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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 188**

**The Dumfries and Galloway Council (Port William) Harbour Empowerment Order 2008**

**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(1).

**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.

(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>(2)</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—

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(2) 1989 c. 29.

- (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, 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(3) 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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**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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