
STATUTORY INSTRUMENTS

1995 No. 2007

The Western Isles Islands Council (Various Harbours Jurisdiction and Byelaws) Harbour Revision Order 1995

Citation and commencement

1. This Order may be cited as the Western Isles Islands Council (Various Harbours Jurisdiction and Byelaws) Harbour Revision Order 1995 and shall come into force on 1st August 1995.

Interpretation

2. In this Order—

“the Council” means the Western Isles Islands Council;

“harbour area” means an area—

- (a) the respective limits of which are specified in Part I of Schedule 1 to this Order, and includes harbour premises adjacent to such area; or
- (b) referred to in Part II of that Schedule;

“harbourmaster” means a person appointed by the Council to be a harbourmaster and includes the deposes and assistants of a person so appointed;

“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 for the purposes of the undertaking;

“undertaking” means the harbour undertaking for the time being carried on by the Council;

“the 1937 Act” means the Harbours, Piers and Ferries (Scotland) Act 1937(1).

Harbour jurisdiction

3. The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964, and the powers of the harbourmaster shall be exercised within the areas described in Part I of Schedule 1 to this Order.

Power to make byelaws

4.—(1) In their application to the harbours referred to in Part I of Schedule 1 to this Order—

- (a) section 11(1) of the 1937 Act and section 83 of the Harbours, Docks, and Piers Clauses Act 1847(2) shall be modified by substituting for the purposes therein specified the purposes specified in article 5 below;
- (b) section 11(2) of the 1937 Act shall be modified by substituting for the penalty therein specified the penalty specified in article 5(2) below; and
- (c) section 11(3) of the 1937 Act shall be modified by the omission of the proviso thereto.

(1) 1937 c. 28.

(2) 1847 c. 27.

(2) The Council may from time to time make byelaws in accordance with article 5 below for the efficient management and regulation of any of the harbours referred to in Part II of Schedule 1 to this Order.

Purpose of byelaws

- 5.—(1) Byelaws may be made pursuant to article 4 above for the following purposes:—
- (a) regulating the use, operation and superintendence of a harbour area and the docks, berths, wharves, quays, piers, jetties, staiths, warehouses, sheds, landing places, locks, sluices, equipment, works and conveniences (including moorings) in such area;
 - (b) regulating the admission to, and the movement within, and the departure of vessels from, a harbour area, or the removal of vessels, and for the good order and government of vessels whilst within such area;
 - (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within a harbour area;
 - (d) regulating the navigation, berthing and mooring of vessels within a harbour area and their speed and manner of navigation, and the use of tugs within such area;
 - (e) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within a harbour area;
 - (f) regulating the conduct of all persons in a harbour area not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
 - (g) regulating the placing and maintenance of moorings within a harbour area;
 - (h) preventing and removing obstructions or impediments within a harbour area;
 - (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into a harbour area;
 - (j) regulating the use of ferries within a harbour area;
 - (k) regulating in a harbour area the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
 - (l) regulating the holding of regattas and other public events in a harbour area;
 - (m) regulating or prohibiting the activities in a harbour area of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (k) above;
 - (n) regulating the launching of vessels within a harbour area;
 - (o) prohibiting persons working or employed in or entering a harbour area, or any part thereof, from smoking therein;
 - (p) regulating or preventing the use of fires and lights within a harbour area, and within any vessels within a harbour area;
 - (q) regulating the movement, speed and parking of vehicles within a harbour area;
 - (r) regulating the use of any fish market provided by the Council and the conduct of persons working therein or resorting thereto, and for preventing nuisance or annoyance thereat;
 - (s) regulating the exercise of the powers, vested in the harbourmaster;
 - (t) making the carrying out of specified harbour operations, or the conduct of persons in a harbour area, subject to the approval (with or without conditions), control or direction of the harbourmaster, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction.

(2) Byelaws made in accordance with article 4(2) above may provide for imposing upon any person, on his being summarily convicted of contravening or failing to comply with any byelaw under this article, a fine not exceeding level 4 on the standard scale.

(3) Where the Secretary of State proposes to exercise the power conferred on him under subsection (10) of section 202 of the Local Government (Scotland) Act 1973⁽³⁾ to confirm with modifications any byelaws submitted by the Council for confirmation and where the Secretary of State proposes to make a modification which appears to him to be substantial he shall inform the Council and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

Application of Harbours, Docks, and Piers Clauses Act 1847

6. Notwithstanding anything contained in the 1937 Act, section 83 (as extended by section 11 of the 1937 Act) and sections 86 to 88 and 90 of the Harbours, Docks, and Piers Clauses Act 1847 shall not apply to that part of the undertaking carried on at the harbour areas referred to in Part II of Schedule 1 to this Order.

For protection of Scottish Hydro-Electric PLC

7. For the protection of Scottish Hydro-Electric PLC the following provisions shall, save to the extent that the company may release the Council therefrom, apply and have effect:—

(1) In this article, unless the subject or context otherwise requires—

“apparatus” means any electrical plant or electric line as respectively defined in section 64 of the Electricity Act 1989⁽⁴⁾ in or adjoining any of the relevant harbour areas;

“the company” means Scottish Hydro-Electric PLC;

“in” in a context referring to apparatus includes under, over, across, along or upon;

“position” includes depth;

“relevant harbour areas” means the areas over which the Council exercise jurisdiction under article 3 above adjoining Kyles Scalpay Terminal, Ludaig Jetty, Vatersay Causeway Slip East and Vatersay Causeway Slip West.

(a) (2) (a) Before exercising the powers of paragraph (b) of section 9 of the 1937 Act above, at, over, under, or near to any apparatus the Council shall give to the company not less than 28 days' notice in writing of their intention so to do, stating the position of the proposed operation and shall furnish such particulars with respect thereto as the company may reasonably require;

(b) if within 21 days of receipt of such notice as is provided for by the preceding paragraph the company notify the Council in writing of the need to take measures of which the company shall be sole judge to protect apparatus from possible harm caused by the proposed operation and specify the reasonable requirements subject to which the proposed operation may be carried out, the Council shall—

(i) carry out such operation only in accordance with such requirements;

(ii) pay to the company the expenses reasonably incurred by them in and in connection with the carrying out of any of the said protective measures;

(3) 1973 c. 65.

(4) 1989 c. 29.

(c) nothing in this Order or in the said section 9 of the 1937 Act shall relieve the Council from liability for damage caused by them to any apparatus in the exercise of the powers conferred on them by that section and the Council shall indemnify the company against all claims, demands, costs, damages and expenses not otherwise provided for in this article which may be made or taken against or recovered from or incurred by the company by reason or in consequence of the exercise of the powers of that section, or any act or omission of the Council in or in connection with such exercise.

(3) The Council and their harbourmaster shall exercise the powers conferred by this Order and by the 1937 Act and any other statutory powers of a harbour authority or their harbourmaster in such a way as not to interfere unreasonably with access by the company to their apparatus for the purpose of inspection, maintenance, alteration or reconstruction.

(4) Nothing in this Order shall authorise the Council to charge any ship, passenger or goods dues as defined in the Harbours Act 1964, in respect of any vessel entering a relevant harbour area solely for the purpose of inspecting, maintaining, altering or reconstructing apparatus.

(a) (5) (a) Any difference arising between the Council and the company under this article shall be referred to and determined by an arbiter to be mutually agreed upon, or failing such agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers;

(b) in settling any difference under this article the arbiter shall have regard to any duties or obligations which the company may be under in respect of any apparatus and may if he thinks fit require the Council to execute any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

Amendment of Orders of 1980

8.—(1) Section 3 of the Ardvienish Harbour Order 1980(5) is amended by substituting for the word “82” the word “90”.

(2) Section 3 of the Breasclete Harbour Order 1980(6) is amended by substituting for the word “82” the word “90”.

Repeals

9. The enactments specified in column (1) of Schedule 2 to this Order are repealed to the extent specified in respect of each of them in column (2) of that Schedule.

St Andrew’s House,
Edinburgh
28th July 1995

Raymond Robertson
Parliamentary Under Secretary of State, Scottish
Office

(5) Confirmed by 1980 c.i.

(6) Confirmed by 1980 c.xxvii.