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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 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(1);
- (b) the Control of Pollution Act 1974(2);
- (c) the Offshore Petroleum Development (Scotland) Act 1975(3);
- (d) Part II of the Food and Environment Protection Act 1985(4);
- (e) Part I of the Coast Protection Act 1949(5), 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(6).

(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(7) 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(8) 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

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(1) 1971 c. 60.  
(2) 1974 c. 40.  
(3) 1975 c. 8.  
(4) 1985 c. 48.  
(5) 1949 c. 74.  
(6) 1974 c. 37.  
(7) 1997 c. 8.  
(8) S.I.1992/223 (S.17).

- (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.