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SCOTTISH STATUTORY INSTRUMENTS

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**1999 No. 199**

**The National Trust for Scotland  
(Canna) Harbour Revision Order 1999**

**PART III**

**HARBOUR REGULATION**

**Harbour jurisdiction**

**15.**—(1) The Trust shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 and the powers of the harbourmaster shall be exercisable within the harbour limits.

(2) The harbour limits shall comprise the harbour premises, together with all waters below the level of high water forming the Sound of Canna commencing on the western boundary from the north end of the footbridge linking Canna with Sanday at a point NG 126670 804971, thence in a south easterly direction for a distance of 33 metres to a point NG 126692 804947, and on the eastern boundary from the east shore of Rubha Carr Innis at a point NG 127973 805061, thence in a southerly direction for a distance of 473 metres to a point NG 127976 804588, on the level of high water.

(3) In the event of any discrepancy between the harbour limits as described in paragraph (2) above and the limits shown on the harbour limits plan, the limits as described in the said paragraph (2) shall be deemed to be correct and shall prevail.

(4) For and incidental to their functions under this Order, the Trust may employ and appoint a harbourmaster.

**Moorings**

**16.**—(1) The Trust may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as they consider necessary or desirable for the convenience of vessels.

(2) The Trust 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, shall place, lay down, maintain, renew or use 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) above shall be valid only for a period of three years commencing with the date on which it takes effect.

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

### **Power to dredge**

17.—(1) The Trust may from time to time, as may appear to them to be necessary or desirable for the purposes of the undertaking, deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the harbour, and may blast any rock in that area.

(2) Subject to the provisions of Article 31 (Crown Rights) below, any materials (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>(1)</sup>) taken up or collected in the course of such operations shall be the property of the Trust and may be used, sold, removed deposited or otherwise disposed of as the Trust may think fit.

(3) Subject to the provisions of this Order no materials so dredged shall be deposited below the level of mean high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

### **General byelaws**

18.—(1) The Trust may from time to time make byelaws for the efficient management and regulation of the harbour area and of the undertaking.

(2) Without prejudice to the generality of paragraph (1) above, 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, staithes, warehouses, sheds, landing places, locks, sluices, 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, including marine creatures of any type, within the harbour;
- (d) regulating the navigation, berthing and mooring of vessels within the harbour area and their speed and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessels, 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 or officers of the Scottish Ministers including the holder of any office in the Scottish Administration or any member of staff of the Scottish Administration as defined in the Scotland Act 1998<sup>(2)</sup> 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 the holding of regattas and other public events in the harbour;

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(1) 1995 c. 21.

(2) 1998 c. 46.

- (m) regulating or prohibiting the activities in the harbour area of divers, surfers, water skiers, jet 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) above;
  - (n) regulating the launching of vessels within the harbour area;
  - (o) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
  - (p) regulating the use of fires and lights within the harbour, and within any vessel within the harbour;
  - (q) regulating the movement, speed and parking of vehicles within the harbour;
  - (r) regulating the exercise of the powers vested in the harbourmaster;
  - (s) 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 harbourmaster, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction.
- (3) Byelaws made under this section may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder, fines not exceeding level 3 on the standard scale;
  - (b) relate to the whole of the harbour or to any part thereof;
  - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels.
- (4) On and from the coming into force of this Order any byelaw made by the Trust and in force within the harbour limits set out in section 3 of the Canna Pier Order 1892<sup>(3)</sup> shall continue in force and shall have effect within the harbour limits set out in article 15(2) of this Order.

### **Confirmation of byelaws**

**19.**—(1) The provisions of subsections (4) to (8), (10) and (12) of section 202 and section 203 of the Local Government (Scotland) Act 1973<sup>(4)</sup> shall apply to any byelaws made by the Trust under this Order as if the Trust were a local authority, and in the application of the provisions of the said Act of 1973 the Scottish Ministers shall be the confirming authority.

(2) Where the Scottish Ministers propose to exercise the power of modification conferred on them by subsection (10) of section 202 of the said Act of 1973 and it appears to them that any modification which they propose to make is substantial, they shall inform the Trust and require them to take any steps they consider necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as they think reasonable for consideration of, and comment upon, the proposed modification by the Trust and by other persons who have been informed of it.

### **Power to detain vessels, etc., in certain circumstances**

**20.** If any person contravenes any of the provisions of this Order or of any byelaw made thereunder by the Trust and any damage is occasioned thereby to the property of the Trust, they may, in addition to any right they have to recover from any such person the cost of repairing or making good any such damage, detain any vessel or other property belonging to or in charge of such person

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<sup>(3)</sup> Confirmed by the Pier and Harbour Orders Confirmation (No.2) Act 1892 (1892 c.lxvii).

<sup>(4)</sup> 1973 c. 65.

or belonging to his employers until the cost has been paid or until reasonable security therefor has been given to the Trust.

### **Power to give directions**

**21.—(1)** The harbourmaster may give special directions to the master of a vessel for any of the following purposes—

- (a) for regulating the time at which and the manner in which any vessel shall enter into, leave or lie in the harbour and its berthing, mooring or unmooring whilst therein;
- (b) for regulating the loading, discharging, storing and safeguarding of a vessel's cargo, fuel, water or stores and the embarking or disembarking of passengers or its taking in or delivering ballast at harbour premises;
- (c) for regulating the manner in which any vessel entering a harbour area shall be dismantled, as well for the safety of that vessel as for preventing the injury to other vessels and to harbour premises, and the moorings therein;
- (d) for removing unserviceable vessels and other obstructions from the harbour and keeping the same clear;
- (e) for regulating the quantity of ballast or dead weight in the hold which each vessel in or at harbour premises shall have during the delivery of its cargo or after having discharged the same;
- (f) for regulating the use of the motive power of a vessel whilst within a harbour area;
- (g) for prohibiting or restricting the use of fires or lights at harbour premises;
- (h) for requiring the removal from the harbour or any part of it of a vessel if—
  - (i) it is on fire; or
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink; or
  - (iii) its removal is necessary to enable maintenance or repair work to be carried out to harbour premises or to premises adjacent thereto;
  - (iv) its removal is considered by the harbourmaster to be necessary to avoid danger to life (including wildlife) or to property; or
  - (v) its removal is considered by the harbourmaster to be necessary to avoid danger to flora or fauna or to the geological or physiographical features of the harbour.

(2) In an emergency, the harbourmaster may give general directions applicable to all vessels or to a particular class of vessels for any of the purposes mentioned in paragraph (1) above.

(3) Any special directions given under this article may be given by the harbourmaster orally or otherwise communicated to the master of the vessel on any occasion when it is not reasonably practicable for a written notice to be served on the master; and any general directions shall be communicated in the manner which is appropriate to the emergency.

### **Failure to comply with directions**

**22.—(1)** The master of a vessel who fails to comply with a direction given under article 21 (power to give directions) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Without prejudice to any other defence it shall be a defence to a charge made pursuant to paragraph (1) above that the master had reasonable ground for believing that to comply with the direction in question would have endangered life or imperilled the safety of any vessel or its cargo, or that for any other reason such compliance was impractical.

### **Enforcement of directions**

**23.**—(1) Without prejudice to any other remedy available to the Trust, if a direction given under article 21 (power to give directions) above is not complied with within a reasonable time, the harbourmaster may 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 master on board a vessel to attend to a direction, the harbourmaster may proceed as if the direction had been given and not complied with:

Provided that the powers of this paragraph shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

(3) Expenses incurred by the Trust in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of the Trust in respect of the vessel.