
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 410

The Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002

PART II

HARBOUR REGULATION

Management and control of harbours

General functions in respect of harbour areas

5.—(1) It shall be the duty of the Comhairle, subject to the provisions of this Order, to take such steps from time to time as it may consider necessary or desirable for the conservancy, protection, regulation, maintenance, operation and management and improvement of—

- (a) the harbour areas and the approaches thereto; and
- (b) the facilities afforded therein or in connection therewith.

(2) For those purposes, and without prejudice to the generality of the foregoing, the Comhairle may—

- (a) improve, maintain, regulate, manage, mark and light the harbour areas and provide harbour facilities;
- (b) place, execute, operate, maintain, renew, alter, remove and reconstruct structures and works and equipment in the harbour areas; and
- (c) do all other things which in its opinion are expedient to facilitate the proper carrying on or development of the harbour areas.

Power to dredge

6.—(1) Subject to the provisions of this Order, the Comhairle may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of a harbour area and the seaward approaches thereto and may blast any rock in that area.

(2) The Comhairle may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995⁽¹⁾) from time to time dredged or removed by it from a harbour area.

(3) Subject to the provisions of this Order no materials so dredged shall be deposited below the level of mean high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

(1) 1995 c. 21.

Reclamation of land

7.—(1) Subject to the provisions of this Order, the Comhairle may within a harbour area fill up, raise, enclose and reclaim land from the sea and the bed and foreshore of the harbour area and for that purpose may place such piles and construct such groynes, retaining walls and other works in and upon the sea, bed and foreshore as the Comhairle deems necessary.

- (2) The Comhairle shall not exercise the powers of paragraph (1) above—
- (a) in relation to any land not owned by it unless it first obtains the consent in writing of the owner thereof; or
 - (b) in relation to any part of a harbour area in front of or adjoining land belonging to Her Majesty in right of Her Crown or to a government department or held in trust for Her Majesty for the purposes of a government department and protected by article 61 below, without the consent in writing of the Crown Estate Commissioners or, as the case may be, the government department.

Declaration of draught, etc. of vessel

8.—(1) The master of a vessel entering, leaving or intending to enter or leave a harbour area shall, if required to do so by the harbour master, state the length overall and draught maximum of his vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) above without reasonable excuse gives incorrect information shall, without prejudice to any right of the 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 purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

Provisions as to damage

9.—(1) This article applies to any damage caused to any work or property of the Comhairle in a harbour area—

- (a) by any person who contravenes any provision of this Order or any other enactment relating to a harbour area; 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 a harbour area by the Comhairle.

Obstruction of officers, etc.

10. Any person who intentionally obstructs an officer of the Comhairle or other person acting in execution of this Order or of any enactment relating to a harbour area 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

11. Any duly authorised officer of the Comhairle may, on producing if so required his authority, enter and inspect a vessel in a harbour area—

- (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

12.—(1) The owner or master of a vessel adrift in a harbour area shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

Licensing of tugs

13.—(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 a harbour area 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) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to appropriate parts of harbour areas, etc.

14.—(1) Notwithstanding anything in this or any other statutory provision of local application, the Comhairle may from time to time set apart or appropriate any part of a harbour area, or any lands, works, buildings, machinery, equipment or other property of the Comhairle in a harbour area, 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 part of a harbour area, or any lands, works, buildings, machinery, equipment or other property, so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Comhairle.

(3) The harbour master or, as the case may be, any such authorised officer may order any person or vessel contravening paragraph (2) above to leave or be removed from the site of the contravention.

(4) Section 58 of the 1847 Act shall extend and apply with appropriate modifications to any vessel moored or otherwise positioned in contravention of paragraph (2) above.

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