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SCOTTISH STATUTORY INSTRUMENTS

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**1999 No. 202**

**Scottish Natural Heritage (Rum)  
Harbour Empowerment Order 1999**

**PART III**

**HARBOUR REGULATION**

**Harbour jurisdiction**

**15.**—(1) Scottish Natural Heritage shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(1)</sup> and the powers of the harbourmaster shall be exercisable within the harbour limits.

(2) The harbour limits shall comprise the harbour premises, together with all waters below the level of high water forming Loch Scresort from the north shore at Rubha na Roinne at a point NG 142306 800171, thence in a south south easterly direction for a distance of 1386 metres to a point NM 142514 798800 on the level of high water.

(3) In the event of any discrepancy between the harbour limits as described in paragraph (2) above and the limits shown on the harbour limits plan, the limits as described in the said paragraph (2) shall be deemed to be correct and shall prevail.

(4) For and incidental to their functions under this Order, Scottish Natural Heritage may employ and appoint a harbourmaster.

**Moorings**

**16.**—(1) Scottish Natural Heritage may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the harbour as they consider necessary or desirable for the convenience of vessels.

(2) Scottish Natural Heritage 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, shall place, lay down, maintain, renew or use 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) above shall be valid only for a period of three years commencing with the date on which it takes effect.

(5) Scottish Natural Heritage may charge a reasonable fee for the grant of a licence under this article.

### **Power to dredge**

17.—(1) Scottish Natural Heritage may from time to time, as may appear to them to be necessary or desirable for the purposes of the undertaking, deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the harbour, and may blast any rock in that area.

(2) Subject to the provisions of article 33 (Crown rights) below, any materials (other than any wreck within the meaning of Part IX of the Act of 1995 taken up or collected in the course of such operations shall be the property of Scottish Natural Heritage and may be used, sold, removed deposited or otherwise disposed of as Scottish Natural Heritage may think fit.

(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.

### **General byelaws**

18.—(1) Scottish Natural Heritage may from time to time make byelaws for the efficient management and regulation of the harbour area and of the undertaking.

(2) Without prejudice to the generality of paragraph (1) above, 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, staithes, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings) in the harbour;
- (b) regulating the admission to, and the movement within, and the departure of vessels from, the harbour, or the removal of vessels, and for the good order and government of vessels whilst within the harbour;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;
- (d) regulating the navigation, berthing and mooring of vessels within the harbour area and their speed and the use of tugs within the harbour;
- (e) preventing damage or injury to any vessels, goods, vehicle, plant machinery, property or persons within the harbour;
- (f) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown or officers of the Scottish Ministers including the holder of any office in the Scottish Administration or any member of staff of the Scottish Administration as defined in the Scotland Act 1998<sup>(2)</sup> whilst in the execution of their duties;
- (g) regulating the placing and maintenance of moorings within the harbour;
- (h) preventing and removing obstructions or impediments within the harbour;
- (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the harbour;
- (j) regulating the use of ferries within the harbour;
- (k) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
- (l) regulating the holding of regattas and other public events in the harbour;

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(2) 1998 c. 46.

- (m) regulating or prohibiting the activities in the harbour area 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 paragraph (k) above;
  - (n) regulating the launching of vessels within the harbour area;
  - (o) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
  - (p) regulating the use of fires and lights within the harbour, and within any vessel within the harbour;
  - (q) regulating the movement, speed and parking of vehicles within the harbour;
  - (r) regulating the exercise of the powers vested in the harbourmaster;
  - (s) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subjects to the approval (with or without conditions), control or direction of the harbourmaster, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
  - (t) conserving and enhancing—
    - (i) the flora and fauna;
    - (ii) the geological and physiographical features; and
    - (iii) the natural beauty and amenity,of the harbour.
- (3) Byelaws made under this section may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder, fines not exceeding level 3 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.

### **Confirmation of byelaws**

**19.**—(1) The provisions of subsections (4) to (8), (10) and (12) of section 202 and section 203 of the Local Government (Scotland) Act 1973<sup>(3)</sup> shall apply to any byelaws made by Scottish Natural Heritage under this Order as if Scottish Natural Heritage were a local authority, and in the application of the provisions of the said Act of 1973 the Scottish Ministers shall be the confirming authority.

(2) Where the Scottish Ministers propose to exercise the power of modification conferred on them by subsection (10) of section 202 of the said Act of 1973 and it appears to them that any modification which they propose to make is substantial, they shall inform Scottish Natural Heritage and require them to take any 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 Scottish Natural Heritage and by other persons who have been informed of it.

### **Power to detain vessels, etc., in certain circumstances**

**20.** If any person contravenes any of the provisions of this Order or of any byelaw made thereunder by Scottish Natural Heritage and any damage is occasioned thereby to the property of Scottish Natural Heritage, they may, in addition to any right they have to recover from any such

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(3) 1973 c. 65

person the cost of repairing or making good any such damage, detain any vessel or other property belonging to or in charge of such person or belonging to his employers until the cost has been paid or until reasonable security therefor has been given to Scottish Natural Heritage.

### **Power to give directions**

**21.**—(1) The harbourmaster may give special directions to the master of a vessel for any of the following purposes—

- (a) for regulating the time at which and the manner in which any vessel shall enter into, leave or lie in the harbour and its berthing, mooring or unmooring whilst therein;
- (b) for regulating the loading, discharging, storing and safeguarding of a vessel's cargo, fuel, water or stores and the embarking or disembarking of passengers or its taking in or delivering ballast at harbour premises;
- (c) for regulating the manner in which any vessel entering a harbour area shall be dismantled, as well for the safety of that vessel as for preventing the injury to other vessels and to harbour premises, and the moorings therein;
- (d) for removing unserviceable vessels and other obstructions from the harbour and keeping the same clear;
- (e) for regulating the quantity of ballast or dead weight in the hold which each vessel in or at harbour premises shall have during the delivery of its cargo or after having discharged the same;
- (f) for regulating the use of the motive power of a vessel whilst within a harbour area;
- (g) for prohibiting or restricting the use of fires or lights at harbour premises;
- (h) for requiring the removal from the harbour or any part of it 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
  - (iii) its removal is necessary to enable maintenance or repair work to be carried out to harbour premises or to premises adjacent thereto; or
  - (iv) its removal is considered by the harbourmaster to be necessary to avoid danger to life (including wildlife) or to property.

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

(3) Any special directions given under this article may be given by the harbourmaster orally or otherwise communicated to the master of the vessel on any occasion when it is not reasonably practicable for a written notice to be served on the master; and any general directions shall be communicated in the manner which is appropriate to the emergency.

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

**22.**—(1) The master of a vessel who fails to comply with a direction given under article 21 (power to give directions) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 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 any other reason such compliance was impractical.

### **Enforcement of directions**

**23.**—(1) Without prejudice to any other remedy available to Scottish Natural Heritage, if a direction given under article 21 (power to give directions) above is not complied with within a reasonable time, the harbourmaster 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 master on board a vessel to attend to a direction, the harbourmaster may proceed as if the direction had been given and not complied with:

Provided that the powers of this paragraph 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.

(3) Expenses incurred by Scottish Natural Heritage in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of Scottish Natural Heritage in respect of the vessel.

### **Powers with respect to disposal of wrecks**

**24.**—(1) In its application to Scottish Natural Heritage, section 252 of the Act of 1995 shall have effect—

- (a) subject to the provisions of article 25 (protection of Crown interest in wrecks) below; and
- (b) in relation to a vessel sunk, stranded or abandoned before as well as after the making of this Order.

(2) Subject to paragraph (3) below, and to any enactment for the time being in force limiting its liability, Scottish Natural Heritage may recover from the owner of any vessel in relation to which it has exercised its powers under section 252 of the Act of 1995 any expenses reasonably incurred by it under that section in relation to that vessel which are not reimbursed out of the proceeds of sale (if any) within the meaning of that section.

(3) Except in case of emergency, paragraph (2) above shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by section 252 of the Act of 1995, other than the power of lighting and buoying, Scottish Natural Heritage has given to the owner of the vessel not less than 48 hours' notice of their intention to do so; and if before the notice expires Scottish Natural Heritage receive from the owner counter notice in writing that he desires to dispose of the vessel himself, and no direction is served in respect of the vessel under paragraph (2)(b) of article 25 (protection of Crown interest in wrecks) of this Order, he shall be at liberty to do so, and Scottish Natural Heritage shall not exercise the powers aforesaid in relation to that vessel until the expiration of 7 days from the receipt of the counter notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to him by Scottish Natural Heritage.

(4) Notice under paragraph (3) above to the owner of any vessel may be served by Scottish Natural Heritage either by delivering it to him or by sending it to him by special delivery post or the recorded delivery service addressed to him at last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to Scottish Natural Heritage or is not in the United Kingdom, by displaying the notice of the office of the harbourmaster for the period of its duration.

(5) In this article the expression “owner” in relation to any vessel means the present owner or, as the case may require, the person who was the owner of the vessel at the time of the sinking, stranding or abandonment thereof.

### **Protection of Crown interest in wrecks**

**25.**—(1) Without prejudice to sections 308 and 309 of the Act of 1995, the powers conferred on Scottish Natural Heritage by section 252 of that Act shall not be exercisable—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;
- (b) except with the consent of the Secretary of State for Defence, which may be given with or without such a direction as is referred to in paragraph (2)(b) below, in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel to which section 308 or section 309 of the Act of 1995 applies but which, at the time when the vessel was sunk, stranded or abandoned—
  - (i) had been required to be placed at the disposal of Her Majesty or of a government department; and
  - (ii) was appropriated to the service, under the direction and control of the Secretary of State for Defence, of Her Majesty's ships of war.

(2) Scottish Natural Heritage shall give notice in writing to the Secretary of State for Defence and to the Secretary of State for the Environment, Transport and the Regions of any decision of Scottish Natural Heritage to exercise in relation to any vessel referred to in paragraph (1)(b) above any of the powers aforesaid other than the power of lighting and buoying and, except in a case which is in the opinion of Scottish Natural Heritage a case of emergency, shall not proceed with the exercise thereof—

- (a) except with the consent of the Secretary of State for Defence and the Secretary of State for the Environment, Transport and the Regions, before the expiration of a period of 14 days from the giving of the notice; or
- (b) if, before the expiration of the said period there is served on Scottish Natural Heritage a direction by the Secretary of State for Defence or the Secretary of State for the Environment, Transport and the Regions that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where in any such case Scottish Natural Heritage proceeds to exercise those powers without the consent and before the expiration of the period mentioned in paragraph (a) above or after a direction has been served on it as aforesaid, it shall not in the exercise of those powers use any explosives and if, before the expiration of that period such a direction is served on them, shall not be entitled to exercise the power of sale conferred by section 252 of the Act of 1995 or the power conferred by paragraph (2) of article 24 (powers with respect to disposal of wrecks) above:

Provided that—

- (i) Scottish Natural Heritage shall not be required to give notice under this paragraph in respect of any vessel in respect of which it has received a consent under paragraph (1) (b) above, but any direction such as is referred to in sub paragraph (b) of this paragraph accompanying that consent shall be deemed for the purposes of this paragraph and of paragraph (3) of article 24 (powers with respect to disposal of wrecks) to have been duly served under sub paragraph (b) of this paragraph;
- (ii) the prohibition on the use of explosives imposed by this paragraph shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may from time to time be approved by the Secretary of State for the purposes of this proviso.

(3) Without prejudice to the power of sale conferred on Scottish Natural Heritage by section 252 of the Act of 1995, Scottish Natural Heritage shall hold and dispose of any wreck within the meaning of Part IX of that Act, raised, removed or recovered under section 252, and any surplus proceeds of sale within the meaning of that section in accordance with such directions (if any) as may be given

to them by the receiver of wreck; and on exercising the said power of sale in the case of any property Scottish Natural Heritage shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by Scottish Natural Heritage under that section.

(4) Any limitation on the powers of Scottish Natural Heritage in relation to any vessel arising by virtue of paragraph (1) or paragraph (2) above shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Commissioners of Northern Lighthouses by section 253 of the Act of 1995.