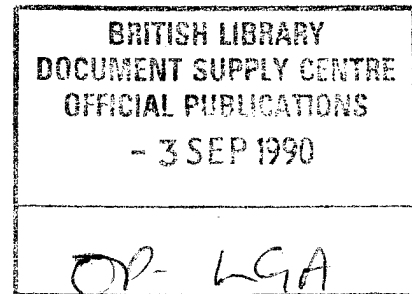




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## Penzance South Pier Extension Act 1990

CHAPTER xxvi

### ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Power to construct works.
4. Power to dredge.
5. Subsidiary works.
6. Power to deviate.
7. Tidal works not to be executed without approval of Secretary of State.
8. Lights on tidal works during construction.
9. Provision against danger to navigation.
10. Abatement of works abandoned or decayed.
11. Survey of tidal works.
12. Permanent lights on tidal works.
13. Saving for Trinity House.
14. Crown rights.
15. Saving for town and country planning.
16. Saving for Coast Protection Act 1949.
17. For protection of National Rivers Authority.
18. Arbitration.
19. Defence of due diligence.

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**ELIZABETH II**



**1990 CHAPTER xxvi**

An Act to empower the Penwith District Council to construct works at Penzance Harbour; and for other purposes. [26th July 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 vicinity of 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 South 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 vicinity of the harbour that is to say:—
- Work No. 1 An embankment or wall commencing by a junction with the existing sea wall 37 metres or thereabouts north-east of the Penzance Jubilee Bathing Pool at grid reference SW4767 2987 and extending from the existing sea wall in a north-easterly direction for a distance of 140 metres or thereabouts thence curving in a northerly direction for 60 metres or thereabouts and there terminating by a junction with the existing South Pier at grid reference SW4779 3001.
- (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 or in the vicinity 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.

Provision against danger to navigation.

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

(2) If the Council fail to 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 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; 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 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.

**18.** 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.

**19.—(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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