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STATUTORY INSTRUMENTS

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**2009 No. 2325**

**The Penzance Harbour Revision Order 2009**

**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<sup>(1)</sup>;

“the Act of 1883” means the Penzance Corporation Act 1883<sup>(2)</sup>;

“the Act of 1995” means the Merchant Shipping Act 1995<sup>(3)</sup>;

“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;

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<sup>(1)</sup> 1847 c. 27 (10 & 11 Vict.).

<sup>(2)</sup> 1883 c.lxxiv.

<sup>(3)</sup> 1995 c. 21.

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

“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.

### **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>(4)</sup>, the Environmental Protection Act 1990<sup>(5)</sup> and the Town and Country Planning Act 1990<sup>(6)</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.

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<sup>(4)</sup> 1974 c. 40.

<sup>(5)</sup> 1990 c. 43.

<sup>(6)</sup> 1990 c. 8.