

202[X] No. []

HARBOURS, DOCKS, PIERS AND FERRIES

The Cornwall Harbours Harbour Revision Order 202[X]

<i>Made</i> - - - -	0000
<i>Laid before Parliament</i>	0000
<i>Coming into force</i> - -	0000

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Cornwall Council applied for a harbour revision order in accordance with section 14(2)(a) of the Harbours Act 1964(a)(“the Act”).

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an Order(b) under section 42A of the Act(c) delegated the functions of the appropriate Minister under section 14(d) to the Marine Management Organisation(e)

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

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- (a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).
 - (b) S.I. 2010/674.
 - (c) Section 42A was inserted, in relation to England and Wales, by section 315 of, and paragraphs 1 and 3(1) of Schedule 21 to, the Marine and Coastal Access Act 2009 (c.23)..
 - (d) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1) of the Harbours Act 1964 (c. 40).
 - (e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1. The head office address of the Marine Management Organisation is located at Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) This Order may be cited as the Cornwall Harbours Harbour Revision Order 202[X] and shall come into force on [DATE].

(2) This Order extends to England and Wales.

Interpretation

2.—(1) In this Order—

“the Act of 1847” means the Harbours Docks and Piers Clauses Act 1847;**(a)**;

“the Act of 1964” means the Harbours Act 1964;

“the Act of 1995” means the Merchant Shipping Act 1995;**(b)**

“aids to navigation” includes lights, buoys, beacons and signals including sound and electronic signals and any structure required to house the same;

“ashore” means all those parts of the harbours which are not constituted of land covered by water at the level of low water;

“the Board” means the Cornwall Harbours Board constituted by Part 2 of this Order

“the Bude Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Bude Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]” one copy of which is deposited with the offices of the Marine Management Organisation and one copy at the principal office**(c)** of the Council;

“charges” means the charges, rates, tolls and dues which the Council is for the time being authorised to demand, take and recover in relation to the undertaking;

“commercial refuelling activities” means recharging or emptying (in whole or part) a vessel with fuel in exchange for financial payment or other valuable consideration;

“Cornwall Harbours User Group” means the relevant consultative body or bodies established by the Council in accordance with the requirements of article 13 of this Order and regularly consulted on matters relating to the harbours or the relevant harbour.

“the Council” means Cornwall Council;

“electronic communications network” has the meanings given by section 32 to the Communications Act 2003;**(d)**

“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;

“Existing Port of Penryn Reserve” means the sum of [£500,000] currently held as a reserve fund for the Port of Penryn;

“Existing Port of Truro Reserve” means the sum of [£300,000] currently held as a reserve fund for the Port of Truro;

“financial year” means any period of 12 months ending on thirty first day of March;

“functions” includes powers and duties;

“general direction” means a direction given under article 31 of this Order;

(a) 1847 c.27

(b) 1995 c.21

(c) New County Hall, Treyew Rd, Truro TR1 3AY

(d) 2003 c.21

“general reserve fund” means the reserve fund to be established, maintained and used by the Council under article 17;

“harbours” means the ports and harbours of, Bude, Newquay, Penryn, Penzance, Prince of Wales Pier in Falmouth, St Ives and Truro, the limits of which are defined at Schedule 1 (Limits of the Harbours);

“harbour facilities” means shipping, fisheries, marine, recreational, leisure, tourism and retail facilities (including buildings);

“harbour limits plans” means the Bude Harbour Limits Plan, the Newquay Harbour Limits Plan, the Port of Penryn Harbour Limits Plan, the Penzance Harbour Limits Plan, the Prince of Wales Pier Harbour Limits Plans, the St Ives Harbour Limits Plans and the Port of Truro Harbour Limits Plans;

“harbour master” means any person appointed as such by the Council, and includes the duly authorised deputies and assistants of the harbour master and any person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of harbour master;

“harbour operations” includes —

- (a) the marking, lighting or dredging of the harbours or any part thereof,
- (b) the berthing, storage, mooring or dry docking of a vessel,
- (c) the laying and maintenance of moorings or other similar apparatus in the harbour,
- (d) the warehousing, sorting, weighing or handling of goods,
- (e) the movement of goods and vehicles (including parking, designated and prohibited areas, speed limits, removal from the harbours),
- (f) the towing, or moving of a vessel,
- (g) the loading or unloading of goods, or embarking or disembarking of passengers,
- (h) energy generation,
- (i) the control of use of the harbours by members of the public and other third parties (including movement, conduct, authorised activities, designated and prohibited areas) but not so as to cause an interference with any public right of way;

“harbour premises” means land above the level of low water and within the areas shown shaded blue and green on the harbour limits plans vested in or occupied or administered by the Council as part of the undertaking and occupied wholly or mainly for the purpose of activities there carried on; which may include docks, quays, piers, wharves, berths, locks, breakwaters, landing places, yards, roads, car parks, sheds, buildings and all other works and conveniences, land and premises;

“harbours revenue” means and includes all moneys receivable by the Council for and in relation to the undertaking other than borrowed moneys and moneys which ought to be carried to capital account;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“jet bike” means any watercraft (not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a water jet engine or other mechanical means of propulsion and steered either—

- (a) by means of a handlebar-operated linkage system (with or without a rudder at the stern), or
- (b) by the person or persons riding the craft using their body weight for the purpose, or
- (c) by a combination of the methods referred to in (a) and (b);

“land” includes land covered by water (except where expressly stated otherwise);

“level of high water” means the level of mean high-water spring tides;

“level of low water” means the level of mean low water spring tides;

“master”, in relation to a vessel, means any person having or taking command, charge, management or conduct of the vessel for the time being;

“Newquay Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed the Newquay Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Penzance Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed the Penzance Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Port of Penryn Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed the Port of Penryn Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Port of Penryn reserve fund” means the reserve fund that may be established and maintained by the Council for the Port of Penryn under article 16.

“Port of Truro Harbour Limits Plan” means the six plans prepared in duplicate, signed on behalf of the Marine Management Organisation and marked respectively the “Signed Port of Truro (Truro River Overview) Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]”, “Signed Truro River 1 (Port of Truro) Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]”, “Signed Truro River 2 (Port of Truro) Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]”, “Signed Truro River 3 (Port of Truro) Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]”, “Signed River Fal 1 (Port of Truro) Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]”, “Signed River Fal 2 (Port of Truro) Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]”, one copy of each of which is deposited at the offices of the Marine Management Organisation and one copy of each at the principal office of the Council;

“Port of Truro reserve fund” means the reserve fund that may be established and maintained by the Council for the Port of Truro under article 15.

“Prince of Wales Pier Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Prince of Wales Pier Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“operator” has the meaning given by paragraph 2 Schedule 3A to the Communications Act 2003;

“special direction” means a direction given under article 34 of this Order;

“statutory undertaker” means —

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990(a);
- (b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(b);
- (c) any operator of an electronic communications network;

(a) 1990 c.8

(b) 1949 c. 74, section 1 was amended by the Local Government Act 1972 (c. 70), Schedule 30.

“St Ives Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed St Ives Harbour Limits Plan referred to in the Cornwall Harbours Harbour Revision Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Trinity House” means the Corporation of Trinity House of Deptford Strond(a);

“undertaking” means the harbours undertaking for the time being of the Council relating to any and or all of the harbours as authorised by this Order and the Orders listed in Schedule 5 (to the extent that those Orders relate to the harbours or any one of them);

“vehicle” includes any vehicle propelled on rails, any machinery on wheels or caterpillar tracks, trailers, bicycles, caravans and mobile homes and includes a hovercraft or any other amphibious vehicle;

“vessel” includes a ship(b), boat, houseboat, raft or water craft of any description, however propelled or moved, and includes non-displacement craft, a jet bike, a personal watercraft, a hydrofoil vessel, a hovercraft or any amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) Reference points specified in this Order shall be construed as references to longitude and latitude reference points.

Incorporation of provisions of Harbour, Docks and Piers Clauses Act 1847

3.—(1) The Act of 1847 (except sections 6 to 26, 28 to 31, 42, 48 to 50, 67, 70, 84 to 92 and 99 to 102), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5).

(2) Section 33 (harbour dock and pier free to the public on payment of rate) of the Act of 1847 does not apply to Prince of Wales Pier.

(3) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission) of the Act of 1847 shall have effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(4) Section 69 (combustible matters on quays, &c., to be removed) of the Act of 1847 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(5) In construing the provisions of the Act of 1847 as incorporated with this Order—

- (a) the expression “the special Act” means this Order;
- (b) the expression “the undertakers” means the Council;
- (c) the expression “the harbour, dock, or pier” shall mean the harbours, and includes those docks, piers, berths, quays, landing places and wharves forming part of the harbour premises;
- (d) for the definition of the word “vessel” in section 3 (interpretation) of the Act of 1847 there shall be substituted the definition of that word in article 2(1) of this Order;
- (e) the reference in section 53 (penalty on shipmasters not complying with directions of the harbour master) of the Act of 1847 to notice of a direction by the harbour master

(a) The Corporation of Trinity House, Tower Hill, London, EC3N 4DH.

(b) ‘ship’ is defined in section 57(1) of the Harbours Act 1964 (c. 40) and includes a seaplane of the surface of the water and a hovercraft within the meaning of the Hovercraft Act 1968.

served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the harbour master to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

PART 2

JURISDICTION, FUNCTIONS, ESTABLISHMENT AND CONSTITUTION OF BOARD AND ADVISORY BODY

Harbours Jurisdiction

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 (interpretation) of the Act of 1964, and the powers of the harbour master shall be exercisable within the harbours, the limits of which are described in Schedule 1 of this Order and shown on the harbour limits plans.

(2) In the event of any discrepancy between the descriptions of the boundaries of the harbours referred to in Schedule 1 and the boundaries shown on the harbour limits plans the limits as shown on the harbour limits plans shall be deemed to be correct and shall prevail.

(3) For and incidental to the performance of its functions under this Order, the Council may employ and appoint harbour masters.

(4) The Council shall, within the harbours, be a local lighthouse authority within the meaning of sections 193 (general and local lighthouse authorities) and 201 (powers of harbour authorities) of the Act of 1995.

General functions

5.—(1) The Council may, subject to the provisions of this Order, take all such steps from time to time as it considers necessary or desirable for the maintenance, operation, management and improvement of the harbours and the harbour facilities afforded therein or in connection therewith, and for the conservation of the harbours' flora, fauna and geological and physiographical features of special interest.

(2) For those purposes and without limiting the scope of paragraph (1), the Council may—

- (a) improve, maintain, regulate, manage, mark and light the harbours and provide harbour facilities therein;
- (b) subject to obtaining the necessary rights in or over land—
 - (i) execute and place in and over the harbours such structures, works and equipment as are required; and
 - (ii) operate, maintain, renew, alter, extend, demolish and reconstruct structures, harbour facilities, works and equipment in the harbours (including those executed or placed pursuant to sub-paragraph (i));
- (c) acquire land; and
- (d) do all other things which in its opinion are expedient to facilitate the operation, improvement or development of the undertaking, including acquire land.

(3) The Council shall, from time to time, formulate, publish^(a) and review a business plan or business plans (“Harbours Business Plan”) in relation to its maintenance, conservation, operation, management and improvement of the undertaking, which it shall have regard to when performing its functions.

(4) In the exercise of the powers of sub-paragraph (2)(b), the Council must not—

(a) www.cornwallharbours.co.uk

- (a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker; or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus, without the consent of the statutory undertaker concerned.

(5) This article is without limitation of the powers of the Council under or by virtue of any other enactment.

Establishment of a Board

6.—(1) Within 12 weeks of this Order coming into force the Council shall establish a Board of between 10 and 12 members constituted and appointed as provided for within this Order and they and their successors from time to time appointed under this Order shall be called the “Cornwall Harbours Board”.

(2) The purpose of the Board shall be to administer the harbours on behalf of the Council with the powers that can be exercised by the Board as set out in Schedule 2.

Composition of the Board

7. —(1) From the establishment of the Board, the composition of the Board shall be as follows;

- (a) five or six members of the Council;
- (b) five or six independent lay members; and

(2) Each person appointed under paragraph (1) shall be a person who appears to the Council to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Board of its functions including, but not limited to, special knowledge, experience or ability in one or more of the following matters—

- (a) maritime industry and activities;
- (b) commerce;
- (c) health and safety;
- (d) management;
- (e) public relations and community issues;
- (f) industrial relations;
- (g) shipping, fishing or cargo handling;
- (h) accountancy or financial management;
- (i) boating and other water related leisure activities;
- (j) environmental matters affecting harbours; and
- (k) any other skills and abilities considered from time to time by the Council to be relevant to the discharge by the Board of its functions.

(3) The Council shall secure, so far as reasonably practicable, that the persons appointed by it under paragraph (1) will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of the Board’s functions.

(4) In making an appointment under paragraph (1)(b) the Council must act in accordance with, and in making an appointment under paragraph (1)(a) the Council must have regard to, any guidance issued by the Secretary of State from time to time with regards to exercise of such functions.

(5) All members of the Board appointed under paragraph (1) shall be bound by the Code of Conduct for Cornwall Council members and co-opted members (or replacement thereof) in force at that time.

Non-voting Co-Opted members

8. From the establishment of the Board, the Board may from time to time co-opt no more than five persons to attend Board meetings as additional (non- voting) attendees for a fixed term of up to 12 months.

Terms of office for Board members

9.—(1) The first appointments to the Board made by the Council under article 7(1)(a) shall be made within 12 weeks of this Order coming into force, with the terms of the members appointed continuing until the next annual meeting of the Council.

(2) At the annual meeting of the Council referred to in paragraph (1) the terms of the members appointed to the Board by the Council in accordance with article 7(1)(a) will be until the end of the current administrative period of the Council.

(3) All subsequent appointments made to the Board by the Council in accordance with article 7(1)(a) will be made for a term of office until the end of the administrative period of the Council during which the appointment takes place

(4) The first appointments made to the Board in accordance with article 7(1)(b) shall be made within 12 weeks of this Order coming into force.

(5) Those appointed under article 7(1)(b) shall initially serve for the following terms;

- (a) one or two independent lay members for a term of one year,
- (b) two independent lay members for a term of two years, and
- (c) two independent lay members for a term of three years.

(6) All subsequent appointments made under article 7(1)(b) unless the appointment is made to fill a casual vacancy shall be made for a period of three years with a maximum period of three consecutive terms of three years being allowed (the third term only in exceptional circumstances following public advertisement of the role and a competitive appointment process).

Casual vacancies

10.—(1) A casual vacancy arising in the office of a duly appointed member of the Board must, unless it is not reasonably practicable to do so, be filled by the appointment of a Board member by the Council in accordance with the requirements of articles 7 and 9.

(2) If a member of the Board appointed under 7(1)(a) ceases to be a member of the Council or is suspended or disqualified from being a councillor, the Council must appoint a replacement member at its next meeting, whose term shall run until the end of the administrative period of the Council during which the appointment takes place.

(3) A member of the Board appointed to fill a casual vacancy under this article shall, if appointed under article 7(1)(b) hold office as a member of the Board for the remainder of the term of the member of the Board in whose place that person has been appointed.

Disqualification or removal of Board members

11.—(1) A person shall be disqualified from being a member of the Board if;

- (a) a member of the Board appointed under article 7(1)(a) ceases to be a member of the Council or becomes suspended or disqualified from the Council;
- (b) a member of the Board has been absent from any meeting of the Board for six consecutive months or more than three meetings in any 12 month period without the permission of the Board;
- (c) a member appointed under article 7(1)(b) becomes bankrupt;
- (d) a member appointed under article 7(1)(b) is incapacitated by physical or mental illness from discharging their duties as a member of the Board and the Board does

not consider there is merit from the Board exercising its powers under paragraph (2) and as set out in Schedule 2;

(e) they are removed in accordance with the Council's constitution.

(2) If the Board is satisfied that a member of the Board –

(a) has acted in a manner which has seriously impeded or prejudiced the Board in the performance of its functions;

(b) has failed to declare an interest or to comply with the standards of behaviour required for members of the Board;

(c) has acted in a manner which may bring the Board into disrepute or which is inappropriate having regards to the functions of the Board; or

(d) is otherwise unable, unwilling or unfit to discharge adequately the duties as a member of the Board;

the Council may, or the Board may by resolution request the Council in writing to, remove a member appointed under article 7(1) and on removal of the member treat the vacancy as a casual vacancy.

Meetings of the Board

12. Meetings of the Board shall be governed by the provisions as set out in Schedule 2.

Advisory Bodies

13.—(1) The Council must establish one or more advisory bodies which the Council must consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbours and their navigation.

(2) The Council must make arrangements for every such advisory body to meet not less than twice a year.

(3) The Council must take into consideration within a reasonable period any matter, recommendation or representation which may from time to time be referred or made to it by such an advisory body whether or not that advisory body has been consulted by the Council on the matter, recommendation or representation so referred or made.

(4) Any advisory body established pursuant to this article must consist of such number or numbers of persons appointed by the Council as the Council from time to time considers appropriate.

(5) Appointments to any such advisory body must be made by the Council in accordance with a scheme prepared by it for that purpose and the scheme must provide for the appointment of persons who, in the opinion of the Council, are representative of persons having an interest in the functioning of the harbours.

(6) Any such advisory body may determine its own quorum and procedure and must appoint a chairperson.

(7) An individual member of any such advisory body may hold office for the period of three years from the date of their appointment and at the end of that period will be eligible for reappointment.

(8) A member of any such advisory body may resign their office at any time by notice in writing given to the Council.

PART 3 FINANCIAL

Application of finances

- 14.** The Council must apply the harbours revenue in the manner following and not otherwise—
- (a) first in payment of the working and establishment expenses and cost of maintenance of the harbours;
 - (b) secondly in payment of the interest on any moneys borrowed by the Council for the harbours under any statutory borrowing power;
 - (c) thirdly in payment of all other expenses properly chargeable to harbours revenue;
 - (d) fourthly to the general reserve fund.

Port of Truro reserve fund

15.—(1) The Council may establish and maintain a Port of Truro reserve fund and carry to it the Existing Port of Truro Reserve;

(2) Any reserve fund established or maintained under this article must be applied by the Council in its discretion—

- (a) in or towards payment of the cost of renewing, improving, extending or replacing any part of the works forming part of the Port of Truro or any vessels, plant or equipment of the Council connected to the Port of Truro; or
- (b) for improving the operational area and the navigation of the Port of Truro and the approaches to the Port of Truro; or
- (c) for any other lawful purpose sanctioned by the Council and connected with the Port of Truro.

Port of Penryn reserve fund

16.— (1) The Council may establish and maintain a Port of Penryn reserve fund and carry to it the Existing Port of Penryn Reserve;

(2) Any reserve fund established or maintained under this article shall must be applied by the Council in its discretion—

- (a) in or towards payment of the cost of renewing, improving, extending or replacing any part of the works forming part of the Port of Penryn or any vessels, plant or equipment of the Council connected to the Port of Penryn; or
- (b) for improving the operational area and the navigation of the Port of Penryn and the approaches to the Port of Penryn; or
- (c) for any other lawful purpose sanctioned by the Council and connected with the Port of Penryn.

General Reserve fund

17.— (1) The Council must establish and maintain a general reserve fund.

(2) The Council must carry to the general reserve fund such part of the harbours revenue as may be available for the purpose in accordance with article 14(1)(d).

(3) Any reserve fund established or maintained under this article must be applied by the Council in its discretion—

- (a) in or towards meeting any deficiency in the harbours revenue account in any year; or
- (b) to meet any extraordinary claim or demand in respect of the undertaking; or

- (c) in or towards payment of the cost of renewing, improving, extending or replacing any part of the works forming part of the undertaking or any vessels, plant or equipment of the Council connected to the undertaking; or
- (d) for improving the operational area and the navigation of the harbours and the approaches to the harbours; or
- (e) for any other lawful purpose sanctioned by the Council and connected with the undertaking.

Borrowing powers

18.—(1) Notwithstanding anything contained in any enactment, the Council may from time to time, for the general purposes of the undertaking, borrow upon the security of all or any of the harbours revenue and property and by any method or methods which it sees fit such sums of money as it considers necessary.

(2) Moneys borrowed under paragraph (1) may be applied only to purposes to which capital money is properly applicable.

(3) Without limiting the scope of paragraph (2), purposes to which capital money is properly applicable shall be deemed to include—

- (a) any major works of repair or maintenance of any part of the works forming part of the undertaking;
- (b) the payment of any interest falling due within the five years immediately following the date of the borrowing of any sum of money borrowed by the Council under this article;
- (c) the repayment within 12 months from the date of borrowing of any sum for the time being outstanding by way of principle on any amount previously borrowed; and
- (d) a payment relating to pensions paid or to be paid to past or present employees of the Council whose employment related to the undertaking or to the family or dependants of such persons.

PART 4

HARBOURS REGULATION

Aids to navigation

19.—(1) In addition to its powers under section 201 of the Act of 1995 (powers of harbour authorities as local lighthouse authorities) but subject to obtaining any necessary interest in or over land, the Council may erect or place, alter, discontinue or remove aids to navigation in any place adjacent to the harbours.

(2) The Council shall not exercise the powers of paragraph (1) without the approval of Trinity House.

Repair of landing places, etc.

20.—(1) In this article, “relevant feature” means any landing place, jetty, wall, pontoon, pile, embankment, bridge, structure or other work in the harbours or on land immediately adjoining the waters of the harbours other than one under the control or management of the Council.

(2) The Council may by notice require the owner, lessee or occupier of a relevant feature which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels using the harbours; or
- (b) a hindrance to the navigation of the harbours;

- (c) to remedy its condition to the Council's reasonable satisfaction within a reasonable time, not being less than 21 days, specified in the notice.

(3) If a person to whom notice is given under this article fails without reasonable excuse to comply with the notice within the time stated in the notice or such other time as the Secretary of State on an appeal may substitute therefor—

- (a) that person shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) the Council may carry out the work required by the notice and may recover the expenses of so doing from the person on whom the notice was served.

(4) A notice under this article shall have annexed to it a copy of this article.

(5) A person aggrieved by a notice served by the Council under this article may, during the period of 21 days beginning with the date on which the notice was served, appeal to the Secretary of State against the notice.

(6) An appeal under paragraph (5) shall be made by notice in writing stating the grounds of the appeal.

(7) A person who appeals under paragraph (5) shall give to the Council notice of the appeal accompanied by a copy of the statement of appeal; and the Council shall, within 21 days of receipt of the notice, be entitled to furnish to the Secretary of State its observations on the appeal.

(8) On an appeal under paragraph (5), the Secretary of State shall either quash the notice, modify its requirements or dismiss the appeal.

(9) In this article "owner" "lessee" and "occupier", in relation to a relevant feature, means the person who was the "owner", "lessee" or "occupier" of the relevant feature at the date the notice is served, or if the "owner" "lessee" or "occupier" of the relevant feature is not readily identifiable, the "owner" "lessee" or "occupier" of the land on which the relevant feature is situated at the date the notice is served.

Restriction of works and dredging

21.—(1) Subject to paragraph (3), no person other than the Council shall—

- (a) construct, alter, renew or extend any works; or
- (b) dredge,

on, under or over tidal waters or land below the level of high water in the harbours unless that person is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, and no such person shall do so except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 23 of this Order or, as the case may require, article 24 of this Order.

(2) The Council may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice, the Council may carry out the works so required and may recover from that person the cost of so doing.

(3) Nothing in this article shall apply to—

- (a) any operations or works specifically authorised by any enactment; or
- (b) any operations or works of a statutory undertaker; or
- (c) any operations or works authorised by a moorings licence granted under article 54 of this Order.

(4) Any person who without reasonable excuse contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Control of certain operations and works of statutory undertakers

22.—(1) This article applies to any operations or works in the harbours of a statutory undertaker on, under or over tidal waters or land below the level of high water, not being operations or works which are specifically authorised by an enactment.

(2) Subject to paragraph (3), a statutory undertaker shall not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the Council and has supplied the Council with such particulars as it may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2), the statutory undertaker shall inform the Council of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies must be carried out subject to any directions which may from time to time be given by the Council to the statutory undertaker, being directions for the avoidance of danger and the prevention, so far as possible, of interference with navigation in the carrying out of such operations or works.

(5) Any person who, without reasonable excuse, contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing of works

23.—(1) The Council may upon such terms and conditions as it thinks fit grant to any person a licence to construct, alter, renew or extend any works in the harbours on, under or over tidal waters or land below the level of high water, notwithstanding that the works as constructed, altered, renewed, or extended interfere with the public right of navigation or any other public right.

(2) Application for a works licence must be made in writing to the Council and shall—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable the applicant to enjoy the benefits of the licence and, if not, the action taken to enable the applicant to obtain such rights if the licence is granted,

and, in granting a licence, the Council may require modifications in the plans, sections and particulars so submitted.

(3) The Council may require an applicant for a works licence, on making the application, to pay a reasonable fee in respect of the administrative expenses of dealing with the application.

(4) As a condition of the granting of a licence, the Council may require a licensee, being an applicant to whom a licence has been granted or the applicant's successor, where works are constructed pursuant to the licence, to pay such reasonable fees in respect of the Council's administrative expenses and overheads in supervising or inspecting where necessary the construction or maintenance of the works.

(5) Where the Council refuses to grant a works licence which has been applied for it shall give reasons in writing for its refusal.

(6) Where the Council grants a works licence upon terms or conditions or require any modification in the plans and particulars, it shall give reasons in writing for the terms and conditions imposed or the modifications required.

(7) If within four months from the receipt of the application under paragraph (2) the Council does not grant a works licence, it shall be deemed to have refused the application.

(8) In the carrying out of operations in pursuance of a works licence, the holder of the licence shall not—

- (a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker; or

- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus,

without the consent of the statutory undertaker concerned.

Licence to dredge

24.— (1) The Council may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of the harbours.

(2) Application for a dredging licence must be made in writing to the Council and must be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations to be carried out in the exercise of the powers granted by the licence, and in granting any such licence the Council may require modifications in the plans, sections and particulars so submitted.

(3) Paragraphs (3) to (8) of article 23 of this Order shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) Any materials, other than wreck within the meaning of Part IX of the Act of 1995, taken up or collected by means of dredging in pursuance of a dredging licence shall be the property of the holder of the licence and that person may use, sell or otherwise dispose of or remove or deposit the materials as that person thinks fit:

- (a) provided that no such material shall be laid down or deposited in any place within the harbours below the level of high water except in such positions as may be approved by the Council and subject to such conditions as may be imposed by the Council;
- (b) if it appears to the holder of the dredging licence that the Council has unreasonably withheld its approval under paragraph (a) of this proviso or that any condition imposed by the Council under that paragraph is unreasonable, that person may appeal to the Secretary of State whose decision shall be binding upon the parties.

Appeals in respect of works or dredging licence

25.— (1) An applicant for a works licence or a dredging licence who is aggrieved by—

- (a) a refusal of the Council to grant a licence;
- (b) any terms or conditions subject to which the licence is granted; or
- (c) any modifications required by the Council in the plans, sections and particulars submitted by the applicant,

may, within 28 days from the date on which the Council notifies the applicant of its decision or the date on which the Council is, under article 23(7) of this Order, deemed to have refused the application, appeal to the Secretary of State.

(2) An appeal under paragraph (1) shall be made by notice in writing stating the grounds of the appeal.

(3) The appellant shall send to the Council a copy of the notice of the appeal; and the Council may, within 28 days of the receipt of the notice, furnish to the Secretary of State its observations on the appeal.

(4) The Secretary of State may confirm, vary or revoke the decision appealed against and may make such consequential amendments as the Secretary of State may specify.

(5) The Secretary of State may direct the Council to give effect to the decision, and the Council shall forthwith comply with any direction given.

Obstruction of works

26. Any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of, or in construction of any works authorised by any enactment, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the

purposes of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Parking places and related facilities

27. The Council may provide facilities within the harbours for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.

Removal of vehicles and vessels

28.—(1) If a vehicle or vessel is left within the harbours without permission of the Council –

- (a) in any place where it is likely to obstruct or interfere with the use of the harbours; or
- (b) in any part of the harbours where the parking of vehicles or leaving of vessels is prohibited by notice erected by the Council, the Council may, at the risk of the owner, remove the vehicle or vessel or cause it to be removed.

(2) Any notice erected under paragraph 1(b) shall be conspicuously posted in or close to the place to which it relates.

(3) Where the Council in exercise of the powers of this article remove a vehicle or vessel or cause it to be removed it shall as soon as practicable report that fact to a constable or to a police station.

(4) The expenses of and incidental to the removal of a vehicle or vessel under this article shall be recoverable from any person responsible.

(5) For the purposes of paragraph (4) “person responsible” means –

- (a) the owner of the vehicle or vessel at the time when it was put in the place from which it was removed under paragraph (1); or
- (b) any person by whom the vehicle or vessel was put in that place.

(6) If the Council in the exercise of the powers of the article remove a vehicle to a place not readily visible from the place whence it is so removed the Council shall, as soon as it is reasonably practicable to do so, send to the person for the time being registered as the keeper of the vehicle for the purposes of the Road Vehicles (Registration and Licencing) Regulations 2002(a) or any other regulations having the like effect for the time being in force, at that person’s last known address, the person’s registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of the article and of the place to which the vehicle has been removed.

(7) A notice stating the general effect of paragraph (1) shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbours.

Power to make byelaws

29.—(1) The Council may make such byelaws as it thinks fit for the efficient management and regulation of the harbours.

(2) Without prejudice to paragraph (1), the Council may make byelaws under this article for any of the purposes set out in Schedule 3 but such byelaws shall not come into operation until the same have received the allowance and the confirmation of the Secretary of State which shall be sufficient for all purposes.

(3) In this article “signals” includes sound signals.

(4) Byelaws made under this article may—

(a) S.I. 2002 No. 2742

- (a) provide for imposing upon a person offending against them, or against any condition, requirement or direction imposed, made or given thereunder, a fine not exceeding level 4 on the standard scale on summary conviction;
 - (b) relate to the whole of the harbours or to any part thereof;
 - (c) make different provisions for different parts of the harbours or in relation to different classes of vessels or vehicles; and
 - (d) otherwise make different provision for different circumstances.
- (5) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence for the person to prove—
- (a) that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence;
 - (b) that they had a reasonable excuse for their act or failure to act; or
 - (c) that the offence was not caused or facilitated by any act or neglect on their part or on the part of any person engaged or employed by them and that all reasonable steps were taken to prevent the commission of the offence.
- (6) The powers in the article are in addition to the powers conferred by section 83 of the Act of 1847.

Confirmation of byelaws

30.—(1) The provisions contained in subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972(a) shall apply to all byelaws made after the coming into force of this Order, by the Council under this Order or section 83 of the Act of 1847.

(2) In its application to byelaws made under this Order or section 83 of the Act of 1847, subsection 236 shall have effect, subject to paragraph (3), as if after the word “confirm” in the first place where that word occurs there were inserted the words “with or without modification”.

(3) Where the confirming authority proposes to make a modification which appears to the confirming authority to be substantial, then –

- (a) the confirming authority shall inform the Council and require it to take any steps the confirming authority thinks necessary for informing persons likely to be concerned with that modification; and
- (b) the confirming authority shall not confirm the byelaws until there has elapsed such period as the confirming authority thinks reasonable for the Council and other persons who have been informed of the proposed modifications to consider and comment on it.

(4) The confirming authority for the purposes of this article and of section 236 in its application to byelaws made under this Order or section 83 of the Act of 1847 shall be the Secretary of State.

Power to make general directions as to use of the harbours, etc.

31.—(1) The Council may, in accordance with the requirements of article 32, give a direction for—

- (a) the ease, convenience or safety of navigation,
 - (b) the safety of persons,
 - (c) the protection of property, flora or fauna, or
 - (d) the ease, convenience or safety of harbour operations ashore,
- within the harbours.

(a) 1972 c.70

(2) A direction under this article may apply—

- (a) to all vessels or to a class of vessel,
- (b) to all vehicles or to a class of vehicle,
- (c) to persons designated in the direction,
- (d) to the whole of the harbours or to a part, or
- (e) at all times or at certain times or at certain states of the tide,

and every direction must specify the extent of its application including its geographical extent in relation to the matters referred to in sub-paragraphs (a), (b), (c), (d) and (e).

(3) The Council may amend or revoke a direction given under paragraph (1).

(4) The Council must keep and make available for inspection at each harbour office and on its harbours website a public register of all in force general directions^(a).

Procedure for giving, amending or revoking general directions

32.—(1) Subject to paragraph (7), if the Council proposes to give, amend or revoke a general direction, it must—

- (a) give notice in writing of the proposal and a plan of the area over which the proposal applies to the “designated consultees” them being;
 - (i) the Chamber of Shipping;
 - (ii) the Royal Yachting Association;
 - (iii) the Cornwall Harbours User Group; and
- (iv) to such other persons or organisations as it considers appropriate for the purposes of the application of this provision;
- (b) place a notice of the proposal on the Council’s harbours website and in prominent locations at each harbour office of the Council to which the proposal applies on the same date as the notice given in accordance with sub-paragraph (a) and keep that notice on display for a minimum of 6 weeks;
- (c) consult with the designated consultees upon the proposal and allow a period of not less than 6 weeks beginning with the date of the notices given in accordance with sub-paragraphs (a) and (b) for written representations to be made by the designated consultees and any other persons to the Council regarding the proposal;
- (d) have regard to all representations made during consultation;
- (e) give notice in writing to the designated consultees and to those other persons that have provided a consultation response, following consultation as to whether the Council proposes to proceed with the proposal and, if so, specifying whether it is making any modifications to the proposal and its reasons for so doing; and
- (f) if the Council proposes to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm in writing whether they maintain their objection to the proposal within 28 days beginning with the date of the notice given in accordance with sub-paragraph (e), or such longer period as the Council may specify.

(2) Where the Council has complied with paragraph (1), it may proceed to give, amend or revoke a general direction if —

- (a) none of the designated consultees have made representations against the proposal;

^(a) The public register of all in force directions may be inspected during office hours at the relevant Harbour offices located at Bude Harbour Office, Bude Visitor Centre, The Crescent, Bude, EX23 8LE, Newquay Harbour Office, South Quay, Newquay, TR7 1HR, Penryn Harbour Office, Exchequer Quay, Commercial Road, Penryn, TR10 8LS, Penzance Harbour Office, North Arm, Wharf Road, Penzance, TR18 4AH, St Ives Harbour Office, Smeatons Pier, St Ives, TR26 1LP, Truro Harbour Office, Town Quay, Truro, TR1 2HJ and available on www.cornwallharbours.co.uk

- (b) none of the designated consultees which made representations against the proposal have confirmed in writing that they are maintaining their objection to the proposal in accordance with paragraph (1)(f); or
 - (c) where a designated consultee has maintained an objection in accordance with paragraph (1)(f), the requirements of paragraph (3) have been complied with.
- (3) Where a designated consultee has confirmed in writing to the Council that they maintain their objection to a proposal—
- (a) the issue must be referred to an independent person (“the adjudicator”) appointed—
 - (i) by agreement between the Council and each designated consultee maintaining an objection in accordance with paragraph (1)(f) (“the parties”), or
 - (ii) failing agreement, by the President of the London Maritime Arbitrators Association on the application of either of the parties,
 - (b) so far as is reasonably practicable within 12 weeks beginning with the date of the referral, the adjudicator must—
 - (i) provide a reasonable opportunity for the parties to make representations to or be heard by the adjudicator at a hearing, and
 - (ii) make a written report to the parties with findings and recommendations on the issue, and
 - (c) the Council must decide whether to exercise the power to give, amend or revoke the general direction having regard to the adjudicator’s report (but it is not bound to give effect to any recommendations) and, once it has decided, must give notice in writing to the designated consultees and to any other person that provided a consultation response of its decision and the reasons for that decision.
- (4) Except as otherwise provided for in paragraph (3), the adjudicator may determine the procedure for the making of representations and the conduct of any hearing.
- (5) The costs incurred by the adjudicator and the parties from a referral under paragraph (3) are to be paid by one or more of the parties as the adjudicator may direct.
- (6) If the Council wishes to exercise the power to give, amend or revoke a general direction in a form materially different from both the form notified to the designated consultees under paragraph (1)(e), and where paragraph (3) applies the form recommended by the adjudicator under paragraph (3)(b), it must proceed, as if the proposal is a new proposal to which paragraph (1) applies.
- (7) Paragraphs (1) to (6) do not apply where in the interests of navigational safety, or safety of persons the Council proposes to give or amend a general direction—
- (a) in an emergency, or
 - (b) relating to an intended activity or operation within the harbours which—
 - (i) is expected to commence within 16 weeks of the Council having been notified or otherwise becoming aware of the intended activity or operation,
 - (ii) is to last less than 28 days, and
 - (iii) the Council considers that the giving or amending of a general direction in relation to the intended activity or operation is required, taking into account other activities or operations in the harbours which may be affected.
- (8) Where the Council proceeds to give or amend a general direction in accordance with paragraph (7), it must—
- (a) as soon as is reasonably practicable give notice of the direction or amendment to those persons who would have been designated consultees had paragraph (1)(a) applied, and
 - (b) if the direction or amendment is intended to continue in force for more than 12 weeks, apply the procedure under paragraphs (1)(c) to (f) and (2) to (6) to the direction or amendment with the following modifications—

- (i) a reference to the ‘proposal’ in those paragraphs is to be read as a reference to the direction or amendment, and
- (ii) in paragraph (1)(c), for “sub-paragraphs (a) and (b)” substitute “paragraph (8)(a)”, and
- (iii) a reference to the Council ‘proceeding’ with a proposal is to be read as a reference to the Council determining that the direction or amendment should remain in force.

Publication of general directions

33.—(1) Subject to paragraph (4), the Council must publish a notice of the giving, amendment or revocation of a general direction as soon as reasonably practicable on one occasion in a newspaper circulating in the area of the harbours to which the proposal relates and electronically on the Council’s harbours website for the period of 28 days beginning with the date of publication of the notice in the newspaper.

(2) The notice must state a place at which copies of the general direction may be inspected.

(3) The Council must display notices of general directions that apply to harbour premises at prominent locations within the harbours.

(4) In an emergency, the Council may give notice of the giving or amendment of a general direction in any manner which it considers to be appropriate.

Special directions

34.—(1) The harbour master may give a special direction in respect of a vessel anywhere in the harbours for any of the following purposes—

- (a) requiring a person to comply with a requirement made in or under a general direction,
- (b) regulating or requiring the movement, anchorage, berthing, mooring or unmooring of the vessel,
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores, and the dispatch of its business at the harbour premises,
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment,
- (e) prohibiting, extinguishing, or restricting the use of fires or lights,
- (f) regulating the use of ballast,
- (g) requiring the removal from any part of the harbours if the vessel—
 - (i) is on fire,
 - (ii) is in such condition as to be liable to become immobilised or waterlogged, to sink or to constitute a danger to life or property,
- (iii) is making an unlawful use of the harbours or interfering with the reasonable use or enjoyment of the harbours by other vessels or persons or the dispatch of business in the harbours, or
- (iv) needs to be removed to enable maintenance or repair work to be carried out to the harbours,
- (h) requiring the vessel to be removed to a place outside the harbours if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate and, where it is in respect of a vessel, must be addressed to the master of the vessel.

(3) Where a special direction is to be given which applies to a person, the harbour master must, where possible, specify a particular person to whom the direction is addressed, either by name or by description sufficient to enable the person to be readily identified.

(4) The harbour master may revoke or amend a special direction.

Failure to comply with directions

35.—(1) A person who fails to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In any proceedings for an offence under paragraph (1), it shall be a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Enforcement of directions

36.—(1) Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the harbour master may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with, provided that the powers of this paragraph shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found, or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

(3) Expenses incurred by the Council in the exercise of the powers conferred by paragraph (1) shall be recoverable by the Council as if it were a charge of the Council in respect of the vessel.

Master's responsibility in relation to directions

37. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to the vessel, to persons on board the vessel, to the cargo or any other person or property.

Saving for existing directions, byelaws etc.

38. Any general direction, special direction, byelaw, regulation, licence, lease, consent or other agreement made, issued, entered into or granted by the Council in relation to the undertaking and in force immediately on or before or on the date on which this Order comes into force, shall, notwithstanding the amendments set out in article 67 and the repeals and revocations set out in article 68 and Schedule 4, continue to have effect.

PART 5 CHARGES

Charges other than ship, passenger and goods dues

39. The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig, or floating platform, a chain ferry or any other vessel, not being a ship as defined by section 57(1) of the Act of 1964, entering, using, operating within or leaving the harbours such reasonable charges as it may determine, and sections 30 and 31 of the Act of 1964 shall with all necessary modification apply to the charges authorised by this article as they may apply to ship, passenger and goods dues demanded under section 26 of the Act of 1964.

Charges for services or facilities

40. In addition to article 39 of this Order and its power to demand ship, passenger and goods dues under section 26 of the Act of 1964, the Council may demand, take and recover such reasonable charges for services and facilities provided by the Council at the harbours or in connection with the undertaking as it may from time to time determine.

Setting of charges

41. The Council when setting its charges (including ship, passenger and good dues under section 26 of the Act of 1964) at each of the harbours—

- (a) is not limited to solely taking account of the viability of the harbour at which the charges will apply, and
- (b) may take account of the overall viability of the undertaking,

provided that the Council shall so far as reasonably practicable ensure that the harbours revenue received from each harbour is sufficient year on year to cover the working and establishment expenses and cost of maintenance of that harbour.

Payment of charges

42.—(1) The charges which the Council is for the time being authorised to demand, take and recover in respect of vessels and goods or otherwise under any enactment—

- (a) are payable before the removal from the harbours of any vessel or goods in respect of which they are payable, and
- (b) may be demanded, taken and recovered,
 - (i) by such persons,
 - (ii) at such places,
 - (iii) at such times, and
 - (iv) under such terms and conditions

as the Council may from time to time specify in its published list of charges.

(2) Charges payable to the Council on or in respect of—

- (a) a vessel, shall be payable by the owner or master;
- (b) goods, shall be payable by the owner, consignee or shipper of the goods.

(3) Where charges payable to the Council may be recovered by it from more than one person, the persons from whom they may be recovered shall be jointly and severally liable.

(4) Without limitation to paragraph (1), the terms and conditions as to the payment of charges which the Council may from time to time specify may include the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

(5) Where charges payable to the Council have not been paid by the time they fall due for payment, the Council may at any time thereafter, detain within or refuse entry to, or require removal from the harbours of the vessel or goods to which the charges relate until such charges have been paid in full and if the owner or master of such vessel or goods to which the charges relate is also the owner or master of other vessels or goods, the Council may also detain within or refuse entry to, or require removal from the harbours of those other vessels or goods until the aforementioned charges have been paid in full.

Compounding arrangements and rebates

43.—(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption, rebate or composition.

(2) Nothing in section 30 of the Act of 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a total or partial exemption, a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

Deposit for charges

44.—(1) The Council may, if it thinks fit, require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge.

(2) Where such a person fails to deposit or guarantee the sum of money required, the Council may detain in the harbours the vessel or goods in respect of which the charge has been or will be incurred, or refuse entry to, or require removal from the harbours in respect of the vessel or goods, until the requirement has been complied with or the charge paid.

Liens for charges

45.—(1) A person who by agreement with the Council collects charges on their behalf and who pays or gives security for the payment of charges on goods in that person's possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not personally liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in that person's custody, and in that event that person shall have a like lien on the goods for the amount of those charges as that person would have in respect of the charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place etc.

46. The harbour master may prevent a vessel from entering the harbours or using a landing place, mooring or other facility provided by the Council, if the master of the vessel refuses to pay the charges for such use.

Exemptions from harbour dues

47.—(1) Except insofar as may be agreed between the Council and the government department or person concerned the Council shall not be entitled to demand harbour dues from, or in respect of—

- (a) a vessel—
 - (i) in the service of HM Revenue and Customs or the Secretary of State for Defence in the execution of their core duties and not carrying persons or goods for reward;
 - (ii) belonging to or used by a lifeboat service whilst employed in or in connection with the core functions of that service;
 - (iii) in the service of a police force or other emergency service in the execution of their core duties and not carrying persons or goods for reward;
- (b) HM Revenue and Customs or any officer or other person employed in their service in execution of their core duties in respect of a vessel or goods under customs seizure, or in respect of goods or other articles belonging to, or in the care or service of, HM Revenue and Customs;
- (c) an officer of HM Revenue and Customs or any other person employed in their service while in the execution of their core duties;

- (d) a person employed by the Secretary of State for Defence while in the execution of core duties;
- (e) Officers of the Department for Transport in the execution of their core duties.

(2) In this article “dues” means ship, passenger and goods dues which the Council may demand under section 26 of the Act of 1964.

Recovery of charges

48.—(1) In addition to any other remedy given by this Order and by the Act of 1847 as incorporated with this Order, the Council may recover any charges payable to it as a debt in any court of competent jurisdiction.

(2) Where the master of a vessel in respect of which a charge is payable to the Council refuses or neglects to pay the same or any part thereof, paragraph (1) applies whether or not the Council’s collector has gone on board the vessel and demanded the charge pursuant to section 44 of the Act of 1847.

Harbour master may prevent sailing of vessels

49. The harbour master may prevent the removal or sailing from the harbours of any vessel until evidence has been produced to the harbour master of the payment of any charges payable in respect of—

- (a) the vessel;
- (b) passengers of the vessel; or
- (c) goods imported or exported on the vessel.

PART 6

MISCELLANEOUS AND GENERAL

Power to Dredge

50.—(1) The Council as may appear to it to be necessary or desirable for the purposes of the undertaking, deepen, widen, dredge, scour, cleanse, alter and improve the bed of the sea and foreshore of the harbours.

(2) Subject to paragraph (3), all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council may think fit.

(3) No such materials shall be laid down or deposited in contravention of the provisions of any enactment as respects to the disposal of waste.

Power to lay Moorings

51.—(1) The Council may provide, place, lay down, maintain, renew, use, have and remove such moorings within the harbours—

- (a) on land owned or leased by it or in which it holds an interest; or
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbours,

as it considers necessary or desirable for the convenience of vessels.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Council such reasonable charges as the Council may from time to time prescribe.

(3) The Council may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Council may give notice in writing to the person having the control of any vessel using any mooring in the harbours at the date this Order comes into force requiring that person within 28 days to remove the mooring so as to enable the Council to provide moorings in accordance with paragraph (1).

(5) The Council shall offer to make available to the person having the control of the vessel referred to in the notice a mooring provided by it under paragraph (1) as soon as such mooring has been laid down.

(6) If any person fails to comply with a notice given by the Council under this paragraph, the Council may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

Power to licence Moorings

52.—(1)(a) The Council may from time to time grant to a person with or without conditions a licence to place, lay down, maintain, retain, renew, use and have existing and future moorings, for vessels in the harbours.

- (b) Nothing in any licence granted under paragraph (1) shall entitle a person to place, lay down, maintain, retain, renew or use and have any mooring on land not owned or leased by that person or by the Council or in which that person is not entitled to use for that purpose.
- (c) A licence granted under paragraph (1) shall be valid only for a period of a maximum of one year commencing with the date on which it is granted.
- (d) The Council may charge for a licence granted under paragraph (1) such reasonable fee as the Council may from time to time prescribe.

(2) (a) In respect of moorings already lawfully laid down in the harbours at the date this Order comes into force ('an original mooring'), a moorings licence under paragraph (1) shall be obtained by the owner or user of the mooring within three months of that date and thereafter renewed annually.

- (b) In considering an application for a moorings licence under paragraph (1) made in respect of an original mooring the Council shall not refuse to grant a licence to lay the original mooring in the same location as situated at the date of this Order unless it is satisfied that the placing, laying down, maintenance, retention, renewal or use of the original mooring to which the application relates would constitute a danger to or interfere with the navigation of vessels in the harbours.

Offences as to Moorings

53.— (1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbours;
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbours except at a mooring provided or licensed by the Council under this article; or
- (d) places, lays down, maintains, retains, renews or has in the harbours any mooring not provided or licensed by the Council under this article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person commits an offence under sub paragraph (1)(d), the Council may remove the mooring in question and recover from that person the expenses incurred in doing so.

(3) In this article “mooring” includes any buoy, pile, post, chain, pillar, pontoon or like apparatus or convenience used or capable of being used for the mooring of vessels.

Development of land etc.

54.—(1) The Council may, subject to obtaining the necessary rights in or over land —

- (a) use or develop for any purpose, and deal with, any land within or in the vicinity of the harbours; or
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the harbours,

provided that it is conducive to the improvement, maintenance, operation or management of the harbours in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of the Council referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

Powers to grant tenancies and dispose of land

55.—(1) The Council may, for the purposes of or in connection with the carrying on of the undertaking, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, machinery, equipment or other property forming part of the harbours for such period, at such rents and other considerations and on such terms and conditions as it thinks fit.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the Council other than those specified in subparagraphs (a) to (f) of paragraph 9B of schedule 2 to the Act of 1964.

(3) The Council may also dispose of, or grant the use or occupation for any purpose of, any lands, works, buildings, machinery, equipment or other property vested in it if it considers that—

- (a) the property is surplus to that which is required for the purpose of the harbours; or
- (b) it would conduce to the improvement, maintenance, operation or management of the harbours in an efficient and economical manner for the property to be held by a person other than the Council, for such consideration and on such terms and conditions as it thinks fit.

Power to appropriate lands and works for particular uses, etc.

56.—(1) Notwithstanding anything in any statutory provision of local application the Council may from time to time for the purpose of or in connection with the management of the harbours set apart and appropriate any part of the harbours for the time being vested in, or occupied or administered by the Council as part of the undertaking for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall make any use of any part of the harbours so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council and—

- (a) the harbour master, or as the case may be, such officer, may order any person or vessel making use of the harbours without such consent to leave or be removed; and
- (b) the provisions of section 58 (Powers of harbour master as to mooring of vessels in harbour) of the Act of 1847 shall extend and apply with the necessary modifications to and in relation to such vessels.

Other commercial activities

57.—(1) The Council may, in addition to any other powers conferred on the Council—

- (a) carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person; or
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company, for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind,

provided that it is conducive to the improvement maintenance, operation or management of the harbours in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of a Council referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

(3) The powers of the Council under this article are additional to the powers of the Council under section 37 (powers of harbour authorities to acquire a harbour business or shares in a harbour business) of the Docks and Harbours Act 1966^(a).

Power to delegate functions

58. Subject to paragraph 9B of Schedule 2 to the Act of 1964 (functions which cannot be delegated under a power conferred by a harbour revision order), the Council may delegate the performance of any of its functions to be carried out by any such Company as is referred to in article 57(1)(b).

Bunkering

59.—(1) The Council may from time to time grant to a person with or without conditions a licence to carry out commercial refuelling activities related to vessels in the harbours.

(2) Nothing in any licence granted under paragraph (1) shall entitle a person to carry out commercial refuelling activities from or on land not owned or leased by that person or by the Council or in which that person has no interest.

(3) Any such licence shall be valid only for a period of one year commencing with the date on which it is granted.

(4) The Council may charge for a licence granted under paragraph (1) such reasonable fee as the Council may from time to time prescribe.

(5) Any person who without reasonable excuse carries out or permits a commercial refuelling activity related to a vessel in the harbours except in accordance with a licence issued by the Council under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Power with respect to disposal of wrecks

60.— (1) In its application to the Council, section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) has effect in relation to the harbours and its approaches in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to paragraph (3), and to any enactment for the time being in force limiting a person's liability, the Council may recover from the owner of any vessel sunk, stranded or abandoned on or after the date of coming into force of this Order in relation to which it has exercised its powers under section 252 any expenses reasonably incurred by it under that section

(a) 1966 c.28; section 37(3) was repealed by the Transport and Works Act 1992 (c.42), Schedule 4 (Part II).

in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) Except in a case which is in the opinion of the Council an emergency, paragraph (2) shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on it by section 252, other than the power of lighting and buoying, the Council has given to the owner of the vessel not less than 48 hours' notice of its intention to do so.

(4) If before the notice expires the Council receive from the owner counter-notice in writing that the owner desires to dispose of the vessel themselves, the owner shall be at liberty to do so; and the Council shall not exercise the powers in section 252 in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to the owner by the Council.

(5) Notice under paragraph (3) to the owner of any vessel may be served by the Council either by delivering it to the owner or by sending it to the owner by registered post or the recorded delivery service addressed to the owner at their last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to the Council, or is not in the United Kingdom, by displaying the notice at the relevant harbour office of the Council and electronically on the harbours website for the period of its duration.

(6) In this article "owner", in relation to any vessel, means the person who was the owner of the vessel at the time of the sinking, stranding or abandonment.

(7) The powers conferred on the Council by this article shall be in addition to and not in derogation of any other powers exercisable by it for or with respect to the removal of wrecks within the harbours and the approaches thereto.

Power to deal with unserviceable vessels

61.—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 (unserviceable vessels to be altogether removed from the harbour) and on the Council by section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) the Council may sell, break up or otherwise dispose of any vessel which is unserviceable and has been laid by or neglected in the harbours or on land immediately adjoining the harbours.

(2) The Council may retain out of the proceeds of sale and such vessel, or any part of such proceeds, any expenses incurred by it in respect of the vessel, or in marking, buoying, lighting or otherwise controlling the vessel or warning shipping of its presence and any expenses incurred by the harbour master under section 57 on the Act of 1847 and shall pay the surplus, if any, to the person entitled to that surplus.

(3) If the proceeds of the sale are insufficient to reimburse the Council for the said expenses, or there is no sale, the Council may recover the deficiency, or where there is no sale, the whole of the expenses, from the owner as a simple contract debt.

(4) Except in the case of emergency, the Council shall, before exercising its powers under this article, give 14 days' notice in writing of its intention to do so to the registered owner of the vessel and by advertisement in each of two successive weeks in a local newspaper circulating in the area of the harbours, provided that, if the registered owner or their place of business or address is not known to the Council or is outside of the United Kingdom, the notice may be given by displaying it at the relevant harbour office of the Council and electronically on the Council's website for two successive weeks.

Removal of obstructions other than vessels

62.—(1) The Council may remove anything, other than a vessel, causing or likely to become an obstruction to, or cause interference with, navigation in any part of the harbours or any approach to the harbours.

(2) The Council may take such steps as appear to it to be appropriate to prevent or minimise such obstruction or interference for the purposes of paragraph (1).

(3) If anything removed by the Council under paragraph (1) is so marked as to be readily identifiable as the property of any person, the Council shall, within 28 days of its coming into the Council's custody, give written notice to that person stating that –

- (a) upon proof of ownership to the reasonable satisfaction of the Council, and
- (b) upon payment of any reasonable expenses incurred by the Council under this article,
- (c) possession may be re-taken at a place named in the notice within the period specified in the notice (being not less than 14 days after the notice is served).

(4) If for the purposes of this article possession of anything removed is not so retaken it shall at the end of that period vest in the Council.

(5) Notwithstanding the provisions of paragraph (3) the Council may, at such time and in such manner as it thinks fit, dispose of anything removed under paragraph (1)–

- (a) which is not so marked as to be readily identifiable as the property of any person; or
- (b) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience.

(6) If anything disposed of by the Council under this article is sold, the Council must place a notice at the relevant harbour office and on the harbours website for a period of 28 days giving details of the property sold and may retain out of the proceeds of sale any expenses incurred by it under this article, and any surplus from the proceeds—

- (a) shall be paid to any person who within 24 months from the time when the property came into the custody of the Council proves to the reasonable satisfaction of the Council that they were the owner at that time; or
- (b) if within the said period no person proves their ownership at the said time, shall vest in the Council.

(7) If the proceeds of sale of anything removed under this article are insufficient to reimburse the Council for the expenses set out in paragraph (6), or there is no sale because the property is unsaleable, the Council may

- (a) recover the deficiency; or
- (b) where there is no sale, the whole of the expenses,

from the person who was the owner at the time when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

Boarding of vessels or vehicles

63. A duly authorised officer of the Council may, on producing if so required their authority, enter and inspect a vessel or vehicle in the harbours for the purposes of any enactment relating to the harbours (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the harbours, including the enforcement of any such enactment, byelaw or general direction.

Notices

64.—(1) Except where this order expressly provides otherwise, a notice or other document required or authorised to be given for the purposes of this Order, or any direction given under this Order, must be in writing and sent by first class post.

(2) Where the person on whom a notice or other document to be given for the purposes of this Order is a body corporate, the notice or document is duly given if it is given to the secretary or clerk of that body.

(3) Where a person on whom a notice or other document is to be given has agreed in writing that notices may be given by email, or other electronic means, the Council may provide notices

by that means until such time as the person informs it in writing that they are no longer willing to receive notices or documents by email or by such other electronic means.

(4) For the purposes of section 7 of the Interpretation Act 1978(10) as it applies for the purposes of this article, the proper address of a person in relation to the giving of a notice or document under paragraph (1) is, if they have given an address for the purpose of receiving notices that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, their last known address at the time the notice is given.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be given on a person whose name and address cannot be ascertained after reasonable inquiry—

- (a) in the case of a notice or document to be given to a person as having an interest in, or as the occupier of, any land, it may be given by —
 - (i) addressing it to them by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
 - (ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land,
- (b) in the case of a notice or document relating to a vessel (including a wreck), it may be given by exhibiting it in a conspicuous position on or near the vessel (unless it would not be reasonably practicable to exhibit the notice or document in this manner or if the notice or document would not be likely to be seen if it were so exhibited) or by handing it to a member of the crew, and
- (c) in the case of any other notice or document or a notice or document that is not capable of being given pursuant to sub-paragraph (b) it may be given by displaying it at the relevant harbour office for the period of its duration.

Saving for Trinity House

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

Crown Rights

66.—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown, or
- (b) authorise the Council or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to —
 - (i) Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners, or
 - (ii) the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the prior consent of the Duke of Cornwall testified in writing under the seal of the said Duchy or, the consent in writing of two or more of such of the regular officers of the said Duchy or other such persons as may be authorised under section 39 of the Duchy of Cornwall Management Act 1863; or
 - (iii) a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

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

Amendment of Act and Orders

67.—(1) the St Ives (Pilotage) Harbour Revision Order 1988**(a)** is amended as follows—

- (a) in article 2 in the definition of ‘harbour’ omit ‘as described in section 33 of the St Ives Harbour Act 1853’ and substitute ‘the limits of which are described in Schedule 1 to the Cornwall Harbours Harbour Revision Order 20**’

(2) the Penzance and Newlyn (Pilotage) Harbour Revision Order 1988**(b)** is amended as follows—

- (a) in article 2 in the definition of “the Harbours” omit ‘as described in section 15 of the Penzance Corporation Act 1883’ and substitute ‘the limits of which are described in Schedule 1 to the Cornwall Harbours Harbour Revision Order 20**’

(3) the Stratton and Bude Improvement Act 1901**(c)** is amended as follows:

- (a) in Section 16 omit ‘harbour docks’;
- (b) in Section 110 omit ‘or harbour undertakings’ and substitute ‘undertaking’;
- (c) in Section 111 omit ‘and harbour undertakings’ and substitute ‘undertaking’; and
- (d) in Section 114—
 - (i) omit ‘the Board of Trade shall be the confirming authority for byelaws made under the section of this Act the marginal note whereof is “Byelaws as to harbour” and’,
 - (ii) omit ‘affecting the harbour or the’.

Revocation and Repeal

68. On the date this Order comes into force the enactments mentioned in the first and second columns of Schedule 4 to this Order shall be revoked or repealed (as appropriate) to the extent specified in the third column of that Schedule.

Signed by authority of the Marine Management Organisation

Chief Executive Officer
An authorised employee of the Marine Management Organisation

Date

(a) SI 1988/1500
(b) SI 1988/1495
(c) 3 Edw. 7 Ch. cxxviii.

SCHEDULES

SCHEDULE 1

Article 4

LIMITS OF THE HARBOURS

Bude Harbour

The harbour or haven of Bude and so much of the sea as lies within a radius of four hundred yards (365.76m) from the mouth of the River Strat and the harbour premises as shown shaded blue and green on the Bude Harbour Limits Plan

Newquay Harbour

The area within an imaginary line commencing at a point (50.415007, -5.0850107) then in a straight line in a northly direction to a point (50.419300, -5.0852898) then in a straight line in a westerly direction to a point ([50.419300, -5.0869500]), then following the level of high water to the point of commencement (50.415007, -5.0850107) and the harbour premises as shown shaded blue and green on the Newquay Harbour Limits Plan

Port of Penryn

All that part of the Penryn River [below the level of high water] lying to the west of an irregular imaginary line drawn from Boyers Cellars ([50.164386, -5.0818030]) to Sely's Creek ([50.168793, -5.0808096]), commonly called Sailor's Creek, in the parish of Mylor and county of Cornwall, being the line forming the north-western boundary of the municipal borough of Falmouth and the harbour premises as shown shaded blue and green on the Penryn Harbour Limits Plan

Penzance Harbour

The area within an imaginary line commencing at a point ([50.114232, -5.5310796]) then in a straight line in a south south easterly direction to a point ([50.112815, -5.5306535]) then in a straight line in a north easterly direction to a point ([50.116629, -5.5232669]), then in a straight line in a north westerly direction to a point ([50.123653, -5.5301363]), then following the level of high water to the point of commencement ([50.114232, -5.5310796]) and the harbour premises as shown shaded blue and green on the Penzance Harbour Limits Plan.

Prince of Wales Pier

The area of sea within a distance of fifty yards from any part of the Prince of Wales Pier and the harbour premises as shown shaded blue and green on the Prince of Wales Pier Harbour Limits Plan. Provided that nothing contained in this Order shall prejudice alter or affect the rights and privileges exercisable by the Falmouth Harbour Commissioners under or by virtue of the Falmouth Harbour Order 1870.

St Ives Harbour

The area within an imaginary line commencing at the seaward end Porthminster Point (50.2076, -5.4711206) then in a straight line in a northly direction to a point (50.218534, -5.471915) then in a straight line in a westerly direction to a point ([50.218436, -5.4751748]), then following the level of high water to the point of commencement seaward end Porthminster Point of commencement (50.415007, -5.0850107) and the harbour premises as shown shaded

blue green on the St Ives Harbour Limits Plan.

Port of Truro

All those parts of the Port of Truro and rivers, including all creeks (except Restronguet Creek, landward of an imaginary straight line drawn between a point ([50.196182, -5.063409]) and a point ([50,193874, -5.05994])) below the level of high water, situated landward of an imaginary straight line drawn between Tarra Point ([50.174229, -5.044864]) and Messack Point ([50.181935, -5.024476]) and the harbour premises as shown shaded blue and green on the Port of Truro Harbour Limits Plans.

SCHEDULE 2

Art 12

PROVISIONS APPLYING TO THE BOARD

Meetings of the Board

1.—(1) The first meeting of the Board on or after the date on which it is first established under article 6 must be convened by the clerk as soon as reasonably possible on or after that date and the clerk must send notice of that meeting by post to each of the members of the Board.

(2) The Board must meet a minimum of four times in each year.

Chair and vice-chair of Board

2.—(1) The chair to be appointed by the Board must be appointed as soon as practicable thereafter and shall be a member of the Council appointed under article 7(1)(a).

(2) The first-person taking office as chair after the establishment of the Board is, unless that person resigns as chair or ceases to be a member of the Board, to continue in office as chair until the Council's next annual general meeting.

(3) Subject to sub-paragraph (7), every person subsequently appointed as chair under sub-paragraph (1) is, unless that person resigns as chair or ceases to be a member of the Board, to hold office for a period of one year.

(4) There must be a vice-chair of the Board who is to be appointed by the Board from among the appointed members of the Board.

(5) The first person taking office as vice-chair after the establishment of the Board must be appointed as soon as practicable thereafter and is, unless that person resigns as vice-chair or ceases to be a member of the Board, to continue in office as vice-chair until the Council's next annual general meeting.

(6) Subject to sub-paragraph (7), every person subsequently appointed as vice-chair under sub-paragraph (4) is, unless that person resigns as vice-chair or ceases to be a member of the Board, to hold office for a period of one year.

(7) If the appointed members of the Board are satisfied that the chair or vice-chair should cease to hold office as such, they may terminate his or her office as such and appoint another member of the Board to be chair or vice-chair during the remainder of the term for which the former chair or vice-chair was appointed.

(8) On a casual vacancy occurring in the office of chair or vice-chair of the Board, the vacancy must be filled by the Board at the next meeting of the Board held after the vacancy occurs.

(9) A member of the Board appointed under sub-paragraph (8) to fill a casual vacancy in the office of chair or vice chair is, unless he or she resigns that office or ceases to be a member of

the Board, to hold that office during the remainder of the term for which the chair or vice-chair being replaced was appointed.

(10) In the absence of the chair the person for the time being holding office as the vice-chair is to have and may exercise all the powers of the chair.

(11) If at a meeting of the Board neither the chair nor the vice-chair is present the members of the Board present must choose one of their number to be chair of the meeting.

Vacation of office by a member of the Board

3.—(1) A member of the Board may resign that office at any time by giving notice in writing given to the chair or if that member of the Board is the chair, the vice-chair.

(2) Any vacancy created by a member of the Board resigning shall be treated as a casual vacancy.

Reappointment of chair

4.—(1) A chair of the Board who has served as the chair for three consecutive terms immediately beforehand is not eligible for reappointment as the chair

(2) For the purposes of this paragraph, “term” does not include—

- (a) a term served by the member of the Board as the chair under paragraph 2(2); or
- (b) the remainder of a term during which the chair was appointed to fill a casual vacancy in the office of the chair under paragraph 3;

Proceedings of meeting of the Board

5.—(1) Every decision at a meeting of the Board must be decided by a majority vote of the Board members present and voting.

(2) If at any meeting of the Board there is an equality of votes on a decision, the chair of the meeting has a second or casting vote.

(3) The quorum required for a meeting of the Board is 5 and substitutes are not allowed.

(4) Board must cause minutes to be made—

- (a) of the names of members of the Board present at a meeting of the Board; and
- (b) of all proceedings or resolutions at such meeting;

and such minutes, if signed by a person purporting to be chair of the meeting to which the minutes relate or of a subsequent meeting at which the minutes were approved as a correct record, is to be received in evidence without further proof.

(5) Until the contrary is proved, a meeting for which minutes have been so made or signed is to be deemed to have been duly convened and held and, if it was a meeting of a committee, that committee is to be deemed to have had power to deal with the subject of the minutes.

(6) A member of the Board who has any interest, direct or indirect—

- (a) in any contract or proposed contract to which the Board are or would be a party, or is a director of a company or body with which the contract or proposed contract is made or proposed to be made,
- (b) in any other matter with which the member of the Board is concerned must declare that interest.

(7) A member of the Board, who is present at a meeting of the Board at which a contract or other matter in which that member has an interest is to be considered, must—

- (a) as soon as is practicable after the commencement of that meeting, disclose that interest;

- (b) not vote on any question with respect to that contract or matter; and
 - (c) withdraw from the meeting—
 - (i) at any time if so required by a resolution of the members of the Board present; and
 - (ii) while a decision on that contract or matter is being made.
- (8) This paragraph does not apply to any interest—
- (a) which a member of the Board has in respect of the payment to the Board of harbour dues;
 - (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general;
 - (c) which the members of the Board present at the meeting by resolution declare to be too remote.

Validity of acts of the Board

6. The Board may act notwithstanding a vacancy among the membership of the Board and no act of the Board is to be deemed to be invalid by reason of any vacancy in their number or defect or irregularity in the appointment of any person as a member of the Board or as chair or vice-chair of the Board.

Remuneration of members of the Board

7. The Council may pay to the chair, vice chair and other Board members such special attendance allowance and other expenses as the as the Council may from time to time determine.

Role of the Board

8. —The Board shall be responsible for those matters set out in the Cornwall Harbours Board Memorandum of Understanding in force from time to time.

9. —No substantial amendment to the responsibilities of the Board under the Cornwall Harbours Board Memorandum of Understanding shall be made without first consulting with the Department for Transport.

General

10. — Subject to the provisions of this Schedule, the procedure of the meetings of the Board is to be regulated in such manner as the Board may determine and the Board may adopt a constitution to contain these procedures.

SCHEDULE 3

Article 29

PURPOSES FOR WHICH BYELAWS MAY BE MADE

- 1. regulating the use of pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buildings, parking places, and other works and facilities provided by the Council;
- 2. regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbours;
- 3. preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property, or persons within the harbours and to any aids to navigation used in connection with the harbours;

4. regulating, preventing or licencing the conduct of all persons in vessels or otherwise in the harbours not being—

- (i) members of a police force;
- (ii) officers or servants of the Crown; or
- (iii) members of a fire brigade

5. whilst in the exercise of their duties as such;

6. regulating the placing, laying down, maintenance, removal and use of moorings within the harbours;

7. preventing or removing obstructions (including vessels and vehicles) or impediments within the harbours;

8. regulating the launching of vessels into the harbours and/or from the harbours;

9. regulating or prohibiting the mooring, careening, beaching or anchoring and keeping of vessels in the harbours;

10. regulating or prohibiting the use in the harbours or onboard any vessel in the harbours of fires, lights, or any other equipment, tools or appliances which the Council considers involves a risk of fire, explosion or chemical reaction and for the prevention of smoking;

11. regulating the removal of rubbish (including ballast, earth or clay or other refuse) and sewerage for vessels in the harbours;

12. the prevention of the disposal of such rubbish and sewerage from vessels, in the harbours;

13. prohibiting the use of or regulating the use, movement, speed, placing, loading, unloading, driving and parking of vehicles in the harbours and the removal of vehicles from the harbours (including by the Council);

14. requiring the use of effectual silencers or other similar apparatus and the control of noise generally on vessels in the harbours;

15. regulating vessels in the harbours and their entry into and departures from the harbours and, without limitation to the generality, for prescribing rules for regulating the speed and manner of navigation or movement and the lights and signals exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbours;

16. regulating the embarkation of persons on to, or their disembarkation from, vessels within the harbours;

17. regulating the holding of regattas and other public events in the harbours;

18. prescribing the lights and signals to be exhibited or made;

19. by vessels aground in the harbours;

20. by vessels or other devices used for marking obstructions within the harbours;

21. assisting the navigation of vessels within the harbours, at the entrance to any dock or at any wharf, pier or other work;

22. preventing nuisances in the harbours;

23. prohibiting or regulating the discharge by land or sea of any material, substance or thing within the harbours of the approaches to them;

24. regulating or prohibiting fishing for marine creatures of any type and by whatever means from any pier, jetty, breakwater, wharf, or other installation or structure of any kind within the

harbours, from any vessel within the harbours or from the foreshore where such fishing interferes with the operation of the harbours or the safety of navigation in the harbours;

25. regulating or prohibiting aquaplaning, jet skiing, water skiing or diving or other recreational activities in the harbours;

26. regulating or prohibiting bathing, and for securing the protection of bathers, within the harbours;

27. regulating or prohibiting the use of vehicles on the foreshore within the harbours;

28. regulating the use of ferries within the harbours and the conduct of boatmen, ferry men, and others plying for hire in the harbours and of persons resorting to any works constructed or operated by the Council;

29. regulating the exercise of powers vested in the harbour master; and

30. the regulation and control of vessels and vehicles and for the regulation and control of persons embarking or disembarking frequenting or employed in the harbours.

31. the purposes specified in section 83 of the Act of 1847 (Byelaws may be made for all or any of the purposes herein named).

SCHEDULE 4

Article 69

REVOCATION / REPEAL

Table

<i>Number</i>	<i>Short Title</i>	<i>Extent of Revocation/Repeal</i>
Ch. lxxxii. 33 & 34 Vict	Pier and Harbour Orders Confirmation Act, 1870 (No. 1)	Whole of the Penryn Harbour Order, 1870
Ch. cxcii. 63 & 64 Vict	Pier and Harbour Orders Confirmation (No. 2) Act, 1900	Whole of the Penryn Harbour Improvement Order 1900
Ch. cxx. 10 & 11 Geo 5	Pier and Harbour Orders Confirmation (No. 1) Act, 1920	Whole of the Penryn Harbour Order 1920
Ch. xliii. 46 & 47 Vict	Pier and Harbour Orders Confirmation (No. 1) Act, 1883	Whole of the Truro Harbour Order, 1883
Ch. xc. 3 EDV 7.	Pier and Harbour Orders Confirmation (No. 6) Act, 1903	Whole of the Truro Harbour Order 1903 apart from Article 10(1) of that Order
Ch. cxv. 9 EDV 7.	Pier and Harbour Orders Confirmation (No. 2) Act, 1909	Whole of the Truro Harbour Order 1909
Ch. cxxi. 10 & 11 Geo 5.	Pier and Harbour Orders Confirmation (No. 2) Act, 1920	Whole of the Truro Harbour Order 1920
Ch. lxxviii. 18 & 19 Geo 5.	Pier and Harbour Orders Confirmation Act, 1928	Whole of the Truro Harbour Order 1928

Cap. Cxxix. 16 & 17 Victoriae	The Saint Ives Harbour Act 1853	Whole Act
Cap. 51. 25 & 26 Victoriae	The Saint Ives Harbour Order 1862	Whole Order
Ch. ix. 50 Vict.	Pier and Harbour Orders Confirmation Act, 1886	Whole of the Saint Ives Harbour Order 1886 apart from Articles 21 and 22
Ch. cxix. 51 & 52 Vict.	Pier and Harbour Orders Confirmation (No 1.) Act, 1888.	Whole of the Saint Ives Harbour Order 1888
SI/1980/115	St. Ives Harbour Revision Order 1980	Whole Order
SI/1993/2176	The St. Ives Harbour Revision Order 1993	Whole Order apart from articles 7 and 8
1 & 2 Victoriae Cap.lxxxiv.	An Act for maintaining the Pier and Harbour of Newquay in the County of Cornwall 1838	Whole Act
7 Victoriae Cap. xxiii	An Act to amend an Act for maintaining the Pier and Harbour of Newquay in the County of Cornwall, and to make certain Tram Roads in connection therewith. 1844	Whole Act
Ch. xxvii Elizabeth II	Newquay Urban District Council Act 1967	Whole Act
Ch. cxiv. 41 & 42 Vict.	Pier and Harbour Orders Confirmation Act, 1878 (No. 1)	Whole of the Falmouth Piers Order 1878
Ch. cci. 2 Edw.7.	Pier and Harbour Orders Confirmation Act(No. 3) Act, 1902	Whole of the Falmouth Corporation Quays Order 1902
Ch. xii 15 & 16 Geo. 6 & 1 Eliz 2.	Pier and Harbour Order (Falmouth) Confirmation Act, 1952	Whole of the Falmouth Piers Order 1952 apart from articles 8 and 9.
46 & 47 Vict. – Sess. 1883	The Penzance Corporation Act 1883	Whole Act
Ch. viii Eliz 2. 1990	Penzance Albert Pier Extension Act 1990	Whole Act apart from articles 3, 5 and 6
Ch. xxvi Eliz 2. 1990	Penzance South Pier Extension Act 1990	Whole Act apart from articles 3, 5 and 6
SI/2009/2325	The Penzance Harbour Revision Order 2009	Whole Order apart from articles 3, 5, 6, 25 and 26
Geo III Cap 53	An Act for making a navigable Cut or Canal, from the Port or Harbour of Bude, in the Hundred of Stratton, in the County of Cornwall, to the River Tamer, in the Parish of	Whole Act

	Calstocke, the said County 1768	
59 Geo. III c. lv.	An Act for improving the Harbour of Bude, in the County of Cornwall; and for making and maintaining a Navigable Canal from the said Harbour of Bude to or near the Village of Thornbury, in the County of Devon, and divers Branches therefrom, all in the said Counties of Cornwall and Devon, 1819	Sections 32, 61 to 64 (inclusive), 66, 73, 75 to 82 (inclusive), 84, 85, 92 to 94 (inclusive), 96, 106 to 108 (inclusive) 111, 117 and 118.
1 Edw. 7 Ch. cclviii.	Stratton and Bude Improvement Act 1901	Sections 62 to 64 (inclusive), 66, 67, 69, 70 to 74 (inclusive), 79 to 81 (inclusive), 108, 109, Third Schedule
3 Edw. 7 Ch. cxxviii.	Pier and Harbour Orders Confirmation (No 2) Act, 1903	Whole of the Bude Harbour Order 1903

SCHEDULE 5

ORDERS

Art 2

- Saint Ives Harbour Order 1886 (Articles 21 and 22)
- Truro Harbour Order 1903 (Article 10(1))
- Falmouth Piers Order 1952 (Articles 8 and 9)
- The St. Ives Harbour Revision Order 1993 (Articles 7 and 8)
- Penzance Albert Pier Extension Act 1990 (Articles 3, 5 and 6)
- Penzance South Pier Extension Act 1990 (Articles 3, 5 and 6)
- The Penzance Harbour Revision Order 2009 (Articles 3, 5, 6, 25 and 26)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of Cornwall Council relates to the harbours of Bude, Newquay, Penryn, Penzance, Prince of Wales Pier in Falmouth, St Ives and Truro. It modernises and consolidates the statutory harbour powers applying in relation to all seven harbours, so that in the future they will all be governed under the Order, with similar statutory harbour powers. The Order provides for:

(1) The Jurisdiction (article 4 and Schedule 1) and General functions (article 5) of the Council as the statutory harbour authority for the harbours including plans of the harbours (including the harbour premises) which can be inspected during working hours at the office of the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH and the principal office of the Cornwall Council, New County Hall, Treyew Rd, Truro TR1 3AY

(2) Establishing the constitution and governance arrangements of the Cornwall Harbours Board (articles 6 to 12 and Schedule 2).

(3) The establishment of an advisory body consisting of harbour stakeholders with which the Council are required to consult on material matters (article 13).

(4) Powers to vest in the Council relating to finances including application (article 14), establishment of the Port of Truro Reserve Fund, Port of Penryn Reserve Fund and a General Reserve Fund (articles 15 to 17), as well as borrowing powers (article 18).

(5) Powers relating to works including a power to dredge, moorings, aids to navigation, repair of landing places, works and dredging licensing and penalties for obstruction of works (articles 50 to 53 and 19 to 26)

(6) Modernised powers of management and control of the harbours to vest in the Council including provisions relating to parking places (article 27), removal of vehicles and vessels (article 28), and byelaws (articles 29 to 30 and Schedule 3).

(7) Powers of general and special direction on the Council and the harbour master (defined in article 2) for the regulation and management of the harbour (articles 31 to 36). A register of all in force general directions which may be inspected during working hours at the harbour office of the Council (article 32). This Order creates an offence of failing to comply with special or general directions, the penalty for which is a fine on summary conviction not exceeding level 4 on the standard scale (article 35). A defence of due diligence is available to a person charged under article 35 (article 35(2)).

(8) A modern suite of charging powers (articles 39 – 49) including exemptions from harbour dues (article 47) and prevention of sailing of vessels (article 49).

(9) Powers relating to development of land (article 54), power to grant tenancies and dispose of land (article 55), power to appropriate lands and works for particular uses, etc. (article 56), other commercial activities (article 57), power to delegate functions (article 58).

(10) Powers relating to bunkering (article 59), disposal of wrecks (article 60), unseaworthy vessels (article 61), removal of obstructions other than vessels (article 62), boarding of vessels (article 63) and notices (article 64).

(11) Saving for Trinity House (article 65), the Crown (article 66).

(12) To facilitate the above, the Order repeals and revokes the Acts and Orders set out in Schedule 4 and amends the St Ives (Pilotage) Harbour Revision Order 1988, the Penzance and Newlyn (Pilotage) Harbour Revision Order 1988 and the Stratton and Bude Improvement Act 1901 (article 68).

An impact assessment has not been prepared for this Order as there is no, or no significant, impact predicted on businesses, charities, voluntary bodies or the public sector.

An Explanatory Memorandum is available alongside the instrument on the UK legislation website at www.legislation.gov.uk.