

1978 No. 427

HARBOURS, DOCKS, PIERS AND FERRIES

The Newlyn Pier and Harbour Revision Order 1977

Made - - - - - 2nd December 1977
Laid before Parliament 2nd February 1978
Coming into Operation 16th March 1978

The Minister of Agriculture, Fisheries and Food, all objections duly made to a draft order submitted to him by the Newlyn Harbour Commissioners and published in accordance with Schedule 3 to the Harbours Act 1964 (a) having been withdrawn, and being satisfied that the making of the Order is desirable in the interests of securing the maintenance and management of Newlyn Harbour in an efficient and economical manner, in exercise of the powers conferred upon him by section 14 of the said Act and of all other powers enabling him in that behalf, and on the application of the said Commissioners, hereby makes the following Order:—

Citation and commencement

1.—(1) This Order may be cited as the Newlyn Pier and Harbour Revision Order 1977 and shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(b).

(2) The Newlyn Pier and Harbour Orders 1906 to 1951(c), the Newlyn Pier and Harbour Revision Order 1968(d) and this Order may be cited together as the Newlyn Pier and Harbour Orders 1906 to 1977.

Interpretation

2.—(1) In this Order, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

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

“the bridge” means the open work viaduct carrying the road (known as the Strand situate at Newlyn being the Class III road from Newlyn to Mousehole) over the creek known as Keel Alley Beach (being part of Work (B) authorised by section 23 (Description of works) of the Newlyn Pier and Harbour Order 1906) and vested in the County Council by virtue of the Newlyn Harbour Bridge Order 1951(f);

(a) 1964 c. 40.

(b) 9 & 10 Geo. 6 c. 18; 1965 c. 43.

(c) 1906 c. cxiii; 1910 c. lxxi; 1920 c. cxx; SR & O 1942/369; S.I. 1951/850.

(d) S.I. 1968/1886.

(e) 1847 c. 27.

(f) S.I. 1951/1336.

“the Commissioners” means the Newlyn Pier and Harbour Commissioners;

“the County Council” means the Cornwall County Council;

“the deposited plan” and **“the deposited sections”** means the plan and sections prepared in triplicate, signed by an Assistant Secretary in the Ministry of Agriculture, Fisheries and Food and marked **“Plan and sections referred to in the Newlyn Pier and Harbour Revision Order 1977”** of which one copy is deposited at the Ministry of Agriculture, Fisheries and Food, one copy at the Department of Trade and one copy at the offices of the Commissioners;

“enactment” means any enactment, whether public general or local, and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the harbour” means the harbour of Newlyn within the limits described in section 6 of the Newlyn Pier and Harbour Order 1906 and includes any land or property belonging to the Commissioners;

“hovercraft” has the same meaning as in the Hovercraft Act 1968(a);

“land” includes any estate or interest in land and land covered by water;

“the 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 plan;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“revenues” means any tolls, rates or dues or such other sums leviable by and includes any income of the Commissioners;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

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

“the undertaking” means the harbour undertaking of the Commissioners as from time to time authorised by any enactment;

“vehicle” means any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis, body, container or trailer, with or without wheels, appearing to have formed part of such a vehicle and any load carried by and anything attached to such a vehicle;

“vessel” means every description of vessel, however propelled or moved, and includes a hovercraft, a hydrofoil vessel, any thing constructed or used to carry persons or goods by water and, except for the purpose of levying rates, a seaplane on or in the water;

“the works” means the works authorised by article 4 (Power to construct works) and described in article 5 (Description of works) of this Order or any of them and any works constructed under article 7 (Subsidiary works) of this Order or any part of the said works and includes those works as renewed, extended, enlarged or altered or otherwise as provided under article 8 (Alteration and improvement of works) of this Order and **“work”** shall be construed accordingly.

(2) The Interpretation Act 1889(b) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(a) 1968 c. 59.

(b) 1889 c. 63.

(3) Unless the context otherwise requires, any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by any subsequent enactment, including this Order.

Incorporation of Act of 1847

3. The provisions of the Act of 1847 (except sections 6 to 13, 16 to 19, 25 to 27, 30 to 32, 49, 50, 66, 67, 79 to 82, 84 to 90, 94, 95, 97, 98 and 101) are hereby incorporated with this Order, except as expressly varied thereby:

Provided that in construing the provisions so incorporated—

- (a) the expression "the special Act" shall mean this Order and the expressions "the Promoters of the undertaking" and "the undertakers" shall mean the Commissioners;
- (b) the meaning of the word "vessel" as defined in this Order shall be substituted for the meaning assigned to that word by section 3 of the Act of 1847;
- (c) section 15 of the Act of 1847, as incorporated with this Order shall have effect as if the words from "shall forfeit" to the end of the section were deleted and there were substituted therefor the words "without reasonable excuse shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds";
- (d) section 20 of the Act of 1847 as incorporated with this Order shall have effect as if the words "in addition to the lands authorised to be compulsorily taken by them under the powers of the special Act" were deleted and as if the words "may take or lease any lands" were inserted after the words "purchase of any lands";
- (e) section 52 of the Act of 1847 in its application to the Authority and the harbour master shall extend to empower the harbour master to give directions prohibiting the mooring of vessels in any particular part or parts of the harbour;
- (f) section 53 of the Act of 1847 shall not be construed to require the harbour master to serve a notice in writing of his directions upon the master of a vessel but such directions may be given orally or otherwise communicated to such master;
- (g) section 63 of the Act of 1847 shall be read and have effect as if for the words from "penalty" to the end of the section there were substituted the words "penalty not exceeding one hundred pounds".

Power to construct works

4. Subject to the provisions of this Order, the Commissioners may, in the lines and situations shown on the deposited plan and on the levels shown on the deposited sections, when they have acquired the necessary lands or obtained sufficient interests therein and within the limits of deviation construct and maintain the works.

Description of works

5. The works authorised by this Order are the following works in the District of Penwith in the county of Cornwall:—

Work No. 1. A quay, revetment and jetty approach and an area for the loading, unloading, movement and use of vehicles formed within that part of the bed and foreshore of the harbour which is to be reclaimed commencing at a point 24 metres or thereabouts north from the south

west end corner of the existing Fish Market in the harbour and extending in a south easterly direction for 112 metres or thereabouts thence in a south westerly direction for 120 metres or thereabouts thence in a westerly direction for 25 metres or thereabouts and thence in a northerly direction to the point of commencement;

Work No. 2. A jetty with a breadth of 12·5 metres or thereabouts and a jetty head with a breadth of 15 metres or thereabouts, commencing by a junction with the jetty approach work No. 1 authorised by this Order, and extending in a south easterly direction for a distance of 142 metres or thereabouts and there terminating;

Work No. 3. An access road 7 metres wide or thereabouts connecting the pier within the harbour known as North Pier with the proposed construction work No. 1 and following a line along the harbour side of the existing Fish Market in the harbour and thence across in front of and a distance of 15 metres or thereabouts from the Commissioners' offices to the said North Pier and there terminating;

Work No. 4. A reclamation and filling-in of the whole or part of the foreshore known as Keel Alley Beach and the removal of the bridge and the construction of an embankment up to a level which makes allowance for the construction thereon by the County Council of a new highway in substitution for the existing highway over the bridge.

Powers to cease in certain events

6.—(1) If the works are not substantially commenced within ten years from the coming into operation of this Order or such extended time as the Minister may in the circumstances by order direct the powers conferred on the Commissioners by article 4 (Power to construct works) of this Order shall cease.

(2) If the execution of any of the works after having been substantially commenced is virtually suspended for twelve consecutive months the said powers in respect of that work shall cease except as to so much thereof as is then completed unless the Minister by order directs that the said powers continue and remain in force.

(3) A certificate of the Minister to the effect that the works have not been substantially commenced or that they have been virtually suspended for twelve consecutive months shall for the purposes of this article be conclusive evidence of the facts stated in such certificate.

Subsidiary works

7.—(1) Subject to the provisions of this Order the Commissioners may from time to time erect, construct, operate and maintain, whether temporarily or permanently, all such works and conveniences as in the opinion of the Commissioners may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works including any additional quay or quays and works for the landing, handling, buying, selling, preserving, freezing, processing, preparing for market or dealing in fish, or the provision of ice for use in the preservation or processing of fish:

Provided that no such permanent works or conveniences shall be erected or constructed outside the limits of deviation.

(2) On the completion of the works the Commissioners shall remove all temporary works placed by them under the powers of this article on, under or over land below the level of high water.

Alteration and improvement of works

8. Subject to the provisions of this Order, the Commissioners may from time to time maintain, renew, extend, enlarge, improve and alter the works temporarily or permanently:

Provided that nothing in this article shall authorise the Commissioners to deviate laterally beyond the limits of deviation authorised by article 10 (Power to deviate) of this Order.

Power to dredge

9. Subject to the provisions of this Order—

(1) The Commissioners may from time to time deepen, dredge, scour, cleanse, alter and improve the harbour for the purpose of affording uninterrupted means of access to the works or the accommodation of vessels thereat.

(2) The Commissioners may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894(a)) from time to time dredged by them from the harbour:

Provided that no such materials shall be deposited below the level of high water otherwise than in such a position and under such conditions or restrictions as may be approved or prescribed by the Secretary of State.

Power to deviate

10. Subject to the provisions of this Order, the Commissioners in constructing the works may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works shown on the deposited sections upwards or downwards to any extent.

Fine for obstructing works

11. Any person who intentionally obstructs any person acting under the authority of the Commissioners in setting out the lines of the works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out without reasonable excuse shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds.

Tidal works not to be executed without approval of Secretary of State

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

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

(a) the said Secretary of State may by notice in writing require the Commissioners at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition and if, on the expiration of thirty days from the date when the notice is served upon the Commissioners, they have failed to comply with the requirements of the notice the said Secretary of State may execute the works specified in the notice; or

(b) if it appears to the said Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

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

As to carrying out of Work No. 4.

13.—(1) The carrying out of Work No. 4 by the Commissioners shall be in accordance with plans and sections approved by the Secretary of State and the County Council and shall be subject to such reasonable requirements and conditions as the Secretary of State and the County Council may make in order to ensure that as little interference as possible is made with the passage of persons and vehicles over that part of the road known as The Strand situate at Newlyn (being the Class III road from Newlyn to Mousehole) which crosses that part of the foreshore known as Keel Alley Beach and to enable the County Council to construct a new highway on top of the embankment forming part of Work No. 4.

(2) Upon the completion of the embankment forming part of Work No. 4 the Commissioners shall maintain that embankment so as to ensure that the said highway to be constructed by the County Council is provided with adequate and proper support.

(3) The County Council shall ensure that at all times there is no interruption in the passage of water through the water main now situate under the road surface of the bridge and shall continue the licence granted by them on 13th September 1974 for the said main in respect of the embankment forming part of Work No. 4 upon the same terms and conditions as if it remained in the bridge.

(4) In the event of there being any inconsistency as between the approval and the requirements and conditions of the Secretary of State and the County Council under paragraph (1) above, the approval and the requirements and conditions of the Secretary of State shall prevail.

For protection of Confederation of British Road Passenger Transport

14.—(1) In this article—

(a) “the CPT” means the Confederation of British Road Passenger Transport;

“scheduled service” means—

(i) any service of stage carriages or express carriages upon a timetabled journey; or

(ii) any service of transport for—

(A) pupils to or from any school or other educational establishment; or

(B) employees to or from any factory or other place of employment;

provided by any public service vehicle;

(b) reference to stopping up the bridge includes reference to any work executed or restriction imposed the effect of which is likely to be substantially to prevent the operation of or to interrupt any scheduled service.

(2) The Commissioners shall not in exercise of the powers of carrying out Work No. 4 described in article 5 of this Order stop up the bridge unless not less than 28 days before the stopping up the Commissioners have given to the CPT written notice of their intention so to do and of the expected dates of the stopping up.

(3) The Commissioners shall forthwith on giving the said notice consult the CPT as to the measures reasonably required to be taken in connection with the exercise of the powers of this Order so as to cause as little interference with traffic as may be practicable and to enable the operators of any scheduled service on a route incorporating the bridge to comply with the terms of the road service licence under which that service is authorised.

(4) The Commissioners shall not stop up the bridge before there is provided and made available for public use a proper substitute road capable of ensuring the continuation of scheduled services without substantial inconvenience or delay and which will be provided until so much of the construction of the new highway referred to in the description of Work No. 4 is completed so as likewise to ensure the continuation of the said services.

(5) During the period of the stopping up of the bridge, and until the new highway referred to in this Order in connection with Work No. 4 aforesaid is constructed and open to public use, the Commissioners shall ensure that warning notices describing or sufficiently indicating the said substitute road shall be kept posted in a conspicuous manner at points at which it will be necessary, by reason of the stopping up, for vehicles to diverge from the highway on the approaches to the bridge.

Provision against danger to navigation

15.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Commissioners shall forthwith 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) Subject to the provisions of article 20 of this Order, if the Commissioners fail to notify Trinity House as required by this article or 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 one hundred pounds and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

16.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners at their own expense either to repair and restore the work, or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the said 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 said Secretary of State may include that part of the work, or any portion thereof, in any notice under this article.

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

Survey of tidal works

17. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work constructed by the Commissioners or of the site upon which it is proposed to construct the work and any expenditure incurred by the said Secretary of State in any such survey and examination shall be recoverable from the Commissioners as a simple contract debt.

Lights on tidal works during construction

18.—(1) The Commissioners shall at or near a tidal work during the whole time of the erection, construction, renewal, extension, enlargement, improvement or alteration thereof exhibit every night from sunset to sunrise 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) Subject to the provisions of article 20 of this Order, if the Commissioners 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 one hundred pounds and on conviction on indictment to a fine.

Permanent lights on tidal works

19.—(1) After the completion of a tidal work, the Commissioners shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) Subject to the provisions of article 20 of this Order, if the Commissioners 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 one hundred pounds and on conviction on indictment to a fine.

Defence in proceedings

20.—(1) In any proceedings for an offence under articles 15, 18 and 19 of this Order (as the case may be), it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence made under paragraph (1) of this article involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not without the leave of the court, be entitled to rely on that defence unless within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in the possession of the person charged.

Works to form part of undertaking

21. The works (except only so much of the topsoil of the embankment as forms part of Work No. 4 and as is required by the County Council for the carrying out of their functions in relation thereto as highway authority) shall for all purposes form part of the undertaking.

Provision of facilities

22. The Commissioners may, within the harbour—

- (1) (a) provide facilities including the erection of barricades or fencing, for—
- (i) the parking of vehicles;
 - (ii) the laying up or storage of vessels;

- (b) for the benefit of persons resorting to or using the harbour provide and sell, or procure the provision and sale of, ice or other refrigerants to such persons for the purpose of or in connection with the preservation or processing of fish.
- (2) demand take and recover such reasonable charges as they may from time to time determine in exercise of their powers under this article or for such services and facilities as they may provide.

Power to Commissioners to make byelaws

23.—(1) In addition to the byelaws which may be made by the Commissioners under section 83 of the Act of 1847, the Commissioners may from time to time make, alter and repeal such byelaws as they think fit with reference to all or any of the following purposes:—

- (a) the management, control and regulation of the harbour and of goods, wares, merchandise and vehicles using or passing over or frequenting or resorting to the harbour;
- (b) the control and regulation of vessels being within the harbour;
- (c) the imposition of limits on the size of vessels entering the harbour;
- (d) the conduct of persons using or being within the harbour and the control or prohibition of smoking by such persons and for preserving order and preventing and suppressing nuisances and offences against decency in the harbour;
- (e) safety precautions to be observed by persons on vessels being within the harbour or persons using or being within the harbour;
- (f) for the prevention or regulation of the disposal of:—
 - (i) rubbish (including ballast, stones, earth, clay or other refuse and any other abandoned article or material whether liquid or solid but not including any substance the discharge or escape of which into the harbour is subject to the provisions of the Prevention of Oil Pollution Act 1971 (a)) in the harbour whether or not from any vessel;
 - (ii) sewage from any vessel in the harbour.

(2) The byelaws which may from time to time be made by the Commissioners in exercise of their powers in that behalf may provide for the imposition of a fine on summary conviction not exceeding one hundred pounds.

(3) The provisions of subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972(b) shall apply to all byelaws to be made by the Commissioners in respect of the undertaking and all fines imposed for the breach of any such byelaws shall be recoverable in manner provided by that Act for the recovery of penalties and the said provisions of sections 236 and 238 shall for the purposes of this article be construed as if the Commissioners were a local authority within the meaning of the said Act of 1972 and the Clerk to the Commissioners were the proper officer of the local authority.

(4) In the application of such last-mentioned provisions the Minister shall be the confirming authority.

(5) Section 34 of the Newlyn Pier and Harbour Order 1906(c) is hereby repealed provided that any byelaws in force on the date upon which the Order comes into operation shall remain in force until repealed by the

(a) 1971 c. 60.

(b) 1972 c. 70.

(c) 1906 c. cxiii.

Commissioners but shall then cease to have effect and be repealed but such repeal shall not affect any penalty, forfeiture or punishment in respect of any offence against those byelaws committed before the date when they cease to have effect.

Byelaws relating to certain dangerous goods

24.—(1) The Commissioners may make byelaws as to the loading and discharging by vessels within the harbour of dangerous goods (which expression in this article does not include dangerous goods to which byelaws made by the Commissioners under the Explosives Act 1875(a), or the Petroleum (Consolidation) Act 1928(b), for the time being apply), and as to the bringing, handling, transport or storage of such goods within the harbour, and generally as to the precautions to be observed with respect to such goods while within the harbour, and such byelaws may in particular provide—

- (a) for regulating the places at which vessels are to load or discharge dangerous goods and the time and mode of, and the precautions to be taken on, such loading and discharging;
- (b) for regulating the places at which vessels carrying dangerous goods are to be moored; and
- (c) for the due enforcement of the byelaws.

(2) Where a person is charged with an offence against a byelaw in force under this article it shall be a defence for that person to prove that the offence was not caused or facilitated by any act of neglect on his part, or on the part of any person engaged or employed by him, and, if that person is charged as the owner or master of a vessel, that in addition all reasonable means were taken by the master to prevent the commission of the offence.

(3) The confirming authority in relation to byelaws made under this article shall be the Minister.

(4) Byelaws made under paragraph (1) of this article may contain provisions for the infliction on persons offending against any of the byelaws of penalties which, on summary conviction, shall be a fine not exceeding one hundred pounds, and, on conviction on indictment, shall be imprisonment for a term not exceeding six months (either in addition to or in substitution for a fine).

(5) Nothing in any byelaw made under paragraph (1) of this article shall prejudice or affect the operation of the Merchant Shipping (Dangerous Goods) Rules, 1965(c), as amended by the Merchant Shipping (Dangerous Goods) (Amendment) Rules 1968(d) and the Merchant Shipping (Dangerous Goods) (Amendment) Rules 1972(e).

Removal of vehicles and obstructions

25.—(1) If a vehicle or any other obstruction is left without the permission of and upon premises owned by the Commissioners—

- (a) in any place where it is likely to obstruct or interfere with the use of the harbour; or
- (b) in any part of the harbour where the parking of vehicles or leaving of obstructions is prohibited and notice of such prohibition has been erected by the Commissioners;

the Commissioners may remove the vehicle or obstruction, or cause it to be removed.

(a) 1875 c. 17.
(d) S.I. 1968/332.

(b) 1928 c. 32

(c) S.I. 1965/1067.
(e) S.I. 1972/666.

(2) Any notice erected under sub-paragraph (b) of the foregoing paragraph shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where the Commissioners in exercise of the powers of this article remove a vehicle or obstruction or cause it to be removed, the expenses of and incidental to the removal shall be recoverable by the Commissioners as a debt in any court of competent jurisdiction.

(4) If the Commissioners in exercise of the powers of this article remove a vehicle or obstruction 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—

(a) in the case of a vehicle to which the Road Vehicles (Registration and Licensing) Regulations 1971(a) or any other regulations having the like effect for the time being in force apply, send to the person for the time being registered as the owner of the vehicle for those purposes at his last known address, his registered address or the address where the vehicle is ordinarily kept;

(b) in the case of any other vehicle or of an obstruction, send to the owner of such vehicle or obstruction (unless after making reasonable inquiry his identity cannot be ascertained)

notice that they have exercised the powers of this article and of the place to which the vehicle or obstruction (as the case may be) has been removed.

(5) A notice stating the general effect of paragraph (1) of this article shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour and in such parts of the harbour as the Commissioners think fit.

Disposal of land

26.—(1) The Commissioners may dispose of land belonging to them in such manner whether by way of sale, exchange, lease, the creation of any easement, right or privilege or otherwise, for such period, upon such conditions and for such consideration as they think fit.

(2) Capital money received by the Commissioners in respect of a transaction under paragraph (1) of this article shall be applied in such manner as the Minister may approve in or towards the extinguishing of any loan raised by the Commissioners for the purposes of the undertaking or otherwise for any purpose for which capital money may properly be applied.

Power to lease

27. The Commissioners may lease or grant the use or occupation of or any easement, servitude or other right or interest in or over any lands, works, buildings, machinery, equipment or other property of the Commissioners for such period or periods, at such rents and considerations and on such terms and conditions as shall be agreed between the Commissioners and the person taking the same.

Works to be within petty sessional division of Penwith

28. So much of the works as is outside the area of the petty sessional division of Penwith in the county of Cornwall shall be deemed to be within the said area.

Borrowing powers

29.—(1) Subject to any order made under sections 1 and 3(4) of the Borrowing (Control and Guarantees) Act 1946(a), the Commissioners may from time to time borrow upon the security of all or any of the revenues and property of the Commissioners and by any method they see fit:—

(a) such sums of money as they may think necessary not exceeding in the aggregate one hundred thousand pounds; and

(b) with the consent of the Minister such further sums of money as they may require :

Provided that in calculating for the purpose of sub-paragraph (a) of this paragraph the aggregate sums of money borrowed by the Commissioners there shall be excluded any sums borrowed for use within twelve months of the date of borrowing for repayment of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(2) Moneys borrowed by the Commissioners under this article shall be applied only to purposes to which capital money is properly applicable.

(3) For the purposes of the last foregoing paragraph, but without prejudice to the generality thereof, purposes to which capital money is properly applicable shall be deemed to include:—

(a) the payment of any interest falling due within the five years immediately following the date of the borrowing on any sum of money borrowed by the Commissioners under this article; and

(b) the repayment within twelve months of the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

Repeal of Bridge Order

30. As from a day appointed by the Minister, after consultation with the Commissioners and the County Council, the Newlyn Harbour Bridge Order 1951 shall be repealed.

Local inquiries

31. The Secretary of State or the Minister may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval under this Order and subsections (2) to (5) of section 250 of the Local Government Act 1972 shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Commissioners were a local authority.

Crown rights

32. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing herein contained shall authorise the Commissioners to take, use or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land, hereditaments, subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of such Commissioners on behalf of Her Majesty first had and obtained for that purpose.

Rights of Duchy of Cornwall

33. In particular and without prejudice to the general law concerning the applicability of Byelaws and Statutory Instruments to the Duchy of Cornwall, nothing in this Order shall extend to authorise the Commissioners to take, enter upon or interfere with any land or water, or take away or affect any rights powers privileges or authorities belonging to or enjoyed by His Royal Highness the Prince of Wales in right of His Duchy of Cornwall or to or by the Possessor of the Duchy of Cornwall for the time being without the consent in writing of some two or more of such of the regular officers of the said Duchy or of such other persons as may be duly authorised under section 39 of the Duchy of Cornwall Management Act 1863(a), to exercise all or any of the said rights powers privileges and authorities by the said Order made exercisable or otherwise for the time being exercisable in relation to the said Duchy or, as the case may be, the consent of the Duke testified in writing under the seal of the Duchy of Cornwall first had and obtained.

Saving for Trinity House

34. Nothing in this Order shall prejudice or derogate from any of the rights or privileges or the jurisdiction or authority of Trinity House.

Saving for Dumping at Sea Act 1974

35. Nothing in this Order shall affect the operation of the Dumping at Sea Act 1974(b).

Costs of Order

36. All costs, charges and expenses of, or in connection with, the preparation, submission and making of this Order (other than costs, charges and expenses which any person is lawfully ordered to pay by the Minister or a joint committee of both Houses of Parliament or any costs, charges and expenses incurred in opposing the Order) shall be paid by the Commissioners.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 2nd December 1977.

(L.S.)

John Silkin
Minister of Agriculture,
Fisheries and Food

(a) 1863 c. 49.

(b) 1974 c. 20.

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order—

- (a)** empowers the Newlyn Pier and Harbour Commissioners to construct in the District of Penwith in the County of Cornwall a quay, revetment, jetty approach and loading area, a jetty and an access road, to reclaim and fill in the whole or part of the foreshore known as Keel Alley Beach and to remove the bridge over the said Beach and to carry out ancillary functions and subsidiary works;
- (b)** authorises the Commissioners to borrow upon the security of their reserves and property such sums as they think necessary not exceeding £100,000 and with the consent of the Minister of Agriculture, Fisheries and Food to borrow such further sums as they may require;
- (c)** empowers the Commissioners to provide certain facilities and to provide and sell or procure the provision and sale of ice or other refrigerants and to make charges therefor;
- (d)** empowers the Commissioners to make byelaws for the management and regulation of the harbour, to empower the Commissioners to remove vehicles and obstructions and to dispose of and to lease land.