
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 410

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

PART II

HARBOUR REGULATION

Wrecks and obstructions

Powers with respect to disposal of wrecks

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

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

(2) Subject to paragraph (3) below, and to any enactment for the time being in force limiting his liability, the Comhairle may recover from the owner of any vessel in relation to which it has exercised its powers under the said section 252 or the said section 253 any expenses reasonably incurred by it 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) above shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on it by the said section 252, other than the power of lighting and buoying, the Comhairle has given to the owner of the vessel not less than 48 hours' notice of its intention to do so; and if before the notice expires the Comhairle receives from the owner counter-notice in writing that he desires to dispose of the vessel himself, and no direction is served in respect of the vessel under paragraph (2) (b) of article 25 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) above 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 harbour master for the period of its duration.

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

Protection of Crown interest in wrecks

25.—(1) Without prejudice to 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) below, 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) 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) above 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;

and where in any such case the Comhairle proceeds to exercise those powers without the consent and before the expiration of the period mentioned in sub-paragraph (a) of this paragraph or after a direction has been served on it as aforesaid, it shall not in the exercise of those powers use any explosives and if, before the expiration of that period such a direction is served on it, 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 24 above:

Provided that—

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

(3) 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 of 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 it 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.

(4) Any limitation on the powers of the Comhairle in relation to any vessel arising by virtue of paragraph (1) or paragraph (2) above shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Commissioners of Northern Lighthouses by section 252 of the said Act of 1995.

Power to deal with unserviceable vessels

26.—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 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 a harbour area.

(2) The Comhairle may retain out of the proceeds of sale of any such vessel, or any part thereof, any expenses incurred by it 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 harbour master under section 57 of the 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 its powers under this article give not less than 21 days' notice of its intention to do so.

(5) Notice under paragraph (4) above shall be given _

- (a) by advertisement in each of three successive weeks in a local newspaper; and
- (b) by displaying the notice at the office of the harbour master for the harbour area where the vessel is situated and at the post office nearest to that area; and
- (c) in the case of a vessel which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995, by serving the notice by post on the registered owner of the vessel unless the owner or his place of business or abode is not known to the Comhairle, or is outside the United Kingdom.

Removal of obstructions other than vessels, vehicles or wreck

27.—(1) Without prejudice to its 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 a harbour area other than—

- (a) a vessel or vehicle; or
- (b) wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(a) (2) (a) If anything removed by the Comhairle under paragraph (1) above 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 its custody give notice, in accordance with paragraph (5) below, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in the Comhairle.

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

(3) The Comhairle may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the 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 it under this article in relation to the thing, and any balance—

(a) shall be paid to any person who within 3 months from the time when the thing came into custody of the Comhairle proves to its reasonable satisfaction that he was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall vest in the Comhairle.

(4) If anything removed under this article—

(a) is sold by the Comhairle and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or

(b) is unsaleable;

the 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.

(5) A notice given under paragraph (2)(a) above shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the 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.

(6) 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

28.—(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; or

(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) above 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 causes 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 causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 1971⁽¹⁾, at his last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that the Comhairle has exercised the powers of this article and of the place to which the vehicle has been removed.

(1) S.I.1971/450.

(5) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each entrance to any parking place provided by the 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) above, “person responsible”, in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless he shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in that place;
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(2) in consequence of the putting of the vehicle in that place.

Power to remove goods

29.—(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.