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STATUTORY INSTRUMENTS

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**1987 No. 2095**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Newlyn Pier and Harbour Revision Order 1987**

*Made* - - - - - *27th November 1987*

*Coming into force* - - - - - *4th December 1987*

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Commissioners and published in accordance with paragraph 3 of Schedule 3 to the Harbours Act 1964(1) having been withdrawn, and being satisfied in accordance with section 14(2)(b) of the said Act that the making of the Order is desirable in the interests of securing the improvement 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, hereby makes the following Order:—

**Title and commencement**

1.—(1) This Order may be cited as the Newlyn Pier and Harbour Revision Order 1987 and shall come into force on 4th December 1987.

(2) The Newlyn Pier and Harbour Orders 1906 to 1951(2), the Newlyn Pier and Harbour Revision Order 1968(3), the Newlyn Pier and Harbour Revision Order 1978(4) and this Order may be cited together as the Newlyn Pier and Harbour Orders 1906 to 1987.

**Interpretation**

2. In this Order, unless the context otherwise requires,

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

“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 of the Ministry of Agriculture, Fisheries and Food and marked “Plan and sections referred to in the Newlyn Pier and Harbour Revision Order

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(1) 1964 c. 40; section 14 was amended by the Docks and Harbours Act 1966 (c. 28), sections 36(2) and (4) and 43(3); the Transport Act 1981 (c. 56), Schedule 6, paragraphs 2, 3 and 14, and the Criminal Justice Act 1982 (c. 48), section 54.  
(2) 1906 c.cxxiii; 1910 c.lxxi; 1920 c.cxx; S.R. & O. 1942/369; S.I. 1951/850.  
(3) S.I. 1968/1886.  
(4) S.I. 1978/427.  
(5) 1847 c. 27.

1987” of which one copy is deposited at the Ministry of Agriculture, Fisheries and Food, one copy at the Department of Transport 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(6).

“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 Strond;

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

“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.

### **Incorporation of provisions of the 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, 48, 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 and in construing those provisions:

- (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 23 of the Act of 1847 shall be read and have effect as if the words after “the same” were omitted;
- (f) 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;
- (g) 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;
- (h) 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 four 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. An extension to the jetty authorised by article 4 (Power to construct works) of the Newlyn Pier and Harbour Order 1978 increasing, in a straight line, the length of the said jetty by 90 metres or thereabouts and there terminating, the breadth of the extended jetty being 15 metres or thereabouts.

Work No. 2. A quay and jetty, including an area for the laying out and repairing of fishing nets, formed within that part of the bed and foreshore of the harbour which is to be or has been reclaimed in an area adjacent to the harbour wall in Fore Street commencing at a point 5 metres or thereabouts from the junction of the Strand with Fore Street and extending in a south easterly direction for 75 metres or thereabouts and thence in a north easterly direction for 15 metres or thereabouts and thence in a south easterly direction for 70 metres or thereabouts and thence in a south westerly direction for 20 metres or thereabouts and there terminating at the said harbour wall.

Work No. 3. A reclamation and filling in of that part of the bed and foreshore of the harbour which is to be or has been reclaimed in an area adjacent to the harbour wall in the Strand commencing at a point 38 metres or thereabouts from the junction of the Strand with Fore Street and extending in an easterly direction for 30 metres and thence in a southerly direction for 40 metres or thereabouts and thence in a north westerly direction for 30 metres or thereabouts and there terminating at the top of the slipway between the Strand and Fore Street.

#### **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 and repair 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 slipway or slipways and works for the landing, handling, buying, selling, preserving, processing, preparing for market or dealing in fish or the provision of facilities and buildings for the mending, storing, laying out or drying of nets or facilities for the benefit of fishermen using the harbour: but 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: but 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) Subject to sub-paragraph (3), 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)(7) from time to time dredged by them from the harbour.

(3) No materials of the kind described in sub-paragraph (2) 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.

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(7) 1894 c. 60.

### **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 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 four hundred 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 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 Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the 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 Secretary of State in so doing shall be recoverable from the Commissioners.

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

13.—(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 18 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 two thousand pounds and on conviction on indictment to a fine.

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

14.—(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 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 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 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.

### **Survey of tidal works**

15. 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 Secretary of State in any such survey and examination shall be recoverable from the Commissioners.

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

16.—(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 18 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 two thousand pounds and on conviction on indictment to a fine.

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

17.—(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 18 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 two thousand pounds and on conviction on indictment to a fine.

### **Defence of due diligence**

18.—(1) In any proceedings for an offence under articles 13, 16 and 17 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**

19. The works shall for all purposes form part of the undertaking.

### **Works to be within petty sessional division of Penwith**

20. 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**

**21.**—(1) Subject to paragraph (2) and to any Order made under sections 1 and 3(4) of the Borrowing (Control and Guarantees) Act 1946<sup>(8)</sup>, 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, such sums of money as they may think necessary not exceeding in the aggregate twice the value of the capital and reserve held by them as certified from time to time by their auditors or one million pounds whichever is the greater.

(2) In calculating for the purpose of paragraph (1) 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.

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

(4) 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.

(5) Article 29 of the Newlyn Pier and Harbour Revision Order 1978 is hereby revoked and all moneys borrowed by the Commissioners at the date of this Order shall be deemed to have been borrowed under the provisions of this article.

## **Local inquiries**

**22.** 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<sup>(9)</sup> 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**

**23.**—(1) 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.

(2) Consent under paragraph (1) may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

## **Rights of Duchy of Cornwall**

**24.** 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

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<sup>(8)</sup> 1946 c. 58.

<sup>(9)</sup> 1972 c. 70.

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(10), 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**

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

### **Costs of Order**

26. 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 27th November 1987.

L.S.

*G W Noble*  
Assistant Secretary



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## EXPLANATORY NOTE

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

This Order enables the Newlyn Pier and Harbour Commissioners to—

- (a) extend the jetty authorised by article 4 of the Newlyn Pier and Harbour Revision Order 1978,
- (b) construct a quay and jetty, including an area for laying out and repairing nets in an area which is to be or has been reclaimed, adjacent to the harbour wall in Fore Street,
- (c) reclaim and fill in that part of the bed and foreshore, in an area which is to be or has been reclaimed, adjacent to the harbour wall and the Strand and terminating at a slipway between the Strand and Fore Street, and
- (d) increase their borrowing powers, including powers to borrow temporarily and to borrow upon the security of their assets.

The deposited plan and deposited sections referred to in articles 2, 4 and 10 of the Order may be inspected at any of the following addresses:

Ministry of Agriculture Fisheries & Food

Great Westminster House

Horseferry Road

London

SW1P2AE

Newlyn Pier & Harbour Commissioners

Harbour Office

Newlyn

Penzance

Cornwall

Department of Transport

Sunley House

90—93 High Holborn

London

WC1V6LP

The applicants for this Order are the Newlyn Pier and Harbour Commissioners.