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STATUTORY INSTRUMENTS

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**2009 No. 2325**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Penzance Harbour Revision Order 2009**

*Made* - - - - - *27th August 2009*

*Coming into force* - - - *18th September 2009*

On 13 September 2005 Penwith District Council applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

By the Cornwall (Structural Change) Order 2008(2) Penwith District Council was wound up and dissolved and the functions, property, rights and liabilities were transferred to Cornwall Council on 1st April 2009;

The Secretary of State is satisfied as mentioned in section 14(2)(b) of that Act;

The Secretary of State for Transport (being the appropriate Minister under section 14 (7)(3) of that Act) in exercise of the powers conferred by that section and now vested in the Secretary of State (4), makes the following Order:—

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Penzance Harbour Revision Order 2009 and shall come into force on 18th September 2009.

**Interpretation**

2.—(1) In this Order, except where the context otherwise requires—

“the Act of 1847” means the Harbours Docks and Piers Clauses Act 1847(5);

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(1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14, and by the Transport and Works Act 1992 (c. 42), section 63, Schedule 3, paragraph 1. See also the Criminal Justice Act 1982, sections 37 and 46.

(2) S.I. 2008/491.

(3) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(4) S.I.1981/238, S.I. 1997/2971 and S.I. 2001/2568.

(5) 1847 c. 27 (10 & 11 Vict.).

“the Act of 1883” means the Penzance Corporation Act 1883(6);

“the Act of 1995” means the Merchant Shipping Act 1995(7);

“the Council” means Cornwall Council;

“deposited plans” and “deposited sections” mean respectively plans and sections which have been deposited in connection with this Order, two copies of which have been deposited at the offices of the Department for Transport and one copy of which has been deposited at the offices of the Council;

“harbour” means Penzance Harbour the limits of which are defined in article 18 (Limits of harbour) and the harbour premises;

“harbour master” means any person appointed as such pursuant to section 51 of the Act of 1847;

“harbour premises” means the quays, berths, 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 undertaking;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“land” includes land covered by water, any interest in land and any servitude or right in, to or over land;

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

“the limits of deviation” means the limits of deviation shown on the deposited plans;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaking” means the harbour undertaking for the time being of the Council;

“vessel” means a ship, boat, raft or water craft of any description however propelled or moved, and includes a displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and

“works” means the works authorised by this Order, or as the case may require, any part of those works and includes any work constructed pursuant to article 4 (Power to construct works).

(2) All areas, directions, distances, lengths, widths and other measurements as stated in any description of works, powers or lands other than article 5 (Power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width and other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

(4) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

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(6) 1883 c.lxxiv.

(7) 1995 c. 21.

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

3.—(1) The Act of 1847 (except sections 6 to 25, 28, 31, 42, 48 to 50, 67 and 77), so far as applicable to the purposes, and not inconsistent with, the provisions of this Order, is incorporated with, and forms part of this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 shall have effect subject to the modification that for the words from “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”.

(3) Section 69 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) In construing the provisions of the Act of 1847 as incorporated with this Order—

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means the Council and the expression “the harbour, dock, or pier” shall mean the harbour;
- (b) for the definition of the word “vessel” in section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2(1) of this Order;
- (c) the reference in section 53 of the Act of 1847 to notice of a direction by the harbour master served upon a vessel shall not be construed as requiring the notice to be in writing.

### **Power to construct works**

4.—(1) Subject to the provisions of this Order, the Council may in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown on those plans and according to the levels shown on the deposited sections, construct and maintain the works described as follows with all necessary works and conveniences connected with them—

#### **Work No. 1**

A vertical retaining wall forming a quay face extending into Penzance Bay and enclosing an area of 0.5 hectares of the bed of the sea commencing by a junction with the existing sea wall 16 metres north-east of the Penzance Jubilee Bathing Pool at a point at SW476692298780 and extending in a north-easterly, then northerly direction for a distance of 165 metres and terminating on South Pier at a point at SW477870300098; the enclosed area to constitute a widening on the south side of South Pier and to be used as hard standing for marshalling and parking vehicles and for the construction of a passenger terminal, a freight terminal, public conveniences and a covered walkway.

#### **Work No.2**

A rock armoured revetment commencing by a junction with Work No. 1 at a point 19 metres south-west of its termination and extending in a northerly, then north-easterly direction for a distance of 260 metres and terminating in Penzance Bay at a point at SW479474301701, including the provision of a covered passenger walkway.

#### **Work No. 3**

An extension of solid construction of Lighthouse Pier, in an easterly then north-easterly direction for a distance of 61 metres using granite facing blocks on the exposed faces on the north side and abutting the rock armoured revetment forming part of Work No. 2 on the south side commencing on Lighthouse Pier at a point at SW478965301461 and terminating in Penzance Bay at a point at SW479352301772, including the relocation of the existing lighthouse.

#### **Work No. 4**

A suspended deck section extending over an area of 80 square metres between South Pier and Lighthouse Pier on the north side commencing on South Pier at a point at SW478027301045 and terminating on Lighthouse Pier at a point at SW477904300990.

(2) The Council may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus lying within the limits of deviation and may by means of those works, enclose and reclaim so much of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) Subject to the provisions of this Order, the Council may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

(4) The works shall for all purposes form part of the undertaking.

### **Power to deviate**

5. Subject to the provisions of this Order, in carrying out Work Nos.1 to 4 the Council may deviate laterally from the lines or situations of those works as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

### **Subsidiary works**

6.—(1) The Council may from time to time within the limits of deviation provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the works or the operation of the undertaking, and for this purpose the Council may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1), the Council may within the limits of deviation carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

### **Power to dredge**

7.—(1) The Council, for the purposes of constructing and maintaining the works and of affording access to the harbour, may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed of the sea and foreshore of the harbour and approaches to the harbour and may blast any rock within the harbour or in such approaches.

(2) Subject to paragraph (3), all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council may think fit.

(3) No such materials shall be laid down or 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 high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

### **Obstruction of works**

8. Any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of, or in constructing the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Works to be deemed part of undertaking**

9. The works shall be deemed for all purposes to be part of the undertaking and all byelaws, rules and regulations of the Council for the time being in force relating to the undertaking shall apply to the works and may be enforced by the Council accordingly.

### **Tidal works not be executed without approval of Secretary of State**

10.—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is demolished, constructed, renewed, reconstructed or altered in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the Council at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and if on the expiration of 30 days from the date when the notice is served upon the Council they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary to do so, the Secretary of State may remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council as a debt.

### **Survey of tidal works**

11. The Secretary of State may at any time, if the Secretary of State deems it expedient, order a survey and examination of a tidal work or a site upon which it is proposed to construct the work, and any expense incurred by the Secretary of State in such a survey and examination shall be recoverable from the Council as a debt.

### **Provision against danger to navigation**

12.—(1) In the case of injury to or destruction or decay of a tidal work or any part of it, the Council shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If the Council fail to comply in any respect with the provisions of this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Abatement of works abandoned or decayed**

13.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of it to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work or any portion of it, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Council, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council as a debt.

### **Lights on tidal works during construction**

14.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Council shall at the outer extremity of it every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Permanent lights on tidal works**

15.—(1) After completion of a tidal work the Council shall at the outer extremity of that work, every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Period for completion of works**

16.—(1) Subject to paragraph (2), if the works are not completed within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Council allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Council for making and maintaining the works shall cease except as to so much of them as are then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 4 (Power to construct works) or article 6 (Subsidiary works).

### **Planning, etc. jurisdiction**

17.—(1) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the limits of deviation shall, to the extent that it lies outwith

the area of the Council, for the purposes of the Control of Pollution Act 1974<sup>(8)</sup>, the Environmental Protection Act 1990<sup>(9)</sup> and the Town and Country Planning Act 1990<sup>(10)</sup>, be annexed to and incorporated with that area.

(2) On the accretion date, the area of the whole or of so much of the works authorised by article 4 (Power to construct works) and article 6 (Subsidiary works) as shall have been completed or substantially commenced shall to the extent that it lies outwith the area of the Council be annexed to and incorporated with that area.

(3) In this article “accretion date” means whichever of the following dates first occurs, namely, the date when the works so authorised have been completed or the date when the powers conferred by article 16 (Period for completion of works) shall cease to have effect.

## PART 2

### HARBOUR REGULATION

#### **Limits of harbour**

**18.**—(1) The limits of the harbour within which the Council shall exercise jurisdiction and the harbour master shall exercise his powers shall be the area described in the Schedule.

(2) The area described in paragraph (1) is, for the purpose of identification only, shown edged red on sheet 4 of the deposited plans.

#### **Moorings**

**19.**—(1) The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus for vessels—

- (a) on land owned or leased by the Council or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and the lessee of the land, on any other land in the harbour.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Council such charges as the Council may from time to time prescribe.

(3) The Council may compound with any other person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Council may give notice in writing to the person having the control of any vessel using any mooring in the harbour at the date this Order comes into force requiring him within 28 days to remove the mooring so as to enable the Council to provide, place or lay down moorings in accordance with paragraph (1).

(5) If any person fails to comply with a notice given by the Council under this paragraph, the Council may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

(6) 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.

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<sup>(8)</sup> 1974 c. 40.

<sup>(9)</sup> 1990 c. 43.

<sup>(10)</sup> 1990 c. 8.

(7) Nothing in any such licence shall entitle a person to place, lay down, maintain, renew and use and have any mooring on land not owned or leased by him or by the Council or in which he has no appropriate interest.

(8) Any licence granted under paragraph (6) shall be valid only for a period of one year commencing with the date on which it takes effect.

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

(10) Sections 43 to 46 of the Act of 1847 shall apply in relation to fees charged under this article.

(11) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings; or
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part of it; or
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Council under this article or at a quay, jetty, slipway or other work or to land owned or leased by the Council; or
- (d) places, lays down or maintains in the harbour any mooring not provided or licensed by the Council 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.

(12) If any person places, lays down or maintains in the harbour any mooring not provided or licensed by the Council under this article, the Council may remove the mooring in question and recover from that person the expenses incurred in doing so.

(13) In this article—

“mooring” includes any buoy, pile, post, chain, pillar or like apparatus or convenience used for the mooring of vessels;

“vessel” includes houseboat.

### **Parking places**

**20.** 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 and may make reasonable charges for the use of such facilities.

### **Removal of vehicles etc**

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

- (a) in any place where it is likely to obstruct or interfere with the use of the authorised works; or
- (b) in any part of the authorised works where the parking of vehicles or boats is prohibited by notice erected by the Council,

the Council may, at the risk of the owner, remove the vehicle or boat or cause it to be removed.

(2) Any notice erected under paragraph (1)(b) shall be conspicuously posted in or close to the place to which it relates.

(3) Where the Council in exercise of the powers of this article remove a vehicle or boat or cause it to be removed they shall as soon as practicable report that fact to a constable or to a police station.



(4) The expenses of and incidental to the removal of a vehicle or boat under this article shall be recoverable from any person responsible.

(5) For the purposes of paragraph (4) “person responsible” means—

(a) the owner of the vehicle or boat at the time when it was put in the place from which it was removed under paragraph (1), unless the owner shows that he was not concerned in, and did not know of, its being put there; or

(b) any person by whom the vehicle or boat was put in that place.

(6) If the Council in exercise of the powers of this article remove a vehicle to a place not readily visible from the place whence it is so removed they 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 2002<sup>(11)</sup> or any other regulations having the like effect for the time being in force, at his last known address, his registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of this article and of the place to which the vehicle has been removed.

(7) A notice stating the general effect of paragraph (1) shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the works.

## **Byelaws**

**22.**—(1) The Council may make byelaws for the good rule and government of the harbour and, without prejudice to the generality, for all or any of the following purposes—

(a) for regulating the use of pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buildings, parking places and other works and facilities provided by the Council;

(b) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;

(c) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour;

(d) for regulating, preventing or licensing the conduct of all persons in vessels or otherwise in the harbour, not being members of a police force or officers or servants of the Crown or members of a fire and rescue authority acting in pursuance of the Fire and Rescue Services Act 2004<sup>(12)</sup> whilst in the exercise of their duties as such;

(e) for regulating the placing, laying down, maintenance and use of moorings and for prescribing the patterns and specifications of moorings in the harbour;

(f) for preventing or removing obstructions or impediments within the harbour;

(g) for regulating the launching of vessels within the harbour;

(h) for regulating or prohibiting the mooring, careening, beaching or anchoring and keeping of vessels in the harbour;

(i) for regulating or preventing the use in the harbour or on board any vessel in the harbour of fires, lights or any other equipment, tools or appliances which the Council consider involves a risk of fire and for the prevention of smoking;

(j) for regulating the removal or disposal of rubbish (including ballast, earth or clay or other refuse) and sewage from vessels in the harbour;

(k) for the prevention of the disposal of such rubbish and sewage from vessels, in the harbour;

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<sup>(11)</sup> S.I. 2002/2742.

<sup>(12)</sup> 2004 c. 21.

- (l) for prohibiting the use of or regulating the movement, speed and parking of vehicles within the harbour;
  - (m) for requiring the use of effectual silencers and the general control of noise on vessels in the harbour;
  - (n) for regulating vessels in the harbour and their entry into and departure from the harbour and, without prejudice to the generality, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
  - (o) for regulating the embarkation of persons into, or their disembarkation from, vessels within the harbour;
  - (p) for regulating the holding of regattas and other public events in the harbour;
  - (q) for prescribing the lights and signals to be exhibited or made—
    - (i) by vessels aground within the harbour;
    - (ii) by devices used for marking obstructions within the harbour;
    - (iii) for assisting the navigation of vessels within the harbour, at the entrance to any dock or at any wharf, pier or other work;
  - (r) for the prevention of nuisances in the harbour;
  - (s) for preventing or regulating the discharge by land or sea of any material or thing within the harbour or the approaches to it;
  - (t) for regulating or preventing fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, or other installation or structure of any kind within the harbour;
  - (u) for regulating or preventing aquaplaning, jet skiing, water skiing or diving or other recreational activities in the harbour;
  - (v) for regulating or preventing bathing, and for securing the protection of bathers, within the harbour;
  - (w) for regulating or preventing the use by vehicles of the foreshore within the harbour;
  - (x) for regulating the use of ferries within the harbour and the conduct of boatmen, ferrymen and others plying for hire in the harbour and of persons resorting to any works constructed or operated by the Council; and
  - (y) for regulating the exercise of the powers vested in the harbour master.
- (2) In this article “signals” includes sound signals.
- (3) Byelaws made under this article, section 83 of the Act of 1847 and section 42 of the Act of 1883 may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given under such byelaws, fines not exceeding level 3 on the standard scale;
  - (b) relate to the whole of the harbour or to any part of it;
  - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles.
- (4) In proceedings for an offence against byelaws made by the Council under this article, section 83 of the Act of 1847 or section 42 of the Act of 1883, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised due diligence to avoid the commission of the offence.

(5) The powers of this article are in addition to the powers conferred by section 83 of the Act of 1847 and section 42 of the Act of 1883.

### **Byelaws as to pleasure boats**

**23.** The powers of the Council to make byelaws under section 185 of the Local Government Planning and Land Act 1980<sup>(13)</sup> (pleasure boats byelaws) shall apply in relation to pleasure boats and vessels operating in the harbour.

### **Confirmation of byelaws**

**24.—(1)** The provisions contained in subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972<sup>(14)</sup> shall apply to all byelaws made after the coming into force of this Order, by the Council under this Order, section 83 of the Act of 1847 and section 42 of the Act of 1883.

(2) In its application to byelaws made under this Order, section 83 of the Act of 1847 and section 42 of the Act of 1883, subsection (7) of section 236 shall have effect, subject to paragraph (3), as if after the word “confirm” in the first place where that word occurs there were inserted the words “with or without modification”.

(3) Where the confirming authority proposes to make a modification which appears to the confirming authority to be substantial, then—

- (a) the confirming authority shall inform the Council and require them to take any steps the confirming authority thinks necessary for informing persons likely to be concerned with that modification; and
- (b) the confirming authority shall not confirm the byelaws until there has elapsed such period as the confirming authority thinks reasonable for the Council and other persons who have been informed of the proposed modification to consider and comment on it.

(4) The confirming authority for the purposes of this article and of section 236 in its application to byelaws made under this Order, section 83 of the Act of 1847 and section 42 of the Act of 1883 shall be the Secretary of State.

### **General directions to vessels**

**25.—(1)** The Council may, after consultation with the Chamber of Shipping in each case of an exercise of the powers, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the harbour and the approaches to it and, without prejudice to the generality of what is stated above, for any of the following purposes—

- (a) for designating areas, routes or channels in the harbour and the approaches to it which vessels are to use, or refrain from using, for movement or mooring;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for the purposes of this paragraph.

(2) Directions given under paragraph (1) may apply—

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
- (b) to the whole of the harbour and the approaches to it, or to a part designated, or the designation of which is provided for, in the direction; and

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(13) 1980 c. 65.

(14) 1972 c. 70.

- (c) at all times or at times designated, or the designation of which is provided for, in the direction,

and every direction given under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) The Council may, after consultation with the Chamber of Shipping, revoke or amend directions given under this article.

### **Publication of general directions**

**26.**—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Council as soon as practicable once in Lloyd’s List or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice shall state a place at which copies of it may be inspected and bought, and the price of such copies.

(2) In an emergency, notice of the giving of a general direction or of any amendment or revocation of a general direction may be given in any manner the Council consider appropriate.

### **Special directions to vessels**

**27.**—(1) In addition to the directions which the harbour master may give under section 52 of the Act of 1847 the harbour master may give a direction under this article—

- (a) requiring any vessel anywhere within the harbour or the approaches to it to comply with a requirement made in or under a general direction;
- (b) prohibiting the mooring of vessels in any particular part or parts of the harbour;
- (c) regulating or requiring the movement, mooring or unmooring of a vessel; and
- (d) regulating the manner in which a vessel takes in or discharges passengers, cargo, fuel, water or ship’s stores otherwise than at a quay or pier.

(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.

### **Master’s responsibility to be unaffected**

**28.** 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 the master’s vessel, persons onboard, its cargo or any other person or property.

### **Failure to comply with directions**

**29.** 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 directions**

**30.**—(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 direction.

(2) If there is no one on board the 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 inquiry has been made, the master cannot be found.

(3) 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.

#### **Exemptions, rebates, etc., in respect of charges**

**31.**—(1) The Council may confer total or partial exemption 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 that list.

## **PART 3**

### **MISCELLANEOUS AND GENERAL**

#### **Power to lease, etc.**

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

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the Council other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964.

#### **Power to appropriate lands and works for particular uses, etc.**

**33.**—(1) Notwithstanding anything in any statutory provision of local application the Council may from time to time for the purpose of or in connection with the management of the harbour set apart and appropriate any part of the harbour for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council think fit.

(2) No person or vessel shall make any use of any part of the harbour so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council and—

- (a) the harbour master, or as the case may be such officer, may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 (Powers of harbour master as to mooring of vessels in harbour) of the Act of 1847 shall extend and apply with the necessary modifications to and in relation to any such vessels.

### **Boarding of vessels**

**34.** A duly authorised officer of the Council may, on producing if so required his authority, enter and inspect a vessel in the harbour for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw of the Council relating to the harbour, including the enforcement of any such enactment or byelaw.

### **Power to deal with unseaworthy vessels**

**35.—(1)** In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 and on the Council by the Merchant Shipping Act 1995<sup>(15)</sup> the Council may sell, break up or otherwise dispose of any vessel which is unseaworthy and has been laid by or neglected in the harbour or on land immediately adjoining the harbour.

(2) The Council may retain out of the proceeds of sale of any such vessel, or any part of such proceeds, any expenses incurred by them in respect of the vessel, or in marking, buoying, lighting or otherwise controlling the vessel or warning shipping of its presence and any expenses incurred by the harbour master under section 57 of the Act of 1847 and shall pay the surplus, if any, to the person entitled to that surplus.

(3) If the proceeds of sale are insufficient to reimburse the Council for the said expenses, or there is no sale, the Council may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner as a simple contract debt.

(4) Except in the case of emergency, the Council shall, before exercising their powers under this article, give 14 days' notice in writing of their intention to do so to the registered owner of the vessel and by advertisement in each of two successive weeks in a local newspaper circulating in the area of the Council, provided that, if the registered owner or his place of business or abode is not known to the Council or is outside the United Kingdom, the notice may be given by displaying it at the principal office of the Council for two successive weeks.

### **Charges for services not otherwise provided for**

**36.** Subject to provisions of this Order the Council may demand and recover such reasonable charges or other consideration as they may determine in respect of any services rendered by them in connection with the harbour.

### **Defence of due diligence**

**37.—(1)** In proceedings for an offence under any provision mentioned in paragraph (2) it shall be a defence for the Council to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—  
article 12 (Provision against danger to navigation);  
article 14 (Lights on tidal works during construction); and  
article 15 (Permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Council shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

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(15) 1995 c. 21.

### **Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994**

**38.**—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(16)</sup> (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by this Order and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995<sup>(17)</sup> for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

### **Saving for Trinity House**

**39.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

### **Crown rights**

**40.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown including (without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall) the Duchy of Cornwall, and in particular and without prejudice to the generality, nothing in this Order authorises the Council or any licensee to take, use, enter upon or in any manner interfere with any land or interests in 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 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 the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the consent of the Duke of Cornwall testified in writing under the seal of the said Duchy or, as the case may be, the consent in writing of two or more of such of the regular officers of the said Duchy or of such other persons as may be authorised under section 39 of the Duchy of Cornwall Management Act 1863<sup>(18)</sup>; or
- (c) 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) may be given unconditionally or subject to terms and conditions.

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<sup>(16)</sup> S.I. 1994/2716.

<sup>(17)</sup> S.I.1995/418

<sup>(18)</sup> 1863 c. 49.

Signed by authority of the Secretary of State for Transport

Date 27th August 2009

*Richard Bennett*  
Head of Ports Division  
Department for Transport



## SCHEDULE

Article 18

### LIMITS OF HARBOUR

An area bounded by an imaginary line commencing at a point (1) at SW2976747657, then in a straight line in a north-easterly direction to a point (2) at SW3015348146, then in a straight line in a north-north-westerly direction to a point (3) at SW3048047931, then in a straight line in a westerly direction to a point at Albert Pier (4) at SW3043247721, then in a straight line in a westerly direction to a point in the harbour car park (5) at SW3042647694, then in a straight line in a south-south-westerly direction to a point (6) at SW3040447695, then in a straight line in a west-south-westerly direction in the harbour car park to a point (7) at SW3034347543, then in a straight line in a north-westerly direction to a point on Wharf Road (8) at SW3034547530, then in a south-south-westerly direction along the harbour wall on the eastern side of Wharf Road to a point (9) at SW3024747529, then in a straight line in a westerly direction to a point at Harbour Court (10) at SW3023647495, then in a south-south-westerly direction along the western side of Abbey Turning Basin to a point (11) at SW3011647508, then in a straight line in a south-westerly direction along Abbey Turning Basin to a point (12) at SW3010847502, then in a straight line in a south-easterly direction along Abbey Turning Basin to a point (13) at SW3009447525, then in a straight line in a north-easterly direction along Abbey Turning Basin to a point (14) at SW3012447543, then in a staggered line in a north-easterly direction along Abbey Turning Basin to Ross Bridge at a point (15) at SW3015447577, then in a south-south-easterly direction through and along the eastern side of The Quay to a point on the western side of the Dock Wall (16) at SW3005947651, then in a straight line in a west-south-westerly direction to a point on The Quay (17) at SW3005047641, then in a south-south-easterly direction to a point (18) at SW3000647671, then in a staggered line in a south-south-easterly direction to the entrance to South Pier (19) at SW2996147693, then in a south-westerly direction to a point (20) at SW2992547678, then in a west-south-westerly direction along the south side of Battery Road to a point (21) at SW2988647621, then in a straight line in a south-south-westerly direction to a point (22) at SW2987647621, then in straight line in an east-south-easterly direction on the northern side of Jubilee Bathing Pool to a point (23) at SW2987347663, then in a south-south-westerly direction along the eastern side of Jubilee Bathing Pool to and terminating at the point of commencement.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order empowers Cornwall Council as the harbour authority for Penzance Harbour to construct and maintain works and other harbour facilities at the harbour.

The Order also confers further powers on the Council to maintain and regulate their undertaking at Penzance Harbour as a statutory harbour undertaking and defines the limits of jurisdiction of the harbour.