
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 188

**The Dumfries and Galloway Council
(Kirkcudbright) Harbour Revision Order 2018**

PART II

HARBOUR REGULATION

Harbour jurisdiction

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 within the area described in schedule 1 of this Order, and shown on the harbour maps together with the harbour premises as shown on the harbour maps.

(2) In the event of any discrepancy between the boundaries of the harbour as described in schedule 1 of this Order and the boundaries shown on the harbour maps, the description shall prevail.

Harbour master

5. The Council may employ and appoint a harbour master.

General powers and duties in respect of the harbour

6.—(1) The Council may improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities therein.

(2) For these purposes and without prejudice to the generality of paragraph (1) the Council may construct, alter, demolish and reconstruct structures and works in the harbour, subject to having all necessary consents and the rights over any land required.

(3) This article is without prejudice to any powers of the Council under or by virtue of any other enactment (including any other provisions within this Order).

Powers with respect to land, buildings, harbour facilities etc.

7.—(1) The Council may for such price and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to it which is no longer required by the Council for the purposes of the harbour.

(2) The Council may for the purposes of the harbour undertaking manage, use or develop land belonging to it as it thinks fit.

Power to dredge

8.—(1) The Council may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the harbour and the seaward approaches thereto.

(2) The Council may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995⁽¹⁾) from time to time dredged or removed by it from the harbour.

(3) No dredged materials shall be deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

Declaration of draught, etc. of vessel

9.—(1) The harbour master may require the master of a vessel entering, leaving or intending to enter or leave the harbour to state the length overall and draught maximum of his vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse fails to give the information or gives incorrect information shall, without prejudice to any right of the Council to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

Provisions as to damage

10.—(1) This article applies to any damage caused to any work or property of the Council in the harbour—

- (a) by any person who contravenes any provision of this Order or any other enactment relating to the harbour; or
- (b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Council may detain any vessel which caused the damage, and any other property belonging to or in charge of the person who caused the damage, or belonging to that person’s employers, until the cost of the damage has been paid or until reasonable security has been given to the Council.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article does not affect—

- (a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act, or failure to act, gave rise to the damage;
- (b) any right of the Council under any other enactment, agreement or rule of law; or
- (c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the harbour by the Council.

Obstruction of harbour master, etc.

11. Any person who intentionally obstructs the harbour master or any other person carrying out duties under this Order or 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.

(1) 1995 c.21.

Boarding of vessels

12. The harbour master may enter and inspect a vessel in the harbour, subject to producing his authority where requested—

- (a) for the purposes of any enactment relating to the Council or of any byelaw of the Council, 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 prior written notice first having been given to the owner or the person appearing to have charge of the vessel, at least 24 hours in advance; and the written notice shall have annexed to it a copy of this article.

Vessels adrift

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

Power to appropriate parts of the harbour, etc.

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

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the harbour, 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 Council 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 Council shall not restrict such rights more than is necessary for the purpose for which the part of the harbour is appropriated or set apart.

Moorings

15.—(1) The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as it considers necessary or desirable for the convenience of vessels.

(2) The Council may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the harbour.

(3) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels 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.

(4) Any licence granted under paragraph (2) shall be valid only for a period of one year commencing with the date on which it takes effect.

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

General directions

16.—(1) The Council may after consultation with the Royal Yachting Association and harbour users give directions for any of the following purposes:—

- (a) designating areas, routes or fairways in the harbour which vessels are to use, or refrain from using for movement, mooring or anchorage;
- (b) securing that vessels move only at certain times or during certain periods;
- (c) securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) prohibiting entry into or navigation within any of the main fairways during any temporary obstruction thereof;
- (e) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master;
- (f) prohibiting entry into or movement in the harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no such direction shall prevent the entry into the harbour or the approaches of any vessel seeking refuge from stress of weather;
- (g) regulating the speed of vessels within the harbour.

(2) A general direction under this article may apply—

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

and every direction 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) The Council may after consultation with the Royal Yachting Association and harbour users revoke or amend any general direction.

Publication of general directions

17.—(1) Except in an emergency, the Council shall publish notice of the giving of a general direction and of any amendment or revocation of a general direction as soon as practicable once in a newspaper circulating in the locality of the harbour, and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies of the general direction or the amended general direction (as the case may be) may be inspected and bought, and the price of the general direction or amended general direction (as the case may be).

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

Special directions to vessels

18.—(1) 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, the manner in which and speed at which a vessel shall enter into, go out of, move within or lie in or at the harbour;
- (c) for securing that a vessel move 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 (from ship to shore or shore to ship or ship to ship) 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.

Failure to comply with special directions

19. The master of a vessel who fails without reasonable excuse to comply with 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

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

Master's responsibility in relation to directions

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

Removal of obstructions other than vessels, vehicles or wreck

22.—(1) The Council may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the harbour other than—

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

(2) If anything removed by the Council under paragraph (1) is known to the Council to be, or is so marked as to be readily identifiable as, the property of any person, the Council shall within one month of its coming into its custody give notice, in accordance with paragraph (6), 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 become the property of the Council.

(3) If the ownership of anything removed by the Council under paragraph (1) is not so known or marked and the ownership cannot within 3 months of its coming into the custody of the Council be proved to the Council's reasonable satisfaction, it shall become the property of the Council.

(4) The Council 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 Council under this article, and if it is sold the proceeds of sale shall be applied by the Council 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 Council proves to its reasonable satisfaction that such person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall become the property of the Council.

(5) If anything removed under this article—

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

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

(7) The Council 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.

Removal of vehicles

23.—(1) If a vehicle is left—

(a) in a parking place provided by the Council within the harbour premises for a longer period than authorised by the Council;

(b) in any part of the harbour premises where the parking of vehicles is prohibited by notice erected by the Council; or

(c) in any place within the harbour premises where it is likely to obstruct or interfere with the use of the harbour premises,

the Council may cause it to be removed to a place of safe custody.

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

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

(4) If the Council 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(2), at that person's last known address or registered address, or the address where the vehicle is ordinarily kept, notice that the Council 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) shall be displayed in a prominent position at each entrance to any parking place provided by the Council and at each place where a road accessible to vehicles enters any part of the harbour premises, and shall be endorsed on any tickets issued to persons leaving vehicles in such parking place or elsewhere at the harbour premises.

(6) In paragraph (3), "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 the owner of the vehicle shows that the vehicle was put there without that person's knowledge or involvement;
- (b) any person by whom it was put in that place; or
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(3) in consequence of the putting of the vehicle in that place.

(7) This article does not apply to any part of any public road within the harbour premises.

Power to remove goods

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

(2) Notwithstanding such removal on behalf of the Council, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Council by the owner in respect of the goods under Part III (Charges) of this Order.

(3) In this article, "goods" includes equipment of any description.

Powers to make byelaws, etc.

25.—(1) The Council may from time to time make byelaws for the efficient management and regulation of the harbour and for the conservation of the natural beauty of all parts of all or any part of the harbour or any of the fauna, flora or physiographical features in the harbour and all other natural features.

(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 docks, berths, wharves, quays, piers, jetties, landing places, equipment, works and conveniences (including moorings);
- (b) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;
- (c) regulating the berthing and mooring of vessels within the harbour and their speed and the use of tugs within the harbour;
- (d) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the harbour;
- (e) regulating the conduct of all persons in the harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;

(2) S.I. 2002/2742.

(3) 1978 c.3.

- (f) regulating the placing and maintenance of moorings within the harbour;
 - (g) preventing and removing obstructions or impediments within the harbour;
 - (h) regulating the use of ferries within the harbour;
 - (i) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
 - (j) regulating the use of personal water craft in the harbour;
 - (k) regulating the holding of regattas and other public events in the harbour;
 - (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 sub-paragraph (i);
 - (m) prohibiting persons in or entering the harbour, or any part thereof, from smoking therein;
 - (n) regulating the movement and parking of vehicles within the harbour;
 - (o) regulating the exercise of the powers vested in the harbour master.
- (3) For the purposes of sub-paragraph (2)(j) above “personal water craft” means any watercraft (not being a structure which by reason of its shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—
- (a) by means of a handlebar operated linkage system (with or without a rudder at the stern); or
 - (b) by the person or persons riding the craft using their body weight for the purpose; or
 - (c) by a combination of the methods referred to respectively in sub-paragraphs (a) and (b).
- (4) 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 thereunder on summary conviction, fines not exceeding level 3 on the standard scale;
 - (b) relate to the whole of the harbour or harbour premises, or to any part thereof; or
 - (c) make different provisions for different parts of the harbour or harbour premises, or in relation to different classes of vessels.
- (5) Existing byelaws in respect of the harbour will remain in place as if they had been made under this order.

Confirmation of byelaws

26.—(1) Byelaws made by the Council 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 Council 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 byelaws shall be open to inspection shall be published as follows—

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

(3) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by the Council at the principal office of the Council and at the harbour office and will be available for inspection without payment.

(4) The Council shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it.

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

(6) Subject to paragraph (7), the Scottish Ministers may confirm the byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(7) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaw they shall inform the Council 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 make decision under paragraph (6) until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

(8) In making a decision under paragraph (6) the Scottish Ministers shall have regard to any comments that may have been received under paragraph (7).

(9) A copy of the byelaws when confirmed shall be printed and deposited by the Council at the principal office of the Council 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 request.