
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 233

**The Comhairle nan Eilean Siar
(Ardveinish) Harbour Revision Order 2000**

**PART I
PRELIMINARY**

Citation and commencement

1.—(1) This Order may be cited as the Comhairle nan Eilean Siar (Ardveinish) Harbour Revision Order 2000 and shall come into force on 14th July 2000.

(2) The Ardveinish Harbour Orders 1980(1), the Western Isles Island Council (Ardveinish) Harbour Revision Order 1992(2) and this Order may be cited together as the Ardveinish Harbour Orders 1980 to 2000.

Interpretation

2.—(1) In this Order—

“the 1980 Order” means the Ardveinish Harbour Order 1980;

“the 1995 Order” means the Western Isles Islands Council (Various Harbours Jurisdiction and Byelaws) Harbour Revision Order 1995(3);

“the authorised works” means the works authorised by this Order, or as the case may require any part thereof, and includes any work constructed pursuant to article 7 below;

“the Comhairle” means Comhairle nan Eilean Siar;

“the deposited plan” and “the deposited sections” means the plan and sections signed on behalf of the Scottish Ministers and marked “Plan and sections referred to in the Comhairle nan Eilean Siar (Ardveinish) Harbour Revision Order 2000” of which copies are deposited with the Scottish Ministers at the Scottish Executive, Victoria Quay, Edinburgh EH6 6QQ and with the Comhairle at Sandwick Road, Stornoway, Isle of Lewis HS1 2BW;

“general direction” means a direction given under article 27 below;

“the harbour” means the harbour of Ardveinish, the area of which is described in article 3 of, and Schedule 1 to, this Order;

“the harbour map” means the map referred to in article 3 below;

“the harbour master” means any person appointed as such by the Comhairle, and includes his deputies and assistants and any other person for the time being authorised by the Comhairle to act, either generally or for a specific purpose in the capacity of harbourmaster;

(1) 1980 c.i, amended by S.I.1992/1975(L).

(2) S.I. 1992/1975(L).

(3) S.I. 1995/2007.

“the 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 Comhairle as part of the harbour undertaking;

“the harbour undertaking” means the harbour undertaking of the Comhairle at Ardveinish authorised by the Ardveinish Harbour Orders 1980 to 2000;

“the level of high water” means the level of mean high-water springs;

“the limits of deviation” means the limits of deviation for the authorised works shown on the deposited plan;

“special direction” means a direction given under article 29 below;

“tidal work” means so much of any authorised work as is on, under or over tidal waters or tidal lands below the level of high water; and

“vessel” means every description of vessel, however propelled or moved, and includes any thing constructed or used to carry persons or goods by water, a seaplane on or in the water, a hovercraft and a hydrofoil.

(2) All areas, dimensions, directions, distances, lengths, points, situations and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each area, dimension, direction, distance, length, point, situation or other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid Reference points.

(4) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

Harbour jurisdiction

3.—(1) The area within which the Comhairle shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964, and within which the powers of the harbour master may be exercised, shall be the area described in Schedule 1 to this Order and shown edged in red on the harbour map together with so much of the harbour premises as is not situated within that area.

(2) In the event of any discrepancy between the boundaries of the harbour as described in paragraph (1), and in Schedule 1 to this Order, and the boundaries shown on the harbour map, the harbour map shall prevail.

(3) All enactments conferring rights, powers, privileges or immunities or imposing duties, obligations or liabilities upon the Comhairle or the harbourmaster, and all byelaws, regulations and directions made by the Comhairle which immediately before the date of the coming into force of this Order related to or had effect within the harbour, as it existed immediately before that date, shall relate to or have effect throughout the harbour as described in paragraph (1), and in Schedule 1 to this Order.

(4) In section 2 of the 1980 Order, for the definition of “the harbour”, there shall be substituted—
““the harbour” means the area described in article 3(1) of, and in Schedule 1 to, the Comhairle nan Eilean Siar (Ardveinish) Harbour Revision Order 2000.”

(5) Section 16 (Limits of the harbour) of, and the Schedule to, the 1980 Order are hereby repealed.

PART II

WORKS

Power to construct works

4. Subject to the provisions of this Order, the Comhairle may, within the limits of deviation, and according to the levels shown on the deposited sections, construct, execute and maintain the works described in Schedule 2 to this Order, together with all necessary works and conveniences connected therewith, in the Barra and Vatersay Electoral Division, parish of Barra, na h'Eileanan an Iar.

Power to renew, etc. works

5. Subject to the provisions of this Order the Comhairle may, within the limits of deviation, renew, replace, or otherwise alter temporarily or permanently the authorised works.

Power to deviate

6. Subject to the provisions of this Order, in the construction or execution of the authorised works the Comhairle may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation, and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be necessary or convenient.

Subsidiary works

7. Subject to the provisions of this Order the Comhairle, for the purposes of or in connection with the authorised works, may within the limits of deviation construct, execute and maintain all such subsidiary or incidental works and conveniences as may be necessary or expedient for or in connection with the authorised works.

Fine for obstructing works

8. Any person who intentionally obstructs any person acting under the authority of the Comhairle in setting out the lines of the works or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale, and shall in addition be liable to repay to the Comhairle as a debt any expenses incurred by them in making good any damage resulting from such obstruction, moving or removal.

Works deemed to be within na h'Eileanan an Iar

9. So much of the authorised works as is not within the administrative area known as na h'Eileanan an Iar shall be deemed for all purposes to be within that area.

Conservation powers, interpretation and education

10. The Comhairle may carry out works in the harbour and do anything which they consider expedient for the purpose of interpreting the history, fauna, flora or geological or physiographical features of the harbour for the benefit or education of persons visiting the harbour or its surroundings.

Tidal works not to be executed without approval of the Scottish Ministers

11.—(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 Comhairle at their 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 Comhairle they have 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 Comhairle as a debt.

Lights on tidal works during construction

12.—(1) During the whole time of demolition, construction, renewal or alteration of any tidal work the Comhairle shall at the outer extremity thereof every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Comhairle fail to comply in any respect with paragraph (1) they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Permanent lights on tidal works

13.—(1) After the completion of a tidal work the Comhairle shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Comhairle fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Survey or tidal works

14. The Scottish Ministers may at any time they deem it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct and execute the work and any expenditure incurred by them in such survey or examination shall be recoverable from the Comhairle.

Provision against danger to navigation

15.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Comhairle shall forthwith notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Comhairle fail to comply in any respect with the provisions of this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

16.—(1) Where a tidal work is abandoned or suffered to fall into decay the Scottish Ministers may by notice in writing require the Comhairle at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Scottish Ministers think proper.

(2) Where a work authorised by this Order consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over the land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Scottish Ministers may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Comhairle, they have failed to comply with the requirements of the notice, the Scottish Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Comhairle as a debt.

PART III

HARBOUR REGULATION

Control and management of harbour

Declaration of draught, etc., of vessel

17.—(1) The master of a vessel entering, leaving or intending to enter or leave the harbour shall, if required to do so by the harbourmaster, 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 gives incorrect information shall, without prejudice to any right of the Comhairle 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 purpose 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

18.—(1) This article applies to any damage caused to any of the authorised works or to any other work or property of the Comhairle in the harbour—

- (a) by any person who contravenes any provision of this Order, or of any byelaw made in relation to the harbour by the Comhairle; 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 Comhairle 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 Comhairle.

(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 Comhairle 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 Comhairle.

Obstruction of officers, etc.

19. Any person who intentionally obstructs an officer of the Comhairle or other person acting in execution of this Order or of any byelaws made thereunder 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

20. Any duly authorised officer of the Comhairle 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 Comhairle or of any byelaw of the Comhairle, 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

21.—(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 his part.

Licensing of tugs

22.—(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 Comhairle in that behalf.

(2) The Comhairle may charge a reasonable fee for the grant of any licence under this article.

(3) Any person who contravenes paragraph (1) 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 harbour, etc.

23.—(1) Notwithstanding anything in this Order or any other statutory provision of local application, the Comhairle may from time to time set apart or appropriate any lands, works, buildings, machinery, equipment or other property of the Comhairle 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 Comhairle think fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any lands, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbourmaster or other duly authorised officer of the Comhairle, and the harbourmaster or, as the case may be, such officer may order any person or vessel making use thereof without such consent to leave or be removed.

Moorings

Power to lay down moorings

24. The Comhairle 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.

Licensing of moorings

25.—(1) The Comhairle 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.

(2) Any licence granted under paragraph (1) shall be valid only for a period of three years commencing with the date on which it takes effect.

(3) The Comhairle may charge a reasonable fee for the grant of a licence under this article.

Offences as to moorings, etc.

26. 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 article 25 above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Directions to vessels

General directions to vessels

27.—(1) The Comhairle may give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation and the safety of persons and property in the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) for designing areas, routes or fairways in the harbour which vessels are to use or refrain from using for movement, mooring or anchorage;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) for prohibiting—
 - (i) entry into the harbour by a vessel which for any reason would be or likely to become a danger to other vessels in the harbour, or to persons, property, flora or fauna in the harbour or within the harbour premises; and
 - (ii) entry into or navigation within the main fairways during any temporary obstruction thereof; and

- (e) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for effecting any of the purposes of this paragraph.

(2) A direction under this article may apply—

- (a) to all vessels or to a class of vessels designated in the direction;
- (b) to the whole of the harbour or to a part designated in the direction; or
- (c) at all times or at times designated 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) of this paragraph.

(3) The Comhairle may revoke or amend any general direction.

Publication of general directions

28.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by the Comhairle 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 direction, shall state a place at which copies thereof may be inspected and bought and the price thereof.

(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 Comhairle to be appropriate.

Special directions to vessels

29.—(1) The harbourmaster may give a direction under this article in respect of a vessel anywhere in the harbour for any of the following purposes:—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at harbour premises;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) as to the use of the motive power of the vessel;
- (f) prohibiting or restricting the use of fires or lights;
- (g) as to the use of ballast;
- (h) requiring the removal from any part of the harbour of a vessel if—
 - (i) it is on fire;
 - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink or to constitute a danger to life or property;
 - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment thereof by other vessels or persons or the dispatch of business there at; or
 - (iv) its removal is necessary to enable maintenance or repair work to be carried out to harbour premises or to premises adjacent thereto; and
- (i) requiring its removal outside the harbour if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) In an emergency the harbour master may give special directions applicable to all vessels or to a particular class of vessels for any of the purposes mentioned in paragraph (1).

(3) A special direction may be given in any manner considered by the harbourmaster to be appropriate.

Failure to comply with directions

30.—(1) The master of a vessel who fails to comply with a general direction or special direction 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) 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 other reason such compliance was impracticable.

Enforcement of special directions

31.—(1) Without prejudice to any other remedy available to the Comhairle, if a special direction 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 one on board a vessel to attend to a special direction, the harbourmaster may proceed as if the direction had been given and not complied with.

(3) The powers of paragraph (2) 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.

(4) Expenses incurred by the Comhairle in the exercise of the powers conferred by paragraphs (1) and (2) shall be recoverable by them as if they were a charge of the Comhairle in respect of the vessel.

Master's responsibility in relation to directions

32. 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 his vessel, to persons on board the vessel, to the cargo or any other person or property.

Wrecks and obstructions

Powers with respect to disposal of wrecks

33.—(1) In their application to the Comhairle, sections 252 and 253 of the Merchant Shipping Act 1995(4) shall have effect—

- (a) subject to the provisions of article 34 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), and to any enactment for the time being in force limiting his liability, the Comhairle may recover from the owner of any vessel in relation to which they have exercised their powers under the said section 252 or the said section 253 any expenses reasonably incurred by them under those sections in relation to that vessel which are not reimbursed out of the proceeds of sale (if any) within the meaning of those sections.

(4) 1995 c. 21.

(3) Except in a case of emergency, paragraph (2) shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by the said section 252, other than the power of lighting and buoys, the Comhairle have 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 the Comhairle 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 subsection (2)(b) of article 34 below, he shall be at liberty to do so, and the Comhairle 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 the Comhairle.

(4) Notice under paragraph (3) to the owner of any vessel may be served by the Comhairle either by delivering it to him or by sending it to him by registered post or the recorded delivery service addressed to him at his 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 the Comhairle or is not in the United Kingdom, by displaying the notice at 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

34.—(1) Without prejudice to section 308(1) of the Merchant Shipping Act 1995, the powers conferred on the Comhairle by sections 252 and 253 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 sub-paragraph (b) of paragraph (2), in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty 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) Subject to paragraph (4), the Comhairle shall give notice in writing to the Secretary of State for Defence and to the Scottish Ministers of any decision of the Comhairle to exercise in relation to any vessel referred to in sub-paragraph (b) of paragraph (1) any of the powers aforesaid other than the power of lighting and buoys and, except in a case which is in the opinion of the Comhairle 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 Scottish Ministers, 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 the Comhairle a direction by the Secretary of State for Defence or the Scottish Ministers that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid.

(3) Subject to paragraph (5) where the Comhairle exercise the powers conferred on them by sections 252 and 253 of the Merchant Shipping Act 1995 without the consent required by, and before the expiry of, the period referred to in sub-paragraph (a) of paragraph (2) or after a direction has been served on them in terms of sub-paragraph (b) of paragraph (2), they 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 the said section 252 or the power conferred by paragraph (2) of article 33 above.

(4) The Comhairle shall not be required to give notice in terms of paragraph (2) in respect of any vessel in respect of which they have received a consent under sub-paragraph (b) of paragraph (1), but any direction such as is referred to in sub-paragraph (b) of paragraph (2) accompanying that consent shall be deemed for the purposes of this paragraph and of paragraph (3) of the said article 33 to have been duly served under sub-paragraph (b) of paragraph (2).

(5) The prohibition in paragraph (3) on the use of explosives shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may for the time being be approved by the Secretary of State for Defence for the purposes of this paragraph.

(6) Without prejudice to the power of sale conferred on the Comhairle by the said section 252, the Comhairle shall hold and dispose of any wreck within the meaning Part IX of the said Act of 1995 raised, removed or recovered under that section, 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 the Comhairle 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 the Comhairle under that section.

(7) Any limitation on the powers of the Comhairle in relation to any vessel arising by virtue of paragraph (1) or paragraph (2) 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 said Act of 1995.

Power to deal with unserviceable vessels

35.—(1) In addition to the powers conferred on the harbourmaster by section 57 of the Harbour, Docks, and Piers Clauses Act 1847⁽⁵⁾ and on the Comhairle by virtue of the Merchant Shipping Act 1995 and by other provisions of this Order, the Comhairle may remove, sell, destroy or otherwise dispose of any vessel laid by or neglected as unserviceable in, or on land adjoining, the waters of the harbour.

(2) The Comhairle may retain out of the proceeds of sale of any such vessel, or any part thereof, any expenses incurred by them in respect of the vessel or in marking, buoying, lighting or otherwise controlling the vessel or warning shipping of its presence and any expenses incurred by the harbourmaster under section 57 of the said Act of 1847, and shall pay the surplus, if any, to the person entitled thereto.

(3) If the proceeds of sale are insufficient to reimburse the Comhairle for the said expenses, or there is no sale, the Comhairle may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner as a debt.

(4) Except in the case of emergency, the Comhairle shall, before exercising their powers under this article, give seven clear days' notice in writing of their intention to do so to the registered owner of the vessel and by advertisement in each of three successive weeks in a local newspaper or, if the owner or his place of business or abode is not known to the Comhairle or is outside the United Kingdom, by displaying the notice at the office of the harbourmaster for the period of its duration.

Removal of obstructions other than vessels, vehicles or wrecks

36.—(1) Without prejudice to their powers under any other enactment (including one contained in this Order) the Comhairle 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—

(5) 1847 c. 27; section 57 was amended by Schedule 6 to the Debtors (Scotland) Act 1987 (c. 18).

- (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 Comhairle under paragraph (1) is known to the Comhairle to be, or is so marked as to be readily identifiable as, the property of any person, the Comhairle shall within one month of its coming into their 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 vest in the Comhairle.

(3) If the ownership of anything removed by the Comhairle under paragraph (1), which is not so known or marked as referred to in paragraph (2) is not within 3 months of its coming into the custody of the Comhairle proved to their reasonable satisfaction, it shall vest in the Comhairle.

(4) The Comhairle may at such time and in such manner as they think 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 Comhairle under this article, and if it is sold the proceeds of sale shall be applied by the Comhairle in payment of the expenses incurred by them 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 Comhairle proves to their 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 Comhairle.

(5) If anything removed under this article—

- (a) is sold by the Comhairle and the proceeds of sale are insufficient to reimburse them for the amount of the expenses incurred in the exercise of their powers of removal; or
- (b) is unsaleable;

the Comhairle 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 Comhairle 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 Comhairle 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 Comhairle 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 Comhairle thereunder.

Removal of vehicles

37.—(1) If a vehicle is left without permission of the Comhairle—

- (a) in a parking place provided by the Comhairle within the harbour premises for a longer period than 24 hours;
- (b) in any part of the harbour premises where the parking of vehicles is prohibited by notice erected by the Comhairle; 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 Comhairle 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 Comhairle in exercise of the powers of this article cause a vehicle to be removed the expenses of and incidental to its removal and safe custody shall be recoverable by the Comhairle from the person responsible.

(4) If the Comhairle in exercise of the powers of this article cause a vehicle to be removed, they shall, if and as soon as 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(6), at his last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that they have 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 Comhairle 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 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; or
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(7) in consequence of the putting of the vehicle in that place.

Power to remove goods

38.—(1) If any goods are left on or in any part of the harbour premises the Comhairle 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 Comhairle may cause them to be removed to the Comhairle’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 Comhairle, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Comhairle by the owner in respect of the goods.

(3) In this article, “goods” includes vehicles and equipment.

Byelaws

Byelaws as to conservation, etc.

39. In its application to the harbour article 5 of the 1995 Order shall have effect as though after paragraph (1)(t) there were inserted, the following paragraph:–

- “(u) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features.”.

(6) S.I. 1971/450; the only relevant amending instrument is S.I. 1975/1342.

(7) 1978 c. 3; section 2 was amended by Schedules 9 and 11 to the Roads (Scotland) Act 1984 (c. 54) and by Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40).

PART IV

CONTROL OF WORKS, DREDGING, ETC.

Restriction of works and dredging

40.—(1) No person other than the Comhairle shall in the harbour—

- (a) alter, renew or maintain any works; or
- (b) dredge,

unless he is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 41 or, as the case may require, article 42 below.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The Comhairle may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates, and to restore the site thereof to its former condition; and if he fails to comply with the notice the Comhairle may carry out the works so required and may recover the cost of so doing from that person.

(4) Nothing in this article shall affect the powers of a public telecommunications operator under the Telecommunications Act 1984(8).

Licensing of works

41.—(1) The Comhairle may upon such terms and conditions as they think fit grant to any person a licence to maintain, alter or renew works within the harbour on, under or over tidal waters or tidal land below the level of high water, notwithstanding any interference with public rights of navigation or other public rights by such works as maintained, altered or renewed.

(2) Application for a works licence shall be made in writing to the Comhairle and shall—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates; and
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable him to enjoy the benefits of the licence and, if not, the action taken or to be taken to enable him to obtain such rights if the licence is granted.

(3) In granting a licence the Comhairle may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) If the Comhairle decide to grant a works licence they shall give notice of their decision to the applicant.

(5) If within 3 months from the date of the making of an application under paragraph (2) the Comhairle do not notify to the applicant their decision whether to grant a works licence, they shall be deemed to have refused the application.

(6) The Comhairle may charge a reasonable fee for the grant of a licence under this article.

(7) The grant of a licence under this article has effect for the purposes of article 40 above and confers no other authority for the carrying out of the operations covered by the licence.

(8) In the execution of any works to which a works licence relates, the licensee shall not damage or injuriously affect any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989⁽⁹⁾) belonging to, or used or maintained by Scottish and Southern Energy plc or, without consent of that company, interfere with or adversely affect the operation of any such line or work.

Licensing of dredging

42.—(1) The Comhairle may upon such terms and conditions as they think fit grant to any person a licence to dredge in any part of the harbour.

(2) Application for a dredging licence shall be made in writing to the Comhairle and shall be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations in respect of which application is made.

(3) In granting a licence the Comhairle may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) If the Comhairle decide to grant a dredging licence they shall give notice of their decision to the applicant.

(5) If within 3 months from the date of making an application under paragraph (2) the Comhairle do not notify the applicant of their decision whether to grant a dredging licence they shall be deemed to have refused the application.

(6) Unless otherwise agreed between the Comhairle and the licensee any materials (other than wreck within the meaning of the Merchant Shipping Act 1995) taken up or collected by means of dredging in pursuance of a dredging licence shall, in so far as they are not the property of the Comhairle before being taken up or collected, but subject to the provisions of article 60 below, become the property of the Comhairle, and the provisions of section 7(2) of the 1980 Order shall apply to such materials which are to become the property of the Comhairle.

(7) The Comhairle may charge a reasonable fee for the grant of a licence under this article.

(8) The grant of a licence under this article has effect for the purposes of article 40 above and confers no other authority for the carrying out of the operations covered by the licence.

(9) In the execution of any works to which a dredging licence relates the holder of the licence shall not damage or injuriously affect any electrical plant or electric line (as respectively defined in section 64 of the Electricity Act 1989) belonging to or used or maintained by Scottish and Southern Energy plc or, without the consent of that company, interfere with or adversely affect the operation of any such line or work.

Appeals in respect of works or dredging licences

43.—(1) Where—

- (a) the Comhairle have refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal; or
- (b) the Comhairle have granted such a licence upon terms or conditions or have required modifications to be made in the plans, sections and particulars submitted by the applicant, and the applicant is aggrieved by the Comhairle's decision as to such terms or conditions, or as to such modifications,

the applicant may within 28 days from the date on which the Comhairle give notice of their decision or the date on which they are under article 40 or article 41 above deemed to have refused the application, as the case may be, appeal to the Scottish Ministers.

(9) 1989 c. 29; section 64 was repealed in part by Article 24 of S.I. 1999/506.

(2) An appeal under this article shall be made by notice in writing, stating the grounds of the appeal.

(3) A person who appeals to the Scottish Ministers under this article shall at the same time send a copy of his statement of appeal to the Comhairle and the Comhairle shall as soon as practicable thereafter furnish the Scottish Ministers with all relevant documents, and may within 28 days from the receipt of the statement of appeal furnish the Scottish Ministers with their observations on the appeal.

(4) On an appeal under this article the Scottish Ministers may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including amendment of the terms and conditions or modification of the plans, sections and particulars.

(5) The Comhairle shall give effect to any decision or requirement given or made by the Scottish Ministers under paragraph (4).

Repair of structures, etc.

44.—(1) The Comhairle may by notice require the owner or occupier of a pier, landing place, embankment, structure or other work which in the opinion of the Comhairle is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels using the harbour; or
- (b) a hindrance to the navigation of the harbour,

to remedy its condition to the satisfaction of a duly authorised officer of the Comhairle within a reasonable time specified in the notice.

(2) If a person to whom notice is given under this article fails to comply with it within the time stated in the notice or, if he appeals and the appeal is not allowed, within the time stated in the notice or such other time as the court may substitute therefor—

- (a) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale; and
- (b) the Comhairle may carry out the works they consider necessary to remedy the condition of the pier, landing place, embankment, structure or other work in question, and may recover the expenses of so doing from the person on whom the notice was served.

(3) A notice under paragraph (1) shall have annexed to it a copy of this article.

(4) A person aggrieved by a notice served by the Comhairle under paragraph (1) may appeal under section 50 of the Sheriff Courts (Scotland) Act 1907(10) to the sheriff by way of summary application and the sheriff may confirm, vary or quash the notice as he thinks just, and make such order in the matter as he considers equitable, and the determination of the sheriff on any such appeal shall be binding on all parties, and shall be final.

PART V

FACILITIES AND SERVICES, ETC.

Handling of fish, cargo, etc.

45. The Comhairle may make arrangements for the handling, sale, storage, processing and trans-shipment of fish or fish products and other goods or cargo passing through the harbour.

Power to provide and operate fish markets

46.—(1) The Comhairle may in relation to the harbour provide, operate and maintain a market for the sale of fish with all such appliances and fittings as they deem necessary and suitable for the purposes thereof, and may—

- (a) divide or allocate any parts thereof into stalls or other defined or limited places;
- (b) in connection with such market provide and operate such services and facilities as may be requisite or expedient;
- (c) fix and regulate the hours during which the market or any part thereof shall be open; and
- (d) recover such reasonable charges as they think fit for the use of the market and for such services and facilities.

(2) The Comhairle may, for such consideration and upon such terms and conditions, subject to such restrictions and for such periods as they think fit, sell, feu, lease, excamb or otherwise dispose of the whole or any part of the lands forming a fish market or part thereof and may enter into and carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

Power to provide warehouses and other facilities

47. The Comhairle may provide warehouses, workshops, slipways and services for marine repairs and ancillary works or contract with others for the provision of such facilities or services.

Power to provide parking places

48. The Comhairle may provide facilities (including shelters) within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.

Power to hire out plant

49. The Comhairle may let upon hire (with or without the services of their employees) on such terms and conditions as they think fit any vessel, plant, equipment or other property belonging to them and forming part of the harbour undertaking.

Provision of vessels

50. The Comhairle may construct, purchase, contract for hire, and may maintain and use, vessels required by them for carrying out their functions under this Order, including dredging, and may sell or dispose of any such vessels belonging to them.

PART VI CHARGES

Liability for charges

51.—(1) Charges payable to the Comhairle on or in respect of—

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

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

Exemptions, rebates, etc., in respect of charges

52.—(1) The Comhairle 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 Comhairle 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.

Security for charges

53. The Comhairle may require a person who incurs or is about to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Comhairle, 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 Comhairle 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

54.—(1) A person, who by agreement with the Comhairle collects charges on their 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 thereof.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Comhairle 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 to pay charges for landing place, etc.

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

Exemption from charges

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

- (a) a vessel—
 - (i) belonging to or in the service of Her Majesty or any member of the Royal Family;
 - (ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward;
 - (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; or
- (d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department of the Environment, Transport and the Regions 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 Comhairle.

Conditions as to payment of charges

57.—(1) Charges shall be payable subject to such terms and conditions as the Comhairle may from time to time specify in their 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 Comhairle by the owner or master of a vessel or a person using a service or facility of the Comhairle as the Comhairle may require in connection with the assessment or collection of a charge.

PART VII

MISCELLANEOUS

Power to sell or lease works

58.—(1) The Comhairle may, with the consent in writing of, and upon such terms, conditions and restrictions (and in the case of a lease for such period) as may be approved by, the Scottish Ministers, sell or lease works in the harbour.

(2) As from such sale or the commencement of such lease the purchaser, to the extent authorised by his conveyance, or the lessee during and to the extent provided in his lease, shall have and may exercise in relation to the works all or any of the powers conferred upon the Comhairle by this Order, and shall in respect of the works be subject to all the restrictions, liabilities and obligations to which the Comhairle are subject, and shall perform all the duties of the Comhairle under this Order in respect of the works.

(3) No lease made under this section shall be assignable without the previous consent in writing of the Scottish Ministers, and the provisions of this article with respect to such lease or the lessee shall apply to any such assignation or to the assignee respectively.

Power to lease harbour land and enter into agreements

59. The Comhairle may for such consideration and upon such terms and conditions and subject to such restrictions and for such period as they think fit sell, feu, lease, excamb or otherwise dispose of the whole or any part of the lands which from time to time form the harbour and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

Crown Rights

60.—(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 the generality of the foregoing, nothing in this Order authorises the Comhairle to take, use, enter upon or in any manner interfere with, any land or interest in land (including any portion of the shore or bed of the sea or of any river channel, creek, bay or estuary) or any rights of whatsoever description—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
- (b) 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.

St Andrew's House,
Edinburgh
12th July 2000

SARAH H BOYACK
A member of the Scottish Executive