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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 410**

**The Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002**

**PART II**

**HARBOUR REGULATION**

*Wrecks and obstructions*

**Protection of Crown interest in wrecks**

**25.**—(1) Without prejudice to section 308(1) of the Merchant Shipping Act 1995, the powers conferred on the Comhairle by sections 252 and 253 of that Act shall not be exercisable—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;
- (b) except with the consent of the Secretary of State for Defence, which may be given with or without such a direction as is referred to in sub-paragraph (b) of paragraph (2) below, in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty but which, at the time when the vessel was sunk, stranded or abandoned—
  - (i) had been required to be placed at the disposal of Her Majesty or of a government department; and
  - (ii) was appropriated to the service, under the direction and control of the Secretary of State for Defence, of Her Majesty's ships of war.

(2) The Comhairle shall give notice in writing to the Secretary of State for Defence and to the Scottish Ministers of any decision of the Comhairle to exercise in relation to any vessel referred to in sub-paragraph (b) of paragraph (1) above any of the powers aforesaid other than the power of lighting and buoys and, except in a case which is in the opinion of the Comhairle a case of emergency, shall not proceed with the exercise thereof—

- (a) except with the consent of the Secretary of State for Defence and the Scottish Ministers, before the expiration of a period of 14 days from the giving of the notice; or
- (b) if before the expiration of the said period there is served on the Comhairle a direction by the Secretary of State for Defence or the Scottish Ministers that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where in any such case the Comhairle proceeds to exercise those powers without the consent and before the expiration of the period mentioned in sub-paragraph (a) of this paragraph or after a direction has been served on it as aforesaid, it shall not in the exercise of those powers use any explosives and if, before the expiration of that period such a direction is served on it, shall not be entitled to exercise the power of sale conferred by the said section 252 or the power conferred by paragraph (2) of article 24 above:

Provided that—

- (i) the Comhairle shall not be required to give notice under this paragraph in respect of any vessel in respect of which it has received a consent under sub-paragraph (b) of paragraph (1) above, but any direction such as is referred to in sub-paragraph (b) of this paragraph accompanying that consent shall be deemed for the purposes of this paragraph and of paragraph (3) of the said article 24 to have been duly served under sub-paragraph (b) of this paragraph;
- (ii) the prohibition on the use of explosives imposed by this paragraph shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may for the time being be approved by the Secretary of State for Defence for the purposes of this proviso.

(3) Without prejudice to the power of sale conferred on the Comhairle by the said section 252, the Comhairle shall hold and dispose of any wreck within the meaning of Part IX of the said Act of 1995 raised, removed or recovered under that section, and any surplus proceeds of sale within the meaning of that section in accordance with such directions (if any) as may be given to it by the receiver of wreck; and on exercising the said power of sale in the case of any property the Comhairle shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by the Comhairle under that section.

(4) Any limitation on the powers of the Comhairle in relation to any vessel arising by virtue of paragraph (1) or paragraph (2) above shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Commissioners of Northern Lighthouses by section 252 of the said Act of 1995.