CHAPTER viii.

An Act to confer further powers upon the mayor aldermen and burgesses of the county borough of Birkenhead to run motor omnibuses to make further provision with reference to the finance of the borough and for other purposes. A.D. 1926.

[16th June 1926.]

WHEREAS the borough of Birkenhead (in this Act referred to as "the borough") is a county borough under the management and control of the mayor aldermen and burgesses of the borough (in this Act referred to as "the Corporation"):

And whereas the Corporation in pursuance of the Birkenhead Corporation Act 1914 provide motor omnibus services both within and outside the borough and it is expedient that further powers should be conferred upon the Corporation as by this Act provided to enable such services to be extended:

And whereas the Wirral Rural District Council and the Bebington and Bromborough Urban District Council being the local authorities affected have consented to the omnibus routes specified in this Act:

And whereas it is expedient that further provision should be made with reference to the finance of the borough and that the powers of the Corporation in relation thereto should be enlarged and extended:

And whereas it is expedient that the other powers contained in this Act should be conferred upon the Corporation:

[*Price* 6*d. Net.*]

A.D. 1926.

And whereas the objects of this Act cannot be attained without the authority of Parliament:

And whereas in relation to the promotion of the Bill for this Act the requirements of the Borough Funds Acts 1872 and 1903 have been observed:

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

Short title.

1. This Act may be cited as the Birkenhead Corporation Act 1926.

Interpretation.

2. In this Act unless the subject or context otherwise requires the expressions—

"The borough" means the borough of Birkenhead;

"The Corporation" means the mayor aldermen and burgesses of the borough;

"The town clerk" and "the treasurer" mean respectively the town clerk and the treasurer of the borough and respectively include any person duly appointed by the Corporation to discharge temporarily the duties of any such officers;

"The borough fund" and "the borough rate" mean respectively the borough fund and the borough rate of the borough;

"The tramway undertaking" means the tramway undertaking of the Corporation as from time to time authorised;

"The Act of 1923" means the Birkenhead Corporation Act 1923;

"Statutory security" means any security in which trustees are for the time being by or under any Act of Parliament passed or to be passed authorised to invest trust money and any mortgage bond debenture debenture stock stock or other security authorised by or under any Act of Parliament passed or to be passed of any county council or municipal corporation or other

local authority as defined by section 34 of the Local Loans Act 1875 but does not include annuities rentcharges or securities transferable by delivery or any securities of the Corporation;

"Statutory borrowing power" means any power whether or not coupled with a duty of borrowing or continuing on loan or re-borrowing money or of redeeming or paying off or creating or continuing payment of or in respect of any annuity rentcharge rent or other security representing or granted in lieu of consideration money for the time being existing under any Act of Parliament public or local passed or to be passed or under any Provisional Order confirmed by Act of Parliament passed or to be passed or under any order or sanction of any Government department made or given or to be made or given by authority of any Act of Parliament passed or to be passed; and

"Revenues of the Corporation" includes the revenues of the Corporation from time to time arising from any land undertaking or other property for the time being of the Corporation and the rates or contributions leviable by or on the order or precept of the Corporation.

Power to run omnibuses.

3.—(1) Subject to the provisions of this Act the Corporation as part of the tramway undertaking may provide and maintain (but shall not manufacture) omnibuses and in addition to the routes over which they are authorised to run omnibuses by section 4 (Power to provide and work motor omnibuses) of the Birkenhead Corporation Act 1914 and either in connection with any of the said routes or otherwise the Corporation may with the consent of the Minister of Transport run the same along the following new routes in the county of Chester (that is to say):—

In the parish of Moreton:

Route No. 1 Along Pasture Road from its junction with Hoylake Road to the Meols Common.

Route No. 2 Along Hoylake Road from its junction with Pasture Road to Bermuda Road.

A.D. 1926.

In the parishes of Moreton Upton and Woodchurch:

Route No. 3 Along Upton Road from its junction with Hoylake Road to Upton and thence along Rake Lane to the Horse and Jockey Inn at Woodchurch.

In the parish of Woodchurch:

Route No. 4 Along the new road proposed to be constructed from the boundary of the borough adjoining the London and North Eastern Railway at Oxton to Woodchurch Road.

In the parish of Bidston:

Route No. 5 Along Boundary Road from its junction with Ashburton Road to Hoylake Road near St. Oswald's Church Bidston.

In the parish of Prenton:

Route No. 6 Along Storeton Road from its junction with Prenton Road West to its junction with Mount Road.

In the urban district of Bebington and Bromborough:

Route No. 7 Along Kings Road from the boundary of the borough to the junction of that road with Town Lane and along Town Lane to its junction with Old Chester Road.

Route No. 8 Along Kings Lane from its junction with Kings Road to its junction with Old Chester Road.

(2) In the case of any application under the provisions of this section for the consent of the Minister of Transport the Corporation shall give notice in writing of their proposals to the road authority and shall publish notice of such proposals in the London Gazette and in such other manner as the Minister of Transport shall direct stating the manner in which and the time within which any persons affected by such proposals may object thereto and if any objection shall be made by any such person the Minister of Transport may direct an inquiry.

(3) The Corporation may demand and take the like tolls fares and charges for the conveyance in the omnibuses of passengers and parcels (not exceeding fifty-six pounds in weight) as they are for the time being able to demand and take for passengers travelling on and parcels conveyed by the tramways of the Corporation.

(4) Subsections (2) (4) (5) and (6) of the said section 4 of the Birkenhead Corporation Act 1914 shall apply and have effect as if they were re-enacted in this section.

(5) The provisions of sections 51 and 56 of the Tramways Act 1870 shall apply to and in relation to the omnibuses of the Corporation as if they were carriages used on tramways.

(6) The Corporation shall keep the accounts in respect of their omnibus undertaking separate from their other accounts distinguishing therein capital from revenue.

(7) For the purposes of this section and the section of this Act of which the marginal note is "Adaptation of roads" the expression "road authority" means with reference to any road or part of a road over which any proposed omnibus service will pass the authority company or person charged with the maintenance of such road or part of a road.

Adaptation of roads.

4.—(1) (*a*) Before the Corporation commence to run omnibuses under the powers of this Act over any road or part of a road it shall be determined by agreement between the Corporation and the road authority or failing agreement by the Minister of Transport whether it is necessary (in order to provide for the running under the powers of this Act of an omnibus service over any such road or part of a road) to adapt alter or reconstruct such road or part of a road or to strengthen any county bridge or district bridge and if so what sum of money (if any) per mile of road so to be adapted altered or reconstructed or what sum of money (if any) in respect of any such bridge shall be payable by the Corporation to the road authority by way of contribution towards the cost incurred in such adaptation alteration reconstruction or strengthening.

(*b*) Within six months after the date upon which all questions to be agreed or determined in pursuance of paragraph (*a*) of this subsection have been so agreed or determined the Corporation shall give notice in writing to the road authority as to whether or not they intend to run omnibuses over the road or part of a road or bridge in question.

(*c*) If the Corporation give notice in writing to the road authority that they intend to run omnibuses over

A.D. 1926.

the road or part of a road or bridge in question and if it shall have been agreed or determined that the Corporation are to make any payment to the road authority under the provisions of paragraph (*a*) of this subsection the Corporation shall on receipt of any certificate which may from time to time be issued by the engineer in charge of the work of adaptation alteration or reconstruction of such road or part of a road or of strengthening such bridge pay to the road authority such proportion of the total amount of the contribution agreed or determined to be payable by the Corporation as the amount so certified to have been expended upon such work bears to the total amount estimated to be expended by the road authority on such work Provided that the aggregate amount to be so paid by the Corporation shall not exceed the amount of the contribution agreed or determined to be payable by them as aforesaid.

(*d*) Notwithstanding anything in this subsection the Corporation shall not be required to pay any sum in respect of any work towards or in respect of the adaptation alteration or reconstruction of any such road or part of a road or the strengthening of any bridge which is not executed within three years from the date on which the Corporation shall commence to run omnibuses over the road or part of a road to be adapted altered or reconstructed or over the bridge to be strengthened.

(*e*) Not more than one payment or (in the case of a payment by instalments in accordance with paragraph (*c*) of this subsection) one series of payments shall be made in respect of any such road or part of a road so adapted altered or reconstructed or of any such bridge so strengthened.

(*f*) For the purposes of this subsection the expression "county bridge" shall include every bridge maintainab'e by a county council and in respect of such bridge the county council shall be deemed to be the road authority and the expression "district bridge" shall include every bridge maintainable by a district council and in respect of such bridge the district council shall be deemed to be the road authority.

(2) Any payment made to a road authority under this section in respect of any main road retained by them under subsection (2) of section 11 of the Local Government

Act 1888 or maintained by them under subsection (4) of that section shall be credited to the county council in ascertaining the amount payable by them under either of the said subsections of the Local Government Act 1888.

(3) If any such adaptation alteration reconstruction or strengthening as aforesaid shall involve an alteration of any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General the enactments contained in section 7 of the Telegraph Act 1878 shall apply to any such alteration and the road authority shall be deemed to be "undertakers" within the meaning of the said Act.

(4) The road authority shall not under section 23 of the Highways and Locomotives (Amendment) Act 1878 as amended by section 12 of the Locomotives Act 1898 or otherwise make any claim against the Corporation in respect of extraordinary traffic by reason of the user of any highway by the omnibuses of the Corporation.

(5) An agreement under this section with respect to any main road maintained by a local authority at the expense of any county council shall not be made except with the concurrence of that county council.

(6) For the purposes of this section the expression "road authority" shall not include a railway company.

As to bridges and roads of railway and canal companies.

5. Nothing in this Act shall impose any obligation upon or enlarge any obligation of any railway or canal company to strengthen adapt alter or reconstruct any bridge or road maintainable by them respectively.

As to cesser of powers.

6.—(1) The powers of running omnibuses under the provisions of this Act on any road or part of a road may at the expiration of ten years from the date on which such running commences and at the expiration of any subsequent period of ten years be determined by the Minister of Transport on the application of the local authority of the district in which such road or part of a road is situate upon such terms as the said Minister may determine.

(2) Before issuing an order to determine the said powers the Minister of Transport shall hold a local inquiry

A.D. 1926.

at which opportunity shall be afforded to any person interested to object to the continuance or cesser of such powers.

Determination of powers in certain events.

7. If the Corporation do not within three years from the giving of the consent of the Minister of Transport to the running under the powers of this Act by the Corporation of omnibuses on any route provide a service of omnibuses on such route or having provided shall discontinue any such service the Minister of Transport may on the application of any local authority within whose district the route or any part of the route is situate and after considering any representation which may be made on behalf of the Corporation by order declare that unless a service of omnibuses be provided within such period as the Minister of Transport may by such order prescribe the powers of the Corporation under this Act in respect of the provision and running of omnibuses on such route or part of such route shall determine and if within the prescribed period such service be not provided as from the expiration of such period the powers of the Corporation under this Act in relation to the provision and running of omnibuses on such route or part of a route shall cease :

Provided that this section shall not apply or have effect in the event of the failure of the Corporation to provide a service of omnibuses on any route being due to strikes unforeseen accident or circumstances beyond the control of the Corporation.

Inquiries by Minister of Transport.

8. In respect of the exercise of any powers or duties conferred on the Minister of Transport or the giving by him of any consents under this Act the provisions of Part I. of the Board of Trade Arbitrations &c. Act 1874 shall apply as if the Minister of Transport were referred to therein in lieu of the Board of Trade and as if in section 4 of that Act the words "under the seal of the Minister of Transport" were substituted for the words "by writing under the hand of the President or of one of the secretaries of the Board."

Revision of omnibus fares.

9. Section 50 (Revision of fares rates and charges) of the Act of 1923 shall extend and apply in respect of the omnibuses of the Corporation as if the same were re-enacted in this Act with the substitution therein of

references to the routes upon which the Corporation are for the time being running a service of omnibuses for references to tramways of the Corporation.

Byelaws.

10. Subsection (3) of section 4 (Power to provide and work motor omnibuses) of the Birkenhead Corporation Act 1914 is hereby repealed without prejudice to anything which may have been done thereunder and the Corporation may make byelaws for regulating the travelling in or upon their omnibuses and for the prevention of nuisances in or upon the same or in or against any premises held by the Corporation in connection therewith Provided that any such byelaw shall be made subject and according to the provisions of the Tramways Act 1870 with respect to the making of byelaws.

Power to borrow and repayment of borrowed moneys.

11.—(1) The Corporation may in addition to any moneys which they are now authorised to borrow or which they may be authorised to borrow under the provisions of any public general Act borrow at interest the sum requisite for paying the costs charges and expenses of this Act as hereinafter defined and all moneys so borrowed shall be chargeable on the borough fund and borough rate or such of the revenues of the Corporation and in such proportions as they may by resolution determine and shall be repaid within five years from the passing of this Act.

(2) The Corporation may also with the sanction of the Minister of Health borrow such further moneys as may be necessary for the purpose of providing a working balance for the payment of current expenses that may be incurred by the Corporation in the exercise or performance of their powers and duties the cost of which is from time to time charged on the borough fund and any moneys borrowed under the powers of this subsection shall be chargeable upon the borough fund and borough rate and be repaid within such periods not exceeding sixty years as the said Minister may prescribe.

(3) The provisions of this section shall not limit the powers conferred upon the Corporation by section 129 (Power to use one form of mortgage for all purposes) of the Act of 1923.

Incorporation of

12. The following provisions of the Acts in this section mentioned shall so far as applicable extend and

A.D. 1926.

certain financial provisions.

apply to and in respect of moneys borrowed by the Corporation under this Act as if they were re-enacted herein (that is to say):—

THE BIRKENHEAD CORPORATION ACT 1881.

Section 287 (Protection of lenders from inquiry).

THE BIRKENHEAD CORPORATION ACT 1897.

Section 48 (Repayment of moneys hereafter borrowed under existing powers);

Section 49 (General provisions as to sinking funds).

THE BIRKENHEAD CORPORATION ACT 1914.

Section 12 (Mode of raising money);

Section 15 (Power to borrow under Local Loans Act 1875);

Section 16 (Power to re-borrow);

Section 17 (Application of money borrowed); and

Section 18 (Audit of accounts):

Provided that the periods for repayment referred to in the section of this Act whereof the marginal note is "Power to borrow and repayment of borrowed moneys" shall respectively be deemed to be "the prescribed period" for the purposes of such application of the said sections:

Provided also that the said sections shall be read and have effect as if the Minister of Health were referred to therein in lieu of the Local Government Board.

Returns as to sinking fund.

13.—(1) The town clerk shall if and when he is requested by the Minister of Health so to do transmit to the said Minister a return showing the provision made for the repayment of any loans raised by the Corporation under any statutory borrowing power.

(2) The return shall show such particulars and shall be made up to such date and in such form as the Minister of Health may require and shall if so required by him be verified by statutory declaration of the treasurer or other the chief accounting officer of the Corporation and shall be transmitted within one month after the making of the request and in the event of his failing to make such

return the town clerk shall for each offence be liable to a penalty not exceeding twenty pounds to be recovered by the Minister in a court of summary jurisdiction and notwithstanding the recovery of such penalty the making of the return shall be enforceable by writ of mandamus to be obtained by the Minister out of the High Court.

(3) If it appear to the Minister of Health by such a return as aforesaid or otherwise that the Corporation have failed to pay any instalment or annual payment required to be paid or to appropriate any sum required to be appropriated or to set apart any sum required for any sinking fund (whether such instalment or annual payment or sum is required by the Act in pursuance of which the moneys are raised or by the said Minister in virtue thereof to be paid appropriated or set apart) or have applied any portion of any sinking fund to any purpose other than those authorised the Minister may by order direct that the sum in such order mentioned not exceeding the amount in respect of which default has been made shall be paid or applied in the manner and by the date in such order mentioned and the Corporation shall notify the Minister as soon as the order is complied with and any such order shall be enforceable by writ of mandamus to be obtained by the Minister out of the High Court.

(4) Section 51 (Annual return to Local Government Board) of the Birkenhead Corporation Act 1897 and so much of any enactment as incorporates that section and Article IX. (Return as to provision for repayment of debt) of the Birkenhead Order 1905 are hereby repealed.

As to section 234 of Public Health Act 1875.

14. In calculating under subsection (2) of section 234 of the Public Health Act 1875 the amount which the Corporation may borrow the amount of any sinking fund or redemption fund accumulated for the purpose of providing for the repayment of loans contracted by the Corporation under the Public Health Act 1875 and the Sanitary Acts as defined by that Act shall be deducted from the total debt of the Corporation under those Acts.

Consolidated loans fund.

15.—(1) Notwithstanding anything contained in the Public Health Acts (Amendment) Act 1890 or in any other Act or any Order as from the thirty-first day of March one thousand nine hundred and twenty-seven or as from any succeeding thirty-first day of March the Corporation may if they think fit establish a fund to be

A.D. 1926.

called the consolidated loans fund to which shall be paid as and when they are received—

(*a*) all moneys borrowed by the Corporation whether by issue of stock or other security together with any moneys temporarily borrowed without security in connection with the exercise of duly authorised borrowing powers;

(*b*) all moneys of a capital nature received by the Corporation whether from the sale of capital assets or otherwise except such as are applied by the Corporation with due authority to another capital purpose; and

(*c*) the appropriate sums provided in each year out of other funds of the Corporation to comply with the terms and conditions as to repayment attaching to their several borrowing powers;

and there shall also be carried to the credit of the consolidated loans fund the unapplied balances of all moneys borrowed or received except of such moneys as have been borrowed from the Public Works Loan Commissioners and of all sums provided by the Corporation as aforesaid before the thirty-first day of March as from which the consolidated loans fund shall be established.

(2) The moneys of the consolidated loans fund shall be used or applied by the Corporation—

(*a*) in the exercise of any duly authorised borrowing power by transfer of the required amount to the appropriate fund and account of the Corporation; or

(*b*) in the redemption of stock or any other securities issued by the Corporation the purchase of stock for extinction or the repayment of any moneys borrowed by the Corporation;

and any moneys of the consolidated loans fund pending use or application as aforesaid may be invested in statutory securities and the sums realised by the sale of such securities shall be repaid on receipt to the consolidated loans fund.

(3) Subject to any priority existing at the passing of this Act all stock of and loans to the Corporation and the dividends and interest thereon shall be charged indifferently on all the revenues of the Corporation and

shall rank equally one with the other without any priority whatsoever.

(4) Save as in this section expressly provided all the obligations of the Corporation to the holders of stock or other securities of the Corporation shall continue in force.

(5) The powers conferred by this section shall not be put into operation by the Corporation except in accordance with a scheme to be approved by the Minister of Health and such scheme may make provision for any matters incidental to the establishment and administration of the consolidated loans fund.

Investment of and payments into sinking fund.

16. Section 130 (Power to invest all sinking funds in statutory securities) of the Act of 1923 is hereby repealed and when under the provisions of this Act or of any other Act of Parliament or of any Order confirmed by or having the effect of an Act of Parliament whether passed confirmed or made before or after the passing of this Act the Corporation are empowered or required to form a sinking fund or loans fund the following provisions shall have effect with respect to the appropriate yearly sums and accumulations thereof required to be set apart for or paid into such sinking fund or loans fund for the purpose of providing for the repayment of moneys borrowed by the Corporation (that is to say) :—

(1) The Corporation may (in addition to any other powers for the time being vested in them) invest the said yearly sums and accumulations in statutory securities :

(2) The said yearly sums and accumulations shall be paid and provided out of the appropriate fund rate or revenue of the Corporation and any interest dividends and annual proceeds arising from the investment thereof or of any moneys standing to the credit of any sinking or loans fund as aforesaid at or after the passing of this Act shall be paid to the credit and form part of the appropriate revenue of the Corporation.

Power to invest certain funds in statutory securities.

17. When under the provisions of any Act of Parliament or of any Order confirmed by or having the effect of an Act of Parliament whether passed confirmed or made before or after the passing of this Act the Corporation are empowered or required to form a

A.D. 1926.

reserve or renewals fund or an insurance fund they may (in addition to any other powers for the time being vested in them) invest such reserve renewals or insurance fund and the interest on the investments of such reserve renewals or insurance fund in statutory securities.

Use of moneys forming part of sinking and other funds.

18. Section 131 (Use of moneys forming part of sinking and other funds) of the Act of 1923 is hereby repealed and notwithstanding anything contained in any previous enactment the Corporation may use for the purpose of any statutory borrowing power exerciseable by them any moneys forming part but not for the time being required for the purposes of any fund accumulated for the redemption of debt or as a reserve insurance or superannuation fund (in this section referred to as "the lending fund") subject to the following conditions :—

(1) The moneys so used shall be repaid to the lending fund within the period by the methods and out of the fund rate or revenue within by and out of which a loan raised under the statutory borrowing power would be repayable :

Provided that the Corporation shall repay to the lending fund the moneys so used or the balance thereof for the time being outstanding as the case may be as and when the same shall be required for the purposes of the lending fund and may if they so resolve repay the same at any time within the period aforesaid and in either case the repayment shall be made out of the fund rate or revenue aforesaid or out of moneys which would have been applicable to the repayment of a loan if raised under the statutory borrowing power :

(2) Interest shall be paid to the lending fund on any moneys so used and for the time being not repaid at such rate per centum per annum as may be determined by the Corporation to be equal as nearly as may be to the rate of interest which would be payable on a loan raised on mortgage under the statutory borrowing power and such interest shall be paid out of the fund

rate or revenue which would be applicable to the payment of interest on a loan raised under the statutory borrowing power:

(3) The statutory borrowing power shall be deemed to be exercised by such use as fully in all respects as if a loan of the same amount had been raised in exercise of the power and the provisions of any enactment as to re-borrowing of sums raised under the statutory borrowing power shall apply accordingly.

Receipt in case of persons not sui juris.

19. If any moneys are payable to a mortgagee or stockholder being a minor idiot or lunatic the receipt of the guardian or committee of his estate shall be a sufficient discharge to the Corporation.

Evidence of transfer or transmission of securities.

20. It shall not be obligatory on the Corporation to receive or register any transfer assignment certificate of death burial bankruptcy or marriage probate letters of administration or other document evidencing a transmission of any authorised security (except securities issued under the Local Loans Act 1875 and securities to which regulations made under section 52 of the Public Health Acts Amendment Act 1890 apply) except upon the production to and temporary deposit with the town clerk or registrar of stock of the Corporation of the security or the certificate thereof for the purpose of the endorsement thereon of a memorandum of such transmission or the issue of a new security or certificate thereof and in case of the issue of a new security or certificate for the purpose of cancellation of the security or certificate so deposited.

Audit of accounts of Corporation by appointed auditor.

21.—(1) The Corporation may from time to time appoint and pay one or more members of the Institute of Chartered Accountants or of the Society of Incorporated Accountants and Auditors to act as auditor or auditors of the accounts of the Corporation in such manner as the Corporation direct in lieu of the auditors appointed under the Municipal Corporations Acts Any auditor or auditors appointed by the Corporation under the provisions of this section and for the time being holding office is or are in this section referred to as " the appointed auditor."

(2) If and while the Corporation exercise the powers of subsection (1) of this section section 25 of the Municipal

A.D. 1926. Corporations Act 1882 shall not apply within the borough.

(3) Every appointment of an auditor or auditors under this section shall be in writing under the seal of the Corporation and may be for such term and subject to such conditions as the Corporation may think fit.

(4) Subsection (1) of section 27 of the Municipal Corporations Act 1882 shall apply and have effect as if the appointed auditor had been referred to therein instead of the borough auditors and in addition the appointed auditor shall be entitled to require from any officer of the Corporation all such papers books accounts vouchers sanctions for loans information and explanations as may be necessary for the performance of his duties.

(5) The appointed auditor shall include in or append to any certificate given by him with reference to the accounts of the Corporation such observations and recommendations (if any) as he may deem necessary or expedient with respect to the accounts and any matter arising thereout or in connection therewith.

Expenses of execution of Act.

22. All expenses incurred by the Corporation in carrying into execution the provisions of this Act with respect to which no other provision is made shall be defrayed out of the borough fund and borough rate.

Costs of Act.

23. The costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act as taxed and ascertained by the taxing officer of the House of Lords or of the House of Commons shall be paid by the Corporation out of the borough fund or such other funds and revenues and in such proportions as the Corporation may by resolution determine or out of money to be borrowed under this Act for that purpose

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