SCOTTISH STATUTORY INSTRUMENTS

2024 No. 325

HARBOURS, DOCKS, PIERS AND FERRIES

The Dumfries and Galloway Council (Stranraer) Harbour Revision Order 2024

Made - - - -	*6th November 2024*
Coming into force - -	*7th November 2024*

CONTENTS

PART 1
Preliminary

1. Citation and commencement
2. Interpretation
3. Incorporation of the Commissioners Clauses Act 1847 and of the Harbours, Docks, and Piers Clauses Act 1847

PART 2
Duties and Powers of Council as Harbour Authority

4. Limits of Harbour
5. Harbour master
6. General powers of Council
7. Power to appropriate parts of the harbour, etc.
8. Moorings
9. Power to lease, etc
10. Powers with respect to land, buildings, harbour facilities etc.
11. Power to dredge
12. Power to enter into arrangements to provide supplies
13. Parking places
14. Power to regulate pleasure craft

PART 3
Harbour Regulation

15. General byelaws
16. Confirmation of byelaws
17. General directions to vessels
18. Publication of general directions
19. Special directions to vessels

20. Failure to comply with directions
21. Enforcement of special directions
22. Master's responsibility to be unaffected
23. Removal of obstructions other than vessels, vehicles or wrecks
24. Removal of vehicles
25. Power to remove goods
26. Declaration of draught, etc. of vessel
27. Provisions as to damage
28. Obstruction of harbour master, etc.
29. Boarding of vessels
30. Vessels adrift

PART 4
Charges

31. Charges
32. Liability for charges
33. Power to grant exemptions, rebates, etc. in respect of charges
34. Account of goods
35. Recovery of charges by seizure, etc.
36. Security for charges
37. Liens for charges
38. Refusal to pay charges for landing place, etc.
39. Exemptions from charges
40. Conditions as to payment of charges

PART 5
Miscellaneous

41. Reserve funds
42. Saving for Commissioners of Northern Lighthouses
43. Saving for Loch Ryan Oyster Fishery Company Limited
44. Crown rights
45. Repeal

SCHEDULE — Repeal

The Scottish Ministers ("the Ministers") make the following Order in exercise of the powers conferred by section 14(1) and 14(2A) of the Harbours Act 1964(**a**) and all other powers enabling Ministers to do so.

(**a**) 1964 c. 40; section 14 was relevantly amended by the Transport Act 1981 (c. 56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of "the appropriate Minister" and "the Minister". The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act(**a**).

In accordance with section 14(2) of that Act—

(a) this Order is made following a written application to Ministers by Dumfries and Galloway Council ("the Council") being a person appearing to Ministers to have a substantial interest in improving, maintaining or managing the harbour(**b**); and

(b) (except in so far as this Order is made for achieving objects mentioned in section 14(2A) of that Act), Ministers are satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance, or management of the harbour in an efficient and economical manner.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour and consolidating any statutory provisions of local application affecting the harbour.

Notice has been published by the Council in accordance with the requirements of paragraph 10 of Schedule 3 of that Act(**c**).

The provisions of paragraph 13 of schedule 3 of that Act have been satisfied.

The provisions of paragraph 17 of that schedule(**d**) have been satisfied. All objections to the application have been withdrawn.

In accordance with paragraph 19(1) of that schedule(**e**) Ministers have considered—

(a) the result of the consultations under paragraph 15 of that schedule;

(b) any objections made and not withdrawn;

(c) any representations made under paragraph 10(2)(f) of that schedule;

(d) any written representations submitted to the Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection.

In accordance with paragraph 19(6) of that Schedule, Ministers have decided to make this Order with modifications which do not appear to Ministers substantially to affect the character of the Order.

PART 1

Preliminary

(**a**) Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c. 42), schedule 3, paragraph 9.

(**b**) Dumfries and Galloway Council is the authority engaged under the Port Marine Safety Code in improving, maintaining and managing Stranraer harbour.

(**c**) Paragraph 10 of schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and S.I. 2017/170.

(**d**) Paragraph 17 of schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(g).

(**e**) Paragraph 19 of Schedule 3 was substituted by S.I. 2017/1070.

Citation and commencement

1. This Order may be cited as the Dumfries and Galloway Council (Stranraer) Harbour Revision Order 2024 and comes into force on the day after the day on which it is made.

Interpretation

2. In this Order—

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847(**a**);

"the 1964 Act" means the Harbours Act 1964(**b**);

"the 1977 Act" means the British Railways Order Confirmation Act 1977(**c**);

"the 1995 Act" means the Merchant Shipping Act 1995(**d**);

"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;

"Commissioners of Northern Lighthouses" means the general lighthouse authority for Scotland, a body corporate constituted by section 193 of, and Schedule 8 to, the 1995 Act;

"Compulsory Consultees" means Maritime and Coastguard Agency, Royal Yachting Association Scotland, Commissioners of Northern Lighthouses, Loch Ryan Statutory Harbour Authority Committee, UK Chamber of Shipping and such other users of the harbour as the Council considers appropriate;

"the Council" means Dumfries and Galloway Council;

"deposited plan" means the plan signed in duplicate with reference this order and marked ''Stranraer Harbour Limits' and pursuant to article 4 of which copies are signed, dated and deposited at the offices of the Scottish Ministers at the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ and with the Council at 109-115 English Street, Dumfries, DG1 2HR;

"East Pier" means the pier or such part of it outwith the ownership of the Council and outwith the harbour limits situated to the south east of the harbour and identified on the harbour limits plan as being the 'East Pier';

"general direction" means a direction given under article 17;

"harbour" means the harbour at Stranraer comprised within the harbour limits;

"harbour limits" means the limits of the harbour as defined in article 4;

"harbour limits plan" means the plan signed in duplicate with reference this order and marked 'Stranraer Harbour Limits' and pursuant to article 4 of which copies are signed, dated and deposited at the offices of the Scottish Ministers at the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ and with the Council at 109-115 English Street, Dumfries, DG1 2HR;

"harbour master" means any person appointed as such by the Council and includes that person's 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;

"harbour premises" means the quays, piers, landing places and all other works, land and buildings vested in or occupied or administered by the Council as part of the harbour undertaking as shown on the harbour premises plan within the area delineated in green;

"harbour premises plan" means the plan signed in duplicate with reference to this order and marked 'The Stranraer Harbour Revision Order 2024 and subtitled 'harbour premises' dated April 2024;

"harbour undertaking" means the harbour undertaking of the Council at Stranraer;

(**a**) 1847 c. 17.
(**b**) 1964 c. 40.
(**c**) 1977 c. 17.
(**d**) 1995 c. 21.

"master" in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

"personal watercraft" means a watercraft intended for sports and leisure purposes of less than 4 metres in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull;

"water-craft" for the purposes of article 15(2)(j) means any water craft (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 (and does not include a ship or fishing vessel within the meanings given in section 313(1) of the 1995 Act) which is either—

(a) capable of moving under its own mechanical power; and/or

(b) used, navigated or situated wholly or partly in or on water; and/or

(c) is capable of being used to carry one or more persons; and/or

(d) by a combination of the methods referred to respectively in sub-paragraphs (a), (b) and (c); and/or

(e) is autonomous;

"special direction" means a direction given under article 19; and

"vessel" means a ship, boat, raft or craft of any description however propelled or moved, and includes a displacement craft, a non-displacement craft, a personal watercraft, a sea plane on the surface of the water, a hydrofoil vessel or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily).

Incorporation of the Commissioners Clauses Act 1847 and of the Harbours, Docks, Piers Clauses Act 1847

3.—(1) Sections 2, 3 and 60 of the Commissioners Clauses Act 1847(**a**) shall be incorporated with this Order subject to the modifications stated in paragraph (3).

(2) Sections 1 to 4, 27, 29, 33, 35, 36, 52, 54, 57 and 61 to 65 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (3) to (5). Notwithstanding section 10 of the Harbours Piers and Ferries (Scotland) Act 1937(**b**), the other provisions of the 1847 Act shall not apply to the harbour undertaking.

(3) In constructing the provisions of the Commissioners Clauses Act 1847 and the 1847 Act as incorporated with this Order—

(a) "the special Act" means this Order;

(b) "the undertakers" means the Council and the expression "the harbour, dock or pier" shall mean "the harbour"; and

(c) "vessel" has the meaning given by paragraph (1) of article 2 (interpretation).

(4) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission) shall have effect subject to the modification that for the words from "be liable to" to the end of the section there are substituted the words "be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale".

(5) Section 65 (harbour master may remove vessel for purposes of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from "Provided always" to the end of the section.

(**a**) 1847 c. 16.
(**b**) 1937 c. 28.

PART 2

Duties and Powers of Council as Harbour Authority

Limits of Harbour

4.—(1) The limits of the harbour within which the Council shall exercise jurisdiction as the harbour authority within the meaning of section 57 of the 1964 Act and within which the powers of the harbour master are exercisable are—

(a) the seaward limits, being the area of Stranraer harbour which extends to that part of Loch Ryan—

(i) shown delineated in red on the harbour limits plan;

(ii) bounded by an imaginary line drawn from a point (HL1) at Kirkcolm Point at 54˚ 58.06' N, 05˚ 03.66' W thence extending in an imaginary straight line to a point (HL2) at 54˚ 57.34' N, 05˚ 01.31' W thence extending in an imaginary straight line to a point (HL3) at 54˚ 57.34' N, 05˚ 00.52' W (the imaginary line between points HL2 and HL3 forming the southern limit of the Port of Cairnryan) thence following the level of MHWS around the southern part of Loch Ryan to the point of commencement and shall include all creeks and bays as far as the tide shall flow and shown delineated in red on the harbour limits plan, and

(b) the harbour land (together with existing or future works) vested in or administered by the Council as part of the harbour being the area delineated in green on the harbour premises plan.

(2) The harbour land referred to in paragraph (1)(b) shall be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997(**a**).

(3) The harbour limits as shown on the harbour limits plan are for indicative purposes only and in the event that there is any discrepancy between the description of that area and the area shown on the harbour limits plan, the description as specified in the definition of harbour limits in article 4(1)(a)(ii) shall prevail.

Harbour master

5. The Council may employ and appoint a harbour master to be responsible for the harbour within the harbour jurisdiction identified in article 4.

General powers of Council

6.—(1) The Council may take such steps from time to time as they consider necessary or expedient for the improvement, maintenance, regulation, management of the harbour and the accommodation and facilities afforded in or connected with the harbour and provide harbour facilities therein.

(2) For these purposes and without prejudice to the generality of paragraph (1) the Council may—

(a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities in the harbour (including facilities for the supply by the Council of fuel for vessels);

(b) construct, reconstruct, extend, enlarge, alter, replace, relay or demolish and reconstruct structures and works in the harbour;

(c) subscribe for or acquire shares or securities of any body corporate;

(d) maintain such reserve funds as they think fit;

(**a**) 1997 c. 8.

(e) invest any sums not immediately required for the purposes of the harbour;

(f) turn their resources to account so far as not required for those purposes; and

(g) do all other things which in their opinion are necessary or expedient to facilitate the proper carrying on or development of the harbour.

(3) This article is without prejudice to any powers of the Council under or by virtue of any other enactment (including any other provisions within this Order).

Power to appropriate parts of the harbour, etc.

7.—(1) Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Council may from time to time set apart and appropriate any part of the harbour or any land, works, buildings, machinery, equipment or other property within the harbour owned or managed by the Council for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Council may think fit. For the avoidance of doubt, this article shall not apply to the East Pier or any part thereof.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the harbour, land, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbour master, and—

(a) the harbour master may order any person or vessel making use thereof without such consent to leave or be removed from the site of the contravention; and

(b) the provisions of section 58 of the 1847 Act shall extend and apply with appropriate modifications in relation to any such vessel.

(3) In exercising its powers to appropriate or set apart any part of the harbour under paragraph (1), the Council shall have regard to the facilitation of—

(a) the public right of navigation in the harbour; and

(b) any public rights of way affecting the harbour,

such that the Council shall not restrict such rights more than is necessary for the purpose for which the part of the harbour is appropriated or set apart.

Moorings

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

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

(3) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the harbour except under and in accordance with the terms and conditions of a licence granted under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any licence granted under paragraph (2) shall be valid only for a period of one year (or such other longer or shorter period as the Council considers appropriate) commencing with the date on which it takes effect.

(5) The Council may charge a reasonable fee for the grant of a licence under this article.

Power to lease, etc

9. The Council may at any time lease or grant the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour for such period or periods and on such terms and conditions as may be agreed between the Council and the persons taking the same.

Powers with respect to land, buildings, harbour facilities etc.

10.—(1) The Council may for such price and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to it which is no longer required by the Council for the purposes of the harbour.

(2) The Council may for the purposes of the harbour undertaking manage, use or develop land belonging to it as it thinks fit.

Power to dredge

11.—(1) 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.

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

(3) No dredged materials shall be deposited—

(a) in contravention of the provisions of any enactment as respects the disposal of waste; or

(b) in any place below the level of mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

Power to enter into arrangements to provide supplies

12. The Council may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plant, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the harbour.

Parking places

13. The Council may provide facilities 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.

Power to regulate pleasure craft

14.—(1) A person shall not within the harbour—

(a) let for hire to the public a pleasure craft except with the written approval of the Council in accordance with this article; or

(b) carry, or permit to be carried, passengers for hire in a pleasure craft unless the craft, and the boatmen in charge of the craft and the navigator, are approved in writing by the Council.

(2) Any such approval may be given for such period as the Council may think fit and may be suspended or revoked by the Council whenever it shall deem such suspension or revocation to be necessary or desirable in the interests of public safety.

(3) The existence of the power to suspend or revoke the approval shall be stated plainly in the approval itself.

(4) A person taking on hire a pleasure craft for purposes other than for profit does not require to be approved as a boatman.

(5) Approval under this article shall not be required for—

(a) any craft which has a relevant certificate issued by the Maritime and Coastguard Agency and valid for the voyage intended or, in the case of hovercraft within the meaning of the Hovercraft Act 1968(**a**), a certificate of safety valid for the voyage intended; or

(b) a pleasure boat or pleasure vessel which is licensed under section 94 of the Public Health Acts Amendment Act 1907(**b**)

(6) A person shall not carry or permit to be carried in any pleasure craft within the harbour a greater number of passengers for hire than are specified in the approval applying to such craft, and every owner of any such craft shall before permitting the same to be used for carrying passengers for hire within the harbour, permanently display in letters and figures not less than three centimetres in height and one half centimetre in breadth, on a conspicuous part of the craft, their own name and also the number of persons which it is approved to carry, in the form "Approved to carry [ ] persons".

(7) Any person who acts in contravention of paragraph (1) or (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Any person aggrieved by the withholding, suspension or revocation of any approval or by any term or condition subject to which an approval has been given under this article may appeal to the sheriff.

(9) In this article and article 15 "pleasure craft" means any vessel of not more than 100 tonnes gross used wholly or mainly for recreation or for the carriage of passengers for reward.

PART 3

Harbour Regulation

General byelaws

15.—(1) The Council may from time to time make byelaws for the efficient management and regulation of the harbour and for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or physiographical features in the harbour and all other natural features.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

(a) regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, quays, piers, warehouses, sheds, jetties, landing places, equipment, works and conveniences (including moorings);

(b) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;

(c) regulating the berthing and mooring of vessels within the harbour and their speed and the use of tugs within the harbour;

(d) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the harbour;

(e) regulating the conduct of all persons in the harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;

(f) regulating the placing and maintenance of moorings within the harbour;

(g) preventing and removing obstructions or impediments within the harbour;

(h) regulating the use of ferries within the harbour;

(i) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;

(**a**) 1968 c. 59.
(**b**) 1907 c. 53.

(j) regulating the use of water-craft in the harbour;

(k) regulating the holding of regattas and other public events in the harbour;

(l) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers, kite surfers, swimmers 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 (i) and (j);

(m) regulating the use of fires, lights and pyrotechnics within the harbour (other than on any vessel within the meaning of section 255 of the 1995 Act);

(n) regulating the type of vehicles which may enter or be within the harbour and the movement, parking, use, loading or unloading of vehicles within the harbour, and giving powers to officers or employees of the Council in relation to such regulation;

(o) regulating fishing within the harbour;

(p) prohibiting or regulating the sale of articles or the provision of services within the harbour;

(q) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;

(r) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in or into the harbour (other than from any vessel within the meaning of section 255 of the 1995 Act);

(s) prohibiting persons from smoking within such parts of the harbour as the Council may from time to time designate;

(t) making the carrying out of specified activities, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master;

(u) the conservation of the fauna and flora in the harbour;

(v) regulating the movement and parking of vehicles within the harbour;

(w) regulating the exercise of the powers vested in the harbour master.

(3) Byelaws made under this article may—

(a) provide for imposing fines on summary conviction not exceeding level 3 on the standard scale for breach of any approval, condition, direction or requirement imposed under the byelaws;

(b) relate to the whole of the harbour or harbour premises, or to any part thereof;

(c) make different provisions for different parts of the harbour or harbour premises, or in relation to different classes of vessels or vehicles or different specified activities.

(4) Existing byelaws in respect of the harbour will remain in place as if they had been made under this order.

Confirmation of byelaws

16.—(1) Byelaws made by the Council under this Order shall not come into operation until they have been confirmed by the Scottish Ministers.

(2) Not later than one month before an application for confirmation of byelaws is made by the Council to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows—

(a) once in the Edinburgh Gazette; and

(b) once in each of two successive weeks in a newspaper circulating in the area in which the harbour is situated.

(3) Not later than the first date on which the notice under paragraph (2) is published, the Council shall send a copy of the notice to the Scottish Ministers.

(4) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by the Council at the principal office of the Council and at the harbour office both at all reasonable hours, and on the Council's website and will be open to public inspection without payment.

(5) The Council shall supply a copy of the byelaws or of part of the byelaws to a person on request.

(6) During the period of one month beginning with the last date of publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

(7) Subject to paragraph (8), the Scottish Ministers may confirm the byelaws in the form submitted to them (with or without modifications) or may refuse to confirm them.

(8) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaws they shall inform the Council and require it to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not confirm the byelaws until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification.

(9) For the purposes of paragraph (8), the Scottish Ministers shall give the Council and any person who is to be informed of a proposed modification the opportunity to make representations in writing about that proposed modification during a period determined by Ministers and the Ministers shall take such representations into account before making a decision under paragraph (7).

(10) A copy of the byelaws when confirmed shall be printed and deposited by the Council at the principal office of the Council and shall at all reasonable hours be open to public inspection without payment, and a copy of the byelaws shall on application be furnished to any person on request.

General directions to vessels

17.—(1) The Council may, after consultation with the Compulsory Consultees, give general directions for the safe management of the harbour in accordance with the Port Marine Safety Code.

(2) Directions given under paragraph (1) may, in particular, make provision—

(a) designating areas, routes or fairways in the harbour which vessels are to use, or refrain from using for movement, mooring or anchorage;

(b) securing that vessels move only at certain times or during certain periods;

(c) securing that vessels make use of descriptions of aids to navigation specified in the direction;

(d) prohibiting entry into or navigation within any of the main fairways during any temporary obstruction thereof;

(e) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master;

(f) 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 such direction shall prevent the entry into the harbour or the approaches of any vessel seeking refuge from stress of weather;

(g) for regulating the speed of vessels within the harbour.

(3) A general 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;

(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).

(4) The Council may, after consultation with the Compulsory Consultees, revoke, or amend any general direction given under this article.

Publication of general directions

18.—(1) Except in an emergency, notice of the giving of a general direction and of any amendment or revocation of a general direction shall be published by the Council as soon as practicable once in a newspaper circulating in the locality of the harbour, and on the Council's harbour website, and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies of the general direction or the amended general direction (as the case may be) may be inspected and bought, and the price of the general direction or amended general direction (as the case may be).

(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

19.—(1) The harbour master may give a special direction under this article—

(a) requiring a vessel anywhere within the harbour to comply with a requirement made in or under a general direction;

(b) regulating the time at which, the manner in which and speed at which a vessel shall enter into, go out of, move within or lie in or at the harbour;

(c) for securing that a vessel moves only at certain times or during certain periods;

(d) prohibiting the mooring of a vessel in any particular part or parts of the harbour;

(e) regulating or requiring the movement, mooring or unmooring of a vessel; and

(f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship or ship to ship) passengers, cargo, fuel, water, ship's stores or ballast in the harbour.

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

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

Failure to comply with directions

20. The master of a vessel who fails without reasonable excuse to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Enforcement of special directions

21.—(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, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the special direction.

(2) If there is no-one on board a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but the harbour master shall not do so unless, after reasonable enquiry has been made, the master of the vessel cannot be found.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Council from the owner of the vessel as if they were a charge of the Council in respect of the vessel.

Master's responsibility to be unaffected

22. 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 that vessel, persons on board, its cargo or any other person or property.

Removal of obstructions other than vessels, vehicles or wrecks

23.—(1) 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) a wreck within the meaning of Part IX of the 1995 Act.

(2) If anything removed by the Council under paragraph (1) 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 (6), 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 become the property of the Council.

(3) If the ownership of anything removed by the Council under paragraph (1) is not so known or marked and the ownership cannot within 3 months of its coming into the custody of the Council be proved to the Council's reasonable satisfaction, it shall become the property of the Council.

(4) 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 such person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall become the property of the Council.

(5) 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.

(6) A notice given under paragraph (2) 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.

(7) 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.

Removal of vehicles

24.—(1) If a vehicle is left—

(a) in a parking place provided by the Council within the harbour premises for a longer period than authorised by the Council;

(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)(b) 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 reasonable 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 keeper of the vehicle for the purposes of the Vehicle Excise and Registration Act 1994(**a**) ("the registered keeper"), at that person's last known address or 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) 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), "person responsible", in relation to a vehicle, means—

(a) the registered keeper of the vehicle at the time when it was put in the place from which it was so removed, unless that person shows that he or she was not concerned in and did not know of its being put there;

(b) any person by whom it was put in that place; or

(c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(**b**) 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

25.—(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 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 under Part 4 (Charges) of this Order.

(3) In this article, "goods" includes equipment of any description.

Declaration of draught, etc. of vessel

26.—(1) The harbour master may require the master of a vessel entering, leaving or intending to enter or leave the harbour to state the length overall and maximum draught of their vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse fails to give the information or 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.

(**a**) 1994 c. 22.
(**b**) 1978 c. 3.

(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

27.—(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 the charge of the person who caused the damage, or belonging to that person's employers, until the cost of the damage has been paid or until reasonable security 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 their intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article does not affect—

(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;

(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 harbour master, etc.

28. Any person who intentionally obstructs the harbour master or any other person carrying out duties under this Order or any enactment relating to the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Boarding of vessels

29. The harbour master may enter and inspect a vessel in the harbour, subject to producing his authority where requested—

(a) for the purposes of any enactment relating to the Council or of any byelaw (pursuant to this Order) 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 at least 24 hours in advance; and the notice shall have annexed to it a copy of this article.

Vessels adrift

30.—(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) to prove that the vessel did not become adrift as the result of any neglect or default on the part of that person.

PART 4

Charges

Charges

31.—(1) The Council may make such reasonable 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.

(2) 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 1964 Act, entering, using or leaving the harbour such reasonable charges as its 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.

(3) In paragraph (2) "charges" does not include ship, passenger and goods dues as defined by section 57 of the 1964 Act.

Liability for charges

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

(a) a vessel, shall be payable by the owner, charterer or master of the vessel; and

(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

33.—(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 1964 Act 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

34.—(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; and

(b) if required so to do by the harbour master, give to the harbour master 48 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, that person shall give to the harbour master a true account signed by that person, 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.

(4) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2), or with any requirement made under paragraph (1)(b), 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.

35.—(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 or her authority, board the vessel with such assistance as the harbour master 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

36. 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

37.—(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 that person's 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 liable for the payment of charges may pay or, by agreement with the Council give, security for charges on goods in its custody, and in that event that person shall have a like lien on the goods for the amount of those charges as he or she would have in respect of charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place, etc.

38. 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 (including any fees, dues and charges that remain unpaid for a period of 30 days from the date of invoice) for such use.

Exemptions from charges

39.—(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 His Majesty or any member of the Royal Family;

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward;

(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; or

(d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department for Transport and of the Scottish Ministers 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

40.—(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) 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 5

Miscellaneous

Reserve funds

41.—(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 officers are for the time being authorised to invest moneys including debenture stock or other security created by the Council.

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

(a) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the harbour undertaking;

(b) in defraying any expenditure in connection with the harbour undertaking for which capital is properly applicable or in providing money for repayment of loans;

(c) 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

(d) 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) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the harbour undertaking and any other similar undertaking of the Council, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.

(5) Any monies held in any combined reserve fund referred to in paragraph 4 may be applied for the purposes of any of the Council's harbour undertakings.

Saving for Commissioners of Northern Lighthouses

42. Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Commissioners of Northern Lighthouses.

Saving for Loch Ryan Oyster Fishery Company Limited

43. Nothing in this order shall prejudicially affect any right, power, privilege or authority of the Loch Ryan Oyster Fishery Company Limited.

Crown rights

44.—(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 that generality, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners,

(b) belonging to His Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having management of that land or (as the case may be) the relevant person, or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Repeal

45. The enactment mentioned in the first and second columns of the schedule is repealed to the extent specified in the third column of that schedule.

RODDY MACDONALD
A member of staff of the Scottish Ministers

St Andrew's House,
Edinburgh
6th November 2024

SCHEDULE

Article 45

Repeal

Number	*Short Title*	*Extent of repeal*
1977 c. 16	The British Railways Order Confirmation Act 1977	The whole Act

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes Dumfries and Galloway Council ('the Council') as the harbour authority for Stranraer Harbour. It defines the harbour limits and confers powers on the Council, including powers to lease and powers as regards the making of byelaws and issuing of general and special directions. It also repeals superseded, obsolete or otherwise unnecessary statutory provision affecting the harbour.

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