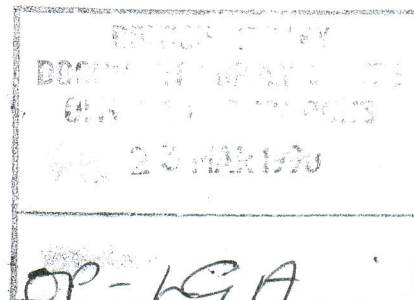




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# Penzance Albert Pier Extension Act 1990

CHAPTER viii

## ARRANGEMENT OF SECTIONS

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*BNS  
74-0021*

**ELIZABETH II**



**1990 CHAPTER viii**

An Act to empower the Penwith District Council to construct works at Penzance Harbour; and for other purposes. [22nd February 1990]

**W**HEREAS—

(1) The Penwith District Council (hereinafter referred to as “the Council”) are the harbour authority for Penzance Harbour (hereinafter referred to as “the harbour”):

(2) It is expedient to empower the Council to construct in the harbour the works described in this Act:

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

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

(5) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed:

1972 c. 70.

(6) A plan and sections showing the lines or situations and levels of the works to be constructed under the powers of this Act have been duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office, House of Commons and with the proper officer of the Cornwall County Council, which plan and sections are respectively referred to in this Act as the deposited plan and sections:

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:—

- Short title.           **1.** This Act may be cited as the Penzance Albert Pier Extension Act 1990.
- Interpretation.       **2.**—(1) In this Act, except where the context otherwise requires—  
                           “the Council” means the Penwith District Council;  
                           “the harbour” means Penzance Harbour;  
                           “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 and sections;  
                           “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;  
                           “Trinity House” means the Corporation of Trinity House of Deptford Strond;  
                           “the works” means the works authorised by section 3 (Power to construct works) of this Act, and any works constructed under section 5 (Subsidiary works) of this Act for or in connection with or subsidiary to either of those works and includes those works as altered, replaced or re-laid under subsection (2) of the said section 3.  
                           (2) References in this Act to reference points shall be construed as references to National Grid reference points.
- Power to construct works.       **3.**—(1) Subject to the provisions of this Act, the Council may make and maintain in the lines and situations and upon the lands delineated on the deposited plan and according to the levels shown on the deposited sections the following works in the harbour that is to say:—  
                           Work No. 1   An embankment or wall commencing by a junction with the existing sea wall 100 metres or thereabouts north of the Penzance Rail Station at grid reference SW4769 3071 and extending from the existing sea wall in a south-south-easterly direction for a distance of 240 metres or thereabouts thence curving in a south-westerly direction for 90 metres or thereabouts and there terminating by a junction with the existing Albert Pier at grid reference SW 4773 3041.  
                           (2) The Council may, within the limits of deviation for the said work, alter, replace or re-lay the same.  
                           (3) The Council may by means of the works fill in, and reclaim from the foreshore and bed of the sea, and may hold and use, so much of the foreshore and bed of the sea as is situated within the limits of deviation.
- Power to dredge.           **4.** Subject to the provisions of section 14 (Crown rights) of this Act, the Council may, for the purposes of constructing and maintaining the works or otherwise for the purposes of their harbour undertaking from time to time deepen, dredge, scour, cleanse, alter and improve the foreshore and bed of the sea and blast any rock within the harbour or any part or parts thereof, and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) from time to time dredged by them:
- 1894 c. 60.

Provided that no materials so dredged, other than those dredged for the purpose of constructing the works or filling in and reclaiming from the foreshore and bed of the sea so much of the foreshore and bed of the sea as is situated within the limits of deviation, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

5. Subject to the provisions of this Act, the Council may from time to time within the limits of deviation erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the works authorised by this Act.

Subsidiary works.

6. In the construction of the works authorised by section 3 (Power to construct works) of this Act 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 shown on that plan and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 10 metres upwards and to any extent downwards.

Power to deviate.

7.—(1) A tidal work shall not be constructed, altered, replaced or re-laid 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.

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

(2) If a tidal work is constructed, altered, replaced or re-laid in contravention of this section or of any condition or restriction imposed under this section—

- (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 thereof and restore the site thereof 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 so to do, he 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.

8.—(1) The Council shall at or near a tidal work during the whole time of the construction, alteration, replacement or re-laying 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.

Lights on tidal works during construction.

(2) If the Council fail to comply with any requirement of a direction given under this section 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.

9.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Council 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.

Provision against danger to navigation.

(2) If the Council fail to notify Trinity House as required by this section or to comply with any requirement of a direction given under this section 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.

**10.**—(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 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 a 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.

**11.** The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work 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.

**12.**—(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, if any, for the prevention of danger to navigation as Trinity House may 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 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.

Saving for  
Trinity House.

**13.** Nothing in this Act shall prejudice or derogate from the powers, rights and privileges of Trinity House.

Crown rights.

**14.**—(1) Nothing in this Act 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 of the foregoing, nothing in this Act authorises the Council to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of 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 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, or as the case may be, the consent of the Duke of Cornwall testified in writing under the seal of the said Duchy; 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.

1863 c. 49.

(2) A consent under this section may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

15. Any development authorised by this Act shall not be deemed for the purposes of the Town and Country Planning General Development Order 1988 (or any general order superseding that order made under section 24 of the Town and Country Planning Act 1971, or any corresponding provision of an Act repealing that section), to be—

Saving for town and country planning.  
S.I. 1988/1813.  
1971 c. 78.

- (a) development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out; or
- (b) development by dock, pier or harbour undertakers or their lessees of operational land of the undertaking, being development which is required for the purpose of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers or goods at a dock, pier or harbour.

16. Nothing in this Act shall affect the operation of section 18 of the Coast Protection Act 1949 (which concerns the removal of materials from the seashore) and sections 34 to 36 of that Act (which require the consent of the Secretary of State to certain operations and contain other provisions for the safety of navigation).

Saving for Coast Protection Act 1949.  
1949 c. 74.

17. For the protection of the British Railways Board (in this section referred to as "the railways board") the following provisions shall unless otherwise agreed in writing between the Council and the railways board apply and have effect:—

For protection of British Railways Board.

(1) In this section—

"the beach" means the beach adjoining or close to the railway;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer to be appointed by the railways board;

"plans" includes sections, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction);

"the railway" means the railways board's railway between its termination at Penzance and a point at the east side of Long Rock level crossing;

“railway property” means any railway of the railways board and any works connected therewith for the maintenance or operation of which the railways board are responsible and includes any land held or used by the railways board for the purposes of such railway or works;

“specified works” means so much of the works authorised by this Act (whether temporary or permanent) as may be situated upon, across, under or over or within 15 metres of, or may in any way affect railway property and includes the construction, maintenance and renewal of such works:

- (2) The Council shall before commencing the specified works (other than works of maintenance or repair) furnish to the railways board proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that—if within 56 days after such plans have been furnished to the railways board the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:

- (3) If within 56 days after such plans have been furnished to the railways board, the railways board shall give notice to the Council that the railways board desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property then, if the Council desire such part of the specified works to be constructed, the railways board shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (4) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Council, if the railways board so desire, with all reasonable dispatch and the Council shall not commence the construction of the specified works until the engineer shall have notified the Council that the protective works have been completed to his reasonable satisfaction:
- (5) The Council shall give to the railways board 28 days' notice in writing of their intention to commence the construction of any of the specified works and, except in emergency (when they shall give such notice as may be reasonably practicable), also of their intention to carry out any works for the repair or maintenance of the specified works:
- (6) The specified works shall, when commenced, be carried out—
- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
  - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
  - (c) in such manner as to cause as little damage to railway property as may be; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of the railways board or the traffic thereon and the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction shall be caused or take place, the Council shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:

- (7) The Council shall—
- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
  - (b) ensure access for the engineer at all reasonable times to all working sites, depots and premises at which materials to be employed in the construction of the specified works are being made, constructed or assembled;
  - (c) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof;
- (8) The railways board shall at all times afford reasonable facilities to the Council and their agents for access to any works carried out by the railways board under this section during their construction and shall supply the Council with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (9) If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary in consequence of the construction of the specified works, such alterations and additions may be effected by the railways board after not less than 28 days' notice has been given to the Council and the Council shall pay to the railways board on demand the cost thereof as certified by the engineer including, in respect of permanent alterations and additions, a capitalized sum representing the increased or additional cost of maintaining, working and, when necessary, renewing any such alteration or additions:
- (10) The Council shall repay to the railways board all costs, charges and expenses reasonably incurred by the railways board—
- (a) in constructing any part of the specified works on behalf of the Council as provided by paragraph (3) of this section or in constructing any protective works under the provisions of paragraph (4) of this section including, in respect of any permanent protective works, a capitalized sum representing the cost of maintaining and renewing those works;
  - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
  - (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, repair or failure of the specified works



and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason;

(*d*) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;

(*e*) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the specified works:

- (11) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board shall give notice to the Council informing them that the state of repair of the specified works appears to be such as prejudicially to affect railway property, the Council shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of repair as not prejudicially to affect railway property and, if and whenever the Council fail to do so, the railways board may make and do in and upon the land of the railways board or of the Council all such works and things as shall be requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the railways board in so doing shall be repaid to them by the Council:
- (12) Any additional expense which the railways board may reasonably incur after giving 28 days' notice to the Council in widening, altering, reconstructing or maintaining railway property under any powers existing at the passing of this Act by reason of the existence of the specified works shall be repaid by the Council to the railways board:
- (13) (*a*) The Council shall bear and pay to the railways board the costs reasonably incurred in making such surveys as may be necessary to enable an estimate to be made of the amount of material accumulated on the beach immediately before the commencement of the construction of the specified works and such other surveys as may from time to time thereafter be reasonably necessary for the purpose of ascertaining whether the material accumulated on the beach has been or is being depleted;
- (*b*) Before making any survey to which this paragraph applies the railways board shall give notice thereof in writing to the Council and on the completion of any such survey the railways board shall notify the Council of the information obtained thereby:
- (14) If within 10 years after the construction of any specified works there is a permanent and significant loss of material from the beach and it is agreed between the Council and the railways board or in default of agreement determined by arbitration that—
- (*a*) such loss is wholly or mainly attributable to the existence of the relevant work; and
- (*b*) it is likely to detract materially from the defences against the sea of the railway by depriving the foundations of the railway of material;

the Council shall, if so required by notice in writing given by the railways board, deposit on the beach such quantity of material as is agreed between the Council and the railways board or in default of agreement determined by arbitration to be necessary, in consequence of the said loss, to make good the said defences:

(15) The Council shall be responsible for and make good to the railways board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the railways board—

(a) by reason of the specified works or the failure thereof; or

(b) by reason of any act or omission of the Council or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

and the Council shall effectively indemnify and hold harmless the railways board from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the railways board on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the Council from any liability under the provisions of this section:

Provided that the railways board shall give to the Council reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Council:

(16) Any difference arising between the Council and the railways board under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.

**18.** For the protection of the South West Water Services Limited (in this section referred to as “the company”) the following provisions shall, unless otherwise agreed in writing between the Council and the company, apply and have effect:—

For protection of  
South West  
Water Services  
Limited.

(1) In this section—

“construction” includes execution and placing, extension, enlargement, alteration, replacement or re-laying and “construct” and “constructed” have corresponding meanings;

“plans” includes descriptions, drawings and particulars;

“outfall” and “sewer” mean respectively any outfall and any sewer vested in the company or under their management and control;

“specified work” means any of the works as defined by section 2 (Interpretation) of this Act which will or may be situated within 15 metres measured in any direction of any outfall or sewer, or which may otherwise affect any outfall or sewer:

(2)(a) Before commencing the construction of the specified works the Council at their own expense shall secure the removal, relocation, alteration or improvement of any outfall or sewer to the satisfaction of the company and subject to the consent of the National Rivers Authority, if and to the extent that the outfall or sewer are adversely affected by the construction of the works;

(b) Any works carried out by the Council under sub-paragraph (a) above shall be carried out to the reasonable satisfaction of the company in accordance with plans approved by them under paragraph (3) below;

- (c) The Council and the company may agree that any such works shall be carried out by the company at the expense of the Council:
- (3)(a) Before commencing the construction of any specified work the Council shall submit plans thereof to the company for their reasonable approval and shall not commence the same until such plans have been approved by the company:
- Provided that if the company do not within 56 days after the receipt of any such plans (or such shorter period as may be agreed by the company having regard to prior consultation as to the plans) signify to the Council their disapproval thereof and the grounds for their disapproval they shall be deemed to have approved thereof;
- (b) In the case of any specified work carried out in an emergency the Council shall not be required to submit plans thereof before commencing the same but they shall give to the company such notice and such particulars thereof as may be practicable in the circumstances before the work is commenced, with further particulars and plans as soon as reasonably practicable thereafter:
- (4) Upon signifying their approval of the plans of any specified work, or considering notice of any specified work carried out in an emergency, the company may specify any steps which shall be taken by the Council in the carrying out of the work, being steps reasonably required for the protection of any outfall or sewer and for ensuring access by the company thereto, having regard to any removal, relocation, alteration or improvement carried out under paragraph (2) above:
- (5)(a) Subject to the provisions of this section, a specified work shall not be constructed except in accordance with such plans as may be approved or deemed to be approved or settled under paragraph (3) above and in accordance with any requirement made by the company under paragraph (4) above or settled by arbitration, and shall be constructed in accordance with those plans and any such requirements to the reasonable satisfaction of the company who shall be given reasonable notice of the date and time on and at which the work is to be commenced;
- (b) The Council shall at all reasonable times afford to the company and their duly authorised representatives access to such specified work for the purpose of inspection:
- (6) If by reason of the carrying out by the Council of any specified works any outfall or sewer is damaged or its efficiency for sewerage purposes is impaired, and the company take such steps as are reasonable—
- (a) to make good the outfall or sewer to restore it to its former standard of efficiency; or
- (b) where necessary, to construct some other work in substitution therefor;
- they may recover from the Council the reasonable cost of so doing and any such cost of executing works needed for remedying any subsidence of the substituted work during such reasonable period as may be agreed between the Council and the company:
- (7) If the company have reasonable ground for believing that the outfall or sewer is likely to be damaged or the efficiency thereof for sewerage purposes is likely to be impaired in any of the circumstances mentioned in the last foregoing paragraph, they may carry out such protective works as may be agreed between them and the Council or

as, failing agreement, may be settled by arbitration, and recover the reasonable cost thereof from the Council:

- (8) If, in consequence of the construction of the specified works, the operation of any outfall or sewer is impaired or adversely affected by reason of siltation or scouring, the Council shall carry out such dredging or other works as may be required to secure the effective discharge of effluent. If they fail to do so within such time as may be reasonably required for the purpose after notice in writing from the company, the company may carry out any necessary work and recover from the Council all costs reasonably incurred by them in so doing:
- (9) The Council shall repay to the company any additional expenditure reasonably incurred by the company in respect of the maintenance or operation of any sewer or outfall affected by the exercise of the powers of this Act and they may comply with the requirements of this paragraph by making a payment of a sum to be agreed or, failing agreement, settled by arbitration:
- (10) The Council shall indemnify and hold harmless the company from all claims, demands or expenses which may be made on or against them or which they may have to pay by reason or in consequence of any injury or damage to any outfall or sewer which may be caused by or result from the construction of any specified work or of the failure or want of repair thereof or any act or omission of the Council, their contractors, agents, workmen or servants whilst engaged upon the work or upon any dredging in the harbour:  
Provided that the company shall give to the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement of the Council:
- (11) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the company or to their satisfaction or in accordance with any directions or award of any arbitrator, shall not relieve the Council from any liability under the provisions of this section:
- (12) Costs recoverable by the company from the Council under this section include a proper proportion of the overhead charges of the company:
- (13) Any difference arising between the Council and the company under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

19. For the protection of the National Rivers Authority (in this section referred to as "the authority") the following provisions shall, unless otherwise agreed in writing between the Council and the authority, apply and have effect:—

For protection of  
National Rivers  
Authority.

- (1) The Council shall use for the purposes of the reclamation authorised by section 3 (3) (Power to construct works) of this Act only such inert or other material, to be reasonably approved by the authority, as shall (so far as is reasonably practicable) reduce or avoid the risk of pollution of the waters of the sea and the Council shall carry out the filling in and reclamation in accordance with the reasonable requirements (if any) given by the authority for the purpose of reducing or preventing such pollution:

- (2) The Council shall indemnify and hold harmless the authority from all claims, demands or expenses which may be made on or against them or which they may have to pay by reason or in consequence of any injury or damage to any work or other property vested in or under the control of the authority which may be caused by or result from the construction of any of the works or of the failure or want of repair thereof or any act or omission of the Council, their contractors, agents, workmen or servants whilst engaged upon the works or upon any dredging in the harbour:
- (3) The fact that any filling in and reclamation has been executed in accordance with any directions or award of an arbitrator shall not relieve the Council from any liability under the provisions of this section:
- (4) Costs recoverable by the authority from the Council under this section include a proper proportion of the overhead charges of the authority:
- (5) Any difference arising between the Council and the authority under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

## Arbitration.

**20.** Where under this Act any dispute or difference is to be referred to or determined by arbitration, then unless otherwise provided, such dispute or difference shall be referred to, and determined by, a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

## Defence of due diligence.

**21.—(1)** In proceedings for an offence under any provision of this Act mentioned in subsection (2) below 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 the offence.

- (2) The provisions referred to in subsection (1) above are the following:—
- Section 8 (Lights on tidal works during construction);
  - Section 9 (Provision against danger to navigation);
  - Section 12 (Permanent lights on tidal works).

(3) If in any case the defence provided under subsection (1) above 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, not less than 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information as was then in their possession, identifying, or assisting in the identification, of that other person.

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