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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 189**

**The Dumfries and Galloway Council (Isle of Whithorn) Harbour Empowerment Order 2008**

**PART I  
PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Dumfries and Galloway Council (Isle of Whithorn) Harbour Empowerment Order 2008 and shall come into force on 23rd May 2008.

**Interpretation**

**2.—(1)** In this Order—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(1);

“charges” means charges, dues and tolls of every description for the time being payable under any enactment to the Council in relation to the harbour undertaking;

“the Council” means Dumfries and Galloway Council;

“general direction” means a direction given under article 19 below;

“the harbour” means the harbour of Isle of Whithorn as described in article 4 below and in Schedule 1 to this Order;

“the harbour map” means the map referred to in article 4 below of which copies are deposited at the offices of the Scottish Ministers at the Scottish Executive, Victoria Quay, Edinburgh, EH6 6QQ and with the Council at Militia House, English Street, Dumfries DG1 2HR;

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

“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 Council as part of the harbour undertaking;

“the harbour undertaking” means the harbour undertaking of the Council at Isle of Whithorn;

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

“mooring” includes buoys and other apparatus provided for the mooring of vessels;

“personal water craft” means any watercraft (not being a structure which by reason of its shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

- (a) by means of a handlebar operated linkage system (with or without a rudder at the stern);  
or
- (b) by the person or persons riding the craft using his or their body weight for the purpose; or
- (c) by a combination of the methods referred to respectively in (a) and (b) above;

“special direction” means a direction given under article 21 below;

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

“vessel” means every description of vessel, however propelled or moved, and includes any thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily), a seaplane on or in the water, a hovercraft, a hydrofoil and any amphibious vehicle.

### **Incorporation of Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) The following provisions of the 1847 Act are hereby incorporated with, and form part of, this Order—

sections 1, 2, 3, 4, 20, 21, 23, 27, 29, 31 to 36, 43, 52 to 66, 68 to 71, 73, 77, 78, 92 and 94.

(2) The said provisions as so incorporated shall have effect as follows:—

- (a) “the special Act” means this Order;
- (b) “the promoters of the undertaking” and “the undertakers” mean the Council;
- (c) “the harbour, dock or pier” means the harbour;
- (d) “vessel” has the meaning given by article 2 above;
- (e) section 52 shall extend to empower the harbour master to give directions prohibiting the mooring within the harbour of any vessel—
  - (i) using any works for the time being vested in the Council, or coming to or departing from those works;
  - (ii) which is obstructing any such works, or the approach thereto; or
  - (iii) which threatens the safety of navigation in the harbour;
- (f) notice given by the harbour master to the master of a vessel under section 53 need not be in writing but may be given orally, or in any other reasonable manner;
- (g) in section 63, for the words from “penalty” to the end of the section there shall be substituted the words “on summary conviction to a fine not exceeding level 2 on the standard scale”;
- (h) in section 69, for the words “forfeit” to the end of the section there shall be substituted the words “be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;
- (i) in section 73, for the words “five pounds” there shall be substituted the words “level 2 on the standard scale”;
- (j) in section 84, for the words “five pounds” there shall be substituted the words “level 2 on the standard scale”.

(3) The provisions of the 1847 Act, other than those referred to in paragraph (1) above, shall not apply to the harbour.

### **Harbour jurisdiction**

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 within the area described in Schedule 1 to this Order, and shown 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 Schedule 1 to this Order, and the boundaries shown on the harbour map, the harbour map shall prevail.

(3) The Council may employ and appoint a harbour master for and incidental to the performance of its functions under this Order and all other enactments relating to the harbour.

## **PART II**

### **HARBOUR REGULATION**

#### *Management and control of the harbour*

#### **General functions in respect of the harbour**

5.—(1) It shall be the duty of the Council, 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 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 Council may—

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

#### **Power to dredge**

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

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

(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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(2) 1995 c. 21.

### **Reclamation of land**

7.—(1) Subject to the provisions of this Order, the Council may within the harbour fill up, raise, enclose and reclaim land from the sea and the bed and foreshore of the harbour 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 Council deems necessary.

- (2) The Council shall not exercise the powers of paragraph (1)—
- (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 the harbour 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 56 below, without the consent in writing of the Crown Estate Commissioners or, as the case may be, the government department.

### **Tidal works not to be executed without approval by the Scottish Ministers**

8.—(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 Council at its 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 Council it has 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 Council as a debt.

### **Declaration of draught, etc. of vessel**

9.—(1) The master of a vessel entering, leaving or intending to enter or leave the harbour 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 Council 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**

10.—(1) This article applies to any damage caused to any work or property of the Council in the harbour—

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

(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 Council 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 Council.

#### **Obstruction of officers, etc.**

**11.** Any person who intentionally obstructs an officer of the Council or other person acting in execution of this Order or of any enactment relating to the harbour 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**

**12.** Any duly authorised officer of the Council 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 Council or of any byelaw of the Council, 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**

**13.—(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) above to prove that the vessel did not become adrift as the result of any neglect or default on his part.

#### **Licensing of tugs**

**14.—(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 Council in that behalf.

(2) The Council 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 the harbour, etc.**

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

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the harbour, 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 Council.

(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**

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

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

### **Licensing of moorings**

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

(2) A licence may be granted under this article on such conditions as the Council 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 Council or in which he has no appropriate interest.

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

18.—(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any moorings or any part thereof from the harbour;
- (c) places, lays down, maintains, renews or has in the harbour any mooring not provided under article 16 or licensed under article 17 above;
- (d) without reasonable excuse causes or permits a vessel to be moored in the harbour except—
  - (i) at a mooring provided under article 16 or licensed under article 17 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 Council 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 Council 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 16 above;

(ii) any unpaid licence fee payable under article 17 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 Council may apply to the sheriff for an order giving the appropriate directions as to the disposal by the Council of any surplus proceeds of sale.

#### *Directions to vessels*

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

**19.**—(1) The Council 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 the harbour and, without prejudice to the generality of the foregoing, for any of the following purposes:—

(a) for designating 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; 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 the harbour 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 the harbour 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 the harbour 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 Council may after consultation with the Royal Yachting Association revoke or amend any general direction.

### **Publication of general directions**

**20.**—(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 Council 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, 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 Council to be appropriate.

### **Special directions to vessels**

**21.**—(1) The harbour master 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 in the harbour;
- (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; or
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink; or 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 therein; or
  - (iii) its removal is necessary to enable maintenance or repair work to be carried out in the harbour or to premises adjacent thereto; and
  - (iv) 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**

**22.**—(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**

**23.**—(1) Without prejudice to any other remedy available to the Council, 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 Council in the exercise of the powers conferred by this article shall be recoverable by it as if they were a charge of the Council in respect of the vessel.

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

**24.** 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.

### *Obstructions*

### **Removal of obstructions other than vessels, vehicles or wreck**

**25.**—(1) Without prejudice to its powers under any other enactment (including one contained in this Order) the Council 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 Council under paragraph (1) above is known to the Council to be, or is so marked as to be readily identifiable as, the property of any person, the Council 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 Council.

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

(3) The Council 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 Council under this article, and if it is sold the proceeds of sale shall be applied by the Council 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 Council 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 Council.

(4) If anything removed under this article—

(a) is sold by the Council 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 Council 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 Council 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 Council 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 Council 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 Council thereunder.

### **Removal of vehicles**

**26.—**(1) If a vehicle is left without permission of the Council—

(a) in a parking place provided by the Council 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 Council; 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 Council 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 Council 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 Council from the person responsible.

(4) If the Council 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(3), at his last known address, his registered address, or the address where the vehicle is ordinarily kept, notice that the Council 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 Council 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(4) in consequence of the putting of the vehicle in that place.

(7) This article does not apply to any part of any public road within the harbour premises.

### **Power to remove goods**

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

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

### *Byelaws*

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

28.—(1) The Council may from time to time make byelaws for the efficient management and regulation of the harbour and the harbour undertaking.

(2) Without prejudice to the generality of paragraph (1) above, byelaws may be made under this article for all or any of the purposes set out in Schedule 2 to this Order.

(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 the harbour or to any part thereof;
- (c) make different provisions for different parts of the harbour 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(5), and the modification appears to them to be substantial, they shall inform the Council and require it to take any

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(4) 1978 c. 3.

(5) 1973 c. 65.

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 Council and by other persons who have been informed of it.

## PART III

### CONTROL OF WORKS, DREDGING, ETC.

#### Restriction of works and dredging

- 29.**—(1) No person other than the Council shall in the harbour—
- (a) construct, place, 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 30 or, as the case may require, article 31 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 Council 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 Council 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 any operation of any electronic communications apparatus within the meaning of the Communications Act 2003(6).

#### Licensing of works

**30.**—(1) The Council may upon such terms and conditions as it thinks fit grant to any person a licence to construct, place, alter, renew or maintain 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 constructed, placed, altered, renewed or maintained.

- (2) Application for a works licence shall be made in writing to the Council 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 Council may require modifications in the plans, sections and particulars submitted to it by the applicant.

(4) If the Council decides to grant a works licence it shall give notice of its decision to the applicant.

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(6) 2003 c. 21.

(5) If within 3 months from the date of the making of an application under paragraph (2) above the Council does not notify to the applicant its decision whether to grant a works licence, it shall be deemed to have refused the application.

(6) The Council 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 29 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<sup>(7)</sup>) 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**

**31.—**(1) The Council may upon such terms and conditions as it thinks 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 Council 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 Council may require modifications in the plans, sections and particulars submitted to it by the applicant.

(4) If the Council decides to grant a dredging licence it shall give notice of its decision to the applicant.

(5) If within 3 months from the date of making an application under paragraph (2) above the Council does not notify the applicant of its decision whether to grant a dredging licence it shall be deemed to have refused the application.

(6) Unless otherwise agreed between the Council 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 Council before being taken up or collected, but subject to the provisions of article 59 below, become the property of the Council, and the Council may use, appropriate or dispose of any such material.

(7) The Council 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 29 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**

**32.—**(1) Where—

(a) the Council has refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal, or

(b) the Council has granted such a licence upon terms or conditions or has required modifications to be made in the plans, sections and particulars submitted by the applicant,

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(7) 1989 c. 29.

and the applicant is aggrieved by the Council'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 Council gives notice of its decision or the date on which it is under article 30 or article 31 above deemed to have refused the application, as the case may be, appeal to the Scottish Ministers.

(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 Council and the Council 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 its 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 Council shall give effect to any decision or requirement given or made by the Scottish Ministers under paragraph (4) above.

#### **Repair of structures, etc.**

**33.—**(1) The Council may by notice require the owner or occupier of a pier, landing place, embankment, structure or other work which in the opinion of the Council 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 Council 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 Council may carry out the works it considers 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) above shall have annexed to it a copy of this article.

(4) A person aggrieved by a notice served by the Council under paragraph (1) above may appeal under section 50 of the Sheriff Courts (Scotland) Act 1907<sup>(8)</sup> 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.

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(8) 1907 c. 51.

## PART IV

### FACILITIES AND SERVICES, ETC.

#### **Power to provide warehouses and other facilities**

34. The Council 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**

35. The Council 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.

#### **Provision of vessels**

36. The Council may construct, purchase, contract for or hire, and may maintain and use, vessels required by it for carrying out its functions under this Order, including dredging, and may sell or dispose of any such vessels belonging to it.

#### **Power to hire out plant, etc.**

37. The Council may let upon hire (with or without the services of its employees) on such terms and conditions as it thinks fit any vessel, plant, equipment or other property belonging to it and forming part of the harbour undertaking.

#### **Provision of supplies**

38.—(1) The Council may provide and supply or make arrangements with others for the provision and supply of fuel, ice, water, chandlery and marine equipment for the bunkering and service of vessels.

(2) Supplies may be provided under this article in the harbour or (with the consent of the occupier of the land) at any other place in Dumfries and Galloway where such supplies may be required by vessels which customarily use the harbour.

(3) The Council may lay down and maintain or make arrangements for the laying down and maintenance of pipelines, storage tanks, equipment and other apparatus, and the execution of ancillary and necessary works, for the purposes of such supplies in the harbour or (with the consent of the occupier of the land) at any other place in Dumfries and Galloway where supplies are to be provided under this article.

## PART V

### CHARGES

#### **Charges other than ship, passenger and goods dues**

39.—(1) The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined by section 57 of the Harbours Act 1964, entering, using or leaving the harbour such charges as it thinks fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(2) The Council may make such charges for services and facilities provided by it or on its behalf in relation to the harbour as it may from time to time determine.

(3) In paragraph (2) above “charges” does not include ship, passenger or goods dues as defined by section 57 of the Harbour Act 1964.

### **Liability for charges**

**40.**—(1) Charges payable to the Council on or in respect of—

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

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

### **Power to grant exemptions, rebates, etc., in respect of charges**

**41.**—(1) The Council 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 Council 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.

### **Account of goods**

**42.**—(1) When goods are to be unshipped within the harbour the master of the vessel containing them shall—

- (a) within 24 hours of the arrival of the vessel within the harbour, deliver to the harbour master the name of the consignee of the goods and a copy of the bill of lading or manifest or, if part only of the cargo is to be unshipped, a sufficient account in writing of the goods to be unshipped;
- (b) if required so to do by the harbour master, give to him 24 hours' notice of the time at which any such goods are to be unshipped.

(2) Before any person ships goods on board of a vessel within the harbour he shall give to the harbour master a true account signed by him, of the kinds, quantities and weights of the goods.

(3) If any difference arises between the harbour master and a master or the owner of goods or consignee concerning the weight or quantities of goods in respect of which charges may be payable, the harbour master may cause the goods to be weighed or measured and may detain a vessel containing such goods until the goods have been so weighed or measured.

- (b) Section 46 of the 1847 Act shall apply to any difference such as is referred to in subparagraph (a) above.

(4) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2) above, or with any requirement made under paragraph (1)(b) above, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Recovery of charges by seizure, etc.**

**43.**—(1) If default is made in the payment of any charge in respect of a vessel or its cargo the harbour master may, on producing if so required his authority, board the vessel with such assistance as he deems necessary and take, seize or arrest the vessel and the tackle and cargo thereof, and if



the charge remains unpaid for 7 days after the seizure or arrestment may cause any of the matters so seized or arrested to be sold, and the surplus (if any) of the proceeds of sale over the amount of the charge and over the expenses of taking, keeping, appraising and selling the matters aforesaid shall be paid to the master on demand.

(2) If any dispute arises as to the amount of charge due, or of the expenses of seizure or arrestment by virtue of this article, the harbour master may detain the matters so seized or arrested until the amount aforesaid, subject to any costs of the application payable by either party, has been determined upon application to the sheriff.

### **Security for charges**

**44.** The Council may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, 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 Council 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**

**45.—(1)** A person who by agreement with the Council collects charges on its 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 of the amount.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Council 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 of customs clearance**

**46.—(1)** A customs officer may refuse—

- (a) to receive a report inwards or to grant a clearance outwards to a vessel; and
- (b) to pass an entry for imported goods liable to charges;

unless he is satisfied that all charges payable to the Council in respect of that vessel or of those goods, as the case may be, have been paid or that a sum of money or guarantee in respect thereof has been deposited with, or given to, the Council.

(2) Where a person who has paid, or by agreement with the Council given security or deposited a guarantee for, a charge on or in respect of a vessel or goods, requests a certificate of his having done so for production to a customs officer in order to prevent a refusal under paragraph (1) above, the Council shall give him such a certificate in such form as it shall determine.

### **Refusal to pay charges for landing place, etc.**

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

### **Exemptions from charges**

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

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

#### **Conditions as to payment of charges**

- 49.**—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in its published list of charges.
- (2) Without prejudice to the generality of paragraph (1) above 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 Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

## **PART VI**

### **MISCELLANEOUS**

#### **Harbour office**

**50.** Any requirement of any enactment to retain any document in the harbour office shall be satisfied in relation to the harbour by retaining the document at the nearest post office and at the main offices of the Council.

#### **Reserve funds**

**51.**—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the harbour undertaking exceed the moneys expended or applied by it in respect thereof, the Council may in respect of that year carry to the credit of a reserve fund in respect of the harbour undertaking such a sum as it considers reasonable not exceeding the amount of such excess.

(2) Moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which trustees are for the time being authorised to invest trust moneys including debenture stock or other security created by the Council.

(3) Any reserve fund provided under this article may be applied—

- (a) in making good to the regional rate fund any deficiency at any time arising in the income of the Council from the harbour undertaking;
- (b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the harbour undertaking;
- (c) in defraying any expenditure in connection with the harbour undertaking for which capital is properly applicable or in providing money for repayment of loans;
- (d) in defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing buildings, works, plant, vessels, equipment or articles forming part of the harbour undertaking; or
- (e) for any purpose which in the opinion of the Council is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea to or from the harbour.

(4) In this paragraph “relevant undertaking” means the harbour undertaking as defined in article 2(1) above and any other harbour undertaking of the Council in relation to which the Council is authorised by any enactment to establish a reserve fund.

- (b) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the harbour undertaking as defined in article 2(1) above and any other relevant undertaking, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.
- (c) Any monies paid in respect of any relevant undertaking into any combined reserve fund provided under this paragraph may be applied for the purposes of any other relevant undertaking.

### **Power to lease harbour land and enter into agreements**

**52.** The Council may for such consideration and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, feu, lease, excamb or otherwise dispose of any part of the lands which from time to time form the harbour and which are no longer required by the Council for the purposes of the harbour, and may carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

### **Saving for certain enactments, etc.**

- 53.**—(1) Nothing in this Order affects prejudicially the operation of—
- (a) the Prevention of Oil Pollution Act 1971<sup>(9)</sup>;
  - (b) the Control of Pollution Act 1974<sup>(10)</sup>;
  - (c) the Offshore Petroleum Development (Scotland) Act 1975<sup>(11)</sup>;
  - (d) Part II of the Food and Environment Protection Act 1985<sup>(12)</sup>;
  - (e) Part I of the Coast Protection Act 1949<sup>(13)</sup>, or the operation of sections 34 and 36 of that Act in their application to operations carried out by virtue of article 31 above;
  - (f) any of the relevant statutory provisions as defined in section 53 of the Health and Safety at Work etc. Act 1974<sup>(14)</sup>.

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<sup>(9)</sup> 1971 c. 60.

<sup>(10)</sup> 1974 c. 40.

<sup>(11)</sup> 1975 c. 8.

<sup>(12)</sup> 1985 c. 48.

<sup>(13)</sup> 1949 c. 74.

<sup>(14)</sup> 1974 c. 37.

(2) Subsection (1) of section 80 (repeal or modification of certain provisions by regulations) of the Health and Safety at Work etc. Act 1974 shall apply to any provision of this Order and to any regulation and byelaw made under it as it applies to any provision to which it relates.

(3) The Town and Country Planning (Scotland) Act 1997<sup>(15)</sup> and any order, regulations, rules, schemes and directions made or given thereunder and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that development thereof is or may be authorised by this Order.

#### **Saving for town and country planning**

54. Any works such as are authorised by articles 5, 6 or 7 above shall not for the purposes of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992<sup>(16)</sup> be treated as—

- (a) development authorised by an order made under section 16 of the Harbours Act 1964 which designates specifically the nature of the development authorised and the land upon which it may be carried out; or
- (b) development on operational land by statutory undertakers or their lessees in respect of a dock, pier or harbour undertaking, being development which is required for the purposes of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour.

#### **Saving for Commissioners of Northern Lighthouses**

55. Nothing in this Order shall affect the jurisdiction or authority of the Commissioners of Northern Lighthouses.

#### **Crown rights**

56.—(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 Council 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) above may be given unconditionally, or subject to terms and conditions.

Victoria Quay,  
Edinburgh  
14th May 2008

*ALASTAIR WILSON*  
A member of the staff of the Scottish Executive

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<sup>(15)</sup> 1997 c. 8.  
<sup>(16)</sup> S.I. 1992/223 (S.17).