other property within the harbour owned or managed by the Company 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 Company may think fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any 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 Company shall have regard to the facilitation of—

- (a) the public right of navigation in the harbour; and
- (b) any public rights of way affecting the harbour,

such that the Company 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

13. The Company 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.

General byelaws

14.—(1) Subject to article 39 (*saving for CMAL and the ferry operator*), the Company 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 berths, quays, jetties, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the harbour;
- (b) 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;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;
- (d) regulating the berthing and mooring of vessels within the harbour and the use of tugs within the harbour;
- (e) preventing damage or injury to any goods, vehicle, plant, machinery, property or person within the harbour;

- (f) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown or officers of the Scottish Ministers including the holder of any office in the Scottish Administration or any member of staff of the Scottish Administration whilst in the execution of their duties;
 - (g) regulating the placing and maintenance of moorings within the harbour;
 - (h) preventing and removing obstructions or impediments within the harbour;
 - (i) regulating the use of cruise ships and ferries within the harbour;
 - (j) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
 - (k) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (j);
 - (l) regulating the launching of vessels within the harbour;
 - (m) prohibiting persons in or entering the harbour, or any part of the harbour, from smoking in open spaces in the harbour designated as “no smoking areas” by the Company by way of signage in the interests of health and safety;
 - (n) regulating the movement and parking of vehicles on private roads within the harbour;
 - (o) regulating the exercise of the powers vested in the Company;
 - (p) 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 Company to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
 - (q) regulating the hours during which any gates, entrances or outlets to or from the harbour or any part of the harbour shall be open;
 - (r) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the harbour;
 - (s) regulating the use of cranes, weighing machines, weights and measures belonging to the Company, and the duties and conduct of weighers and meters employed by the Company;
 - (t) regulating the holding of regattas and other public events in the harbour;
 - (u) regulating or preventing the use of fires and lights within the harbour;
 - (v) 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
 - (w) 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 under them, fines not exceeding level 3 on the standard scale;
 - (b) relate to the whole of the harbour or to any part of the harbour;
 - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles.

Confirmation of byelaws

15.—(1) Byelaws made by the Company 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 Company 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 proposed byelaws shall be open to inspection shall be published as follows—

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

(3) Such notice shall include reference to the right to make objection or representation referred to in paragraph (7).

(4) Not later than the first date on which the notice under paragraph (2) is published, the Company shall send a copy of the notice to the Chief Executive Officer of Argyll & Bute Council and to the Scottish Ministers.

(5) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the proposed byelaws shall be kept by the Company at the office of the harbour master and shall at reasonable hours be open to public inspection without payment.

(6) The Company shall supply a copy of the proposed byelaws or of part of the proposed byelaws to any person who shall apply for it on payment of a reasonable charge.

(7) During the period of one month following the last date of publication of the notices required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the proposed byelaws to which the notice relates.

(8) Subject to paragraph (9), the Scottish Ministers may confirm the proposed byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(9) Where the Scottish Ministers propose to make a modification that appears to them to be substantial they shall inform the Company 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 confirm the proposed byelaws until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Company and by other persons who have been informed of it.

(10) A copy of the byelaws when confirmed shall be printed and deposited by the Company at the office of the harbour master 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 payment of such reasonable sum as the Company may determine.

General directions to vessels

16.—(1) Subject to article 39 (*saving for CMAL and the ferry operator*), the Company may, after consultation with the Chamber of Shipping and the Royal Yachting Association in each case of an exercise of the powers, give general directions for any of the following purposes—

- (a) for securing the admission to, and movement within, and the departure of vessels only at certain times or during certain periods;
- (b) for designating areas, routes or channels in the harbour which vessels are to use, or refrain from using, for movement, mooring or anchorage;
- (c) for securing that vessels move only at certain times or during certain periods;
- (d) for regulating the use of the motive power of vessels anywhere within the harbour;
- (e) for securing that vessels make use of appropriate aids to navigation required to comply with general directions;
- (f) prohibiting entry into or navigation within any of the main channels during any temporary obstruction thereof;
- (g) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master to identify the vessel, its cargo and its likely time of arrival at and departure from the harbour
- (h) for specifying the precautions to be taken in respect of apparatus, machinery and equipment; and

- (i) for prohibiting or restricting use of fires or lights.
- (2) Directions given under paragraph (1) may apply—
 - (a) to all vessels or to a class of vessels designated in the direction;
 - (b) to the whole of the harbour, or to a part designated in the direction; and
 - (c) at all times or at times designated in the direction,

and every general direction given 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) Subject to article 39 (*saving for CMAL and the ferry operator*), the Company may, after consultation with the Chamber of Shipping and the Royal Yachting Association, revoke or amend general directions given under this article.

Publication of general directions

17.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Company as soon as practicable once in Lloyd’s List or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice shall state a place at which copies of the direction or the amended direction (as the case may be) may be inspected and bought, and the price of the direction or amended direction (as the case may be).

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

Special directions to vessels

18.—(1) Subject to article 39 (*saving for CMAL and the ferry operator*), 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 and the manner in which a vessel shall enter into, go out of, or lie in or at the harbour;
- (c) regulating or requiring the movement, berthing, mooring or unmooring of a vessel;
- (d) regulating or requiring the loading, unloading, embarking, disembarking, discharging, storing and safeguarding of a vessel’s cargo, fuel, water, stores, passengers or ballast and the dispatch of business at harbour premises;
- (e) 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; and
- (f) requiring the removal outside the harbour of a vessel if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

(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.

Master's responsibility to be unaffected

19. 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.

Failure to comply with directions

20. The master of a vessel who fails without reasonable excuse to comply with a general direction or 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

21.—(1) Without prejudice to any other remedy available to the Company, 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 the 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 inquiry 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 Company from the owner of the vessel as if they were a charge of the Company in respect of the vessel.

Obstruction of officers, etc

22. Any person who intentionally obstructs an officer of the Company or other person acting in execution of this Order or of 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

23. Any duly authorised officer of the Company may, on producing if so required his authority, enter and inspect a vessel in the harbour—

- (a) for the purposes of any enactment relating to the Company or any byelaw of the Company 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 notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice shall have annexed to it a copy of this article.

Vessels adrift

24.—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary convictions 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 this paragraph (1) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

Removal of obstructions other than vessels, vehicles or wreck

25.—(1) Without prejudice to its powers under any enactment (including one contained in this Order) the Company may remove anything which is causing or is likely to become an obstruction or impediment to the proper use of any part of a harbour area other than—

- (a) a vessel or a vehicle; or
- (b) a wreck within the meaning of Part IX of the 1995 Act.

(2) If—

- (a) anything removed by the Company under paragraph (1) above is known to the Company to be, or is marked as to be readily identifiable as, the property of any person, the Company shall within one month of its coming into the custody of the Company give notice, in accordance with paragraph (5) below, 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 vest in the Company;
- (b) the ownership of anything removed by the Company under paragraph (1) above which is not so known or marked is not within 3 months of its coming into the custody of the Company proved to its reasonable satisfaction, it shall vest in the Company.

(3) The Company 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 Company under this article, and if it is sold the proceeds of sale shall be applied to the Company 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 Company proves to its reasonable satisfaction that that person was the owner thereof at that time; or
- (b) if within the said period no person proves ownership at the said time, shall vest in the Company.

(4) If anything removed under this article:

- (a) is sold by the Company 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 Company 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 Company or who was the owner at the time of its abandonment or loss.

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

(6) The Company 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 given or issued by the Company.

Removal of vehicles

26.—(1) If a vehicle is left without permission of the Company—

- (a) in a parking place provided by the Company within the harbour for a longer period than 24 hours or such other period as may be specified by notice erected by the Company;
- (b) in any part of the harbour where the parking of vehicles is prohibited by notice erected by the Company; or
- (c) in any place within the harbour where it is likely to obstruct or interfere with the use of the harbour,

the Company may, at the risk of the owner, cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1) above shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where the Company in exercise of the powers of this article causes a vehicle to be removed the expenses of and incidental to its removal and safe custody shall be recoverable by the Company from the person responsible as a debt.

(4) If the Company in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002 at that person's last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that the Company has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each entrance to any parking place provided by the Company and at each place where a road accessible to vehicles enters any part of the harbour, and shall be endorsed at the harbour,

(6) In paragraph (3) above, "person responsible", in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless that person shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in that place;
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978.

Power to remove goods

27.—(1) If any goods are left on or in any part of the harbour the Company may require the owner of the goods to remove them; and if the goods are not so removed within six hours of such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store; and such removal shall be carried out at the expense and the risk of the owner of the goods.

(2) Notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner thereof in respect of the goods.

(3) In this article "goods" includes equipment.

Charges

28.—(1) The Company may demand, take and recover such reasonable charges for any services and facilities provided by it or on its behalf in relation to the harbour as the Company may from time to time determine.

(2) In this article "charges" means any charges other than ship, passenger and goods dues.

Liability for charges

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

- (a) a vessel, shall be payable by the owner or master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

(2) Where a charge payable to the Company may be recovered from more than one person, the persons from whom it is recoverable shall be jointly and severally liable.

(3) In this article "goods" includes vehicles and equipment

Exemptions, rebates, etc. in respect of charges

30.—(1) The Company may confer total or partial exemption 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 1964 Act shall require the Company 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 that list.

Security for charges

31. The Company may require a person who incurs or is about to incur a charge to deposit with, or to guarantee, such sum of money as is, in the opinion of the Company, 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 by the Company, the Company 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

32.—(1) A person, who by agreement with the Company 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 thereof.

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

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

Exemptions from charges

34.—(1) Except insofar as may be agreed between the Company and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Company to levy charges shall extend to authorise them to levy charges on—

- (a) a vessel—
 - (i) belonging to or in the service of Her Majesty or any member of the Royal Family; or
 - (ii) in the service of the Commissioners of HM Revenue & Customs 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 HM Revenue & Customs in respect of a vessel or goods under customs seizure.

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

Conditions as to payment of charges

35.—(1) Charges shall be payable subject to such reasonable terms and conditions as the Company may from time to time specify in its published list of charges.

(2) Without prejudice to the preceding generality of paragraph (1) the terms and conditions may prescribe the time when the charge falls due for payment and may require such information to be

given to the Company by the owner or master of a vessel or a person using a service or facility of the Company as the Company may require in connection with the assessment or collection of a charge.

PART 4

MISCELLANEOUS AND GENERAL

Saving for Commissioners of Northern Lighthouses

36. 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.

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

Crown rights

38.—(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 Company or any licensee 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 Her Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
- (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.

Saving for CMAL and the ferry operator

39.—(1) Where any exercise by the Company of its powers under article 4 (*power to maintain etc. the existing works*), article 5 (*power to dredge*), article 14 (*general byelaws*) or article 16 (*general directions to vessels*) 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, the Company 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.

(2) Except in the case of an emergency, special directions issued under article 18 (*special directions to vessels*) shall not apply to any ferry operated by the ferry operator in connection with the relevant ferry services.

(3) No ship, passenger or goods dues shall be levied by the Company in respect of any vessel, or any passengers or goods, on any vessel, which enters the harbour to take access to, and egress from, the ferry pier and slipway but the Company shall be entitled to levy ships, passengers and goods dues in respect of any vessel that (except in the case of emergency)—

- (a) anchors or moors in the harbour (other than at the ferry pier and slipway); or
- (b) otherwise uses any of the harbour premises,

prior to, or after, any use of the ferry pier and slipway.

(4) This article shall have no effect—

- (a) during any period in which the Company is the leaseholder of the ferry pier and slipway; and, otherwise,
- (b) following the date upon which the Company becomes the heritable proprietor of the ferry pier and slipway.

Saving for Calve Island

40.—(1) Nothing in this Order shall prejudice or derogate from—

- (a) the existing servitude right of way of the heritable proprietor of Calve Island for driving stock and for vehicular traffic to and from Calve Island over the ford (indicated with a red perch and a green perch shown north west of point 7 on the harbour map); or
- (b) any existing right of the heritable proprietor of Calve Island to maintain, free of any charge from the Company, the existing running line and buoy to the shoreline (shown marked as “Running Mooring” on the harbour map for identification);

(2) No ship, passenger or goods dues shall be levied by the Company in respect of—

- (a) the loading or unloading of domestic goods or livestock; or
- (b) the embarking or disembarking of non commercial passengers,

at the Aros Pier or the Calve Island Pier (both shown on the harbour map) by the heritable proprietor of Calve Island.

VALERIE FERGUSON

A member of the staff of the Scottish Ministers

St Andrew's House,
Edinburgh
9th June 2017

SCHEDULE

Article 8

HARBOUR LIMITS

In this Schedule to this Order, a reference to—

- (a) a direction shall be construed as if the words “or thereabouts” were inserted after that direction;
- (b) a point is a reference to that point as shown on the harbour map and to the co-ordinates of that point which are stated in the table in this Schedule to this Order.

The area identified as the “H.E.O Limits” by the legend and as bounded by a pink line on the harbour map as follows:

Commencing at point (1) where the Tobermory River enters the Bay the boundary follows the mean high water springs line (in pink) along the Quay, around the Fishing Pier then along the Quay to point (2); thence from point (2) to point (3) as follows, the boundary extends inshore north to the A848 road to enclose the buildings owned by CMAL (as at the date of the commencement of this Order) then turns north east and follows the south road edge of the A848 road to the boundary gate to the ferry terminal car park then north, then north east along the south edge of the path to the lighthouse, then returning south to below the rock face to point (3) (as shown by the pink line bounding the area shown blue on the harbour map); thence from point (3) the boundary follows the line of mean high water springs to point (4) marked on charts as Rubha na Leip; thence from point (4) in a straight line over the sea and South to point (5) marked on charts as Rubh’ an Rìgh on Calve Island; thence from point (5) south along the mean high water springs line along the West coast of Calve Island and Eilean na Beithe to point (6) at the southern end of Calve island and known as Cnap a’ Chaibhe; thence from point (6) in a straight line South West across the southern entrance of the Doirlinn to point (7) on the Mull shore; thence from point (7), the boundary follows the line of mean high water springs to point (8) at Sgiath Gheal; thence from point (8) to point (9) as follows, the boundary extends south west to the edge of the Aros Park Path then generally north west along the north east edge of the Aros Park Path enclosing part of the land owned by the Company (as at the date of the commencement of this Order and shown in yellow on the harbour map) before turning generally north east along the western boundary of the Ledaig Boat Park, over the solum of the seabed owned by the Crown Estate (as at the date of the commencement of this Order and shown in orange on the harbour map) to point (9) ; thence from point (9) returning along the mean high water springs line to point (1). The islands of Eilean na Beithe and Eilean a’ Chuirn and surrounding islets including Eilean Dheanish to the line of mean high water springs are excluded from the harbour limits.

The points referred to above are as detailed in the table below:

<i>WAY POINT</i>	<i>LATITUDE</i>	<i>LONGITUDE</i>
1	56°37.272’ north	06°04.200’ west
2	56°37.383’ north	06°03.883’ west
3	56°37.413’ north	06°03.776’ west
4	56°37.683’ north	06°03.494’ west
5	56°37.485’ north	06°02.860’ west
6	56°36.649’ north	06°01.823’ west
7	56°36.583’ north	06°01.897’ west
8	56°37.168’ north	06°04.010’ west
9	56°37.250’ north	06°04.076’ west

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made following an application by Tobermory Harbour Association (“the Company”), empowers the Company to maintain the harbour at Tobermory (the limits of which are defined in the Order) and to regulate its use.

Part 1 makes preliminary provision, including provision as to interpretation (article 2) and the incorporation with modifications of provisions in the Harbours, Docks and Piers Clauses Act 1847 (article 3).

Part 2 gives the Company the power to maintain, use and operate the piers, pontoons and slipways existing in the harbour as at the date of this Order and to dredge the harbour and the approaches to it.

Part 3 makes provision for regulation of the harbour.

The Company is authorised to provide moorings within the harbour and to recover charges for vessels using them (article 9). It may also provide vehicle parking facilities within the harbour (article 11).

By virtue of article 14 the Company is empowered to make byelaws for the efficient management and regulation of the harbour. The procedure for confirmation of proposed byelaws is set out in article 15.

Under article 16, the Company may give general directions to vessels, which must be published in accordance with article 17, and the harbour master may issue a special direction to any vessel (article 18). Failure without reasonable excuse to comply with a general or special direction is an offence (article 20).

Article 23 empowers any duly authorised officer of the Company, in certain circumstances and for certain purposes, to enter and inspect a vessel in the harbour. Article 24 makes provision regarding vessels adrift in the harbour, while Article 25 provides that the Company may remove obstructions (other than vessels, vehicles or wreck) from the harbour. Articles 26 and 27 give the Company the power to remove vehicles and goods left in the harbour in certain circumstances.

Articles 28 to 35 make provision about charges that may be levied by the Company for services and facilities provided in relation to the harbour.

Part 4 makes miscellaneous and general provision.