
STATUTORY INSTRUMENTS

2009 No. 2325

The Penzance Harbour Revision Order 2009

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.

Commencement Information

I1 Art. 32 in force at 18.9.2009, see [art. 1](#)

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.

Commencement Information

I2 Art. 33 in force at 18.9.2009, see [art. 1](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Penzance Harbour Revision Order 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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.

Commencement Information

I3 Art. 34 in force at 18.9.2009, see [art. 1](#)

Power to deal with unserviceable 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⁽¹⁾ the Council may sell, break up or otherwise dispose of any vessel which is unserviceable 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.

Commencement Information

I4 Art. 35 in force at 18.9.2009, see [art. 1](#)

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.

Commencement Information

I5 Art. 36 in force at 18.9.2009, see [art. 1](#)

(1) 1995 c. 21.

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.

Commencement Information

I6 Art. 37 in force at 18.9.2009, see [art. 1](#)

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

38.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽²⁾ (“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⁽³⁾ 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.

Commencement Information

I7 Art. 38 in force at 18.9.2009, see [art. 1](#)

Saving for Trinity House

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

Commencement Information

I8 Art. 39 in force at 18.9.2009, see [art. 1](#)

(2) [S.I. 1994/2716](#).

(3) [S.I.1995/418](#)

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⁽⁴⁾; 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.

Commencement Information

19 Art. 40 in force at 18.9.2009, see [art. 1](#)

(4) 1863 c. 49.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Penzance Harbour Revision Order 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Order revoked in part by [S.I. 2023/675 Sch. 4](#)