

ELIZABETH II



1983 CHAPTER x

An Act to authorise the council of the borough of Torbay to construct works in the harbour at Torquay; to make provision for moorings and the licensing thereof; to amend the Tor Bay Harbour Act 1970; and for other purposes.

[26th July 1983]

WHEREAS—

(1) The borough of Torbay (hereinafter referred to as “the borough”) is under the management and local government of the council of the borough of Torbay (hereinafter referred to as “the Council”):

(2) The Council are the harbour authority for the harbour of Tor Bay:

(3) The borough and its environs constitute an important holiday and residential centre:

(4) Leisure activities such as yachting, cruising and boating have, in recent years, considerably expanded and are continuing so to expand around the south-west coast of England:

(5) It would be of public and local advantage to improve and increase the existing facilities within the borough for the accommodation of vessels and their owners, which facilities would be of substantial advantage to the residents of the borough and to visitors thereto:

(6) It is expedient that the Council be authorised to construct the marina, the recreational and other facilities and the harbour works hereinafter described in this Act:

(7) It is expedient that further powers be conferred on the Council to enable them to make provision for moorings and the licensing thereof:

(8) It is expedient that the other provisions of this Act be enacted:

(9) The objects of this Act cannot be attained without the authority of Parliament:

(10) A plan and sections showing the lines and levels of the works by this Act authorised and the lands which may be taken or used for the purposes thereof, and a book of reference to the said plans containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of those lands and describing the same, have been deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the Chief Executive of the Devon County Council, and such plan, sections and book of reference are respectively referred to in this Act as the deposited plan, sections and book of reference:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows, that is to say:—

PART I

PRELIMINARY

1.—(1) This Act may be cited as the Tor Bay Harbour (Torquay Marina &c.) Act 1983.

(2) The Tor Bay Harbour Act 1970 and this Act may together be cited as the Tor Bay Harbour Acts 1970 and 1983.

PART I
—cont.
1970 c. liii.

2. In this Act, except where the context otherwise requires— Interpretation.

“the Act of 1970” means the Tor Bay Harbour Act 1970;

“the authorised works” means the works authorised by section 3 of this Act or any part of those works;

“the Council” means the council of the borough of Torbay;

“harbour” and “harbour master” have the same respective meanings as in section 4 of the Act of 1970;

“harbour undertaking” has the same meaning as in section 4 of the Act of 1970;

“inner harbour” has the same meaning as in section 36 of the Act of 1970;

“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;

“moorings” includes mooring posts, floating jetties, pontoons, buoys and similar apparatus or facilities;

“standard scale” shall be construed in accordance with section 75 of the Criminal Justice Act 1982;

1982 c. 48.

“statutory maximum” means the prescribed sum as defined by section 32 (9) of the Magistrates’ Courts Act 1980;

1980 c. 43.

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

“Torquay marina” means Work No. 2 and the facilities to be provided as part of Work No. 3 and such parts of the land and water within the limits of deviation of those works as lie north-north-east of an imaginary line drawn from the lower platform of Queens Steps at Haldon Pier at Ordnance Survey Reference SX9163/827098 to the lower platform of the Northern Steps on the inner face of Princess Pier at Ordnance Survey Reference SX9163/480185;

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

“vessel” has the same meaning as in section 4 of the Act of 1970.

PART II
WORKS

Power to
construct
works.

3.—(1) Subject to the provisions of this Act, the Council may in the lines and situations and within the limits of deviation shown on the deposited plan, and according to the levels shown on the deposited sections, make and maintain the works hereinafter described with all necessary works and conveniences connected therewith:—

Work No. 1—A southern pier or breakwater being an extension of the existing pier or breakwater (known and hereinafter referred to as Haldon Pier) extending in a westerly direction for a distance of 90 metres or thereabouts:

Work No. 2—Piled moorings together with a pontoon system with bridge connection to Princess Promenade to be constructed or placed in Torquay Outer Harbour:

Work No. 3—Demolition of existing buildings and the provision of shore facilities including car park, toilets, offices, club house and other ancillary facilities:

Work No. 4—A cill extending from South Pier to the Old Fish Quay between Torquay Inner Harbour and Torquay Outer Harbour to enable water to be retained in Torquay Inner Harbour at all stages of the tide:

Work No. 5—A lock basin bounded on both sides by retaining walls and enclosed at both ends by sluice gates and extending from South Pier to the Old Fish Quay between Torquay Inner Harbour and Torquay Outer Harbour.

(2) In the construction of the authorised works the Council 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 those works shown on the deposited sections to any extent upwards or downwards.

(3) The Council may, within the limits of deviation, from time to time reconstruct, renew, alter, extend, add to, replace or relay the authorised works and may maintain the same as reconstructed, renewed, altered, extended, added to, replaced or relaid.

4. Subject to the provisions of this Act, the Council may from time to time construct and maintain—

(a) within the limits of deviation all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the authorised works; and

Power to
make
subsidiary
and
accommo-
dation
works.

(b) within the inner harbour at Torquay such works for the accommodation or convenience of vessels as they think fit, including, without prejudice to the generality of the foregoing, pontoons, stagings, quays, jetties, piers, walkways, approaches, slipways, landing places, berthing heads, mooring posts, buoys, bollards, navigation marks and lights.

PART II
—cont.

5.—(1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Council, after giving not less than ten days' notice to the owner, lessee and occupier of the land in question, may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.

Correction
of errors
in deposited
plan and
book of
reference.

(2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments, and a copy thereof in the Private Bill Office, House of Commons, and with the Chief Executive of the Devon County Council with whom a copy of the deposited plan has been deposited in accordance with the Standing Orders of the Houses of Parliament; and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate, and it shall be lawful for the Council to take the land and execute the works in accordance with the certificate.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

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

Provision
against
danger to
navigation.

(2) If the Council fail to notify the Trinity House as required by this section or to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART II
—cont.Abatement of
works
abandoned
or decayed.

7.—(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 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 Secretary of State thinks proper.

(2) Where a work authorised by this Act 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 thereof, in any notice under this section.

(3) If, on the expiration of 30 days from the date when a notice under this section 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 him in so doing shall be recoverable from the Council.

Survey of
tidal works.

8. 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 Council, or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Council.

Permanent
lights on
tidal works.

9.—(1) After the completion of a tidal work, the Council 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 the Trinity House shall from time to time direct.

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

Lights on tidal
works during
construction.

10.—(1) The Council shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, alteration, extension, replacement or relaying thereof or the addition thereto, 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) If the Council fail to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART II
—cont.

PART III

MISCELLANEOUS AND GENERAL

11.—(1) Subject to the provisions of this Act, Torquay marina shall be for the exclusive use of pleasure craft and accordingly the Council shall not permit any other vessel to use Torquay marina: Restriction to pleasure craft.

Provided that the Council may permit the use of Torquay marina by any of the following vessels:—

- (a) a vessel for the carriage of not more than 100 passengers where that vessel is used for berthing and not for landing or embarking passengers;
- (b) a vessel which is, for the time being, used for or in connection with sea fishing for profit;
- (c) a vessel for the time being employed for the purposes of any of the functions of the Council;
- (d) a vessel for the time being employed in the supply of goods for use or for sale at premises situated on lands adjacent to Torquay marina;
- (e) a vessel for the time being employed in connection with the provision of services at Torquay marina or on lands adjacent thereto;
- (f) a lifeboat or a vessel used by the coastguard service, the Trinity House or the Ministry of Defence.

(2) In subsection (1) above “pleasure craft” means any vessel of not more than 100 tons gross used wholly or mainly for recreation and not for the carriage of passengers or goods for reward and that tonnage shall—

- (a) in the case of a vessel having a tonnage figure recorded in its certificate of registry, be taken to be that figure; and
- (b) in the case of any other vessel, be calculated by multiplying the vessel’s length by its breadth, by its depth and by 0.0045.

12.—(1) The Council may place, lay down, maintain and use moorings on land within the harbour or on any other land with the consent in writing of the owner or lessee thereof or any other person having an interest entitling him to give that consent. Powers as to moorings, etc.

PART III
—cont.

(2) The Council may from time to time grant a licence to any person to place, lay down, maintain, or use existing or future moorings at such place or places within the harbour and for such number of boats as may be specified in the licence, and on such terms and conditions as they think fit.

(3) A licence granted under subsection (2) above shall be valid for such period not exceeding five years, as may be specified in the licence.

(4) The Council may charge a reasonable fee for the grant of a licence under this section, and for the use of any apparatus provided by them under subsection (1) above.

(5) The Council may confer total or partial exemptions from, allow rebates to, or make compositions with, any person with respect to the fees prescribed by them under this section, and may vary or extinguish any such exemption, rebate or composition.

(6) A licence to lay a mooring issued by the Council and in force immediately before the commencement of this Act shall, unless revoked (and except during any suspension thereof) continue to have effect until the date of expiry provided for in the licence, and shall be deemed for the purposes of this Act to have been granted under this section.

Obstruction
of
moorings,
etc.

13.—(1) Any person who, in the harbour—

- (a) intentionally obstructs any person acting under the authority of the Council in placing, laying down, maintaining, or using any mooring;
- (b) intentionally and without lawful authority or reasonable excuse pulls up or removes any mooring;
- (c) other than in the case of an emergency, causes a vessel to be moored except at a mooring provided or licensed by the Council under section 12 of this Act or with the consent of the harbour master; or
- (d) places, lays down, maintains, or uses any mooring not so provided or licensed;

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person contravenes subsection (1) (d) above, the Council may remove the mooring in question and recover from him the expenses incurred in so doing.

Power to sell
or lease
undertaking or
to transfer
related
powers.

14. The Council may at any time sell or lease (subject to such terms and conditions as may be agreed) any part of their harbour undertaking or transfer any power conferred upon them for the purposes of that undertaking (including a power to levy any charges) and in that event the purchaser, lessee or

transferee, as the case may be, shall have and may exercise to the extent authorised by his conveyance, lease or instrument of transfer, all or any of the powers conferred upon the Council by or under the Act of 1970 (except for section 8 thereof) or this Act in relation to that part of the undertaking but shall be subject to all the restrictions, liabilities and obligations in respect thereof to which the Council are subject and shall perform all the functions of the Council conferred by or under the Act of 1970 or this Act in respect of that part.

PART III
—cont.

15. In connection with the establishment or carrying on by a body corporate of any undertaking or business which appears to the Council to be advantageous or convenient for or in connection with the furtherance of their functions as the harbour authority for the harbour the Council may subscribe for, purchase, take up and hold or dispose of any shares, stock, mortgages, debentures or debenture stock of that body, and may in respect of any shares, stock, mortgages, debentures or debenture stock for the time being held by them exercise either by themselves or through a person or persons nominated by the Council for the purpose all or any of the rights exercisable by an individual holder or holders of such shares, stock, mortgages, debentures or debenture stock.

Power to invest in securities of bodies corporate.

16. The limits of deviation applicable to Haldon Pier by virtue of The Torquay Harbour Order 1868 (as confirmed by The Pier and Harbour Orders Confirmation Act 1868 (No. 2)) shall hereafter be coextensive with the limits of deviation applicable to Work No. 1 of this Act and the proviso to section 9 of the Act of 1970 shall be construed accordingly.

Limits of deviation of Haldon Pier. 1868 c. xlvii.

17. Section 22 of the Act of 1970 shall be amended—

Licensing of pleasure craft.

- (a) in subsection (1) thereof, by substituting for the words from “annual fees” to the end of the subsection, the words “(for the purpose of recovering the reasonable costs of dealing with applications for, and granting or refusing licences) annual fees for such licences, for a craft a fee not exceeding £250 and for a boatman or other person a fee not exceeding £75.”;
- (b) in subsection (3) (a) thereof, by inserting after the words “let for hire”, the words “to the public”;
- (c) in subsection (4) thereof, by deleting the word “not” and by adding at the end thereof the words “but any terms and conditions of such a licence shall, to the extent that they conflict with those applicable to that certificate, be of no effect”;

PART III
—cont.

(d) in subsection (6) thereof, by substituting for the words from “fifty pounds” to the end of the subsection the words “level 3 on the standard scale”.

Obstruction of
officers.

18. Any person who—

- (a) intentionally obstructs an officer of the Council acting in pursuance of this Act or the Act of 1970, or of any byelaw or regulation made under that Act; or
- (b) without reasonable excuse fails to comply with a requirement properly made by such person so acting; or
- (c) without reasonable cause fails to give to such officer so acting any other assistance or information which he may reasonably require for the purpose of the performance of his functions; or
- (d) in giving such information as aforesaid makes a statement which he knows to be false;

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Miscellaneous
amendments
to Act of
1970.

19.—(1) The Act of 1970 shall have effect subject to the following amendments:—

(a) in section 4—

(i) at the end of the definition of “harbour undertaking” there shall be added “or any undertaking of a like nature authorised by any other enactment”;

(ii) after the definition of “the signed map”, there shall be inserted the following definitions:—

“standard scale” shall be construed in accordance with section 75 of the Criminal Justice Act 1982;

“statutory maximum” means the prescribed sum as defined by section 32 (9) of the Magistrates’ Courts Act 1980;

- (b) in section 9, the words “laterally or” shall be deleted and, at the end of the subsection, there shall be added the words “by more than 5 metres”;
- (c) in section 21 (1), for the words from “one hundred pounds” to the end of the subsection, there shall be substituted the words “level 5 on the standard scale”;
- (d) in section 23 (4) (a), after the word “steps” there shall be inserted the words “(including the destruction, sinking or removal of the vessel or structure)”;

1982 c. 48.

1980 c. 43.

- (e) in section 35 (2), for the words “twenty pounds” there shall be substituted the words “level 3 on the standard scale”;
- (f) in section 36 (1) (b), after the words “pleasure craft” there shall be inserted the words “not exceeding 2.3 metres in length overall”;
- (g) for subsection (5) of section 45, there shall be substituted the following subsection:—
“(5) Byelaws made under subsection (1) of this section may provide that persons contravening any byelaw shall be liable on summary conviction to such fine as may be specified as respects that byelaw, being a fine not exceeding—
(a) level 5 on the standard scale in the case of an offence against a byelaw which, in the opinion of the harbour authority when making the byelaws and, in the opinion of the Secretary of State when confirming them, is intended to protect the safety of members of the public; and
(b) level 3 on the standard scale in the case of an offence against any other byelaw.”;
- (h) section 48 (2) shall cease to have effect;
- (i) in section 51 (1), after the word “byelaw” there shall be inserted the words “or regulation”;
- (j) in section 54 (1), for the words “twenty pounds” there shall be substituted the words “level 3 on the standard scale”;
- (k) in section 55 (1), for the words “fifty pounds” there shall be substituted the words “level 4 on the standard scale”;
- (l) in section 72 for the words “one hundred pounds” there shall be substituted the words “level 5 on the standard scale”.

(2) Section 62 (1) and (3) of the Act of 1970 shall apply to offences under sections 13, 18 and 20 of this Act as it applies to the offences mentioned in section 62 (2) of the Act of 1970.

20.—(1) Subject to subsection (2) below, a person who Discharges within an inner harbour knowingly discharges or causes or into waters permits to be discharged into the waters thereof any toxic, of inner noxious or offensive matter except in pursuance of statutory harbours. powers shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Nothing in subsection (1) above shall affect the operation of Part II of the Control of Pollution Act 1974.

PART III
—*cont.*
Application
of
provisions
of Act of
1970.

21. The following sections of the Act of 1970 shall apply in relation to this Act as they apply in relation to that Act, namely:—

- section 63 (Restriction on right to prosecute);
- section 65 (Protection of members and officers of harbour authority from personal liability);
- section 66 (Application of general provisions of Act of 1936);
- section 67 (Saving for Board of Trade);
- section 68 (Crown rights);
- section 69 (Crown right of access);
- section 70 (Saving rights of Duchy of Cornwall).

Planning
permission.

S.I. 1977/289.

22.—(1) In this section “Class XII development” means development authorised by Article 3 of, and Class XII in Schedule 1 to, the Town and Country Planning General Development Order 1977 (which permit development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out).

(2) Subject to the provisions of subsection (3) of this section, in its application to development authorised by this Act, the planning permission granted for Class XII development shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.

(3) Subsection (2) of this section shall not apply to the carrying out of any development consisting of a work authorised by subsection (3) of section 3 of this Act.

For protection
of South
Western
Electricity
Board.

23. For the protection of the South Western Electricity Board (hereinafter referred to as “the board”) the following provisions shall, unless in any case it is otherwise agreed in writing between the Council and the board, apply and have effect:—

(1) In this section—

“apparatus” means any electric line or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the board and the expression “adequate alternative apparatus” means alternative apparatus adequate to enable the board to fulfil their statutory functions in a manner not less efficient than previously;

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

1882 c. 56.

- (2) The Council shall not for the purposes of exercising the powers of this Act seek to remove any apparatus or exercise such powers so as to obstruct or render unreasonably inconvenient the access to any apparatus until adequate alternative apparatus shall have been constructed and is in operation to the reasonable satisfaction of the board:
- (3) If the Council for the purpose of exercising the powers of this Act require the removal or alteration of any apparatus, they shall give to the board written notice of their requirement, or if in consequence of the exercise of the powers of this Act the board shall require to remove or alter any apparatus, the Council shall afford to the board the necessary facilities and rights for the construction of adequate alternative apparatus or alteration of the apparatus, as the case may be, in other land of the Council and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that if the Council are unable to afford facilities and rights as aforesaid, the board shall, on receipt of a written notice to that effect from the Council, forthwith use their best endeavours to obtain the necessary facilities and rights over other land:

- (4) Not less than 28 days before commencing to execute any work under the powers of this Act which is near to, or is likely to affect, any apparatus the removal or alteration of which has not been required by the Council under paragraph (3) of this section, the Council shall submit to the board a plan of the work to be executed and such work shall be executed only in accordance with the plan submitted as aforesaid and in accordance with such reasonable requirements as may be made by the board for the protection of the apparatus, or for securing access thereto, and the board shall be entitled by their officer to watch and inspect the execution of such work:

Provided that if the board within 14 days after the submission to them of any such plan shall, in consequence of the work proposed by the Council, reasonably require the removal or alteration of any apparatus, the foregoing provisions of this section shall apply and have effect as if the removal or alteration of such apparatus had been required by the Council under paragraph (3) thereof:

PART III
—cont.

- (5) The Council shall pay to the board the amount by which the costs, charges and expenses reasonably incurred by the board in connection with any inspection, removal, alteration for protection of any apparatus or the construction of any new apparatus that may be required in consequence of the exercise of the powers of this Act shall exceed the value (such value being calculated after removal) of any apparatus removed in consequence of alternative apparatus being provided and shall also make compensation to the board for any damage caused to any apparatus in consequence of the exercise of the said powers:
- (6) (a) Any difference which may arise between the Council and the board under this section shall be settled by arbitration;
- (b) In settling any difference under this section the arbitrator shall have regard to any duty or obligation which the board may be under in respect of any apparatus and may, if he thinks fit, require the Council to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with any purpose for which the apparatus is used.

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Tor Bay Harbour (Torquay Marina &c.) Act 1983

CHAPTER X

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