CHAPTER 28.

An Act to make provision for the acquisition and construction by local authorities of harbours, piers, ferries and boatslips in Scotland, for the construction of new works connected therewith, and for the fixing and revision of dues thereat, and at certain inland navigation undertakings, and for other purposes relating to the matters aforesaid. [6th May 1937.] A.D. 1937.

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:—

PART I.

TRANSFER OF HARBOURS, &C., to LOCAL AUTHORITIES.

Transfer of harbours, &c., to local authorities.

1.—(1) It shall be lawful for the owner of any marine work to transfer it, on such terms as may be agreed, to any local authority authorised by the Secretary of State under this section to accept such transfer.

(2) The Secretary of State may authorise a local authority to accept a transfer of a marine work if the local authority is either—

(*a*) the council of any county or burgh within which the marine work is wholly or partly situated; or

(*b*) in the case of a marine work situated wholly in a burgh, the council of the county within which such burgh is situated; or

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PART I. —*cont.*

(c) in the case of a marine work situated wholly in a county or partly in one county and partly in another county, the council of any burgh in such county or in either of such counties situated within ten miles of the marine work:

Provided that—

(i) where the transfer of a marine work to any one of two or more councils could be authorised by the Secretary of State in pursuance of the foregoing provisions, it shall be lawful for such councils, or for any two or more of them, to combine for the purposes of a transfer to them of that marine work on such terms and conditions as may be agreed (including provision for the appointment of a joint committee), and it shall be lawful for the Secretary of State to authorise any councils so combining to accept jointly such transfer; and

(ii) before authorising any council to accept a transfer of a marine work not wholly situated in its own area, and before authorising any councils in combination to accept jointly a transfer of the marine work, the Secretary of State shall afford to every council who could be authorised to accept a transfer of the marine work in pursuance of the foregoing provisions, an opportunity of making representations.

(3) The power of transfer conferred by subsection (1) of this section on the owner of a marine work shall be exercisable by any local authority in whom a marine work is vested whether by transfer under the said subsection or otherwise.

Compulsory acquisition of marine work.

2.—(1) Where a local authority are desirous of acquiring a marine work of which they could be authorised to accept a transfer under this Part of this Act and are unable to do so by agreement on terms which are in their opinion reasonable they may purchase the marine work compulsorily by means of a compulsory purchase order made by them and confirmed by the Secretary of State in accordance with the provisions of Part I of the First Schedule to this Act.

(2) Any two or more councils who might combine for the purposes of a transfer to them of a marine work shall

have the like power of combining for the purpose of the compulsory purchase of that marine work and may purchase the same compulsorily by means of such a compulsory purchase order as is mentioned in the foregoing subsection.

(3) The provisions of Part II of the First Schedule to this Act shall have effect with regard to the validity and date of operation of compulsory purchase orders made under this section.

(4) At any time within six weeks after the determination of any question of disputed compensation payable in respect of a marine work or of any interest therein in pursuance of a compulsory purchase order made under this section, the local authority may, unless they have exercised any power of entry on the marine work, withdraw any notice to treat served on any person interested in the marine work, and intimation of any such withdrawal shall be given forthwith by the local authority to the Secretary of State, and the compulsory purchase order shall thereupon cease to be operative.

(5) Where, in pursuance of the last foregoing subsection, a local authority withdraw a notice to treat, they shall be liable to pay to the person to whom such notice was given, and to any other person interested in the marine work, compensation for any expense properly incurred by him in connection with the making of the compulsory purchase order, or with his claim to compensation, and the amount of such compensation shall, in default of agreement, be determined in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919. 9 & 10 Geo. 5. c. 57.

(6) No award of compensation in respect of a marine work or of any interest therein made in pursuance of a compulsory purchase order under this section shall be enforceable before the expiration of six weeks from the date of such award, and where, in pursuance of subsection (4) of this section, a notice to treat has been withdrawn, any award of compensation to the person on whom such notice was served shall cease to have effect.

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PART I. —*cont.*

Effect of transfers and acquisitions of marine works.

3.—(1) Nothing in any Act whereby any marine work is vested in or belongs to any body or person shall be deemed to prevent the transfer of such work to a local authority under section one of this Act, and where any such marine work is so transferred or is purchased compulsorily by a local authority under section two of this Act the provisions of such first mentioned Act and of any other Act relating to the marine work shall, save as provided in section nineteen of this Act or in so far as they are inconsistent with the provisions of this Act, have effect as if the local authority had been the undertakers named in such first mentioned Acts.

(2) On the application of the local authority to whom any marine work has been transferred under section one of this Act or by whom any marine work has been purchased compulsorily under section two of this Act, the Secretary of State may, by order, make such adaptations or modifications of the provisions of any local Act applying to such marine work as may seem to him necessary to bring those provisions into conformity with the provisions of this Act.

PART II.

CONSTRUCTION OF WORKS.

Application for orders under 24 & 25 Vict. c. 45.

4. Any application under the General Pier and Harbour Act, 1861—

(*a*) by a local authority for a provisional order authorising the construction of a harbour, pier or boatslip which on completion will be a marine work within the meaning of this Act in such a situation that, if such work had been already in existence, the Secretary of State could have authorised its transfer to such local authority in pursuance of section one of this Act, or

(*b*) by any local authority or harbour authority for a provisional order authorising the construction of any new works or the improvement of existing works in connection with a marine work vested in such authority and (where such

authority is a harbour authority), certified by the Secretary of State under section eight of this Act as a marine work to which Part III of this Act ought to apply,

shall be made to the Secretary of State in lieu of the Minister of Transport.

Adaptation of 24 & 25 Vict. c. 45, &c.

5. In relation to any application under the last foregoing section of this Act, the General Pier and Harbour Act, 1861, and the Acts amending that Act shall apply, subject to the following modifications:—

(1) For references to the Board of Trade there shall be substituted references to the Secretary of State and for references to a secretary or assistant secretary there shall be substituted references to a person authorised by the Secretary of State:

(2) Section fifteen of the General Pier and Harbour Act, 1861, in so far as it relates to the levying and recovering of rates, the audit of the accounts of receipts and expenditure and the power to borrow shall not apply:

25 & 26 Vict. c. 19.

(3) Sections eight, eleven and nineteen of the General Pier and Harbour Act, 1861, Amendment Act, shall not apply:

(4) Sections three to five of the General Pier and Harbour Act, 1861, Amendment Act, and the schedule therein referred to shall not apply, but the applicants for an order shall publish notice of the application and of any proposed works in such manner as the Secretary of State may prescribe, and shall also send notice thereof in writing to the Board of Trade and the Minister of Transport:

(5) Section sixteen of the General Pier and Harbour Act, 1861, shall not apply, but in lieu thereof the following provisions shall have effect:—

(i) After a provisional order has been settled and made by the Secretary of State, he shall publish, in such manner as he thinks best adapted for informing persons affected, notice that he has settled the order and of the place where copies of the order as settled may be obtained, together with a statement that the order will become final and have

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PART II. —*cont.*

effect as an Act of Parliament unless within such period, not being less than thirty days, as may be stated in the notice, a memorial by—

(*a*) the county council of any county, or the town council of any burgh, in which the marine work or any part thereof is situate or is proposed to be constructed; or

(*b*) any twenty or more ratepayers in any such county or burgh,

is presented to the Secretary of State praying that the order shall not become law without confirmation by Parliament;

(ii) If no memorial has been presented by any such body or persons within such period as aforesaid or if every such memorial has been withdrawn, the Secretary of State shall confirm the order and the order shall thereupon have effect as if enacted in this Act, but if any such memorial has been presented and has not been withdrawn, the order shall have no effect unless and until confirmed by Parliament, and in such case the Secretary of State may bring in a Bill to confirm the order:

(6) No order shall be made without the consent in writing of the Minister of Transport and, in the case where any works are proposed to be constructed below high-water mark of ordinary spring tides, of the Board of Trade.

Adaptation of 24 & 25 Vict. c. 47.

6. Section three of the Harbours and Passing Tolls, &c., Act, 1861, shall, as regards any works authorised by a provisional order under this Part of this Act, be read and construed as if for any reference to the Board of Trade there were substituted a reference to the Secretary of State, and for any reference to a secretary or assistant secretary there were substituted a reference to any person authorised by the Secretary of State.

Minor works.

7.—(1) Where,—

(*a*) a local or harbour authority in whom a marine work to which Part III of this Act applies is vested are desirous of undertaking the construction, reconstruction, extension or

improvement of any works, machinery or conveniences ancillary to, or in connection with, the marine work; or

(*b*) a local authority are desirous of undertaking the construction, reconstruction, extension or improvement of a marine work within any of the following counties, namely the counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Zetland, or within any burgh situate therein,

and in either case it is shown to the satisfaction of the Secretary of State that the cost of the necessary operations will not exceed five thousand pounds, the Secretary of State may authorise such authority to undertake the same, subject to and in accordance with the procedure laid down in the Second Schedule to this Act.

(2) Any works constructed under the foregoing subsection which are ancillary to, or in connection with, a marine work shall, for the purposes of this Act or of any other Act relating to the marine work, be deemed to be part thereof.

PART III.

MAINTENANCE OF MARINE WORKS.

Maintenance of marine works.

8.—(1) This Part of this Act shall apply—

(*a*) to any marine work transferred to, or acquired by, a local authority under Part I of this Act;

(*b*) to any marine work vested in a local authority at the commencement of this Act which was constructed under the Western Highlands and Islands (Scotland) Works Act, 1891, or in respect of which such local authority has passed a resolution adopting this Part of this Act;

54 & 55 Vict. c. 58.

(*c*) to any marine work vested at the commencement of this Act in a harbour authority if, on an application by the authority, the Secretary of State certifies that in his opinion this Part of this Act ought to apply to the marine work;

(*d*) to any marine work constructed under or in pursuance of the provisions of Part II of this Act, or in connection with which any new works are constructed under those provisions.

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PART III. —*cont.*

(2) Notice of any meeting of a local authority at which a resolution to adopt this Part of this Act is to be moved shall be given in a newspaper circulating in the area of the local authority at least three weeks prior to the meeting.

(3) A local authority which has passed a resolution adopting this Part of this Act shall, as soon as may be after such passing, cause a copy of the resolution to be sent to the Secretary of State.

Powers of authority in relation to marine work.

9. The following provisions shall have effect as regards any marine work to which this Part of this Act applies :—

(*a*) The Secretary of State may, on the application of the local authority or harbour authority in whom the marine work is vested and after consultation with the Minister of Transport, fix the limits within which the powers of the authority and their officers may be exercised and the limits within which any dues for the time being leviable may be exacted;

(*b*) The authority may dredge, scour, deepen and maintain the said work and the entrances and channels thereof:

Provided that no rock, stone, shingle, sand, mud or other material shall be laid down or deposited in any place below high-water mark otherwise than in such position and under such restrictions as may be fixed by the Board of Trade;

(*c*) The authority may provide, construct or take on lease, and maintain, such warehouses, offices, sheds, weighing-machines, cranes, and other buildings and conveniences as may be found necessary in connection with the marine work for the accommodation of vessels thereat, and of traffic landed at or embarked at the same, and may make such reasonable charges as they may think fit for the use of any such warehouses, offices, sheds, weighing-machines, cranes, buildings or conveniences;

(*d*) Any person authorised by the Secretary of State, and any officer of Customs and Excise, or of the Coastguard, or of the Board of Trade, or of

the Ministry of Transport, or of the Fishery Board for Scotland, or of the Department of Agriculture for Scotland, being in the execution of his duty, and any person going to or returning from any lifeboat, or using any lifeboat or apparatus for saving life, and any person brought ashore from any vessel in distress, shall at all times have free ingress to and passage and egress on, along, through, and out of the marine work by land, and with their vessels and otherwise, without payment;

(*e*) Fishing vessels belonging to countries with which for the time being treaties exist exempting from dues and port charges such vessels when forced by stress of weather to seek shelter in the ports or on the coasts of the United Kingdom shall, when forced by stress of weather to make use of the marine work, and not breaking bulk while making such use, be exempt from any dues leviable in respect of the use of the marine work.

Application of 10 & 11 Vict. c. 27, &c.

10.—(1) The Harbours, Docks, and Piers Clauses Act, 1847, with the exception of sections six to thirteen, sixteen to nineteen, thirty, forty-seven, forty-nine, fifty, eighty-four, and eighty-five, shall, except in so far as the Secretary of State may direct, apply to any marine work to which this Part of this Act applies in like manner as if the marine work had been constructed in pursuance of an Act incorporating those provisions, and for the purposes of the said provisions this Part of this Act shall be deemed to be the special Act and the authority in whom the marine work is vested shall be deemed to be the undertakers.

(2) Any reference to a vessel in the provisions of the Harbours, Docks, and Piers Clauses Act, 1847, as applied by the foregoing subsection, shall be deemed to include a reference to a seaplane when on the surface of the water, and in section twenty-eight of the said Act any reference to a vessel shall also include a floating dock and a vessel of exceptional construction or method of propulsion:

Provided that—

(i) nothing in any of the aforesaid provisions shall, except in the case of a seaplane disabled by

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PART III. —*cont.*

an accident, authorise a harbour master to require the dismantling of a seaplane or any part thereof or the making of any alterations whatever of the structure or equipment of a seaplane; and

(ii) nothing in any of the aforesaid provisions or in any byelaw made in pursuance thereof shall prejudice any regulations for the investigation of accidents made under section twelve of the Air Navigation Act, 1920, as amended by any subsequent enactment.

10 & 11 Geo. 5. c. 80.

(3) Where the proceeds of the sale of any wreck in pursuance of section fifty-six of the Harbours, Docks, and Piers Clauses Act, 1847, as applied by subsection (1) of this section shall not be sufficient to meet the expenses reasonably incurred in removing such wreck, the deficiency shall be recoverable from the person who was the registered owner of the vessel at the time it was wrecked.

(4) A harbour authority in whom any marine work to which this Part of this Act applies is vested shall every year within six months after the first day of January cause accounts to be prepared, in such form as may be prescribed by the appropriate Department, of the total revenue and expenditure in respect of the work for the year ending the preceding thirty-first day of December and such accounts shall be duly audited by such person as may be appointed for the purpose by the Secretary of State and certified by the clerk or secretary of the authority, and a copy thereof shall be transmitted forthwith to the sheriff clerk of the county within which the marine work or the largest part thereof is situate, to the Minister of Transport and, if so required by the appropriate Department, to that Department. In the case of any harbour authority whose financial year begins on a day other than the first day of January, the foregoing provisions of this subsection shall have effect with the substitution of that other day for the first day of January, and of the day immediately preceding that other day for the thirty-first day of December.

(5) A local authority in whom a marine work to which this Part of this Act applies is vested shall, as soon as may be after receiving from the auditor, in pursuance of the Third Schedule to the Local Government (Scotland) Act, 1929, the certified duplicate abstract of accounts,

19 & 20 Geo. 5. c. 25.

cause a copy thereof, so far as relating to the marine work, to be sent to the Minister of Transport, and, if so required by the appropriate Department, to that Department.

Byelaws.

11.—(1) The purposes for which byelaws may be made under section eighty-three of the Harbours, Docks, and Piers Clauses Act, 1847, as applied to a marine work by section ten of this Act, shall extend to the prevention of obstruction or injury to the marine work, so however that no estate, interest or right of a profitable or beneficial nature in, over, or affecting the marine work shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any such byelaw without compensation being made or provided for the same by the authority making the byelaw, and such compensation shall in case of difference be determined by an arbiter appointed, in default of agreement between the parties, by the Secretary of State.

(2) The byelaws which may from time to time be made in the exercise of the power conferred by section eighty-three of the Harbours, Docks, and Piers Clauses Act, 1847, as applied by section ten of this Act, may provide for imposing a penalty not exceeding five pounds for any breach or failure to observe any such byelaw.

(3) No byelaws made under the aforesaid section as so applied shall come into operation until they have been confirmed by the Secretary of State:

Provided that, in the case of any such byelaws which the Secretary of State in consultation with the Board of Trade shall deem to concern primarily the interests of navigation, the Board of Trade shall be substituted for the Secretary of State, and the confirmation of any such byelaws by the Secretary of State or the Board of Trade shall be sufficient evidence of compliance with the provisions of this subsection.

Power to fix and to revise dues.

12.—(1) Notwithstanding anything in any Act with regard to tolls, dues or charges, the Secretary of State may, on the application of the authority in whom a marine work to which this Part of this Act applies is vested or of any person appearing to the Secretary of State to have an interest, after consultation with the Board of Trade and the Minister of Transport, fix a schedule of dues in respect of the use of the marine work and the authority in whom such work is vested shall levy and collect such dues as

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they think fit, not exceeding those specified in such schedule and except in any case where the approval of the Secretary of State has been obtained not being less than seventy-five per centum thereof, provided that the dues so levied and collected be at all times charged equally to all persons in respect of the same description of vessel and the same description of goods. Before fixing any such schedule, the Secretary of State may direct a local inquiry to be held by such person as he may appoint for the purpose.

(2) Where an application for revision of any of the dues specified in any such schedule as aforesaid is made to the Secretary of State by the authority in whom the marine work is vested or by any person appearing to the Secretary of State to have an interest, or where the Secretary of State is otherwise satisfied that any of such dues should be revised, he may, after consultation with the Minister of Transport, make an order revising all or any of such dues, and such order shall take effect as from such date as may therein be specified. Before making any such order, the Secretary of State shall, except where the authority in whom the marine work is vested is the applicant, afford that authority an opportunity of making representations, and may direct a local inquiry to be held by such person as he may appoint for the purpose.

(3) The Secretary of State may require any person making an application under this section to publish in such manner as the Secretary of State may think fit a notice stating that the application has been made and specifying a time within which representations may be made with regard thereto to the Secretary of State.

(4) Where, on an application under this section, an order has been made by the Secretary of State revising any such due or dues as aforesaid, or the Secretary of State has decided not to make an order, no further application for a revision of the due or dues to which the application related shall be made within twelve months from the date of such order or decision.

(5) An application under this section shall be accompanied by such information and particulars certified in such manner as the Secretary of State may require, and any person appointed to hold an inquiry may call for such documents and accounts as he shall think fit and may hear such witnesses as he shall think fit and shall

have power to take evidence on oath and for that purpose to administer oaths.

(6) The expenses incurred in relation to any inquiry held under this section, including the remuneration of any person appointed to hold the inquiry, shall be paid by the authority and other parties to the inquiry, or by such of them and in such proportions as the Secretary of State may direct, and the Secretary of State may certify the amount of the expenses incurred, and any sum so certified and directed to be paid by any authority or party shall be a debt due to the Crown from such authority or party.

(7) In any case where the person appointed to hold an inquiry under this section is an officer of any Government department it shall be lawful to include, in the expenses incurred in relation to the inquiry, a fee not exceeding five guineas a day in respect of the services of such officer.

(8) The authority in whom any marine work to which this Part of this Act applies is vested shall keep open for public inspection at such marine work a list specifying the dues for the time being exigible.

Power to lease dues.

13. A local authority, in whom any marine work to which this Part of this Act applies is vested, may, on such terms and conditions as they may think fit, grant a lease for any period not exceeding five years of the dues exigible in respect of the marine work, and the lessee under any such lease shall have the like right to levy and collect the dues as the local authority would have had if such lease had not been granted.

Application of revenue.

14. The revenue received from dues or otherwise in respect of a marine work to which this Part of this Act applies shall in the first instance be applied for the purposes and in the order following:—

(1) In paying the expense properly chargeable to revenue of the maintenance, repair and management of the marine work:

(2) In paying the interest charges in respect of money borrowed for the purposes of the marine work:

(3) In paying the appropriations, instalments, or sinking fund charges in respect of money borrowed for the purpose of the marine work:

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(4) In paying sums into any such reserve fund, and subject to such conditions, as may be approved by the Secretary of State:

Provided that in the case of a marine work constructed in pursuance of a provisional order made on an application under section four of this Act or authorised by or under section seven of this Act, the expenses incurred in obtaining such provisional order or authorisation shall be paid in priority to any other expenses, so far as the expenses so incurred are not paid out of moneys borrowed in pursuance of this Act.

Duty of maintenance by authority receiving assistance from public funds.

15.—(1) Where any assistance by way of grant or loan shall, after the commencement of this Act, have been sanctioned and given out of moneys provided by Parliament to a local or harbour authority for the purpose of constructing, improving or repairing any marine work to which this Part of this Act applies, and where the appropriate Department is, at any time, satisfied that any particular operation is necessary in order to maintain the marine work in an efficient condition and proper state of repair, such Department may by notice served on the authority require it to carry out such operation within such period, not being less than one month, as may be specified in the notice, and it shall be the duty of the authority, unless, on an application to the sheriff under the next succeeding subsection, the requirement contained in the notice shall have been cancelled or modified, to comply with such requirement.

(2) Where a notice has been served on an authority in pursuance of the foregoing subsection, that authority, if they are of opinion that the requirement contained in the notice is in the circumstances unnecessary or unreasonable, may within one month after such service present an application to the sheriff for the cancellation or modification of the requirement, and on any such application the sheriff may cancel or modify the requirement in such manner as he shall think fit, having regard to all the circumstances of the case including the cost involved, and it shall be the duty of the authority to comply with any requirement so modified.

(3) Where an authority whose duty it is under this section to comply with a requirement to carry out an operation fails to do so within the period specified in

the notice served under subsection (1) of this section, or, in the case where there has been an application under subsection (2) of this section to the sheriff, within such period as may be specified in the sheriff's deliverance, the appropriate Department may themselves carry out the operation and may recover from the authority the expense thereby incurred.

Deficiency in revenue to be met out of rates.

16. If in any year the revenue received by a local authority in respect of any marine work to which this Part of this Act applies shall be insufficient to defray the expenditure incurred in managing, maintaining in an efficient state and keeping in repair any such work and any sums required to meet interest, sinking fund or other loan charges, the deficiency shall be met out of rates in accordance with the provisions hereinafter contained.

Special districts.

17.—(1) Where a county council liable in pursuance of this Act in payment of any sum in respect of the maintenance of a marine work to which this Part of this Act applies shall be of opinion, having regard to the area which derives benefit from the marine work, that a special district should be formed for the purposes of the maintenance thereof, they shall publish in one or more newspapers circulating in the county a notice specifying the part of the county proposed to be so formed into a special district, and intimating that objections to the formation of the proposed special district may be lodged with the council by any person interested within twenty-one days after the publication of the notice.

(2) The county council shall take into consideration any objections to the proposed special district lodged in accordance with the intimation contained in the notice referred to in the foregoing subsection, and thereafter may, by resolution, form into a special district for the purposes of the maintenance of the marine work the part of the county specified in the notice, with such addition or limitation, if any, as the council may think fit, or may abandon the proposal to form a special district.

(3) A resolution under this section may be revoked or altered by a subsequent resolution.

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Levy of rates required to meet deficiency.

18.—(1) Any deficiency which is required to be met out of rates in pursuance of section sixteen of this Act shall be met in the following manner:—

(*a*) in the case of a marine work vested in the council of a burgh the deficiency shall be met by that council: Provided that it shall be lawful for the council of the county within which the burgh is situated to agree to contribute towards the deficiency such sum as they may think fit;

(*b*) in the case of a marine work vested in the council of a county the deficiency shall be met by that council: Provided that it shall be lawful for the council of any burgh situated within the county to agree to contribute towards the deficiency such sum as they may think fit;

(*c*) in the case of a marine work vested jointly in two or more councils in combination, the deficiency shall be met by those councils in such proportions as may be fixed by the combination agreement.

(2) Any sum payable by a county or a town council in pursuance of the last foregoing subsection may be defrayed out of any rate leviable by the council and payable by owners and occupiers in equal proportions or out of a rate to be levied by the council for the purposes of this Act on owners and occupiers in equal proportions:

Provided that any sum so payable by the council of a county in which one or more special districts have been formed in pursuance of section seventeen of this Act shall be defrayed out of a rate to be levied by the council for the purposes of this Act on owners and occupiers in equal proportions and such rate shall be levied—

(*a*) in the case where a special district has been so formed for the purposes of the maintenance of the marine work in respect of which the sum is payable, in that special district; and

(*b*) in the case where no special district has been so formed for the purposes of the said marine

work, throughout the whole area of the county exclusive of any special district so formed for the purposes of the maintenance of any other marine work.

(3) Notwithstanding anything in the last foregoing subsection, subsection (1) of section thirty-three of the Local Government (Scotland) Act, 1929 (which empowers a county council to contribute towards the expenses of a special district) shall apply as regards any special district formed in pursuance of section seventeen of this Act.

(4) The assessor of a county in making up the valuation roll of the county shall distinguish therein the lands and heritages situated within the boundaries of each special district in the county formed in pursuance of section seventeen of this Act.

Provisions of this Part of this Act to have effect in lieu of provisions in other Acts.

19. Where any Act relating to a marine work to which this Part of this Act applies contains provisions with regard to any of the matters dealt with in this Part of this Act, the provisions of this Part of this Act regarding such matters shall, except in so far as the Secretary of State otherwise directs, have effect in lieu of the said provisions of the first mentioned Act, and those provisions shall cease to have effect.

Discontinuance of marine work.

20.—(1) If it appears to the authority in whom any marine work to which this Part of this Act applies is vested that the marine work is no longer required or cannot be adequately maintained except by such expenditure as could not be justified in view of any benefit to be derived from the continued existence of the work, the authority may resolve to discontinue the maintenance of such marine work:

Provided that no such resolution shall take effect unless and until it has been approved by the Secretary of State given after consultation with the Board of Trade and any other Government Department appearing to the Secretary of State to be interested, and, in the case of a marine work in respect of which any assistance by way of grant or loan has, whether before or after the commencement of this Act, been given out of moneys provided by Parliament, with the consent of the Treasury.

(2) On the application of the authority by whom any such resolution as aforesaid has been passed, the Secretary

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of State may by order make such provision as seems to him necessary with regard to any outstanding liabilities of the authority in respect of the marine work, including any liabilities in respect of loans granted to the authority out of moneys provided by Parliament:

Provided always that no such order affecting liabilities in respect of loans granted out of moneys provided by Parliament shall be made except with the consent of the Department or body by whom the loan was granted.

(3) When any resolution under this section takes effect, the provisions of this Part of this Act and of any other enactment applying to the marine work to which the resolution relates shall cease to have effect as regards that marine work, except in so far as the Secretary of State may otherwise direct, and except in so far as such provisions authorise the levying and recovery of rates necessary to meet outstanding loan charges or the recovery of any rates levied but not recovered prior to the date when the resolution takes effect.

PART IV.

MISCELLANEOUS.

Borrowing.

21.—(1) For the purpose of the acquisition under this Act of a marine work, or for the purpose of constructing any works authorised by a provisional order made on application under section four of this Act, or by or under section seven of this Act, or for the purpose of meeting the expense incurred in obtaining any such provisional order, or for any other purpose of this Act to which capital is properly applicable, a county or town council shall have power to borrow such sums as may be necessary, and the provisions of section twenty-three of the Local Government (Scotland) Act, 1929, shall apply to such power to borrow.

(2) For the purpose of constructing any works authorised by a provisional order made on application under section four of this Act, or by or under section seven of this Act, or for the purpose of meeting the expense incurred in obtaining any such provisional order, or for any other purpose to which capital is properly applicable in connection with a marine work to which Part III of this Act applies, a harbour authority shall have power to

borrow such sums as may be necessary not exceeding in the whole such amount as may be fixed by the Secretary of State.

(3) Any sums borrowed by a county or town council or by a harbour authority in pursuance of this section shall be repaid by such method, subject to such conditions, and within such period as the Secretary of State may fix.

Returns regarding repayment of moneys borrowed.

22.—(1) The clerk to the harbour authority by whom any moneys have been borrowed under this Act shall, within one month after being requested so to do by the Secretary of State, transmit to him a return showing the provision made by the authority for the repayment of the moneys so borrowed.

(2) The return shall show such particulars, shall be made up to such date, and shall be in such form as the Secretary of State may require, shall be certified by the person whose duty it is to keep the accounts of the authority, and shall, if so required by the Secretary of State, be verified by a statutory declaration made by that person.

(3) If it appears to the Secretary of State from any return made under this section or otherwise that the authority—

(*a*) have failed to pay any instalment or to make any annual payment required to be paid or made; or

(*b*) have failed to appropriate to the discharge of any loan any sum required to be so appropriated; or

(*c*) have failed to set apart any sum required for a sinking fund; or

(*d*) have applied any portion of a sinking fund to a purpose other than those authorised;

the Secretary of State may by order direct that such sum as is specified in the order, not exceeding the amount in respect of which default has been made, shall be paid or applied in the manner and by the date set out in the order, and the authority shall notify the Secretary of State as soon as the order has been complied with.

(4) An order made under the last foregoing subsection may be enforced at the instance of the Secretary of State under section ninety-one of the Court of 31 & 32 Vict. c. 100.

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PART IV. —*cont.*

Session Act, 1868, in like manner as if compliance with the order were a statutory duty.

(5) If a return required to be made under this section is not made, the person in default shall be liable on summary conviction to a penalty not exceeding twenty pounds, and notwithstanding the recovery of any such penalty the making of the return may be enforced as aforesaid.

Marine work not to be taken over under 8 Edw. 7. c. 62.

23. A county council shall not take over, in pursuance of section eleven of the Local Government (Scotland) Act, 1908, any pier or ferry unless it has been certified by the Secretary of State not to be a marine work within the meaning of this Act, and the said section eleven shall not apply to any pier or ferry to which Part III of this Act applies.

Fixing and revision of dues on certain inland navigation undertakings. 9 & 10 Geo. 5. c. 50.

24.—(1) Any direction given under subsection (1) of section three of the Ministry of Transport Act, 1919, by the Minister of Transport (in this section referred to as "the Minister") as to the dues to be charged in the case of any canal or inland navigation undertaking, which is in force at the passing of this Act, shall, notwithstanding anything in the first mentioned Act or in any enactment amending or operating to continue in force paragraph (*e*) of the aforesaid subsection, remain operative after the thirty-first day of December nineteen hundred and thirty-seven, subject, however, to the provisions of the following subsections of this section.

(2) A certified copy of any such direction as is referred to in the last foregoing subsection shall be kept open for public inspection at the principal office of the undertaking to which the direction relates.

(3) If it appears to the Minister, or is represented by application in writing to the Minister by any chamber of commerce, shipping or agriculture or by any representative body of traders concerned or by a local authority, that under the circumstances then existing the dues or any of them for the time being authorised to be taken in pursuance of this section or of any order made thereunder should be revised, the Minister shall refer the matter to the rates advisory committee constituted under the Ministry of Transport Act, 1919, or any sub-committee thereof to which that committee may, under section two of the Harbours, Docks, and Piers (Temporary Increase of

10 & 11 Geo. 5. c. 21.

Charges) Act, 1920, have delegated their powers or, if the said advisory committee has ceased to exist, to a committee consisting of persons with similar qualifications to be appointed for the purpose by the Minister (any such committee or sub-committee being hereinafter referred to as "the committee"), and after considering any report of the committee the Minister may make an order revising the dues referred to in the application or any of them.

(4) The Minister may fix the date as from which any order made under subsection (3) of this section shall have effect, and thenceforth such order shall remain in force until it is revoked or modified by a further order of the Minister made in pursuance of the said subsection.

(5) Subsections (4), (5) and (6) of section twelve of this Act shall apply to applications under subsection (3) of this section in like manner as those subsections apply to applications under the said section twelve subject to the following and any other necessary modifications :—

(*a*) references to the Minister shall be substituted for references to the Secretary of State, and

(*b*) references to the committee shall be substituted for references to a person appointed to hold an inquiry.

Fixing and revision of dock dues and charges in certain cases.

25.—(1) Any order made under the Harbours, Docks, and Piers (Temporary Increase of Charges) Acts, 1920 to 1922, which is in force at the commencement of this Act shall, notwithstanding anything in those Acts or in the order contained, remain operative after the thirty-first day of December nineteen hundred and thirty-seven, subject, however, to the provisions of the next succeeding subsection.

(2) The provisions of section twelve of this Act with regard to the fixing and revision of dues shall apply as regards any undertaking to which any such order as aforesaid relates in like manner as those provisions apply as regards the marine works referred to in the said section.

Works below high-water mark not to be carried out without approval of Board of Trade.

26. Nothing in this Act shall authorise the execution of any works on, over, or under tidal lands below high-water mark of ordinary spring tides except in accordance with such plans and sections, and subject to such restrictions and regulations, as, previous to such works being commenced, have been approved by the Board of Trade

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PART IV. —*cont.*

in writing under the hand of one of the secretaries, under-secretaries or assistant secretaries of the Board of Trade.

Lights on works.

27. Where any part of any works authorised by a provisional order made on an application under section four of this Act or by or under section seven of this Act is situated below high-water mark of ordinary spring tides, the authority carrying out such works shall exhibit and keep burning on the works every night from sunset to sunrise such lights (if any) and take such other steps for the protection of navigation as may be from time to time required or approved during the construction, alteration or extension of the works by the Board of Trade and after the completion of the works by the Commissioners of Northern Lighthouses.

Power of Board of Trade to require removal of works.

28. Where any part of a marine work vested in a local authority or harbour authority under this Act or of a marine work as regards which a resolution under section twenty of this Act has taken effect is situated on, over or under tidal lands below high-water mark of ordinary spring tides and is in such a condition as to cause danger to, or to interfere with, or to cause reasonable apprehension of danger to or interference with, the right of navigation or any other public right over such tidal lands, the Board of Trade may, by notice in writing, require the authority in whom the work is vested or by whom the resolution was passed, as the case may be, to remove such part of the work and restore to the satisfaction of the Board of Trade the site thereof to a condition free from obstruction to navigation or danger to the public, and if, within thirty days after the service of such notice, the authority shall not have complied therewith, the Board of Trade may themselves carry out such removal and restoration and may recover from the authority the expense thereby incurred.

Crown rights.

29. Nothing in this Act shall affect prejudicially any estate, right, power, privilege or exemption of the Crown or authorise the use of or interference with any land (including tidal lands below high-water mark of ordinary spring tides) belonging to His Majesty in right of his Crown or to any Government Department, except with the consent of His Majesty or the Government Department, as the case may be.

Modification of local Acts to provide for seaplanes.

30. The Secretary of State may, by order, make such adaptations or modifications of the provisions of any local Act applying to a marine work as may be necessary to enable the use thereof by seaplanes.

Interpretation.

31.—(1) In this Act unless the context otherwise requires—

"Act" includes a provisional order confirmed by Act of Parliament;

"appropriate Department" means, as regards any marine work, the Fishery Board for Scotland or the Department of Agriculture for Scotland according as the Secretary of State may nominate the said Board or the said Department for the purposes of this section as regards that marine work;

"dues" includes tolls and charges;

"ferry" includes all rights pertaining thereto (including rights of access) and all boats, vessels, landing stages, plant and apparatus used in connection with the ferry;

"harbour," "pier" and "boatslip" include the whole undertaking and the works, plant, apparatus and other property used in connection therewith;

"harbour authority" means any person or body of persons (other than a local authority) authorised by or under any Act to carry on a harbour, pier or ferry undertaking;

"local authority" means a county or a town council, and includes any two or more such councils, who have combined for any of the purposes of this Act;

"marine work" means any harbour, pier, ferry or boatslip which in the opinion of the Secretary of State and the Minister of Transport is principally used or required for the fishing or agricultural industries or is reasonably required for the maintenance of communications between the various parts of Scotland, but shall not include any harbour, pier or ferry vested in or worked by any railway company or any of the

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PART IV. —*cont.*

harbour or dock authorities or companies specified in the Third Schedule to this Act;

"owner" includes any person holding under a deed of entail or other limited title;

"seaplane" includes a flying boat and any other aircraft designed to manœuvre on the water, and a seaplane taking off from, or alighting on, the water shall be deemed to be on the surface of the water while in contact therewith;

"vessel" shall include a seaplane when on the surface of the water.

(2) For the purposes of this Act any assistance by way of grant or loan given under the Public Works Loans Acts, 1875 to 1882, or under the Development and Road Improvement Funds Act, 1909, or by any Government Department shall (except where such assistance was given under Part II of the said Act of 1909 as amended by any subsequent enactment) be deemed to have been given out of moneys provided by Parliament.

9 Edw. 7. c. 47.

Repeal of 54 & 55 Vict. c. 58.

32. The Western Highlands and Islands (Scotland) Works Act, 1891, is hereby repealed:

Provided that, without prejudice to the provisions of the Interpretation Act, 1889, any table of rates fixed, any lease of rates granted, any byelaw, or any appointment made or any other thing done under the first-mentioned Act, shall, if in force at the commencement of this Act, continue in force, and shall, so far as it could have been fixed, granted, made or done under or in pursuance of this Act, be deemed to have been so fixed, granted, made or done.

52 & 53 Vict. c. 63.

Citation and extent.

33. This Act may be cited as the Harbours, Piers and Ferries (Scotland) Act, 1937, and shall extend to Scotland only.

SCHEDULES.

A.D. 1937.

FIRST SCHEDULE.

PART I.

Section 2.

PROVISIONS AS TO COMPULSORY ACQUISITION OF MARINE WORKS.

1. A compulsory purchase order shall be in the prescribed form and shall describe the marine work to which it applies, and shall incorporate, subject to any necessary adaptations—

(*a*) the Lands Clauses Acts (except sections one hundred and twenty to one hundred and twenty-five of the Lands Clauses Consolidation (Scotland) Act, 1845); 8 & 9 Vict. c. 19.

(*b*) the Acquisition of Land (Assessment of Compensation) Act, 1919; and

(*c*) sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845: 8 & 9 Vict. c. 20.

Provided that the arbiter shall not take into account any building erected or any improvement or alteration made or any interest in land created after the date on which notice of the order having been made is published in accordance with the provisions of this Schedule if, in the opinion of the arbiter, the erection of the building or the making of the improvement or alteration or the creation of the interest in respect of which a claim is made was not reasonably necessary and was carried out with a view to obtaining compensation or increased compensation.

2. Before submitting the order to the Secretary of State the local authority shall—

(*a*) publish in a newspaper circulating in the district of the authority a notice in the prescribed form stating the fact of such an order having been made and describing the marine work and specifying the situation and boundaries thereof and naming a place where a copy of the order may be seen at all reasonable hours; and

(*b*) serve on every owner, lessee and occupier (except tenants for a month or a less period than a month) of the marine work or any part thereof, a notice in the

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prescribed form stating the effect of the order and that it is about to be submitted to the Secretary of State for confirmation, and specifying the time within and the manner in which objections thereto may be made.

3. If no objection is duly made by any of the persons upon whom notices are required to be served or by any person appearing to the Secretary of State to have an interest, or if all objections so made are withdrawn, the Secretary of State may, if he thinks fit, confirm the order with or without modification, but in any other case he shall, before confirming the order, cause a local inquiry to be held, and shall consider any objection not withdrawn and the report of the person who held the inquiry, and may then confirm the order either with or without modification:

Provided that—

(i) the Secretary of State may require any person who has made an objection to state in writing the grounds thereof, and may confirm the order without causing a local inquiry to be held if he is satisfied that every objection duly made relates exclusively to matters which can be dealt with by the arbiter by whom the compensation is to be assessed;

(ii) the order as confirmed by the Secretary of State shall not, unless all persons interested consent, authorise the local authority to purchase compulsorily any land which the order would not have authorised them so to purchase if it had been confirmed without modification.

52 & 53 Vict. c. 50.

4. The provisions of subsections (1) and (3) of section ninety-three of the Local Government (Scotland) Act, 1889, shall apply to any local inquiry held under this Schedule as they apply to local inquiries held under that section, subject however to the following and any other necessary modifications:—

(*a*) references to the authorities concerned in the inquiry shall include references to the parties to the inquiry;

(*b*) "five guineas" shall be substituted for "three guineas";

(*c*) the Secretary of State may make orders as to the costs of the parties to the inquiry and to the parties by whom such costs shall be paid.

PART II.

PROVISIONS AS TO THE VALIDITY AND DATE OF OPERATION OF COMPULSORY PURCHASE ORDERS.

1. So soon as may be after a compulsory purchase order has been confirmed by the Secretary of State the local authority by whom the order was made shall publish in a newspaper circulating in the district of the authority a notice in the prescribed

form stating that the order has been so confirmed and naming a place where a copy of the order may be seen at all reasonable hours and shall serve a like notice on every person who having given notice of his objection to the order, appeared at the local inquiry in support of his objection.

2. If any person aggrieved by a compulsory purchase order desires to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of this Act or that any requirement of this Act or of any order or regulation made thereunder has not been complied with in relation to the order, he may within six weeks after the date on which notice of its confirmation is published in accordance with the provisions of the preceding paragraph make an application for the purpose to the Court of Session, and upon any such application the Court—

(*a*) may by interim order suspend the operation of the order or of any provision contained therein, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and

(*b*) if satisfied that the order or any provision contained therein is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by any requirement of this Act or of any order or regulation made thereunder not having been complied with, may quash the order or any provision contained therein, either generally or in so far as it affects any property of the applicant.

3. Subject to the provisions of the last preceding paragraph, a compulsory purchase order shall not, either before or after it has been confirmed, be questioned in any legal proceedings whatsoever, and shall become operative at the expiration of six weeks from the date on which notice of its confirmation is published in accordance with the provisions of paragraph 1 of this Part of this Schedule.

4. Except by leave of the Court of Session, no appeal shall lie to the House of Lords from a decision of the Court of Session under this Part of this Schedule.

PART III.

1. For the purposes of this Schedule a notice may be served—

(i) by registered post or by delivery to or at the residence of the person to whom it is addressed; or

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(ii) if the local authority are unable after reasonable inquiry to ascertain the name and address of the person upon whom it should be served, by addressing it to him—

(*a*) by name, if his name is known; or

(*b*) if his name is not known, by the description of "owner" or "occupier" of the premises (naming them) to which it relates,

and by delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, by affixing it or a copy thereof to some conspicuous part of the premises.

2. In this Schedule "prescribed" means prescribed by the Secretary of State.

Section 7 (1).

SECOND SCHEDULE.

1. The Secretary of State before authorising the execution of any work, shall require the authority to give such public notice as he may deem necessary (*a*) specifying the operations proposed to be undertaken, and, where the construction of a new or the extension of an existing marine work is involved, the area or extended area within which dues are proposed to be levied; and (*b*) intimating that objections to the proposals of the authority may be lodged with the Secretary of State within twenty-one days from the date of the notice.

2. The Secretary of State shall consider any objections lodged with him in pursuance of the notice referred to in the immediately preceding paragraph and may after consultation with the Board of Trade thereafter authorise the construction of the work.

3. The provisions of the Lands Clauses Acts in regard to the taking of land by agreement are hereby incorporated with this Schedule.

4. Subject to the provisions of this Schedule, the authority as undertakers may construct the authorised work and accesses thereto.

5. Every person who wilfully obstructs any person acting with the sanction of the authority as undertakers aforesaid in setting out the lines of the work authorised or who pulls up or

removes any poles or stakes driven into the ground for the purpose of setting out the lines of the said work or defaces or destroys the said work or any part thereof, shall for every such offence be liable on conviction by a court of summary jurisdiction to a penalty not exceeding five pounds.

6. Any person appointed by the Secretary of State shall from time to time during the construction of the authorised work be entitled to inspect the same in order to his reporting thereon.

THIRD SCHEDULE.

Section 31.

The Trustees of the Clyde Navigation.
The Commissioners for the Harbour and Docks of Leith.
The Aberdeen Harbour Commissioners.
The Trustees of the Harbour of Dundee.
The Trustees of the Port and Harbours of Greenock.
The Ardrossan Harbour Company.
The Granton Harbour, Limited.

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