

2016 No. 414

HARBOURS, DOCKS, PIERS AND FERRIES

The Aberdeen Harbour Revision Order 2016

Made - - - - - *7th December 2016*

Coming into force - - - - - *8th December 2016*

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SCHEDULE — MITIGATION MEASURES

The Scottish Ministers (“the Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (3) of the Harbours Act 1964(a) and all other powers enabling them to do so.

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 of that Act(b).

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

- (a) this Order is made following a written application to the Ministers by the Aberdeen Harbour Board (“the applicant”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) the 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 facilitating the efficient and economic transport of goods or passengers by sea.

In accordance with paragraph 4 of schedule 3 of that Act(c), the Ministers have decided that part of the application relates to a project which falls within Annex I to Directive 2011/92/EU(d) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment.

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- (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).
 - (b) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), schedule 3, paragraph 9.
 - (c) Schedule 3 was substituted by S.I. 1999/3445 and relevantly amended by the Transport (Scotland) Act 2005 (asp 12), section 46(5) and by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5).
 - (d) O.J. L 26, 28.1.2012, p.1. Directive 2011/92/EU repealed and recast the provisions contained in Council Directive 85/337/EC (O.J. L 175, 5.7.1985, p.40, as amended by Council Directive 97/11/EC (O.J. L 73, 14.3.1997, p.5) and Directive 2003/35/EC of the European Parliament and of the Council (O.J. L 140, 5.6.2009, p.114)).

In accordance with paragraph 6 of that schedule, the Ministers have—

- (a) informed the applicant of that decision and the reasons for it; and
- (b) given an opinion to the applicant about the extent of the information referred to in Annex IV to that Directive which the applicant would be required to supply in the environmental statement and—
 - (i) in giving that opinion the Ministers have taken into account the matters in sub-paragraph (3) of that paragraph; and
 - (ii) before giving that opinion the Ministers have, in accordance with sub-paragraph (4) of that paragraph, consulted the applicant and such bodies with environmental responsibilities as the Ministers thought appropriate.

In accordance with paragraph 8 of that schedule, the Ministers have directed the applicant to supply them with an environmental statement and, as required by paragraph 9 of that schedule, the applicant has complied with that direction.

Notices have been published by the applicant in accordance with the requirements of paragraphs 10 and 10A of that schedule.

In accordance with paragraph 15 of that schedule, the Ministers have—

- (a) consulted; and
- (b) sent the environmental statement and any further information falling within paragraph 10A(2) of that schedule to,

such bodies who were likely to have an interest in the project by reason of their environmental responsibilities as the Ministers thought appropriate.

The provisions of paragraph 17 of that schedule have been satisfied.

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

- (a) the environmental statement and the further information falling within paragraph 10A(2) of that schedule;
- (b) the result of the consultations under paragraph 15 of that schedule;
- (c) any objections made and not withdrawn;
- (d) any representations made under paragraph 10(2)(f) or 10A(4)(d) of that schedule; and
- (e) any written representations submitted to the Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection.

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

In accordance with sections 54A(1), (2)(a) and (4) of the Harbours Act 1964(a) a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

(a) Section 54A was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(3) and amended by S.S.I. 2011/396.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Aberdeen Harbour Revision Order 2016 and comes into force on the day after the day on which it is made.

(2) The Aberdeen Harbour Orders 1960 to 2002 and this Order may be cited together as the Aberdeen Harbour Orders 1960 to 2016.

Interpretation

2.—(1) In this Order—

“the 1960 Order” means the Provisional Order confirmed by section 1 of the Aberdeen Harbour Order Confirmation Act, 1960 and contained in the schedule of that Act(a);

“the Board” means the statutory body incorporated under the name of “the Aberdeen Harbour Board” by section 4 of the 1960 Order;

“CEMD” means a Construction and Environmental Management Document approved by the Ministers from time to time under article 28(1);

“Commissioners of Northern Lighthouses” means the general lighthouse authority for Scotland, a body corporate constituted by section 193 and schedule 8 of the Merchant Shipping Act 1995(b);

“deposited plans” means the plans which are bound together and signed in duplicate with reference to this Order and marked “The Aberdeen Harbour Revision Order 2016 Plans” of which one set has been deposited at the Scottish Government, Transport Scotland, AMFC Directorate, 2F North, Victoria Quay, Edinburgh, EH6 6QQ and the other set has been deposited at the principal office of the Board, 16 Regent Quay, Aberdeen, AB11 5SS;

“general direction” means a direction given under article 18;

“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(c));

“the Group” means the Environmental Advisory Group referred to in paragraph 1 of the schedule;

“harbour” means the harbour of Aberdeen as comprised within the harbour limits;

“harbour limits” means the limits of the harbour as defined in article 15;

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

“harbour undertaking” has the same meaning as in section 3 of the 1960 Order;

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

“limits of deviation” means the limits delineated in red on sheet 9;

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management thereof;

“OEMD” means an Operational and Environmental Management Document approved by the Ministers from time to time under article 28(2);

“special direction” means a direction given under article 20;

(a) 1960 c.1.

(b) 1995 c.21. Schedule 8 was amended by section 55 of the Scotland Act 2016 c.11.

(c) 1998 c.46.

“the Ministers” means the Scottish Ministers;

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

“UK Chamber of Shipping” means the trade association for the United Kingdom shipping industry, incorporated under that name as a company limited by guarantee;

“vessel” means a ship, boat, raft or water craft of any description however propelled or moved, and includes a jet-ski, a displacement craft, a personal watercraft, a sea plane on the surface of the water, a hydrofoil vessel or any other amphibious vehicle and any other 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 thereof and includes any work constructed under article 3 (power to construct works) or article 5 (subsidiary works).

(2) In this Order, all areas, directions, distances, lengths, widths and heights as stated in any description of works, powers or lands other than article 4 (power to deviate) shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width and height and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

(3) Any reference in this Order to a work identified by a number is a reference to the work of that number authorised by this Order.

(4) Any reference in this Order to a numbered sheet is a reference to that numbered sheet in the deposited plans.

PART 2

WORKS

Power to construct works

3.—(1) The Board may, in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown on them, construct and maintain in the City of Aberdeen the following works, along with all necessary works and conveniences connected with them—

Work No. 1 – Deepening by means of excavation, including drilling and blasting, to a depth of 10.5 metres below Chart Datum, including side slopes of that part of the seabed shown coloured green on sheet 1.

Work No. 2 – Deepening by means of excavation, including drilling and blasting, to a depth of 9 metres below Chart Datum, including side slopes of that part of the seabed shown coloured orange on sheet 1.

Work No. 3 – Deepening by means of excavation, including drilling and blasting, to a depth of 10.5 metres below Chart Datum, including side slopes of that part of the seabed shown coloured blue on sheet 1.

Work No. 4 – Construction of a breakwater, including dredging, from the north shore of Nigg Bay, as shown coloured blue on sheet 2.

Work No. 5 – Construction of a breakwater, including dredging, from the south shore of Nigg Bay, as shown coloured green on sheet 2.

Work No. 6 – Construction of west, north and east quays and a southeast pier, including quay walls and pier walls respectively and associated structures, as shown coloured green on sheet 3.

Work No. 7 – Excavation, reclamation, infilling and surfacing of an area of land behind the quays forming Work No. 6 to form hardstanding for port operations, marshalling of

cargo, parking, port entrance and exit and ancillary uses, as shown coloured yellow on sheet 3.

Work No. 8 – Construction/erection of (i) protective fencing and gates shown coloured blue on sheet 4 and (ii) service trenches, lighting, welfare accommodation, vehicle weighbridges, CCTV facilities and signage within the area shown coloured green on sheet 4.

Work No. 9 – Construction of a harbour car park, security gatehouse and security installations within the area shown coloured orange on sheet 5.

Work No. 10 – Construction of water storage tanks, a fuel depot, bulk commodity storage tanks and electricity substations within the area shown coloured blue on sheet 6.

Work No. 11 – Construction of berthing jetties as shown coloured green on sheet 7.

Work No. 12 - Erection of breakwater lights, leading lights and sector lights and erection of dredged channel navigational aids in accordance with the requirements of the Commissioners of Northern Lighthouses.

(2) The respective deck levels of the breakwaters, quays, pier and jetties forming works 4, 5, 6 and 11 shall be as follows: breakwaters at levels between 10.4 and 12.9 metres above Chart Datum and quays, pier and jetties at a level of 6.7 metres above Chart Datum.

(3) The respective heights of the buildings and structures forming works 8, 9 and 10 shall be as follows: fencing and gates 3 metres, lighting units 25 metres, welfare accommodation 5 metres, CCTV facilities 6 metres, security gatehouse 4 metres, tanks and fuel depot 15 metres and other items 5 metres.

(4) The Board may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the seabed of the harbour and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the harbour undertaking and so much of the seabed of the harbour and of the foreshore as may be reclaimed shall be deemed to be operational land within the meaning of section 215 of the Town and Country Planning (Scotland) Act 1997(a).

(5) The Board may, within the limits of deviation, alter, reconstruct, extend, enlarge, replace or relay, temporarily or permanently, the works and may maintain and use the same as altered, reconstructed, extended, enlarged, replaced or relaid.

(6) For the purposes of facilitating the construction of the works authorised under this article, the Board may enter into arrangements with persons who may be affected by the construction of the works, including financial arrangements.

(7) The Board may authorise any person or persons to carry out the works.

Power to deviate

4. In carrying out the works authorised by article 3 (power to construct works)—

- (a) the Board may deviate laterally from the lines or situations of those works as shown on sheets 1 to 7 to any extent not exceeding the limits of deviation;
- (b) the Board may deviate vertically from the levels and heights set out in of article 3(2) and (3) to any extent not exceeding ten metres upwards and to such extent downwards as may be necessary or convenient; and
- (c) the Board may deviate vertically in a downwards direction from the levels stipulated in the descriptions of Works Nos. 1, 2 and 3 in article 3(1) in order to facilitate construction but by no more than 5.5 metres.

(a) 1997 c.8.

Subsidiary works

5. The Board may within the limits of deviation carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and loading of passengers; and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

Obstruction of works

6. Any person who intentionally obstructs any person acting under the authority of the Board in setting out the lines of or in constructing the works, or who 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.

Works to be deemed part of the harbour undertaking

7. The works shall be deemed for all purposes to be part of the harbour undertaking and the Aberdeen Harbour Orders 1960 to 2002 together with all byelaws, directions, rules and regulations of the Board for the time being in force relating to the harbour undertaking shall apply to the works and may be enforced by the Board accordingly.

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 Ministers and subject to any conditions and restrictions imposed by the 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 Ministers may by notice in writing require the Board at their own expense to remove, alter or reconstruct the tidal work, or any part of it, or otherwise restore the site of the tidal work to its former condition; and if on the expiry of one month beginning with the date the notice was served upon the Board they have failed to comply with the requirements of the notice, the Ministers may execute the works specified in the notice; or
- (b) if it appears to the Ministers urgently necessary to do so, they may themselves remove, alter or reconstruct the tidal work, or any part of it, or otherwise restore the site to its former condition.

(3) Any expenditure incurred by the Ministers under paragraph (2) shall be recoverable from the Board.

Survey of tidal works

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

Provision against danger to navigation

10.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof, the Board shall as soon as practicable notify the Commissioners of Northern Lighthouses and 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 the Board fails to comply in any respect with the provisions of this article, the Board 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 falls into decay the Ministers may by notice in writing require the Board at the Board's own expense to repair and restore the work, or any part of it, or to remove the work and restore the site of the work to its former condition, to such an extent and within such limits as the Ministers think appropriate.

(2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or allowed to fall 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 Ministers may include that part of the work, or any portion of it, in any notice under this article.

(3) If, on the expiry of one month from the date when a notice under this article is served upon the Board, they have failed to comply with the requirements of the notice, the Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Board.

Lights on tidal works during construction

12.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Board shall at the outer extremity thereof 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 the Board fails to comply in any respect with a direction given under this article the Board 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 the Board shall at the outer extremity thereof 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 the Board fails to comply in any respect with a direction given under this article the Board 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 are not completed within ten years from the coming into force of this Order or within such extended period as the Ministers may on the application of the Board allow by consent in writing, the powers granted to the Board under this Order for making and maintaining the works shall cease to have effect, unless the works have been substantially commenced.

(2) As soon as reasonably practicable after any consent is given under paragraph (1), the Board 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 summary of the effect of that consent.

(3) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (2), the Board shall keep a copy of the consent referred to in

that notice open to public inspection at their principal office at all reasonable hours, without payment.

(4) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 4 has been constructed as will enable other works to be constructed, maintained and managed together with that part of Work No. 4 as a harbour for the efficient and economic transport of goods or passengers by sea.

(5) Paragraph (1) does not apply to any works carried out under article 3(5) or article 5.

PART 3

HARBOUR REGULATION

Limits of harbour

15.—(1) The harbour shall comprise—

- (a) the area shown delineated in green on sheet 8;
- (b) the area shown delineated in red on sheet 9; and
- (c) that area below the level of high water within a radius of 2.3 nautical miles from Girdle Ness Lighthouse at Aberdeen (which is located at latitude 57°08.34'N and longitude 002°02.91'W) which area is shown coloured pink on sheet 10.

(2) All references in the Aberdeen Harbour Orders 1960 to 2002 to the “harbour” and the “port and harbour” shall be construed as references to the “harbour” as defined in article 2.

General byelaws

16.—(1) The Board 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, 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 navigation, berthing and mooring of vessels within the harbour, their speed and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons 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 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) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the harbour;
- (j) regulating the use of ferries within the harbour;
- (k) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;

- (l) 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 paragraph (k);
 - (m) regulating the launching of vessels within the harbour;
 - (n) prohibiting persons working or employed in or entering the harbour or any part thereof, from smoking therein;
 - (o) regulating the use of fires and lights within the harbour and within any vessel within the harbour;
 - (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 harbour master to take such action as may be reasonably required in default of compliance with any such approval, condition, control or direction; and
 - (q) the conservation of the fauna, avifauna and flora in the harbour.
- (3) Byelaws made under this article may—
- (a) provide for fines on summary conviction not exceeding level 3 on the standard scale for breach of any approval, condition, direction or requirement imposed under the byelaws;
 - (b) relate to the whole of the harbour or to any part thereof;
 - (c) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles.

Confirmation of byelaws

17.—(1) Byelaws made by the Board under this Order shall not come into operation until they have been confirmed by the Ministers.

(2) Not later than one month before an application for confirmation of byelaws is made by the Board to the Ministers, notice of the intention to apply for confirmation and of the place at which and time during which a copy of the byelaws shall be open to inspection shall be published as follows—

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

(3) Not later than the first date on which the notice under paragraph (2) is published, the Board shall send a copy of the notice to the Chief Executive of Aberdeen City Council and to the Ministers.

(4) For a period of at least one month before application is made for confirmation of byelaws, the Board shall keep a copy of the byelaws open to public inspection, without payment, at their principal office at all reasonable hours.

(5) The Board shall supply a copy of the byelaws or of part of the byelaws to a person on payment of such reasonable charge as the Board may determine.

(6) During the period of one month beginning with the last date of publication of any notice required by paragraph (2), any person may make, in writing to the Ministers, any objection to or representation about the byelaws to which the notice relates.

(7) The Ministers may confirm the byelaws (with or without modifications) or may refuse to confirm them.

(8) Where the Ministers propose to make a modification that appears to them to substantially affect the character of the byelaws, they shall inform the Board and require them to take any steps the Ministers consider necessary for informing persons likely to be concerned with the modification.

(9) For the purposes of paragraph (8), the Ministers shall give the Board and any person who is to be informed of a proposed modification the opportunity to make representations in writing

about that proposed modification during a period determined by the Ministers and the Ministers shall take such representations into account before making a decision under paragraph (7).

(10) The Board shall—

- (a) keep a copy of confirmed byelaws open to public inspection at all reasonable hours, without payment, at the Board's principal office; and
- (b) provide a copy of the byelaws to any person on payment of such reasonable charge as the Board may determine.

General directions to vessels

18.—(1) The Board may, after consultation with the UK Chamber of Shipping, give general directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation or for the conservation of fauna, avifauna and flora in the harbour and the approaches and channels leading thereto and, without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) for designating areas, routes or channels in the harbour and the approaches thereto which vessels are to use, or refrain from using, for movement or mooring;
- (b) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for the purposes of this paragraph.

(2) Directions given under paragraph (1) may apply—

- (a) to all vessels or to a class of vessel designated, or the designation of which is provided for, in the direction; and
- (b) to the whole of the harbour and the approaches and channels leading thereto, or to a part designated, or the designation of which is provided for, in the direction; and
- (c) at all times or at times designated, or the designation of which is provided for, in the direction,

and every direction given under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a) to (c).

(3) The Board may, after consultation with the UK Chamber of Shipping, revoke or amend directions given under this article.

Publication of general directions

19.—(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 Board as soon as practicable, once in Lloyd's List or in some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies may be inspected or bought and, in the latter case, the price of those copies.

(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 Board consider appropriate.

Special directions to vessels

20.—(1) The harbour master may give a special direction—

- (a) requiring a vessel anywhere within the harbour limits to comply with a requirement made in or under a general direction;
- (b) for 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) for securing that a vessel moves only at certain times or during certain periods;
- (d) prohibiting the mooring of a vessel in any particular part or parts of the harbour;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel; and

(f) regulating the manner in which a vessel takes in or discharges passengers, cargo, fuel, water, ship's stores or ballast in the harbour.

(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

21. 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 his vessel, persons on board, its cargo or any other person or property.

Failure to comply with directions

22. 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 2 on the standard scale.

Enforcement of special directions

23.—(1) Without prejudice to any other remedy available to the Board, 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 he shall not do so unless, after reasonable inquiry has been made, the master cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Board from the owner of the vessel.

PART 4

MISCELLANEOUS & GENERAL

Defence of due diligence

24.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2), it shall be a defence for the Board 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 an allegation that the commission of the offence was due to the act or default of another person, the Board shall not, without leave of the Court, be entitled to rely on that defence unless, within a period of 7 clear days before the hearing, they have 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 their possession.

Saving for Commissioners of Northern Lighthouses

25. 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.

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

Crown rights

27.—(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 Board 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 of 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.

Environmental requirements

28.—(1) The works shall not be commenced until the Ministers have, following consultation in accordance with paragraphs (4) to (7), approved in writing the CEMD for the works (amendments to which may be approved by the Ministers from time to time).

(2) The operation of the harbour facilities constituted by the works shall not be commenced until the Ministers have, following consultation in accordance with paragraphs (4) to (7), approved in writing the OEMD for the works (amendments to which may be approved by the Ministers from time to time).

(3) The approved OEMD shall supersede the CEMD with the latter then ceasing to have effect.

(4) Before approving the CEMD or the OEMD or any proposed amendment to them, the Ministers shall consult the following bodies in so far as each has an interest in the subject matter—

- (a) Aberdeen City Council;
- (b) the Scottish Environment Protection Agency;
- (c) Scottish Natural Heritage.

(5) The consultation responses of those bodies shall be without prejudice to the respective statutory rights and powers of the consultees.

(6) The period for responses to consultation under paragraph (4) shall be determined by the Ministers taking into account the extent to which they consider that they require advice on appropriate and necessary mitigation for construction and operational procedures, and the Ministers shall have regard to such responses before making any decision on whether to approve the CEMD or the OEMD (or any amendment to either document).

(7) Before making any decision on whether to approve the CEMD or the OEMD (or any amendment to either document) the Ministers shall allow the Board an opportunity to comment on any response received from a body consulted by the Ministers under paragraph (4) and shall have regard to any such comment.

(8) For the purpose of ensuring compliance with the obligations set out in the CEMD or OEMD, the following statutory bodies shall have the power to approve on behalf of the Ministers those matters delegated to each of them by the Ministers and upon which an application is submitted by or on behalf of the Board to them for approval under the CEMD or OEMD—

- (a) Aberdeen City Council;
- (b) the Scottish Environment Protection Agency.

(9) The Board shall, after receipt of intimation to the Board of the approval by the Ministers of the CEMD or OEMD or any amendment of the same, send each of the bodies referred to in paragraph (4) a copy of the CEMD or OEMD (or, as the case may be, the amended CEMD or OEMD) as approved.

(10) The Board shall ensure that the works are carried out and then operated as part of the harbour in accordance with the CEMD or the OEMD (or any amendment to either document) then in effect.

Mitigation

29. The schedule of this Order shall have effect.

Repeals

30. Sections 52, 82 and 91 to 95 of the 1960 Order are repealed.

St Andrew's House,
Edinburgh
7th December 2016

H YOUSAF
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 29

MITIGATION MEASURES

Environmental Advisory Group

1.—(1) Prior to the commencement of the works, the Board shall establish, implement and organise an Environmental Advisory Group.

(2) The Group will advise and support the Board in the creation and implementation of the CEMD and the OEMD.

(3) The Group shall include the contractor responsible for the works and representatives as appropriate from regulatory and statutory bodies, including—

- (a) Aberdeen City Council;
- (b) Scottish Natural Heritage;
- (c) The Scottish Environment Protection Agency;
- (d) The Royal Society for the Protection of Birds;
- (e) Whale and Dolphin Conservation;
- (f) Historic Environment Scotland;
- (g) Dee District Salmon Fishery Board; and
- (h) any other parties or successor organisations as the Ministers may intimate that they wish to consult before deciding whether to approve a CEMD or an OEMD or an amendment to either of those documents.

Construction and Environmental Management Document

2. The CEMD shall include—

- (a) construction method statements;
- (b) a schedule of mitigation, including all mitigation measures proposed by the Board in connection with the works together with any associated consents and other mitigation recommended by the following consultees—
 - (i) Aberdeen City Council;
 - (ii) the Scottish Environment Protection Agency; and
 - (iii) Scottish Natural Heritage;
- (c) processes to control and action changes to the construction methodology or schedule of mitigation;
- (d) the following specific management plans—
 - (i) marine mammal protection plan;
 - (ii) vessel management plan;
 - (iii) noise and vibration mitigation plan (including hours of operation);
 - (iv) lighting plan;
 - (v) traffic management plan;
 - (vi) pollution prevention plan;
 - (vii) otter protection plan;
 - (viii) piling management plan;
 - (ix) fish species protection plan;
 - (x) habitat management plan;

- (xi) waste management plan;
- (xii) landscape mitigation and compensation management plan; and
- (xiii) Nigg Bay Site of Special Scientific Interest management plan;
- (e) a written scheme for archaeological investigation and mitigation;
- (f) methods for the investigation of the spatial extent and concentration of the sediment plume around the mouth of the River Dee and, if necessary, appropriate mitigation measures to reduce the potential for impacts on salmon smolts from increased predation;
- (g) methods for the investigation of the potential impacts on the East Tullos Burn wetlands from the culverting of the East Tullos Burn and, if necessary, appropriate mitigation to ensure that there is no adverse impact on the wetlands;
- (h) details of the appointment of an appropriately qualified Environmental Clerk of Works and of their roles and responsibilities;
- (i) methods of monitoring, auditing, reporting and communication of environmental issues on site;
- (j) methods for the investigation of contamination and ground gas on site and an assessment of ground water quality and any necessary remediation; and
- (k) details of the persons within the project team who will have responsibility and authority to suspend work on the project (or any part of it) if a potential breach of legislation or mitigation measures occurs.

Operational and Environmental Management Document

3. The OEMD shall include—

- (a) a schedule of mitigation relevant to the operational phases of the harbour after the construction of the works recommended by the consultees listed in paragraph 2(b);
- (b) processes to control and action changes from the agreed schedule of mitigation;
- (c) the following specific management plans—
 - (i) habitat protection and enhancement plan;
 - (ii) Nigg Bay Site of Special Scientific Interest management plan;
 - (iii) marine mammal protection plan;
 - (iv) access management plan;
 - (v) noise management plan;
 - (vi) vessel movement plan, incorporating a code of practice to guide the behaviour of vessels in the harbour;
 - (vii) lighting plan; and
 - (viii) travel plan;
- (d) details of the appointment of a suitably qualified Compliance Manager with responsibility for the implementation of the OEMD; and
- (e) methods of monitoring, auditing, reporting and communication of environmental management on site with the Ministers and other relevant parties.

Restrictions on construction

4.—(1) Impact piling and blasting shall not take place outwith the following hours:-

- (a) Monday to Friday 7 am to 7 pm;
- (b) Saturday 9 am to 4 pm,

and those activities shall not take place on Sundays.

(2) Impact piling and blasting shall not take place on any part of the seabed unless that part of the seabed lies to the landward side of a partially or wholly constructed breakwater or other

effective acoustic barrier capable of providing underwater noise attenuation from impact piling and/or blasting activities.

(3) The construction of any breakwaters comprised within the works shall not commence between 1st June and 31st August in any year without the prior written consent of Scottish Natural Heritage and the Royal Society for the Protection of Birds.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the Aberdeen Harbour Board (“the Board”) to construct and maintain works and other port facilities at Nigg Bay lying to the south of the existing harbour, as an extension to it. The works will consist of deepening areas of seabed, the construction of breakwaters, quays and a pier and the formation of areas for harbour operations with ancillary works. The Order also defines new harbour limits.

The Order confers updated powers on the Board as regards the making of byelaws and enables the issuing of general and special directions to vessels.

The mitigation measures set out in the schedule of the Order are primarily for (but not limited to) the protection of the following animals and environments: Atlantic salmon interest of the River Dee Special Area of Conservation (SAC), bottlenose dolphin of the Moray Firth SAC, eider duck of the Ythan estuary, Sands of Forvie and Meikle Loch Protection Area and the geological interests of the Nigg Bay Site of Special Scientific Interest. They are also directed at other natural heritage interests and mitigating other environmental effects as identified in the Environmental Statement.

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