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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 190**

**The Dumfries and Galloway Council  
(Garlieston) Harbour Empowerment Order 2008**

**PART V**

**CHARGES**

**Charges other than ship, passenger and goods dues**

**39.**—(1) The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined by section 57 of the Harbours Act 1964, entering, using or leaving the harbour such charges as it thinks fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(2) The Council may make such charges for services and facilities provided by it or on its behalf in relation to the harbour as it may from time to time determine.

(3) In paragraph (2) above “charges” does not include ship, passenger or goods dues as defined by section 57 of the Harbour Act 1964.

**Liability for charges**

**40.**—(1) Charges payable to the Council on or in respect of—

- (a) a vessel, shall be payable by the owner or master of the vessel;
- (b) goods, shall be payable by the owner, consignee or shipper of the goods.

(2) Where a charge payable to the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

**Power to grant exemptions, rebates, etc., in respect of charges**

**41.**—(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

**Account of goods**

**42.**—(1) When goods are to be unshipped within the harbour the master of the vessel containing them shall—

- (a) within 24 hours of the arrival of the vessel within the harbour, deliver to the harbour master the name of the consignee of the goods and a copy of the bill of lading or manifest or, if part only of the cargo is to be unshipped, a sufficient account in writing of the goods to be unshipped;
  - (b) if required so to do by the harbour master, give to him 24 hours' notice of the time at which any such goods are to be unshipped.
- (2) Before any person ships goods on board of a vessel within the harbour he shall give to the harbour master a true account signed by him, of the kinds, quantities and weights of the goods.
- (3) If any difference arises between the harbour master and a master or the owner of goods or consignee concerning the weight or quantities of goods in respect of which charges may be payable, the harbour master may cause the goods to be weighed or measured and may detain a vessel containing such goods until the goods have been so weighed or measured.
- (b) Section 46 of the 1847 Act shall apply to any difference such as is referred to in sub-paragraph (a) above.
- (4) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2) above, or with any requirement made under paragraph (1)(b) above, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Recovery of charges by seizure, etc.**

43.—(1) If default is made in the payment of any charge in respect of a vessel or its cargo the harbour master may, on producing if so required his authority, board the vessel with such assistance as he deems necessary and take, seize or arrest the vessel and the tackle and cargo thereof, and if the charge remains unpaid for 7 days after the seizure or arrestment may cause any of the matters so seized or arrested to be sold, and the surplus (if any) of the proceeds of sale over the amount of the charge and over the expenses of taking, keeping, appraising and selling the matters aforesaid shall be paid to the master on demand.

(2) If any dispute arises as to the amount of charge due, or of the expenses of seizure or arrestment by virtue of this article, the harbour master may detain the matters so seized or arrested until the amount aforesaid, subject to any costs of the application payable by either party, has been determined upon application to the sheriff.

#### **Security for charges**

44. The Council may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Council may detain the vessel in the harbour or goods on or in harbour premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

#### **Liens for charges**

45.—(1) A person who by agreement with the Council collects charges on its behalf and who pays or gives security for the payment of charges on goods in his possession shall have a lien on those goods for the amount paid or security given in respect of the amount.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in his custody, and in that event he shall have a like lien on the goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.

### **Refusal of customs clearance**

**46.**—(1) A customs officer may refuse—

- (a) to receive a report inwards or to grant a clearance outwards to a vessel; and
- (b) to pass an entry for imported goods liable to charges;

unless he is satisfied that all charges payable to the Council in respect of that vessel or of those goods, as the case may be, have been paid or that a sum of money or guarantee in respect thereof has been deposited with, or given to, the Council.

(2) Where a person who has paid, or by agreement with the Council given security or deposited a guarantee for, a charge on or in respect of a vessel or goods, requests a certificate of his having done so for production to a customs officer in order to prevent a refusal under paragraph (1) above, the Council shall give him such a certificate in such form as it shall determine.

### **Refusal to pay charges for landing place, etc.**

**47.** An officer of the Council may prevent a vessel from using a landing place or any other facilities provided by the Council, if the master of the vessel refuses to pay the charges for such use.

### **Exemptions from charges**

**48.**—(1) Except in so far as may be agreed between the Council and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to levy charges shall extend to authorise it to levy charges on—

- (a) a vessel—
  - (i) belonging to or in the service of Her Majesty or any member of the Royal Family; or
  - (ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or
  - (iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or
  - (iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;
- (b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;
- (c) troops landed at the harbour premises or a person employed by the Secretary of State for Defence while in the execution of his duty;
- (d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department for Transport and of the Scottish Executive in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the harbour without mooring or making use of any facilities provided by the Council.

### **Conditions as to payment of charges**

**49.**—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in its published list of charges.

(2) Without prejudice to the generality of paragraph (1) above the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given

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to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.