

Eastbourne Harbour Act 1980

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ELIZABETH II



1980 CHAPTER xxxix

An Act to authorise Eastbourne Harbour Company Limited to construct works; and for other purposes.

[8th August 1980]

WHEREAS Eastbourne Harbour Company Limited (hereinafter referred to as " the Company ") are a company within the meaning of the Companies Act 1948 and are a company limited by shares: 1948 c. 38.

And whereas all the shares in the Company are owned by the Trustees of the Chatsworth Settlement (hereinafter referred to as " the Trustees "):

And whereas the Trustees own some 158 hectares of land in the borough of Eastbourne known as the Crumbles which they have developed or intend to develop for residential, commercial and recreational purposes:

And whereas outline planning permission for the said development has been granted by the local planning authority:

And whereas it would be of public and local advantage to provide, in conjunction with the said development, facilities for yachts and small boats:

And whereas it is expedient that the Company should be authorised to construct the harbour works described in this Act:

And whereas it is expedient that the other provisions of this Act be enacted:

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

And whereas plans and sections showing the lines and levels of the works by this Act authorised and the lands which may be used for the purposes thereof, and a book of reference to the said plans containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of those lands and describing the same, were deposited in the month of November 1979, in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the proper officer of the East Sussex County Council, and such plans, sections and book of reference are respectively referred to in this Act as the deposited plans, sections and book of reference:

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

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Eastbourne Harbour Act 1980.

Interpretation.

2.—(1) In this Act unless there be something in the subject or context repugnant to such construction—

"the Act of 1847" means the Harbours, Docks and Piers Clauses Act 1847;

1847 c. 27.

"the borough" means the borough of Eastbourne;

"the borough council" means the Eastbourne Borough Council;

"the Company" means Eastbourne Harbour Company Limited;

"daily fine" means a fine for each day on which an offence is continued after conviction thereof;

"duties of customs and excise" includes any tax, levy, surcharge or other sum to the collection of which the general provisions of the Customs and Excise Management Act 1979 relating to customs or excise have been applied by statute;

1979 c. 2.

PART I —*cont.*

" enactment " means any Act, whether public general or local, or any order made thereunder, or any provision in any Act or in any such order;

" the harbour " means the locked basin and the tidal harbour or either of them;

" the harbour master " means the harbour master appointed by the Company and includes his authorised deputies and assistants and any person authorised by the Company to act in that capacity;

" the harbour undertaking " means the undertaking of the Company in connection with the works, as from time to time authorised, or any part thereof;

" hovercraft " has the same meaning as in the Hovercraft Act 1968; 1968 c. 59.

" the level of high water " means the level of mean high-water springs;

" the limits of deviation " means the limits of deviation authorised by section 8 (Power to deviate) of this Act;

" the locked basin " means Work No. 4;

" the statutory maximum " means the prescribed sum as defined in section 28 (7) of the Criminal Law Act 1977; 1977 c. 45.

" the tidal harbour " means Works Nos. 7 and 8;

" tidal work " means so much of any work authorised by this Act as is on, under or over tidal waters or tidal lands below the level of high water;

" the Trinity House " means the Corporation of Trinity House of Deptford Strond;

" vessel " includes any thing (howsoever propelled or moved) constructed or used to carry persons or goods by water and (without prejudice to the generality of the foregoing) includes in particular a hovercraft, a hydrofoil vessel and, except for the purpose of levying rates, any seaplane on or in the water;

" the water authority " means the Southern Water Authority;

" the works " means the works authorised by section 4 (Power to construct works) of this Act and any works constructed under section 6 (Subsidiary works) and section 7 (Works for the accommodation of vessels) of this Act for or in connection with, or subsidiary to, any of those works and includes those works as extended, enlarged, altered, replaced or relaid under subsection (2) of the said section 4 and " work " shall be construed accordingly.

(2) This Act shall be read as if the words " or thereabouts " were inserted after each distance and area mentioned in section 4 (Power to construct works) of this Act.

PART I —*cont.*

(3) Any reference in this Act to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Act.

(4) References in this Act to reference points shall be construed as references to National Grid reference points.

Incorporation of Act of 1847.

3.—(1) The provisions of the Act of 1847 (except sections 6 to 13, 16 to 27, 32, 33, 37 to 43, 49, 50, 66, 67, 81, 82, 84 to 90, 95, 97, 98 and 101) so far as the same are applicable to the purposes of and are not inconsistent with the provisions of this Act are hereby incorporated with this Act.

(2) In the construction of the provisions so incorporated—

(i) the expression " special Act " shall mean this Act;

(ii) the expression " the harbour, dock or pier " shall mean the harbour;

(iii) the prescribed limits shall be the Company's jurisdiction as defined by section 17 (Limits of jurisdiction) of this Act;

(iv) the word " vessel " shall have the meaning assigned to it by section 2 (Interpretation) of this Act;

(v) the word " rates " in section 29 of the Act of 1847 shall not include mooring rates.

PART II

WORKS

Power to construct works.

4.—(1) Subject to the provisions of this Act, the Company may make and maintain in the lines and situations and upon the lands delineated on the deposited plans and described in the deposited book of reference and according to the levels shown on the deposited sections the following works in the borough and on the bed of the sea, that is to say:—

Work No. 1 A western sea wall or embankment commencing at reference point TQ6435 0193, extending in a south-west by west direction for a distance of 50 metres, thence in a south-south-west, south-east by east, southerly and south-easterly direction for a distance of 730 metres, thence in an arc of 30 metres to reference point TQ6438 0127:

Work No. 2 An eastern sea wall or embankment commencing at reference point TQ6440 0197 and extending in a north-easterly direction for a distance of 90 metres,

PART II —*cont.*

thence in a south-easterly, south-south-westerly, southerly and south-easterly direction for a distance of 760 metres to reference point TQ6453 0133:

Work No. 3 A lock or locks situate between Works Nos. 1 and 2 commencing at reference point TQ6433 0201 and terminating at reference point TQ6439 0193:

Work No. 4 A locked basin having an area not exceeding 40 hectares:

Work No. 5 A south-western breakwater commencing at reference point TQ6435 0117 and extending seaward in an easterly and north-easterly direction in an arc for a distance of 540 metres and there terminating:

Work No. 6 A north-eastern breakwater commencing at reference point TQ6455 0168 and extending seaward in a south-easterly and southerly direction in an arc for a distance of 300 metres and there terminating:

Work No. 7 An inner tidal basin bounded by Works Nos. 1, 2 and 3:

Work No. 8 An outer tidal basin and entrance channel bounded on the south-western side by Work No. 5 and on the north-eastern side by Work No. 6.

(2) The Company may, within the limits of deviation for the said works, extend, enlarge, alter, replace or relay the same.

(3) Subject to the provisions of this Act, the Company may by means of Works Nos. 5 and 6 enclose and reclaim from the foreshore and bed of the sea and may hold and use as part of the harbour undertaking so much of the foreshore and bed of the sea as is included within the limits of deviation and is required for or in connection with the said works.

Power to dredge.

5. Subject to the provisions of this Act, the Company may, for the purposes of constructing and maintaining the works or otherwise for the purposes of the harbour undertaking, from time to time deepen, dredge, scour, cleanse, alter and improve the foreshore and bed of the sea and blast any rock within the harbour or any part or parts thereof, or the channels and approaches thereto, and (subject to the consent required by section 35 (Crown rights) of this Act) may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) from time to time dredged by them: 1894 c. 60.

Provided that no materials so dredged by them shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

PART II —*cont.*

Subsidiary works.

6. Subject to the provisions of this Act, the Company may from time to time within the limits of deviation erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the works authorised by section 4 (Power to construct works) of this Act.

Works for the accommodation of vessels.

7. Subject to the provisions of this Act, the Company may within the harbour from time to time construct, maintain, alter, improve, enlarge and extend such temporary or permanent works for the accommodation or convenience of vessels as they think fit, including, without prejudice to the generality of the foregoing, pontoons, stagings, quays, jetties, piers, approaches, slipways, landing places, berthing heads, mooring posts, mooring buoys, moorings, bollards, walkways, buoys, navigation marks and lights.

Power to deviate.

8. In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation shown on those plans and may deviate vertically from the levels of those works shown on the deposited sections to any extent upwards or downwards.

Works to be within county of East Sussex, etc.

9.—(1) So much of the works as is beyond mean low water shall be deemed to be within—

(*a*) the county of East Sussex;

(*b*) the borough;

(*c*) the petty sessional division of Eastbourne;

(*d*) the Eastbourne No. 5 (Langney) electoral division; and

(*e*) the St. Anthony's Ward.

(2) During the period between the passing of this Act and the date when Works Nos. 5 and 6 have been completed each of the areas mentioned in subsection (1) above shall be deemed to include all lands beyond mean low water which are within the limits of deviation.

1841 c. 30.

(3) Nothing in this section shall require the performance of any functions under the Ordnance Survey Act 1841 until the Company have certified in writing to the Director General of Ordnance Survey that Works Nos. 5 and 6 have been completed.

Power to take water from sea.

10.—(1) The Company may from time to time for the purposes of the works take, impound and use water from, and discharge water to, the sea.

1971 c. 60.

(2) Nothing in this section shall exempt the Company from the provisions of the Prevention of Oil Pollution Act 1971.

PART II —*cont.*

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

11.—(1) A tidal work shall not be constructed, extended, enlarged, altered, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

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

(*a*) the Secretary of State may by notice in writing require the Company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

(*b*) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Provision against danger to navigation.

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

(2) If the Company fail to notify the Trinity House as required by this section or to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed.

13.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work authorised by this Act and consisting partly of a tidal work and partly of works on or over land above the level of high water, is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.

PART II —*cont.*

(3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Company, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Company.

Survey of tidal works.

14. The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work constructed by the Company, or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Company.

Permanent lights on tidal works.

15.—(1) After the completion of a tidal work, the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Trinity House shall from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this section, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Lights on tidal works during construction.

16.—(1) The Company shall at or near a tidal work during the whole time of the construction, extension, enlargement, alteration, replacement or relaying thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART III

HARBOUR MANAGEMENT

Limits of jurisdiction.

17. The limits within which the Company shall have authority (including the powers to levy dues and charges) and within which the powers of the harbour master may be exercised shall extend over the works and the area of water within a distance of 80 metres in any direction from Works Nos. 5 and 6.

PART III —*cont.*

Harbour to be for use of pleasure craft.

18.—(1) Subject to the provisions of this section, the harbour shall be for the exclusive use of pleasure craft and other similar vessels and accordingly the Company shall not permit any vessel other than a pleasure craft to use the harbour:

Provided that the Company may permit the harbour to be used by any of the following vessels:—

(*a*) a vessel for the carriage of not more than 40 passengers;

(*b*) a fishing vessel within the meaning of section 27 of the Sea Fish Industry Act 1970; 1970 c. 11.

(*c*) a vessel for the time being employed in connection with or for the purposes of the harbour undertaking;

(*d*) a vessel for the time being employed in the supply of goods for use or for sale at any premises situate on lands adjacent to the harbour; or

(*e*) a lifeboat or a vessel used by the coastguard service, the Trinity House or the Ministry of Defence.

(2) The tidal harbour shall, on payment of any rates, dues and charges from time to time levied by the Company, be open to any vessel (whether for the unshipping of goods or the landing of passengers therefrom or otherwise) in any case where it is obliged to use the tidal harbour from stress of weather, mechanical breakdown or other sufficient cause.

(3) In this section " pleasure craft " means any vessel not being a vessel for the carriage of passengers or goods for reward.

Power to make byelaws.

19.—(1) The Company may from time to time make, alter and repeal such byelaws as they think fit for all or any of the following purposes, that is to say:—

(*a*) for regulating the navigation of vessels within the harbour, including regulation of the speed and manner of navigation of vessels within the harbour and for preventing obstruction to vessels using the harbour;

(*b*) for regulating or prohibiting the mooring, careening, beaching or anchoring and keeping of vessels in the harbour;

(*c*) for regulating or prohibiting the placing, laying down, maintaining or using of moorings in the harbour and for prescribing the patterns and specification of moorings in the harbour;

PART III —*cont.*

(*d*) for regulating the launching of vessels within the harbour and the use of pontoons, slipways and landing places;

(*e*) for securing the good and orderly conduct of persons in vessels or otherwise in the harbour;

(*f*) for regulating or preventing the use of firearms in the harbour;

(*g*) for the prevention of nuisances in the harbour;

(*h*) for securing the safety of vessels and persons using and of property within the harbour;

(*i*) for regulating the removal or disposal of rubbish (including ballast, earth, clay or other refuse) and sewage from vessels in the harbour;

(*j*) for the prevention of the disposal of such rubbish and sewage as aforesaid in the harbour.

(2) Before making any byelaws under section 83 of the Act of 1847 or subsection (1) above the Company shall consult the borough council and the water authority.

(3) No byelaw made under this section shall apply to any lifeboat or the crew thereof while engaged on a life-saving mission or to any vessel belonging to or any officer of the Trinity House while engaged in carrying out his duties as such an officer.

(4) The byelaws which may from time to time be made by the Company in exercise of the powers in that behalf conferred on them by section 83 of the Act of 1847 and by subsection (1) above may provide for the imposition on summary conviction for the breach or non-observance of any of the byelaws of a fine not exceeding £50 and of a daily fine not exceeding £5.

1972 c. 70.

(5) Subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972, shall apply to all byelaws made by the Company in respect of the undertaking as if they were a local authority and the secretary of the Company were the proper officer of the local authority, and all fines imposed for the breach of any such byelaws shall be recoverable in manner provided by that Act for the recovery of fines.

(6) The said section 236, in its application to byelaws made under section 83 of the Act of 1847 or subsection (1) above, shall have effect as if in subsection (7) of that section, after the word " confirm " where it firstly occurs in that subsection the words " with or without modification " were inserted:

Provided that where the confirming authority proposes to make a modification which appears to him to be substantial, he shall inform the Company and require them to take any steps he thinks necessary for informing persons likely to be concerned with that

PART III —*cont.*

modification and shall not confirm the byelaws until there has elapsed such period as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Company and by other persons who have been informed of it.

(7) Byelaws made under this section shall be of no effect if and in so far as they are inconsistent with any byelaws made or having effect as if made by the water authority under section 33 of the Control of Pollution Act 1974 and for the time being in force. 1974 c. 40.

(8) The confirming authority for the purposes of the said section 236 shall be the Minister of Transport.

Extension of powers of harbour master to give directions.

20. Section 52 of the Act of 1847, as incorporated with this Act, in its application to the Company and to the harbour master—

(*a*) shall extend to empower the harbour master to give directions prohibiting the mooring of vessels in any particular part or parts of the harbour and in the area of water outside the harbour within a distance of 80 metres from Works Nos. 5 and 6; and

(*b*) shall not be construed so as to require the harbour master in emergency to give particular directions in the case of every vessel in respect of which it is desired to exercise any of the powers of that section, but in pursuance of that section for all or any of the purposes thereof the harbour master shall be entitled in emergency to give general directions applicable to all vessels or to particular classes of vessels.

Directions of harbour master need not be in writing.

21. Section 53 of the Act of 1847, in its application to the Company and the harbour master, shall not be construed so as to require the harbour master to serve a notice in writing of his directions upon the master of a vessel and such directions may be given orally or otherwise communicated to the master on any occasion when it is not reasonably practicable for a written notice to be served on the master.

Harbour charges, etc.

22. The Company shall have power to levy such dues and charges for the use of the harbour and for the services and facilities provided thereat subject to such terms and conditions as they think fit and shall publish and prominently display a list of such dues and charges; and the provisions of sections 30, 31, 32 and 42 of the Harbours Act 1964, shall not apply with respect to any of the dues and charges so levied, or to any accounts relating to the harbour undertaking. 1964 c. 40.

Conditions relating to payment of charges.

23. Dues and charges demanded at the harbour shall be payable subject to such conditions as the Company may from time to time specify in their published list of charges.

PART III —*cont.*

How charges to be paid.

24. The several dues and charges which the Company for the time being demand, take and recover in respect of vessels shall be payable before the removal from the harbour of any vessel in respect of which they are payable and may be demanded, taken and recovered by such persons, at such places, at such times and under such regulations as the Company may from time to time appoint.

As to payment of charges.

25.—(1) Dues and charges payable to the Company shall be payable by the owner of any vessel or goods in relation to which the dues or charges are payable.

(2) Where dues or charges payable to the Company may be recovered by them from more than one person, the said persons shall be jointly and severally liable.

Deposit for charges.

26. The Company may, if they think fit, require any person liable, or to become liable, to pay dues or charges to the Company to deposit with their collector, or to guarantee such sum as, in the opinion of the Company, is reasonable having regard to the probable amount thereof.

Penalty for evading payment of charges.

27. If the owner of any vessel or goods shall at any time elude or evade, or attempt to elude or evade, payment of or wrongfully refuse to pay any dues or charges payable by such owner to the Company at the time when the same shall become due and payable, he shall be liable to pay to the Company a sum of £50 or a sum equal to three times the amount of such dues or charges (whichever be the greater), which sum shall be a debt due to the Company and shall be recoverable by the Company in any court of competent jurisdiction.

Powers with respect to disposal of wrecks.
1894 c. 60.

28.—(1) In their application to the Company, sections 530 and 532 of the Merchant Shipping Act 1894 shall have effect—

(*a*) subject to the provisions of section 29 (Protection of Crown interests in wrecks) of this Act; and

(*b*) in relation to a vessel sunk, stranded or abandoned before as well as after the passing of this Act.

(2) Subject to subsection (3) below, and to any enactment for the time being in force limiting his liability, the Company may recover as a simple contract debt from the owner of any vessel in relation to which they have exercised their powers under the said section 530 or the said section 532 any expenses reasonably incurred by them under those sections in relation to that vessel which are not reimbursed out of the proceeds of sale (if any) within the meaning of those sections.

PART III —*cont.*

(3) Except in a case which is in the opinion of the Company a case of emergency, subsection (2) above shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by the said section 530, other than the power of lighting and buoying, the Company have given to the owner of the vessel not less than 48 hours' notice of their intention to do so; and if before the notice expires the Company receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, and no direction is served in respect of the vessel under paragraph (*b*) of subsection (2) of the said section 29, he shall be at liberty to do so, and the Company shall not exercise the powers aforesaid in relation to that vessel until the expiration of 7 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 him by the Company.

(4) Notice under subsection (3) above to the owner of any vessel may be served by the Company either by delivering it to him or by sending it to him by registered post or the recorded delivery service addressed to him at his 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 Company or is not in the United Kingdom, by displaying the notice at the office of the principal officer of the Company at or nearest to the harbour for the period of its duration.

(5) In this section the expression " owner " in relation to any vessel includes the person who was the owner of the vessel at the time of the sinking, stranding or abandonment thereof.

Protection of Crown interests in wrecks. 1894 c. 60.

29.—(1) Without prejudice to section 741 of the Merchant Shipping Act 1894, the powers conferred on the Company by sections 530 and 532 of the said Act of 1894 shall not be exercisable—

(*a*) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;

(*b*) except with the consent of the Secretary of State, which may be given with or without such a direction as is referred to in paragraph (*b*) of subsection (2) below, in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty but which, at the time when the

PART III
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vessel was sunk, stranded or abandoned—

(i) had been required to be placed at the disposal of Her Majesty or of a government department; and

(ii) was appropriated to the service, under the direction and control of the Secretary of State, of Her Majesty's ships of war.

(2) The Company shall give notice in writing to the Secretary of State for Defence and to the Secretary of State for Trade of any decision of the Company to exercise in relation to any vessel referred to in paragraph (*b*) of subsection (1) above any of the powers aforesaid other than the power of lighting and buoying and, except in a case which is in the opinion of the Company a case of emergency, shall not proceed with the exercise thereof—

(*a*) except with the consent of the Secretary of State for Defence and the Secretary of State for Trade, before the expiration of a period of 14 days from the giving of the notice; or

(*b*) if before the expiration of the said period there is served on the Company a direction by the Secretary of State for Defence or the Secretary of State for Trade that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where, in any such case as aforesaid, the Company proceed to exercise those powers without the consent and before the expiration of the period mentioned in paragraph (*a*) of this subsection or after a direction has been served on them as aforesaid, they shall not in the exercise of those powers use any explosives and if, before the expiration of the period aforesaid, such a direction as aforesaid is served on them, shall not be entitled to exercise the power of sale conferred by the said section 530 or the power conferred by subsection (2) of section 28 (Powers with respect to disposal of wrecks) of this Act:

Provided that—

(i) the Company shall not be required to give notice under this subsection in respect of any vessel in respect of which they have received a consent under paragraph (*b*) of subsection (1) above, but any direction such as is referred to in paragraph (*b*) of this subsection accompanying that consent shall be deemed for the purposes of this subsection and of subsection (3) of the said section 28 to have been duly served under paragraph (*b*) of this subsection;

(ii) the prohibition on the use of explosives imposed by this subsection shall not apply to the use for cutting away the superstructure of a vessel of such small explosive

charges as may for the time being be approved by the Secretary of State for the purposes of this proviso. PART III —*cont.*

(3) Without prejudice to the power of sale conferred on the Company by the said section 530, the Company shall hold and dispose of any wreck within the meaning of Part IX of the said Act of 1894, raised, removed or recovered under that section, and any surplus proceeds of sale within the meaning of that section, in accordance with such directions (if any) as may be given to them by the receiver of wreck; and on exercising the said power of sale in the case of any property the Company shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by the Company under that section.

(4) Any limitation on the powers of the Company in relation to any vessel arising by virtue of subsection (1) or subsection (2) above shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Trinity House by section 531 of the said Act of 1894.

PART IV

MISCELLANEOUS AND GENERAL

Power to sell or lease harbour undertaking.

30. At any time after the works have been completed the Company may from time to time sell or lease the harbour undertaking or any part thereof (hereafter in this section referred to as " such undertaking ") and the purchaser or lessee, as the case may be, shall have and may exercise to the extent authorised by his conveyance or lease, as the case may be, all or any of the powers conferred upon the Company by this Act in relation to such undertaking but shall be subject to all the restrictions, liabilities and obligations in respect of such undertaking to which the Company are subject, and shall perform all the duties of the Company under this Act in respect of such undertaking.

Power to mortgage harbour undertaking.

31. The Company may mortgage, charge or otherwise encumber the harbour undertaking.

For protection of borough council.

32.—(1) In this section " plans " includes sections, drawings and specifications.

(2) (*a*) Before commencing any work the Company shall (except in case of emergency) furnish to the borough council plans thereof for their reasonable approval and the borough council may either disapprove the plans or may give approval thereto, either with or without conditions.

PART IV —*cont.*

(*b*) The Company shall not commence any work until the plans so required to be submitted to the borough council have been approved in writing by the borough council or, if the borough council shall disapprove the plans or approve the plans, subject to any condition that is unacceptable to the Company, until the same shall have been settled by arbitration.

(3) If the borough council do not within two months of the submission to them of any plans pursuant to subsection (2) above intimate in writing to the Company their approval (either with or without conditions) or disapproval thereof, they shall be deemed to have approved of the same unconditionally.

(4) A work shall not be constructed otherwise than in accordance with such plans (with or without conditions) as may be approved or deemed to be approved by the borough council as aforesaid or settled by arbitration and shall be constructed to the reasonable satisfaction of the borough council, who shall be given reasonable notice of the date and time on and at which the work is to be commenced.

(5) If there shall be any inconsistency between any plans approved or deemed to be approved by the borough council or settled by arbitration under the provisions of this section or any conditions relating thereto and the plans approved by the Secretary of State under section 11 (Tidal works not to be executed without approval of Secretary of State) of this Act or any conditions or restrictions imposed by him under that section, the work shall be constructed in accordance with the plans approved by the Secretary of State and subject to the conditions or restrictions imposed by him.

(6) The Company shall not discharge or permit to be discharged into the waters of the harbour, or on to the foreshore or into the sea, any sewage or trade effluent, and shall so far as may be reasonably practicable secure that no sewage or trade effluent is discharged or carried into the waters of the harbour.

(7) The Company shall secure that floating refuse or litter is cleared from the waters of the inner harbour at such intervals as may be reasonably necessary to maintain a satisfactory standard of cleanliness in these waters.

(8) The Company shall at all reasonable times afford to the borough council and to all persons duly authorised by them access to any part of the works during and after the completion of the construction of the works for the purpose of ascertaining whether the provisions of this section are being complied with.

(9) Any difference arising between the Company and the borough council under this section shall be determined by arbitration.

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For protection of water authority.

33. For the protection of the water authority the following provisions shall, unless otherwise agreed between the Company and the water authority, apply and have effect:—

(1) In this section—

" plans " includes sections, drawings and specifications and reference to the plans of any work includes plans of any dredging or other operations to be carried out under section 5 (Power to dredge) of this Act for the purposes of constructing that work;

" the protected beach " means so much of the beach as lies between Work No. 6 and an imaginary line drawn due south from the eastern end of the platform of Cooden Beach Railway Station, being the beach within 9 kilometres or thereabouts from Work No. 6;

" sea defence work " means a river wall or defence work on or comprising the protected beach and for the time being vested in, or under the control of, the water authority for the purposes of their land drainage functions;

" shingle " includes gravel and sand;

" watercourse " includes any outfall, pipe, culvert, sluice, conduit or other structure which discharges water to the sea:

(2) (*a*) Before commencing any work the Company shall submit to the water authority plans thereof for their reasonable approval and the water authority may either disapprove the plans or may give approval thereto either with or without conditions:

Provided that, in the case of any work to be carried out under section 6 (Subsidiary works) or section 7 (Works for the accommodation of vessels) of this Act in any emergency, the Company shall not be required to submit plans thereof to the water authority before commencing the work but shall give notice of the work to the water authority as soon as reasonably practicable and shall submit plans of the work to the water authority as soon as reasonably practicable thereafter and, so far as reasonably practicable in the circumstances, subparagraph (*b*) of this paragraph and paragraphs (3) to (5) below shall apply in respect of any such work;

(*b*) The Company shall not commence any work until the plans so required to be submitted to the water authority have been approved in writing by the water authority or, if the water authority shall disapprove the plans or

PART IV —*cont.*

approve the plans subject to any condition that is unacceptable to the Company, until the same shall have been settled by arbitration:

(3) If the water authority do not within two months of the submission to them of any plans pursuant to paragraph (2) above intimate in writing to the Company their approval (either with or without conditions) or disapproval thereof, they shall be deemed to have approved of the same unconditionally:

(4) A work and any dredging or other operation to be carried out under the said section 5 for the purpose thereof shall not be constructed or carried out otherwise than in accordance with such plans as may be approved or deemed to be approved (with or without conditions) by the water authority as aforesaid or settled by arbitration and shall be constructed or carried out, as the case may be, to the reasonable satisfaction of the water authority who shall be given reasonable notice of the date and time on and at which the work is to be commenced:

(5) If any work is carried out in contravention of the foregoing provisions of this section, the water authority may remove or alter the work and recover from the Company the expenses incurred in so doing:

(6) (*a*) Plans of any tidal work shall not be submitted by the Company to the Secretary of State for his approval under section 11 (Tidal works not to be executed without approval of Secretary of State) of this Act until plans of that work have been approved by the water authority or settled by arbitration under this section with or without conditions and if on the submission of plans to the Secretary of State the Secretary of State requires any alteration of the plans so approved or settled under this section or of any conditions relating thereto, the Company shall, not less than 28 days before commencing the work, inform the water authority of any such alteration;

(*b*) Subject to compliance with sub-paragraph (*a*) of this paragraph, if there shall be any inconsistency between any plans approved or deemed to be approved by the water authority or settled by arbitration under the provisions of this section or any conditions relating thereto and the plans approved by the Secretary of State under the said section 11 or any conditions or restrictions imposed by him under that section the work shall be constructed in accordance with the plans approved by the Secretary of State and subject to the conditions or restrictions imposed by him:

PART IV —*cont.*

(7) (*a*) Before commencing any dredging or other operation authorised by section 5 (Power to dredge) of this Act, not being an operation of which a plan is submitted under paragraph (2) above, the Company shall submit to the water authority a plan defining the nature, extent and manner of the operation and particulars as to the place and manner of disposal of materials dredged in the course of the operation;

(*b*) An operation to which sub-paragraph (*a*) of this paragraph applies shall not be carried out otherwise than in accordance with such plan and in such manner as may be approved by the water authority (with or without conditions) or, in the event of difference arising between the Company and the water authority, as may be settled by arbitration;

(*c*) If the water authority do not within two months of the submission of any plan pursuant to sub-paragraph (*a*) of this paragraph intimate to the Company in writing their approval (either with or without conditions) or disapproval thereof, they shall be deemed to have approved of the same unconditionally:

Provided that, if there shall be any inconsistency between any plan approved or deemed to be approved by the water authority or settled by arbitration under this paragraph or any conditions relating thereto and any requirement, condition or restriction of the Secretary of State under section 5 (Power to dredge) of this Act, the Company shall be deemed to have complied with the provisions of this paragraph if they have complied with the requirement, condition or restriction of the Secretary of State;

(*d*) The Company shall not be required to comply with sub-paragraph (*a*) of this paragraph in a case of emergency but in such a case they shall give to the water authority notice as soon as reasonably practicable and a plan defining the nature and extent of the operation as soon as reasonably practicable thereafter, and shall comply with sub-paragraph (*b*) of this paragraph so far as reasonably practicable in the circumstances:

(8) Without prejudice to the generality of any reference in the foregoing provisions of this section to the giving of a conditional approval to any plans submitted under paragraph (2) or paragraph (7) above, the water authority may attach to their approval such conditions (including conditions requiring the construction of protective works by, and at the expense of, the Company during the construction of any works or the carrying out

PART IV —*cont.*

of a dredging operation or wreck-raising operation) as are reasonably necessary to safeguard a sea defence work or watercourse against damage or to secure that the efficiency of a watercourse for land drainage purposes is not impaired:

(9) (*a*) If, by reason of the construction of any works or the carrying out of any dredging operation or wreck-raising operation, a sea defence work is interfered with, or the efficiency of a watercourse for land drainage purposes is impaired, the water authority may after giving notice in writing to the Company (except in case of emergency when notice shall be given as soon as reasonably practicable)—

(i) make good the sea defence work or watercourse to restore it to its former standard of efficiency; or

(ii) where necessary, construct some other work in substitution therefor;

and may recover from the Company the reasonable cost of so doing;

(*b*) For the purposes of this paragraph such cost shall include a proper proportion of the overhead charges of the water authority and the cost of executing and maintaining for such reasonable period as may be agreed between the Company and the water authority or, failing agreement, settled by arbitration, any works needed for remedying any depletion of shingle accumulated on the protected beach:

(10) If the water authority have reasonable ground for believing that a sea defence work or watercourse is likely to be damaged, or the efficiency of a watercourse for land drainage purposes is likely to be impaired, in any of the circumstances mentioned in the last foregoing paragraph, they may carry out such protective works as may be agreed between the water authority and the Company or as, failing agreement, may be settled by arbitration, and may recover the reasonable cost thereof (including a proper proportion of the overhead charges of the water authority) from the Company:

(11) The Company shall not without the consent of the water authority construct any work so as to obstruct to an unreasonable extent access to a sea defence work by the water authority, their officers, servants, workmen, contractors and agents, together with any vehicles, plant and machinery which may be reasonably necessary, but such consent shall not be unreasonably withheld and may be given subject to reasonable terms and conditions:

PART IV —*cont.*

(12) (*a*) The Company shall bear and pay to the water authority the costs reasonably incurred in making such survey as may be necessary to enable an estimate to be made of the amount of shingle accumulated on the protected beach immediately before the commencement of the construction of the works and such other surveys as may from time to time thereafter be reasonably necessary for the purpose of ascertaining whether the shingle accumulated on the protected beach has been or is being depleted;

(*b*) Before making any survey to which this paragraph applies the water authority shall give notice thereof in writing to the Company and on the completion of any such survey the water authority shall notify the Company of the information obtained thereby:

(13) The fact that any work or operation has been constructed or carried out in accordance with any plans approved by the water authority or any directions or award of an arbitrator shall not relieve the Company from any liability under paragraphs (9) and (10) above:

(14) Any difference arising between the Company and the water authority under this section shall be determined by arbitration.

Provisions applicable to last two preceding sections.

34. In any case where any plans have been submitted both to the borough council under section 32 (For protection of borough council) of this Act and to the water authority under section 33 (For protection of water authority) of this Act and one of those authorities disapprove such plans or approve such plans subject to any condition that is unacceptable to the Company, then in any arbitration proceedings which may take place as a result of such disapproval or approval the authority which are not a party to those proceedings shall be entitled to be heard in such proceedings and the plans as settled by any such arbitration of which that authority have had due notice from the Company before the commencement of the proceedings shall be deemed to have been approved by that authority, whether or not they have been heard in the proceedings.

Crown rights.

35. Nothing in this Act shall affect prejudicially any estate, right, power, privilege, or exemption of the Crown, and, in particular and without prejudice to the generality of the foregoing, nothing herein contained shall authorise the Company to take, use, or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land, hereditaments, subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under

PART IV —*cont.*

the management of the Crown Estate Commissioners or belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of those commissioners on behalf of Her Majesty or, as the case may be, the consent in writing of that government department first had and obtained for that purpose.

Inquiries.

36. The Minister of Transport and the Secretary of State may each cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval, or the making of any order, or the confirmation of any byelaw under this Act and section 250 of the Local Government Act 1972 shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

1972 c. 70.

Defence of due diligence.

37.—(1) In proceedings for an offence under any provision of this Act mentioned in subsection (2) below or under any byelaws made thereunder it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The provisions referred to in subsection (1) above are the following:—

Section 12 (Provision against danger to navigation);

Section 15 (Permanent lights on tidal works);

Section 16 (Lights on tidal works during construction);

Section 19 (Power to make byelaws).

(3) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying, or assisting in the identification of, that other person.

Arbitration.

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

Planning.

39. In their application to development authorised by this Act, article 3 of, and Class XII in Schedule 1 to, the Town and Country Planning General Development Order 1977 (which

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permit development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.

Costs of Act.

40. The costs, charges and expenses preliminary to, and of and incidental to, the applying for and the preparing, obtaining and passing of this Act shall be paid by the Company.

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