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SCOTTISH STATUTORY INSTRUMENTS

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**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<sup>(1)</sup>) 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.

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(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.

## *Moorings*

### **Power to lay down moorings**

**15.—**(1) The Comhairle may provide, place, lay down, maintain, renew, use, have or remove such moorings within a harbour area as it considers necessary or desirable for the convenience of vessels.

(2) The Comhairle may issue permits on such conditions (including conditions as to payment) as it thinks fit authorising the holder of the permit to use or allow the use of any moorings provided under this article.

(3) The Comhairle may compound with any person with respect to the payments referred to in paragraph (2) above.

### **Licensing of moorings**

**16.—**(1) The Comhairle may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings for vessels in a harbour area.

(2) A licence may be granted under this article on such conditions as the Comhairle thinks fit.

(3) Nothing in any licence granted under this article shall entitle any person to place, lay down, maintain, renew, use or have any mooring on land not owned or leased by him or by the Comhairle or in which he has no appropriate interest.

### **Offences as to moorings, etc.**

**17.—**(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Comhairle in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any moorings or any part thereof from a harbour area;
- (c) places, lays down, maintains, renews or has in a harbour area any mooring not provided under article 15 or licensed under article 16 above;
- (d) without reasonable excuse causes or permits a vessel to be moored in a harbour area except(
  - (i) at a mooring provided under article 15 or licensed under article 16 above; or
  - (ii) at a quay, jetty, slipway or other work;

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

(2) If any person commits an offence under paragraph (1)(c) above the Comhairle may remove the mooring in question and recover from that person the expenses incurred in doing so.

(3) If any person commits an offence under paragraph (1)(d) above the Comhairle may—

- (a) remove the vessel, including any tackle with the vessel;
- (b) dispose of it; and
- (c) recover out of the proceeds of sale—
  - (i) any unpaid charge payable under article 15 above;
  - (ii) any unpaid licence fee payable under article 16 above; and
  - (iii) the expenses of removal and disposal under this paragraph;

and shall hold any surplus proceeds of sale on trust for the owner of the vessel.

(4) If the owner of a vessel removed under paragraph (3) above is unknown and cannot after diligent inquiry be found, the Comhairle may apply to the sherrif for an order giving the appropriate directions as to the disposal by the Comhairle of any surplus proceeds of sale.

### *Directions to vessels*

#### **General directions to vessels**

**18.—**(1) The Comhairle may after consultation with the Royal Yachting Association 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 a harbour area and, without prejudice to the generality of the foregoing, for any of the following purposes: \_

- (a) for designating areas, routes or fairways in a harbour area 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 a harbour area by a vessel which for any reason would be or likely to become a danger to other vessels in a harbour area, or to persons, property, flora or fauna in a harbour area; and
  - (ii) entry into or navigation within any of the main fairways during any temporary obstruction thereof;
- (e) for prohibiting entry into or movement in a harbour area or the approaches by vessels at times of poor visibility due to the weather or to the presence of dust or smoke;

Provided that no direction given under sub-paragraph (e) above shall prevent the entry into a harbour area or the approaches of any vessel seeking refuge from stress of weather;

- (f) 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, or for which the designation is provided for, in the direction; or
  - (b) to the whole of a harbour area or to a part designated, or for which the designation is provided for, in the direction; or
  - (c) at all times or at times designated, or for which the designation is provided for, 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) above.

(3) The Comhairle may after consultation with the Royal Yachting Association revoke or amend any general direction.

#### **Publication of general directions**

**19.—**(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 area to which the direction relates, and,

if the notice relates to the giving or amendment of a direction, it shall state a place at which copies of the direction 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**

**20.**—(1) The harbour master may give a direction under this article in respect of a vessel anywhere in a harbour area 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 in the harbour area;
- (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 a harbour area of a vessel if—
  - (i) it is on fire; or
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink; or
  - (iii) it is making an unlawful use of a harbour area or interfering with the reasonable use or enjoyment thereof by other vessels or persons or the dispatch of business therein; or
  - (iv) its removal is necessary to enable maintenance or repair work to be carried out in the harbour area or to premises adjacent thereto; and
  - (v) its removal is considered by the harbour master 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) above.

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

(4) The harbour master may revoke or amend a special direction.

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

**21.**—(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 4 on the standard scale.

(2) Without prejudice to any other defence, it shall be a defence to a charge made pursuant to paragraph (1) above that the master had reasonable ground for believing that to comply with the direction in question would have endangered life or imperilled the safety of any vessel or its cargo, or that for other reason such compliance was impracticable.

### **Enforcement of special directions**

**22.**—(1) Without prejudice to any other remedy available to the Comhairle, if a special direction is not complied with within a reasonable time, the harbour master 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 harbour master may proceed as if the direction had been given and not complied with.

(3) The powers of paragraph (2) above 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 this article shall be recoverable by it as if they were a charge of the Comhairle in respect of the vessel.

### **Master's responsibility in relation to directions**

**23.** 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**

**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(2), 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.

(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(3) 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.

### *Byelaws*

### **Powers to make byelaws, etc.**

**30.**—(1) The Comhairle may from time to time make byelaws for the efficient management and regulation of a harbour area and the harbour undertaking.

(2) Without prejudice to the generality of paragraph (1) above, byelaws may be made under this article for the following purposes: \_

- (a) regulating the use, operation and superintendence of a harbour area and the docks, berths, wharves, quays, piers, jetties, staiths, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings);
- (b) regulating the admission to, and the movement within, and the departure of vessels from a harbour area or the removal of vessels, and for the good order and government of vessels whilst within a harbour area;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within a harbour area;
- (d) regulating the navigation, berthing and mooring of vessels within a harbour area and their speed and manner of navigation, and the use of tugs within a harbour area;

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(2) S.I.1971/450.

(3) 1978 c. 3.

- (e) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within a harbour area;
  - (f) regulating the conduct of all persons in a harbour area not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
  - (g) regulating the placing and maintenance of moorings within a harbour area;
  - (h) preventing and removing obstructions or impediments within a harbour area;
  - (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into a harbour area;
  - (j) regulating the use of ferries within a harbour area;
  - (k) regulating in a harbour area the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
  - (l) regulating the holding of regattas and other public events in a harbour area;
  - (m) regulating or prohibiting the activities in a harbour area of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (k) above;
  - (n) regulating the launching of vessels within a harbour area;
  - (o) prohibiting persons working or employed in or entering a harbour area, or any part thereof, from smoking therein;
  - (p) regulating or preventing the use of fires and lights within a harbour area, and within any vessels within a harbour area;
  - (q) regulating the movement, speed and parking of vehicles within a harbour area;
  - (r) regulating the use of any fish market provided by the Comhairle and the conduct of persons working therein or resorting thereto, and for preventing nuisance or annoyance thereat;
  - (s) regulating the exercise of the powers vested in the harbour master;
  - (t) making the carrying out of specified harbour operations, or the conduct of persons in a harbour area, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
  - (u) for the conservation of the natural beauty of all or any part of a harbour area or of any of the fauna, flora or geological or physiographical features in a harbour area and all other natural features.
- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 4 on the standard scale;
  - (b) relate to the whole of a harbour area or to any part thereof;
  - (c) make different provisions for different parts of a harbour area or in relation to different classes of vessels.

(4) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and, if he was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

(5) Where the Scottish Ministers propose to exercise the power of modification conferred on them by subsection (10) of section 202 of the Local Government (Scotland) Act 1973(4), and

the modification appears to them to be substantial, they shall inform the Comhairle and require it to take any steps they consider necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as they think reasonable for consideration of, and comment upon, the proposed modification by the Comhairle and by other persons who have been informed of it.