

ARDROSSAN HARBOUR REVISION ORDER APPLICATION

PURPOSE AND EFFECT NOTE

1 Introduction

- 1.1 This purpose and effect note relates to an application by Ardrossan Harbour Company Limited (**AHCL**) for the proposed Ardrossan Harbour Revision Order (the **HRO**).
- 1.2 AHCL is the statutory harbour authority for Ardrossan Harbour (**the Harbour**) pursuant to a number of private Acts and Orders in respect of the Harbour.
- 1.1 The application is for a harbour revision order to be made under the powers conferred by section 14 of the Harbours Act 1964 (the **1964 Act**).
- 1.2 The HRO would repeal historic legislation relating to the Harbour and grant AHCL the power to be able to grant long leases over it. The current legislation does not allow leases of more than 7 years to be granted and long leases of the whole of the harbour are also prohibited. A number of long term lease agreements are now required for the Harbour and therefore AHCL need to remove the restrictions on leasing in order to be able to provide sufficient security to prospective lessors. No works are proposed but the HRO forms part of a package of proposals to modify and upgrade parts of the harbour infrastructure. These additional works do not form a part of this HRO application.

2 Documents

- 2.1 The application is accompanied by:
- 2.1.1 A draft of the proposed HRO;
 - 2.1.2 This note on the proposed application;
 - 2.1.3 The fee for the application in the sum of £4,000.
- 2.2 An Environmental Statement is not required to be submitted with this HRO application as it is not an EIA Application for the purposes of the 1964 Act.

3 Need and justification for the HRO

- 3.1 Applications for HROs are made under section 14(1) of the 1964 Act. This section provides that:

“Subject to the provisions of this section and to the following provisions of this Act, there may, in relation to a harbour which is being improved, maintained or managed by a harbour authority in exercise and performance of statutory powers and duties, be made by the appropriate Minister an order (in this Act referred to as a “harbour revision order”) for achieving all or any of the objects specified in Schedule 2 to this Act.”

3.2 These requirements are met by this application and so the Scottish Ministers are entitled to make the HRO, because:

3.2.1 the HRO relates to a harbour;¹

3.2.2 that harbour is being improved, maintained and managed by a harbour authority, i.e. AHCL, in the exercise and performance of AHCL's statutory powers and duties; and

3.2.3 the HRO is sought to achieve the objects specified in Schedule 2 to the 1964 Act set out in paragraph 3.3 below. Paragraph 3.3 should be read alongside section 4 of this note, which confirms the purpose and effect of each of the provisions in the draft HRO, and the objects contained in the 1964 Act which each of these provisions achieves.

Objects

3.3 The HRO is proposed to achieve the following objects:

3.3.1 Paragraph 4 of Schedule 2 the 1964 Act– *“Imposing or conferring on the authority for the purposes aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above.”*

3.3.2 The HRO confers powers on AHCL to grant leases or any other lesser rights over the Harbour.

3.3.3 The making of the HRO will therefore enable the object contained in paragraph 4 of Schedule 2 to the 1964 Act to be achieved.

3.4 Section 14(2A) to the 1964 Act of *“...repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour...”*.

3.4.1 The HRO confers a power on AHCL to repeal sections 38 and 44 of The Ardrossan Harbour Consolidation Act 1864. Section 38 restricts grants of leases to no longer than a 7 year term and section 44 prohibits the grant of long leases over the whole harbour.

3.4.2 The making of the HRO will therefore enable the object contained in Section 14(2A) to the 1964 Act to be achieved.

3.5 The application has been made in writing by AHCL which is the harbour authority engaged in improving, maintaining or managing Ardrossan. This application therefore complies with the requirement in section 14(2)(a) of the 1964 Act.

4 The contents of the HRO

4.1 This section of the note explains:

¹ The term “harbour” includes “any port”, under s. 57(1) of the 1964 Act. The Port is therefore a harbour for the purposes of the 1964 Act.

- 4.1.1 the purpose of including each provision in the draft HRO;
- 4.1.2 the legal effect of including each provision in the draft HRO;
- 4.1.3 whether the use of those provisions is precedented in any other made Scottish harbour orders and, if so, which harbour order; and
- 4.1.4 the object(s) in Schedule 2 to the 1964 Act which those provisions achieve(s).

Article in HRO	Purpose of provision	Precedent	Legal effect	Objects
Article 3	Power to grant leases	This is a well precedented provision in HRO's, see for example article 28 of the Loch Ryan Port (Harbour Empowerment Order) 2009	This article confers the power on AHCL to enable them to grant leases and or other rights over any part of the Harbour or the Harbour in its entirety.	See paragraph 3.6
Article 4	Repeal of historic legislation	This is a well precedented provision in HRO's, see for example article 42 of the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018	Sections 38 and 44 of The Ardrossan Harbour Consolidation Act 1864 would be repealed and no longer of legal effect.	See paragraph 3.10

5 Conclusion

- 5.1 In light of the above, the proposed HRO satisfies the requirements of section 14(1) of the 1964 Act as it relates to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties, for objects specified under Section 14(2A) and Schedule 2 to the 1964 Act.
- 5.2 AHCL therefore considers that the Scottish Ministers are entitled to make the HRO under section 14(1) of the 1964 Act.

BDB Pitmans

On behalf of Ardrossan Harbour Company Limited