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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 233**

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

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(1) 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.

(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

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(1) 1995 c. 21.

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 buoying 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 unseviceable vessels**

**35.**—(1) In addition to the powers conferred on the harbourmaster by section 57 of the Harbour, Docks, and Piers Clauses Act 1847(2) 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 unseviceable 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—

- (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

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(2) 1847 c. 27; section 57 was amended by Schedule 6 to the Debtors (Scotland) Act 1987 (c. 18).

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(3), 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(4) 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.”.

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

(4) 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).