
SCOTTISH STATUTORY INSTRUMENTS

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⁽¹⁾) 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.

(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.