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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 188**

**HARBOURS, DOCKS, PIERS AND FERRIES**

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

*Made* - - - - *7th June 2018*

*Coming into force* - - *8th June 2018*

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964(1) and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act(2).

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to Ministers by Dumfries and Galloway Council (“the Council”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) (except in so far as this Order is made for achieving objects mentioned in section 14(2A) of that Act), Ministers are satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance, or management of the harbour in an efficient and economical manner.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour and consolidating any statutory provisions of local application affecting the harbour.

Notice has been published by the Council in accordance with the requirements of paragraph 10 of Schedule 3 of that Act(3).

In accordance with paragraph 19(1) of that Schedule(4), Ministers have considered—

- (a) the result of the consultations under paragraph 15 of that Schedule;

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(1) 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

(3) Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c). Paragraph 10A of Schedule 3 was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(d).

(4) Paragraph 19(1) of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(i).

- (b) any objections made and not withdrawn;
- (c) any written representations submitted to Ministers by the Council or any objector in elaboration of the application or, as the case may be, objection.

In accordance with paragraph 19(2) of that Schedule(5), Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order

## PART I

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018 and comes into force on the day after the day on which it is made.

#### **Interpretation**

2. In this Order—

- “1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(6);
- “charges” means charges, dues and tolls of every description for the time being payable under any enactment to the Council in relation to the harbour undertaking;
- “the Council” means Dumfries and Galloway Council;
- “government department” includes any part of, or member of staff of the Scottish Administration (within the meaning of section 126(6) of the Scotland Act 1998);
- “general direction” means a direction given by the Council under article 16;
- “the harbour” means the harbour at Kirkcudbright comprised within the harbour limits;
- “the harbour limits” means the limits of the harbour as described in article 4 and in Schedule 1 to this Order and shown on the harbour maps;
- “harbour maps” means the maps referred to in article 5 of which copies are signed, dated and deposited at the offices of the Scottish Ministers at the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ and with the Council at Militia House, English Street, Dumfries, DG1 2HR;
- “harbour master” means any person appointed as such by the Council and includes that person’s deputies and assistants and any other person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of harbour master;
- “harbour premises” means the quays, piers, landing places and all other works, land and buildings for the time being vested in, or occupied or administered by the Council as part of the harbour undertaking as shown on the harbour maps;
- “harbour undertaking” means the harbour undertaking of the Council at Kirkcudbright;
- “master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

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(5) Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

(6) 1847 c.27.

“relevant person” in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies means the person who manages that property, or those rights and interests;

“special direction” means a direction given by the harbour master under article 18 (special direction);

“vessel” means a ship, boat or craft of any description and includes anything constructed or adapted for floating on or being submersed in water (whether permanently or temporarily).

### **Incorporation of the 1847 Act**

3.—(1) Sections 1 to 4, 27, 29, 33, 35, 36, 52, 54, 57 and 60 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission) shall have effect subject to the modification that for the words from “be liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) Section 65 (harbour master may remove vessel for purposes of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

(4) In constructing the provisions of the 1847 Act as incorporated with this Order—

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means the Council and the expression “the harbour, dock or pier” shall mean “the harbour”; and
- (b) for the definition of the word “vessel” in section 3 (interpretation in this and the special Act) there shall be substituted the definition of that word in paragraph (1) of article 2 (interpretation).

## **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(7)) 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.

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(7) 1995 c.21.

(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.

#### **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<sup>(8)</sup>, 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<sup>(9)</sup> 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.

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<sup>(8)</sup> S.I. 2002/2742.

<sup>(9)</sup> 1978 c.3.

### **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;
- (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 n 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.

## **PART III**

### **CHARGES**

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

**27.**—(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 reasonable 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 reasonable 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) “charges” does not include ship, passenger and goods dues as defined by section 57 of the Harbours Act 1964.

### **Liability for charges**

**28.**—(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**

**29.**—(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**

**30.**—(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 the harbour master 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, that person shall give to the harbour master a true account signed by that person, 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.

(4) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2), or with any requirement made under paragraph (1)(b), 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.**

**31.**—(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 or her authority, board the vessel with such assistance as the harbour master 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**

**32.** 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**

**33.—(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 that person's 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 liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in its custody, and in that event it shall have a like lien on the goods for the amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

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

**34.** 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**

**35.—(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 Ministers 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**

**36.**—(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) the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given 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.

## **PART IV**

### **MISCELLANEOUS**

#### **Reserve funds**

**37.**—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the harbour undertaking exceed the moneys expended or applied by it in respect thereof, the Council may in respect of that year carry to the credit of a reserve fund in respect of the harbour undertaking such a sum as it considers reasonable not exceeding the amount of such excess.

(2) Moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which officers are for the time being authorised to invest moneys including debenture stock or other security created by the Council.

(3) Any reserve fund provided under this article may be applied—

- (a) in making good to the regional rate fund any deficiency at any time arising in the income of the Council from the harbour undertaking;
- (b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the harbour undertaking;
- (c) in defraying any expenditure in connection with the harbour undertaking for which capital is properly applicable or in providing money for repayment of loans;
- (d) in defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing buildings, works, plant, vessels, equipment or articles forming part of the harbour undertaking; or
- (e) for any purpose which in the opinion of the Council is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea to or from the harbour.

(4) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the harbour undertaking and any other similar undertaking of the Council, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.

(5) Any monies held in any combined reserve fund referred to in paragraph 4 may be applied for the purposes of any of the Council's harbour undertakings.

### **Saving for Commissioners of Northern Lighthouses**

**38.** Nothing in this Order shall prejudice or derogate from any of the, rights, duties, or privileges of the Commissioners of Northern Lighthouses.

### **Saving for landowner**

**39.** Nothing in this Order shall prejudicially affect the ownership by St Mary's Isle Estate (successor to the Earl of Selkirk) (or its successors) of any part of the foreshore situated within the harbour.

### **Saving for Kirkcudbright Common Good**

**40.** Nothing in this Order shall prejudicially affect any estate, power, privilege, authority or exemption of the Kirkcudbright Common Good Fund.

### **Crown rights**

**41.—**(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having management of that land or (as the case may be) the relevant person; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

### **Repeal**

**42.** The enactment mentioned in the first and second columns of schedule 2 is repealed to the extent specified in the third column of that schedule.

St Andrew's House,  
Edinburgh  
7th June 2018

*JOHN NICHOLLS*  
A member of the staff of the Scottish Ministers

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

**SCHEDULE 1**

**Harbour Limits**

The limits of jurisdiction of Kirkcudbright Harbour shall extend to that part of the tidal estuary of the River Dee from an imaginary line 1.54 metres to the south end of and parallel to Kirkcudbright Bridge between (Point A on Plan 1 of 2) 54° 50' 21" N, 04° 03' 05" W and (Point B on Plan 1 of 2) 54° 50' 18" N, 04° 02' 59" W thence seaward by the level of MHWS from both ends of the bridge to an imaginary line drawn from the south side of the RNLI slipway to a point on the western shore of Kirkcudbright Bay between (Point C on Plan 1 of 2) 54° 48' 02" N, 04° 05' 21" W and (Point D on Plan 1 of 2) 54° 47' 41" N, 04° 03' 46" W and shall include the tidal river estuary, all creeks, bays and tributaries as far as the tide shall flow. Positions are to WGS 84 datum.

**SCHEDULE 2**

**Repeals**

<i>Number</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
1925 c.lxviii	Kirkcudbright Burgh Order Confirmation Act 1925	Part III

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order updates the existing legislation for Kirkcudbright Harbour in line with the current needs of the Harbour Authority and Kirkcudbright harbour users from the date it comes into force. This Order also repeals parts of the Kirkcudbright Burgh Harbour Confirmation Act 1925 which are no longer relevant.