

## Oban Harbour – A guide to legislation and operations

### The Harbours Act 1964 (the Act)

Prior to the introduction of the Act harbour authorities operated mainly under local legislation as independent bodies.

The Act was concerned with the central organisation of harbours, this is a devolved act and adapted for Scottish Law but the principles remain the same.

The Act also provided for major harbour developments to be subject to control at government level.

The Act gives powers to Scottish Ministers to make various types of harbour order, for the purposes of introducing new harbour legislation or amending existing harbour legislation of local application to a specific harbour or group of harbours.

Transport Scotland provide a guide to Harbour orders:-

<https://www.transport.gov.scot/transport-network/ports-and-harbours/harbour-orders/#>

The Act is the enabling legislation for the application for statutory powers to allow for the operation, management and improvement of a harbour.

There are many other legal documents and acts relevant to the Harbours environment. The legal framework is constantly changing and evolving to improve safety.

**Types of Harbour Orders** that can be applied for under the Act:

**Section 14 harbour revision orders (HROs):** Orders under section 14 can be applied for by the harbour authority concerned in improving, maintaining or managing a harbour in the exercise and performance of statutory powers and duties, or by a person, or a body representing persons, having a substantial interest in the harbour. The order must be in the interests of the harbour and may be made for achieving all or any of the objects specified in Schedule 2 of the 1964 Act. An HRO can extend or modify existing statutory powers and/or authorise works.

**Sections 15 harbour revision orders (HROs):** Orders under section 15 are made by Scottish Ministers without application by a harbour authority and are limited to the reconstitution of a harbour authority and the regulation of its procedure.

**Section 16 harbour empowerment orders (HEOs):** Orders under section 16 may be applied for by any person whose objectives are the improvement, maintenance or management of a harbour, or the construction of a new harbour for which they are seeking statutory powers where such powers do not already exist.

CMAL have a number of current Harbour Orders in place that provide the legal framework in which we operate at Oban:-

1. The Caledonian MacBrayne (Oban Quay) Harbour Revision Order 2005
2. The Transport (Scotland) Act 1989 (Transfer of Shipping Companies) Appointed Day Order 1990
3. Scottish Transport Group (Oban Quay) Harbour Revision Order 1986
4. Scottish Transport Group (Oban Quay) Order Confirmation Act 1974 confirming the Scottish Transport Group (Oban Quay) Order 1974
5. London Midland and Scottish Railway Order Confirmation Act 1933 confirming the London Midland and Scottish Railway Order 1933
6. Callander and Oban Railway Act 1897
7. Callender and Oban Railway Act 1878

### Regulation of Harbour Activities through the Port Marine Safety Code (PMSC)

The PMSC has been developed and improved over many years and provides a practical framework that provides for a pragmatic and proportionate approach to safety standards across the industry.

#### The PMSC

<https://www.gov.uk/government/publications/port-marine-safety-code>

It will improve safety in the port marine environment and will enable organisations to manage their marine operations to nationally agreed standards.

It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured.

It sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment. The UK Government, the devolved administrations and representatives from across the maritime sector, endorse it and, while the PMSC is not mandatory, these bodies have a strong expectation that all harbour authorities will comply.

The Marine Coastguard Agency (MCA) through auditing and health checks regulates compliance with the PMSC.

#### CMAL and the PMSC

To demonstrate compliance CMAL have in place the appropriate policies and a Marine Safety Management System (MSMS) that meets the key requirements of the PMSC:-

- 1. Duty holder:** Formally identify and designate the duty holder, whose members are individually and collectively accountable for compliance with the Code, and their performance in ensuring safe marine operations in the harbour and its approaches.
- 2. Designated Person:** A 'designated person' must be appointed to provide independent assurance about the operation of the marine safety management system. The designated person must have direct access to the duty holder.
- 3. Legislation:** The duty holder must review and be aware of their existing powers based on local and national legislation, seeking additional powers if required in order to promote safe navigation.
- 4. Duties and Powers:** Comply with the duties and powers under existing legislation, as appropriate.
- 5. Risk Assessment:** Ensure that marine risks are formally assessed and are eliminated or reduced to the lowest possible level, so far as is reasonably practicable, in accordance with good practice.
- 6. Marine Safety Management System:** Operate an effective MSMS which has been developed after consultation, is based on formal risk assessment and refers to an appropriate approach to incident investigation.
- 7. Review and Audit:** Monitor, review and audit the risk assessment and MSMS on a regular basis – the independent designated person has a key role in providing assurance for the duty holder.

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**8. Competence:** Use competent people (who are trained, qualified and experienced) in positions of responsibility for managing marine and navigation safety.

**9. Plan:** Publish a safety plan showing how the standards in the Code will be met and produce a report assessing performance against that plan at least every 3 years.

**10. Aids to Navigation:** Comply with directions from the General Lighthouse Authorities and supply information & returns as required.

### **Open Port Duty**

The PMSC identifies CMAL's requirement to operate Open Port Duty,

“Taking reasonable care, so long as the harbour or facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property.”

The open ports duty is a specific requirement (one of many) of our statutory legislation.

All CMAL harbours and facilities are “open for public use”

### **Protective Provisions**

Protective provision are stipulations in the HRO often-requiring action by the Harbour Authority to safeguard the interests of the parties with an interest in the harbour environment.

The purpose is to protect the interested parties from the CMAL taking actions / making decisions, which may adversely affect their activities in the harbour.

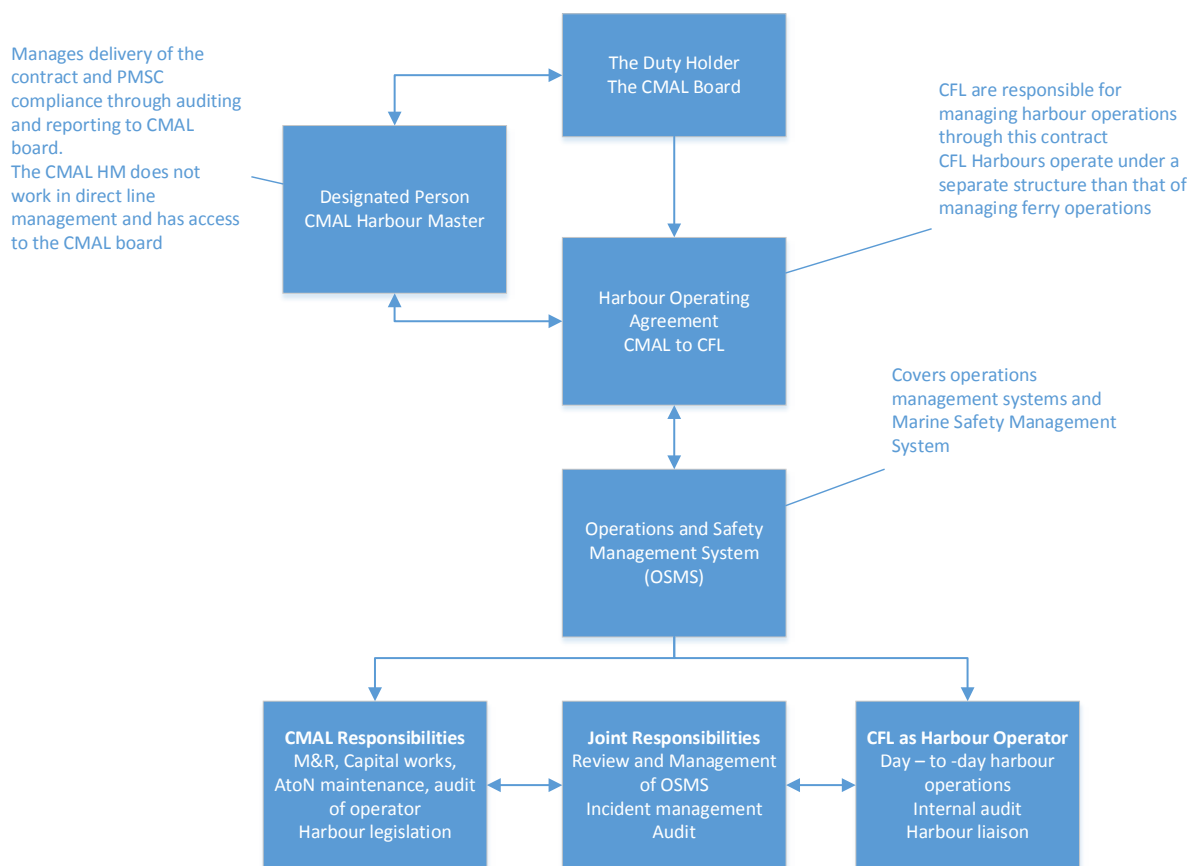
CMAL are committed to considering the interests of the all parties and will consider how the concerns raised can be addressed through protective provisions in legislation (if appropriate).

For example, we could include provisions that allow for:-

- The formal recognition of the Oban Bay Management Group and its role in the management of the wider activities in the harbour.
- The commitment to reduce the Harbour area should a Trust Port be established at a future time.

It is important that we understand the concerns through contributing to the survey in order that we can look at how these can be addressed through the HRO process.

**How CMAL delivers its obligations and duties as a SHA through CFL Harbours**



**Oban Harbour Revision Order**

CMAL currently has through existing legislation in a limited area within the Oban Bay area general and specific statutory duties in respect of:

- the regulation of traffic and safety of navigation within its jurisdiction through general and special directions;
- the conservancy of the harbour and its seaward approaches;
- the protection of the environment within the harbour and its surroundings; and ensuring so far as reasonably practicable the safety at work of its employees and other persons who may be affected by its activities;

with these duties CMAL is required to:

- facilitate the safe movement of vessels and craft into, out of, and within the harbour/facility;

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- carry out the functions of the Authority with special regard to their possible impact on the environment;
- prevent acts of omissions which may cause personal injury to employees or others, or damage to the environment;
- create and promote an interest and awareness in employees and others with respect to safety and protection of the environment; and
- Work with government agencies and others to comply with national legislation in respect of the management of environmentally designated areas and the biodiversity of harbour waters, including, 'where technically feasible and not disproportionately costly', measures to achieve 'good ecological status'.

The HRO that will be promoted will extend these duties to the wider Oban Bay area. Once (if) made the Marine Safety Management System will be reviewed through a risk-based approach to implement appropriate risk mitigation measures and operating arrangements that will allow the safe navigation and use of the harbour by all.

General / special directions are the mechanism with which any Statutory Harbour Authority manage and regulate marine traffic and CMAL have powers with regard to general directions within the current statutory limits.

Any general directions that will be promoted for the wider area will be based on the current Safe Code of Practice, we will engage and consult on directions promoted through the Oban Bay Management Group and the harbour user groups.

Compliance with general / special directions will by means of full investigation of infringements and if deemed appropriate fines based on the standard scale and if severe enough through prosecution.

The standard scale (current) is detailed below and general directions would normally incur a fine at level 4 (this would be set within the legislation) and these are set out and reviewed from time to time through Criminal Procedure (Scotland) Act 1995 (c. 46), <https://www.legislation.gov.uk/ukpga/1995/46/data.pdf>

<b>Level on the scale</b>	<b>Amount of Fine</b>
1	£ 200
2	£ 500
3	£1,000
4	£2,500
5	£5,000

Lorna Spencer  
Director of Harbours, Caledonian Maritime Assets