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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**

*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>(1)</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.

(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<sup>(2)</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.

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(1) S.I.1971/450.

(2) 1978 c. 3.

### **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.