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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 189**

**The Dumfries and Galloway Council (Isle of Whithorn) Harbour Empowerment Order 2008**

**PART II**

**HARBOUR REGULATION**

*Management and control of the harbour*

**General functions in respect of the harbour**

5.—(1) It shall be the duty of the Council, subject to the provisions of this Order, to take such steps from time to time as it may consider necessary or desirable for the conservancy, protection, regulation, maintenance, operation and management and improvement of—

- (a) the harbour and the approaches thereto; and
- (b) the facilities afforded therein or in connection therewith.

(2) For those purposes, and without prejudice to the generality of the foregoing, the Council may—

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities;
- (b) place, execute, operate, maintain, renew, alter, remove and reconstruct structures and works and equipment in the harbour; and
- (c) do all other things which in its opinion are expedient to facilitate the proper carrying on or development of the harbour.

**Power to dredge**

6.—(1) Subject to the provisions of this Order, 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 and may blast any rock in that area.

(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<sup>(1)</sup>) from time to time dredged or removed by it from the harbour.

(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.

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(1) 1995 c. 21.

### **Reclamation of land**

7.—(1) Subject to the provisions of this Order, the Council may within the harbour fill up, raise, enclose and reclaim land from the sea and the bed and foreshore of the harbour and for that purpose may place such piles and construct such groynes, retaining walls and other works in and upon the sea, bed and foreshore as the Council deems necessary.

- (2) The Council shall not exercise the powers of paragraph (1)—
- (a) in relation to any land not owned by it unless it first obtains the consent in writing of the owner thereof; or
  - (b) in relation to any part of the harbour in front of or adjoining land belonging to Her Majesty in right of Her Crown or to a government department or held in trust for Her Majesty for the purposes of a government department and protected by article 56 below, without the consent in writing of the Crown Estate Commissioners or, as the case may be, the government department.

### **Tidal works not to be executed without approval by the Scottish Ministers**

8.—(1) A tidal work shall not be constructed, executed, renewed, replaced or altered except in accordance with plans and sections approved by the Scottish Ministers and subject to any conditions and restrictions imposed by the Scottish Ministers before the work is begun.

(2) If a tidal work is constructed, executed, renewed, replaced or altered in contravention of this article—

- (a) the Scottish Ministers may by notice in writing require the Council at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition, and if, on the expiration of 30 days from the date when the notice is served upon the Council it has failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice; or
- (b) if it appears to the Scottish Ministers urgently necessary to do so, they may themselves remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Scottish Ministers in so doing shall be recoverable from the Council as a debt.

### **Declaration of draught, etc. of vessel**

9.—(1) The master of a vessel entering, leaving or intending to enter or leave the harbour shall, if required to do so by the harbour master, 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) above without reasonable excuse 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 causing the damage, or belonging to his employers, until the cost of the damage has been paid or until reasonable security therefor 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 is without prejudice to—

- (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; or
- (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 officers, etc.**

**11.** Any person who intentionally obstructs an officer of the Council or other person acting in execution of this Order or of 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.

#### **Boarding of vessels**

**12.** Any duly authorised officer of the Council may, on producing if so required his authority, enter and inspect a vessel in the harbour—

- (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 notice first having been given to the owner or the person appearing to have charge of the vessel; and the 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) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

#### **Licensing of tugs**

**14.—(1)** It shall not be lawful for any person, except in an emergency, to operate a vessel exceeding 5 tons gross for fee or reward for the purpose of moving or controlling the movement of any other vessel within the harbour except under and in accordance with the terms and conditions of a licence granted by the Council in that behalf.

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

(3) Any person who contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Power to appropriate parts of the harbour, etc.**

15.—(1) Notwithstanding anything in this or any other statutory provision of local application, the Council may from time to time set apart or appropriate any part of the harbour, or any lands, works, buildings, machinery, equipment or other property of the Council in the harbour, for the exclusive, partial or preferential use or accommodation for any particular trade, activity, person, vessel or class of vessels or goods, subject to the payment of such reasonable charges and to such terms and conditions as the Council 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, or any lands, works, buildings, machinery, equipment or other property, so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council.

(3) The harbour master or, as the case may be, any such authorised officer may order any person or vessel contravening paragraph (2) above to leave or be removed from the site of the contravention.

(4) Section 58 of the 1847 Act shall extend and apply with appropriate modifications to any vessel moored or otherwise positioned in contravention of paragraph (2) above.

### *Moorings*

### **Power to lay down moorings**

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

(2) The Council may issue permits on such conditions (including conditions as to payment) as it thinks fit authorising the holder of the permit to use or allow the use of any moorings provided under this article.

(3) The Council may compound with any person with respect to the payments referred to in paragraph (2) above.

### **Licensing of moorings**

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

(2) A licence may be granted under this article on such conditions as the Council thinks fit.

(3) Nothing in any licence granted under this article shall entitle any person to place, lay down, maintain, renew, use or have any mooring on land not owned or leased by him or by the Council or in which he has no appropriate interest.

### **Offences as to moorings, etc.**

18.—(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any moorings or any part thereof from the harbour;
- (c) places, lays down, maintains, renews or has in the harbour any mooring not provided under article 16 or licensed under article 17 above;
- (d) without reasonable excuse causes or permits a vessel to be moored in the harbour except—
  - (i) at a mooring provided under article 16 or licensed under article 17 above; or

- (ii) at a quay, jetty, slipway or other work;  
shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) If any person commits an offence under paragraph (1)(c) above the Council may remove the mooring in question and recover from that person the expenses incurred in doing so.
- (3) If any person commits an offence under paragraph (1)(d) above the Council may—
  - (a) remove the vessel, including any tackle with the vessel;
  - (b) dispose of it; and
  - (c) recover out of the proceeds of sale—
    - (i) any unpaid charge payable under article 16 above;
    - (ii) any unpaid licence fee payable under article 17 above; and
    - (iii) the expenses of removal and disposal under this paragraph;and shall hold any surplus proceeds of sale on trust for the owner of the vessel.
- (4) If the owner of a vessel removed under paragraph (3) above is unknown and cannot after diligent inquiry be found, the Council may apply to the sheriff for an order giving the appropriate directions as to the disposal by the Council of any surplus proceeds of sale.

#### *Directions to vessels*

#### **General directions to vessels**

- 19.**—(1) The Council may after consultation with the Royal Yachting Association give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation and the safety of persons and property in the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes:—
- (a) for designating areas, routes or fairways in the harbour which vessels are to use, or refrain from using, for movement, mooring or anchorage;
  - (b) for securing that vessels move only at certain times or during certain periods;
  - (c) for securing that vessels make use of descriptions of aids to navigation specified in the direction;
  - (d) for prohibiting—
    - (i) entry into the harbour by a vessel which for any reason would be or likely to become a danger to other vessels in the harbour, or to persons, property, flora or fauna in the harbour; and
    - (ii) entry into or navigation within any of the main fairways during any temporary obstruction thereof;
  - (e) for prohibiting entry into or movement in the harbour or the approaches by vessels at times of poor visibility due to the weather or to the presence of dust or smoke:  
Provided that no direction given under sub-paragraph (e) above shall prevent the entry into the harbour or the approaches of any vessel seeking refuge from stress of weather;
  - (f) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for effecting any of the purposes of this paragraph.
- (2) A 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; or
- (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) above.

(3) The Council may after consultation with the Royal Yachting Association revoke or amend any general direction.

### **Publication of general directions**

**20.**—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by the Council 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 direction, it shall state a place at which copies of the direction may be inspected and bought and the price thereof.

(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**

**21.**—(1) The harbour master may give a direction under this article in respect of a vessel anywhere in the harbour for any of the following purposes:—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business in the harbour;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) as to the use of the motive power of the vessel;
- (f) prohibiting or restricting the use of fires or lights;
- (g) as to the use of ballast;
- (h) requiring the removal from any part of the harbour 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 it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment thereof by other vessels or persons or the dispatch of business therein; or
  - (iii) its removal is necessary to enable maintenance or repair work to be carried out in the harbour or to premises adjacent thereto; and
  - (iv) its removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

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

(3) A special direction may be given in any manner considered by the harbour master to be appropriate.

- (4) The harbour master may revoke or amend a special direction.

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

**22.**—(1) The master of a vessel who fails to comply with a general direction or special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 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 other reason such compliance was impracticable.

### **Enforcement of special directions**

**23.**—(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 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 attend to a special direction, the harbour master may proceed as if the direction had been given and not complied with.

(3) The powers of paragraph (2) above 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.

(4) Expenses incurred by the Council in the exercise of the powers conferred by this article shall be recoverable by it as if they were a charge of the Council in respect of the vessel.

### **Master's responsibility in relation to directions**

**24.** 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 his vessel, to persons on board the vessel, to the cargo or any other person or property.

### *Obstructions*

### **Removal of obstructions other than vessels, vehicles or wreck**

**25.**—(1) Without prejudice to its powers under any other enactment (including one contained in this Order) 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) wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(2) If anything removed by the Council under paragraph (1) above 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 (5) below, 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 vest in the Council.

- (b) If the ownership of anything removed by the Council under paragraph (1) above which is not so known or marked is not within 3 months of its coming into the custody of the Council proved to its reasonable satisfaction, it shall vest in the Council.

(3) 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 he was the owner thereof at that time; or
- (b) if within the said period no person proves ownership at the said time, shall vest in the Council.

(4) 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.

(5) A notice given under paragraph (2)(a) above 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.

(6) 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 given or issued by the Council thereunder.

### **Removal of vehicles**

**26.—**(1) If a vehicle is left without permission of the Council—

- (a) in a parking place provided by the Council within the harbour premises for a longer period than 24 hours; or
- (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) above 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 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 1971<sup>(2)</sup>, at his last known address, his 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.

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(2) S.I.1971/450.

(5) A notice stating the general effect of paragraph (1) above 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) above, “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 he shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in that place;
- (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**

27.—(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’s 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.

(3) In this article, “goods” includes vehicles and equipment.

### *Byelaws*

### **Powers to make byelaws, etc.**

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

(2) Without prejudice to the generality of paragraph (1) above, byelaws may be made under this article for all or any of the purposes set out in Schedule 2 to this Order.

(3) Byelaws made under this article may—

- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 4 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) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and, if he was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

(5) Where the Scottish Ministers propose to exercise the power of modification conferred on them by subsection (10) of section 202 of the Local Government (Scotland) Act 1973(4), and the modification appears to them to be substantial, they shall inform the Council and require it to take any

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(3) 1978 c. 3.

(4) 1973 c. 65.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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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 Council and by other persons who have been informed of it.