

Oban Municipal Harbour: Draft Harbour Revision Order (date draft issued 26/8/22)  
OCHDA comments

Existing section heading	OCHDA comments	Suggested wording
<b>Interpretation</b> (Article 2)	Requires to include sea-planes & float planes	
<b>Incorporation of the Harbour, Docks and Piers Clauses Act 1847</b> (Article 3)	Section 52 of the Act (Powers of the Harbour Master) must be incorporated in the HRO.	Add “52” to the list of Sections to be incorporated from the H,D&P Clauses Act in Article 3-(1).
<b>Harbour area</b> (Article 4), as drawn on first draft	N entrance boundary difficult to draw on chart & assess vessel position. Suggest an arc. Kerrera Marina included – is this intentional? S entrance: accept Council’s proposal but note that the Navigational Risk Assessment may lead to amendment.	Excluding the area known as Ardantrive Bay for the operation of Kerrera Marina.
<b>Harbour master &amp; powers</b> (Article 11 (1)(b)) & (Article 11 (2) – Provisions as to damage	1b) Damage not caused by negligence should not be included. Council & owners should have suitable ‘no-fault’ insurance 2) Requires to clarify that this only applies when the damage occurred while the vessel owner is acting in the course of their employment	
<b>Harbour master &amp; powers</b> (Article 13 (a)) – Boarding of vessels	Enforcement of enactments or bye-laws should only relate to those which arise from the Harbour Undertaking.	Add after “byelaw of the Council”, “ <i>where such enactment or byelaw relates to the Harbour Undertaking</i> ”
<b>Moorings</b> (Article 17)	Process for hand-over of tenancies between CES and A&BC requires to be detailed. Council power to lay new moorings requires consent from CES.	
<b>General directions</b> (Article 18 (1))	Harbour directions should always be focussed on improving safety or ease of navigation.	“The Council may.....give directions, <i>in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons, by:-</i> ”
<b>Powers to make byelaws</b>	Byelaws should be confined to prohibiting specified	Delete “ <i>and for authorising the harbour</i> ”

<p>(Article 27 (2)(p))</p> <p><b>Note:</b> 27 (2) (t) duplicates 27 (2) (k)</p>	<p>behaviour rather than a general assumption of power to act as the HM regards as necessary.</p>	<p><i>master to take such actions as may reasonably be required in default of compliance with any such condition, control or direction."</i></p>
<p><b>Powers to make byelaws</b> (Article 27 (3))</p>	<p>Definition of 'personal watercraft' in this article should be based on Government Recreational Craft Regulations (2017)</p>	<p><i>"personal watercraft" means a watercraft intended for sports and leisure purposes of less than 4 metres in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull;</i></p>
<p><b>Charges</b> (Article 29)</p>	<p>No specific mention is made to ship, passenger and goods dues (<i>sometimes called Harbour Dues or Conservancy Charges</i>) for vessels using the Harbour. All applicable vessels should be expected to contribute to the infrastructure, maintenance and management of the Harbour by means of these dues.</p>	<p>In accordance with Section 26 of the Harbours Act 1964.</p>
<p><b>Reserve funds</b> (Article 39)</p>	<p>Article 39 (4) and (5) allow that the Council can use Reserve Funds generated in Oban to support other similar activity in Argyll &amp; Bute. Since Oban Harbour is the busiest harbour operated by the Council this is likely to be adopted routinely. In order to maintain transparency there should be a clear expectation regarding publishing of annual accounts, as required by Section 42 of the Harbours Act 1964.</p>	
<p><b>Saving for CMAL &amp; Ferry Operator</b> (Article 41)</p> <p><b>Note:</b> numbering incorrect, assume 41 1,2,3 &amp; 4</p>	<p><b>Article 41 (3)</b> provides a full exemption for ferries to have to adhere to any Special Directions issued by the Harbour Master.</p> <p>This is considered to be wholly unacceptable to the safe management of the harbour by the Harbour Master.</p> <p><b>Article 41(4)</b> specifically excludes the levying of harbour</p>	<p>Delete Articles 41 (3) &amp; 41 (4)</p>

	<p>dues on vessels accessing to/egressing from the Railway Pier (i.e. ferries). All Harbour users should be expected to contribute to the cost of navigating the waters of Oban Harbour though fees may be discounted or waived under specific circumstances.</p>	
<p><b>Incorporation of earlier legislation</b></p>	<p><b>Article 43 – Repeals:</b> Sections 38-42 of the Callander and Oban Railway Act 1878, and Oban Piers Order (1896) which established the still-extant Oban Harbour Authority and vested powers held to this day by CMAL at the Railway Pier, will have to be repealed, amended or otherwise taken into consideration.</p> <p><b>Purpose and Effect notes:</b> These will be required for all powers sought through the HRO. (Transport Scotland guidance states <i>“Drafts should be accompanied by purpose and effect notes which detail the reason for seeking each power and the legal basis for such a power to be granted with reference to schedule 2 of the 1964 Act.”</i>)</p>	
<p><b>Sections to be added</b></p>		
<p>Governance arrangements: Oban Harbour Board &amp; Advisory Body</p>	<p>Existing Council-wide Harbour Board is neither sufficient nor appropriate. Proposed re-instatement of defunct Port User Group does not properly fulfil PMSC and Guidance on Good Governance recommendations on consultation.</p>	<p>Suggest new Articles 4 &amp; 5, inserted above “Jurisdictions”.</p> <p>See detailed proposals for Oban Harbour Board and local Advisory Body, below.</p>

## **Oban Harbour Board & Advisory Body (new sections)**

### **4. Establishment of Harbour Board**

4.1 Within 12 weeks of this Order coming into force the Council shall establish a Board of between 8 and 10 members constituted and appointed as provided for within this Order and in accordance with Section 57 of the Local Government (Scotland) Act 1973, and they and their successors from time to time appointed under this Order shall be called the “Harbour Board”.

#### **Composition of the Board**

4.2. – (1) From the establishment of the Board, its composition shall be as follows;

(a) five elected members of the Council;

(b) a minimum of three independent lay members, made up of one representative from Oban Community Council, one from OCHDA acting on behalf of the Oban Bay Stakeholders Group and one from the Harbour Advisory Committee (q.v. 5, below).

(2) The Council shall secure, so far as reasonably practicable, that the persons appointed by it under paragraph (1) will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of the Board’s functions.

(3) All members of the Board appointed under paragraph (1) shall be bound by the Code of Conduct for Argyll and Bute Council members and co-opted members (or replacement thereof) in force at that time.

#### **Non-voting Co-Opted members**

4.3. From the establishment of the Board, the Board may from time to time co-opt no more than three persons to attend Board meetings as additional (non- voting) attendees for a fixed term of up to 24 months.

#### **Terms of office for Board members**

4.4 – (1) The first appointments to the Board made by the Council under article 7(1)(a) shall be made within 12 weeks of this Order coming into force, with the terms of the members appointed continuing until the next annual meeting of the Council.

(2) At the annual meeting of the Council referred to in paragraph (1) the terms of the members appointed to the Board by the Council in accordance with article 7(1)(a) will be until the end of the current administrative period of the Council.

(3) All subsequent appointments made to the Board by the Council in accordance with article 7(1)(a) will be made for a term of office until the end of the administrative period of the Council during which the appointment takes place.

(4) The first appointments made to the Board in accordance with article 7(1)(b) shall be made within 12 weeks of this Order coming into force.

(5) Those appointed under article 7(1)(b) shall initially serve for the following terms; (a) one or two independent lay members for a term of one year,

(b) two independent lay members for a term of two years, and

(c) two independent lay members for a term of three years.

(6) All subsequent appointments made under article 7(1)(b) unless the appointment is made to fill a casual vacancy shall be made for a period of three years with a maximum period of three consecutive terms of three years being allowed (the third term only in exceptional circumstances following public advertisement of the role and a competitive appointment process).

### **Casual vacancies**

4.5. — (1) A casual vacancy arising in the office of a duly appointed member of the Board must, unless it is not reasonably practicable to do so, be filled by the appointment of a Board member by the Council in accordance with the requirements of articles 7 and 9.

(2) If a member of the Board appointed under 7(1)(a) ceases to be a member of the Council or is suspended or disqualified from being a councillor, the Council must appoint a replacement member at its next meeting, whose term shall run until the end of the administrative period of the Council during which the appointment takes place.

(3) A member of the Board appointed to fill a casual vacancy under this article shall, if appointed under article 7(1)(b) hold office as a member of the Board for the remainder of the term of the member of the Board in whose place that person has been appointed.

### **Meetings of the Board**

4.6. Meetings of the Board shall take place at least 4 times per year.

### **5. Establishment of Advisory Body**

5. — (1) The Council must establish a harbour advisory body which the Council must consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour.

(2) The Council must make arrangements for the advisory body to meet not less than three times a year.

(3) The Council must take into consideration within a reasonable period any matter, recommendation or representation which may from time to time be referred or made to it by such an advisory body whether or not that advisory body has been consulted by the Council on the matter, recommendation or representation so referred or made.

- (4) Any advisory body established pursuant to this article must consist of such number or numbers of persons appointed by the Council as the Council from time to time considers appropriate, but should consist of at least 50% elected members, who may also be members of the Harbour Board but should be members drawn from the Oban Lorn and the Isles Area Committee.
- (5) Appointments to any such advisory body must be made by the Council in accordance with a scheme prepared by it for that purpose and the scheme must provide for the appointment of persons who, in the opinion of the Council, are representative of persons having an interest in the functioning of the harbour.
- (6) Any such advisory body may determine its own quorum and procedure and must appoint a chairperson.
- (7) An individual member of any such advisory body may hold office for the period of three years from the date of their appointment and at the end of that period will be eligible for reappointment.
- (8) A member of any such advisory body may resign their office at any time by notice in writing given to the Council.