ELIZABETH II



1972 CHAPTER xxv

An Act to confer powers upon the Central Electricity Generating Board for the construction of ancillary works in connection with the proposed Killingholme Generating Station and for the acquisition of lands and easements for the purposes thereof or in connection therewith; and for other purposes. [27th July 1972]

WHEREAS the Central Electricity Generating Board (hereinafter referred to as "the Board") were established by the Electricity Act, 1957, and it is the duty of the Board under the said Act to develop and maintain an efficient co-ordinated and economical system of supply of electricity in bulk for all parts of England and Wales and for that purpose (inter alia) to generate or acquire supplies of electricity and to provide bulk supplies of electricity for the area boards in England and Wales for distribution by those boards: 1957 c. 48.

And whereas to meet the increasing demands for the supply of electricity the Board are proposing to construct on land they have acquired or are about to acquire a generating station in the parish of North Killingholme in the rural district of Glanford Brigg in the administrative county of Lincoln, Parts of Lindsey, which will be known as the "Killingholme Generating Station" (hereinafter in this Act referred to as "the Generating Station") and the Secretary of State for Trade and Industry has granted consent under section 2 of the Electric Lighting Act, 1909 (as subsequently amended), for consent to the construction of the Generating Station: 1909 c. 34.

And whereas in operating the Generating Station large quantities of water will be required for cooling purposes and the most convenient and economical method of obtaining the water will be to abstract it from and subsequently to discharge it into the river Humber:

And whereas it is expedient that the Board should be empowered to acquire lands and easements for the purpose of the construction of the works necessary for the abstraction of water from the river Humber and the subsequent discharge of water into the said river from the Generating Station as aforesaid and for other purposes connected therewith:

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

And whereas it is expedient that the other provisions contained in this Act should be enacted:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

And whereas plans and sections showing the lines and levels of the works by this Act authorised, such plans showing also the lands which may be acquired or used compulsorily under the powers of this Act for or in connection with the said works and the other purposes mentioned in this Act, together with a book of reference to the said plans containing the names of the owners or reputed owners, lessees or reputed lessees, and of the occupiers of all such lands, and describing the same, have been deposited with the clerk of the county council of the administrative county of Lincoln, Parts of Lindsey, 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):—

Short title.

1. This Act may be cited as the Killingholme Generating Station (Ancillary Powers) Act 1972.

Incorporation of Acts.

1845 c. 20.

2.—(1) Section 16 of the Railways Clauses Consolidation Act, 1845, and the provisions of that Act with respect to the temporary occupation of lands near the railway during the construction thereof are hereby incorporated with this Act and, as so incorporated, shall have effect as if—

(*a*) for the words " the period by the special Act limited for the completion of the railway " there were substituted

the words " the period of eight years from the commencement of the construction of any of the works authorised by the special Act ";

(*b*) the expression " the company " meant the Board; and

(*c*) the expression " the railway " meant the works authorised by this Act and " the centre of the railway " meant the centre of any such works respectively.

(2) (*a*) Part I of the Act of 1965 (except section 4, paragraph (*b*) of subsection (2) of section 21, subsection (5) of section 24, section 27 and sub-paragraph (3) of paragraph 3 of Schedule 3 thereof), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies to a compulsory purchase to which Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act, 1946, applies and as if this Act were a compulsory purchase order under the said Act of 1946. 1946 c. 49.

(*b*) In subsection (1) of section 11 of the Act of 1965 as so applied, for the words " fourteen days " there shall be substituted the words " three months' ".

(*c*) The Lands Clauses Consolidation Act, 1845, shall not apply to the acquisition of land under this Act. 1845 c. 18.

3.—(1) In this Act, unless the subject or context otherwise requires— Interpretation.

" the Act of 1965 " means the Compulsory Purchase Act, 1965; 1965 c. 56.

" the Board " means the Central Electricity Generating Board;

" the docks board " means the British Transport Docks Board;

" the Generating Station " means such generating station as may be constructed by the Board in the parish;

" land " includes any interest in or right over land and land covered with water;

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

" the parish " means the parish of North Killingholme in the rural district of Glanford Brigg in the administrative county of Lincoln, Parts of Lindsey;

" the river " means the river Humber;

" the river authority " means the Lincolnshire River Authority;

" the Secretary of State " in section 10 (Abstraction and discharge) and section 12 (Temporary stoppage of highways,

etc.) of this Act means the Secretary of State for the Environment and in every other case means the Secretary of State for Trade and Industry;

" 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 tribunal " means the Lands Tribunal;

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

" the works " means the works authorised by this Act and includes those works as renewed, enlarged, diverted or altered under section 6 (Alteration and improvement of works) of this Act and the works authorised by section 5 (Power to make subsidiary works) of this Act and " work " shall be construed accordingly.

(2) All areas, distances, lengths and directions stated in any description of works, powers or lands in this Act shall be construed as if the words " or thereabouts " were inserted after each such area, distance, length or direction.

(3) In this Act a group of two letters and eight figures identifying or associated with any point represents the map co-ordinates of that point estimated to the nearest ten metres on the grid of the national reference system used by the Ordnance Survey on its maps and plans.

(4) Unless the subject or context otherwise requires any reference in this Act to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Act.

(5) Unless the subject or context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Act.

Power to construct works.

4. Subject to the provisions of this Act the Board may in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown upon the deposited sections make and maintain the works hereinafter described together with all necessary works and conveniences connected therewith, namely:—

Work No. 1 One or more conduits and an intake commencing in the parish at TA 17061948 and extending into the river in a north-easterly direction for a distance of 530 yards and terminating by a junction with Work No. 2 at TA 17461975.

Work No. 2 An operating platform in the river supported on columns commencing at TA 17441978 and extending downstream for a distance of 70 yards to and terminating at TA 17481972.

Work No. 3 One or more conduits and an outfall commencing in the parish at TA 17271910 extending into the river in a north-easterly direction for a distance of 780 yards to and terminating at TA 17861949.

Power to make subsidiary works.

5.—(1) Subject to the provisions of this Act the Board may from time to time erect, construct and maintain whether temporarily or permanently all such necessary works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works authorised by section 4 (Power to construct works) of this Act:

Provided that—

(*a*) the Board shall ensure that, so far as is reasonably practicable, any such works shall not unnecessarily narrow or obstruct the navigable waterway of the river or otherwise interfere with or impede navigation or obstruct the flow of water or the passage of fish;

(*b*) no such permanent works or conveniences shall be erected or constructed outside the limits of deviation shown on the deposited plans.

(2) On the completion of the works authorised by the said section 4 the Board shall remove all temporary works placed by them under the powers of this section on, under or over land below the level of high water.

Alteration and improvement of works.

6. Subject to the provisions of this Act, the Board may from time to time maintain, renew, enlarge, divert and alter, temporarily or permanently, the works authorised by section 4 (Power to construct works) of this Act or any part of any such work:

Provided that nothing in this section shall authorise the Board to deviate laterally beyond the limits of deviation.

Power to deviate.

7. In the construction of the works authorised by section 4 (Power to construct works) of this Act the Board 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 that work shown on the deposited sections to any extent upwards or downwards.

Works to be within petty sessional division of Barton-on-Humber and the parish.

8. So much of the works as is outside the area of the petty sessional division of Barton-on-Humber in the county of Lincoln Parts of Lindsey, or of the parish, shall be deemed to be within the said area and within the parish.

Power to dredge.

9.—(1) Subject to the provisions of this Act the Board may from time to time for the purpose of the construction, maintenance alteration, improvement, diversion or user of the works, deepen dredge, scour and improve and remove obstructions from the bed foreshore and banks of the river adjoining or near to the works.

(2) The Board may use, appropriate and dispose of the materials from time to time dredged by them from the river:

Provided that no such materials shall be deposited below the level of high water except in such places and in accordance with such restrictions or regulations as may be approved or prescribed by the Secretary of State nor shall such materials be deposited on the foreshore or bed of the river without the consent of the docks board.

(3) (*a*) Nothing in this section shall authorise any interference with any subaqueous cable belonging to or used by the Post Office.

(*b*) As early as possible, and in any event not less than twenty-eight days, before any exercise of their powers under subsection (1) of this section within a distance of fifty yards of any subaqueous cable belonging to or used by the Post Office, the Board shall give notice in writing to the Post Office of such intended exercise.

(4) No materials dredged up or removed under the powers of this section shall be laid down or deposited in any place or manner so as to cover any subaqueous cable belonging to or used by the Post Office or any submarine gas main placed or maintained by the Gas Council or to impede in any way the inspection, maintenance, removal or renewal of any such cable or main.

Abstraction and discharge.

10.—(1) The Board may by means of Work No. 1 abstract from the river such quantities of water as may be required for cooling purposes connected with the Generating Station.

(2) The Board may by means of Work No. 3 discharge into the river any water so abstracted but nothing in this subsection shall—

(*a*) authorise the Board to make such discharge except in accordance with such conditions as may be imposed by the river authority in giving their consent under section 7 of the Rivers (Prevention of Pollution) Act, 1951, or on

1951 c. 64.

appeal under section 6 of the Rivers (Prevention of Pollution) Act, 1961, as may be determined by the Secretary of State; or 1961 c. 50.

(*b*) prejudice or affect the right of the said river authority or the Secretary of State under section 5 of the said Act of 1961 to vary or revoke any condition attached to such consent.

(3) For the purposes of the said section 5 of the Act of 1961, the river authority shall be deemed to have granted consent to Work No. 3 and nothing in this Act shall prejudice or affect the right of the said river authority or the Secretary of State under that section to vary that consent.

Special exemptions. 1905 c. clxxix.

11. Section 6 (No erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act, 1905, shall not apply to the works and section 8 (Sand &c. not to be removed from bed or foreshore of River Humber without licence of Commissioners) of that Act shall not apply to the exercise by the Board of the powers of section 9 (Power to dredge) of this Act.

Temporary stoppage of highways, etc.

12.—(1) The Board during and for the purposes of the construction, maintenance, renewal, enlargement, diversion or alteration of any of the works may temporarily stop up, alter, divert or otherwise interfere with any road, footpath or bridleway or any private right of way, and, in the case of any highway or right of way, may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road, footpath or bridleway or right of way from passing along and using the same.

(2) The Board shall provide reasonable access for foot-passengers, with or without animals, bona fide going to or from any such land, house or building.

(3) The powers of subsection (1) of this section shall not be exercised in relation to any road without the consent of the highway authority having powers in relation thereto, which consent shall not be unreasonably withheld but may be given subject to such reasonable conditions (other than a monetary payment as the consideration for the grant of a consent) as the highway authority may require, and any question whether such consent is unreasonably withheld, or any conditions so imposed are unreasonable, shall be determined by the Secretary of State.

(4) Notwithstanding the temporary stopping up or diversion of any road, footpath or bridleway or right of way under the powers of this section, the Gas Council and the East Midlands

Gas Board shall be at liberty at all times to enter upon the road, footpath, bridleway or right of way with any necessary vehicles to exercise and do all such works and things in any such road, footpath, bridleway or right of way as may be necessary for inspecting, repairing, maintaining, renewing or removing any apparatus belonging to or maintained by them or either of them.

(5) The powers of this section shall not be exercised with respect to any road or highway upon which a service of stage carriages or express carriages is operated unless not less than forty-eight hours' previous notice is given to the traffic commissioners and to the holders of the road service licence under which that service is authorised.

(6) In the exercise of the powers of this section the Board shall, whenever possible, provide a proper temporary substitute way before interrupting the traffic on any road or highway.

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

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

(2) If a tidal work is constructed, renewed, enlarged, diverted or altered 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 Board 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 thirty days from the date when the notice is served upon the Board, 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 himself 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 Board as a simple contract debt.

Provision against danger to navigation.

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

(2) If the Board fail to notify the docks board 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 one hundred pounds and on conviction on indictment to a fine.

Abatement of works abandoned or decayed.

15.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or the river authority may by notice in writing require the Board 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 or the river authority, as the case may be, 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 or the river authority, as the case may be, may include that part of the work, or any portion thereof, in any notice under this section.

(3) If, on the expiration of thirty days from the date when a notice under this section is served upon the Board, they have failed to comply with the requirements of the notice, the Secretary of State or the river authority, as the case may be, may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Board as a simple contract debt.

Survey of tidal works.

16.—(1) 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 Board 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 Board as a simple contract debt.

(2) The river authority may at their own expense at any time carry out a survey and examination of any such work as is referred to in subsection (1) of this section and the Board shall provide the river authority free of charge with all such facilities as are reasonably necessary for that purpose.

Permanent lights on tidal works.

17.—(1) After the completion of a tidal work, the Board 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 docks board shall from time to time direct.

(2) If the Board 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 one hundred pounds and on conviction on indictment to a fine.

Saving for Trinity House.

18. Nothing in section 14 (Provision against danger to navigation) or section 17 (Permanent lights on tidal works) of this Act shall prejudice or derogate from any of the rights or privileges or the jurisdiction or authority of the Trinity House.

Lights on tidal works during construction.

19.—(1) The Board shall at or near a tidal work during the whole time of the construction, renewal, enlargement, diversion or alteration 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 Board 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 one hundred pounds and on conviction on indictment to a fine.

Power to acquire land.

20.—(1) Subject to the provisions of this Act the Board may enter upon, take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for the purposes of the works or for the purposes of obtaining access thereto, obtaining materials for the construction thereof, or depositing spoil or other material excavated during the construction thereof or otherwise for the purposes of this Act or other purposes connected therewith.

(2) (*a*) The powers of the Board for the compulsory acquisition of lands under this section shall not be exercised after 31st December, 1974.

(*b*) The powers to acquire compulsorily any land shall for the purposes of this subsection be deemed to have been exercised if before 31st December, 1974, notice to treat has been served in respect of that land.

Correction of errors in deposited plans and book of reference.

21.—(1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Board after giving not less than ten days' notice to the owner, lessee and occupier of the land in question may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.

(2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, and with the clerk of the county council of the administrative county of Lincoln, Parts of Lindsey, and a copy thereof shall be deposited with every clerk of a local authority and chairman of a parish council or parish meeting with whom a copy of the deposited plans (or so much thereof as includes the land to which the certificate relates) has been deposited in accordance with the standing orders of the Houses of Parliament or who has the custody of any copy so deposited, and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Board to take the land and execute the works in accordance with the certificate.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

Acquisition of part only of certain properties.

22.—(1) Where a copy of this section is endorsed on, or annexed to, a notice to treat served under the Act of 1965, as applied by this Act, the following provisions of this section shall apply to the land subject to the notice instead of subsection (1) of section 8 of that Act.

(2) Where the land subject to the notice is part only of a house, building or factory, or part only of land consisting of a house, together with any park or garden belonging thereto then, if the person on whom the notice is served, within twenty-one days after the day on which the notice is served on him, serves on the Board a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (hereinafter in this section referred to as " the land subject to the counter-notice "), the question whether he shall be required to sell the part shall, unless the Board agree to take the land subject to the counter-notice, be referred to the tribunal.

(3) If the said person does not serve such a counter-notice as aforesaid within twenty-one days after the day on which the notice to treat is served on him, or if on such a reference to the tribunal the tribunal determine that the part subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice, or, in the case of part of land consisting of a house together with a park or garden belonging thereto, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the said person shall be required to sell the part.

(4) If on such a reference to the tribunal the tribunal determine that part only of the land subject to the notice to treat can be

taken without material detriment to the remainder of the land subject to the counter-notice, or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.

(5) If on such a reference to the tribunal the tribunal determine that the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice but that the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Board are authorised to acquire compulsorily under this Act.

(6) If the Board agree to take the land subject to the counter-notice, or if the tribunal determine that—

(*a*) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(*b*) the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Board are authorised to acquire compulsorily under this Act.

(7) In any case where, by virtue of a determination by the tribunal under subsection (4), (5) or (6) of this section, a notice to treat is deemed to be a notice to treat for part of the land specified in the notice or for more land than is specified in the notice the Board may, within six weeks after the tribunal make their determination, withdraw the notice to treat, and if they do so shall pay to the said person compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in default of agreement by the tribunal.

(8) Where a person is under this section required to sell part only of a house, building or factory, or of land consisting of a house together with any park or garden belonging thereto, the Board shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.

Power to acquire easements only.

23.—(1) The Board may, instead of acquiring any land which they are authorised to acquire compulsorily under this Act, acquire compulsorily such easements and rights over or in the land as they may require for the purpose of constructing, using, maintaining, renewing, diverting or removing the works or for the purpose of obtaining access to the works or for the purpose of doing any other thing necessary in connection with the works.

(2) Accordingly the Board may give notice to treat in respect of any such easement or right describing the nature thereof and "land" in Part I of the Act of 1965, as applied by this Act, includes such easements and rights as aforesaid.

(3) Where the Board have acquired an easement or right only over or in any land under this section—

(*a*) they shall not be required or, except by agreement or during the execution of the works, entitled to fence off or sever that land from the adjoining land;

(*b*) the owner or occupier of the land for the time being shall, subject to the easement or right, have the same right to use the land as if this section had not been enacted.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for an easement or right is given under this section requires the Board to acquire the land, the Board shall not be entitled under this section to acquire the easement or right unless the tribunal determines that the easement or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house; and, if the tribunal does not so determine, the Board may acquire the land compulsorily notwithstanding that the period mentioned in subsection (2) of section 20 (Power to acquire land) of this Act has expired, but not later than one year after the determination of the tribunal:

Provided that nothing in this subsection shall apply to land forming part of a street.

(5) A notice to treat given under this section shall be endorsed with notice of the effect of subsection (4) of this section.

Disregard of recent improvements and interests.

24. In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land under this Act, the tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land, by reason of any building erected, works executed, or improvement or alteration made, whether on the land acquired or on any other land with which the claimant is, or was, at the time of the erecting, executing or making of the building, works,

improvement or alteration, directly or indirectly concerned if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration (as the case may be) was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Extinction of private rights of way.

25.—(1) All private rights of way over any land which may be acquired compulsorily under this Act shall be extinguished on the acquisition of the land, whether compulsorily or by agreement, or on the entry on the land in pursuance of subsection (1) of section 11 of the Act of 1965, as applied by this Act, whichever is the sooner.

(2) Any person who suffers loss by the extinguishment of any right under this section shall be entitled to be paid by the Board compensation, to be determined, in case of dispute, in accordance with the provisions of the Land Compensation Act, 1961.

1961 c. 33.

Grant of easements by persons under disability.

26.—(1) Any person empowered by the Act of 1965, as applied by this Act, to sell and convey or release lands may, if he thinks fit, subject to the provisions of the Act of 1965, grant to the Board any easement or right required for the purposes of this Act over or in the lands, not being an easement or right of water in which some person other than the grantor has an interest.

(2) The provisions of the Act of 1965 with respect to lands and rentcharges, so far as they are applicable, shall extend and apply to any such grant and to any such easement or right as aforesaid

Arbitration.

27. Where under this Act any question or dispute is to be referred to or determined by an arbitrator or arbitration then unless other provision is made the reference shall be to a single arbitrator to be agreed upon between the parties or failing agreement appointed by the President of the Institution of Civil Engineers on the application of any party to the dispute (after notice in writing to the others of them) and subject as aforesaid the provisions of the Arbitration Act, 1950, shall apply to the reference and determination.

1950 c. 27.

Crown rights.

28.—(1) Nothing in this Act shall authorise the Board to take use or in any manner interfere with any land or hereditament or any rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners on behalf of Her Majesty first had and obtained for that purpose.

(2) Nothing in this Act shall authorise the Board to take, use or in any manner interfere with any land or hereditaments o

any rights of whatsoever description belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department and the Board shall comply with such conditions as the government department may prescribe in giving such consent.

Saving for Duchy of Lancaster.

29. In particular and without prejudice to the general law concerning the applicability of statutes to the Duchy of Lancaster, nothing in this Act contained shall extend or operate to authorise the Board to take, use, enter upon or in any manner interfere with any land, soil, water or any manorial rights or any other rights of whatsoever description belonging to Her Majesty in right of Her Duchy of Lancaster without the consent in writing of the Chancellor for the time being of the said Duchy first had and obtained (which consent may be given either unconditionally or subject to such conditions and upon such terms as the said Chancellor shall deem necessary or appropriate) or take away, prejudice or diminish any estate, right, privilege, power or authority vested in or enjoyed or exercisable by Her Majesty, Her Heirs and Successors in right of Her said Duchy.

For protection of Humber Bridge Board.

30. For the protection of the Humber Bridge Board (hereinafter in this section referred to as "the bridge board") the following provisions shall unless otherwise agreed in writing between the Board and the bridge board apply and have effect:—

(1) The bridge board shall not be liable to the Board for any interference with or damage to the works caused by the construction, maintenance, repair, alteration or renewal of the bridge and other works authorised by the Humber Bridge Act 1959 except in any case in which such interference or damage was due to or was caused by any negligent act or default on the part of the bridge board or any of their officers or servants or contractors:

1959 c. xlvi.

(2) Any difference arising between the Board and the bridge board under this section shall be settled by arbitration.

For protection of docks board.

31. For the protection of the docks board, the following provisions shall, unless otherwise agreed in writing between the Board and the docks board, apply and have effect:—

(1) In this section "plans" includes sections and "approved plans" means plans approved or deemed to have been approved by the docks board or settled by arbitration:

(2) Before commencing the construction of any part of a tidal work plans showing the general mode of construction thereof shall be delivered by the Board to the

docks board for their reasonable approval, and such tidal work shall not be constructed otherwise than in accordance with approved plans and to the reasonable satisfaction of the docks board:

(3) After the purpose for which any temporary works were placed or conveniences connected therewith in the river were constructed under the powers of this Act has been accomplished the Board shall, with all reasonable dispatch, remove any such works or conveniences and if without reasonable cause they fail to do so the docks board may remove the same, charging the Board with the reasonable expense of so doing, and the Board shall repay to the docks board all such expense:

(4) (*a*) The Board shall before commencing any dredging in the river under the powers of this Act (other than maintenance dredging and except in an emergency) deliver to the docks board for their reasonable approval plans defining the nature, extent and manner of such dredging, and such dredging shall not be carried out otherwise than in accordance with approved plans and in such manner as may be approved by the docks board or as may be settled by arbitration;

(*b*) In this paragraph "maintenance dredging" means dredging solely for the purpose of maintaining the bed, foreshore or banks of the river in the same condition as they were after dredging operations approved by the docks board had been carried out:

(5) If the docks board fail to express their disapproval of any plans within two months after they have been delivered to them in pursuance of this section, they shall be deemed to have approved them:

(6) If there shall be any inconsistency between any approved plans and the plans approved by the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the tidal work to which the plans relate shall be constructed in accordance with the plans approved by the Secretary of State:

(7) (*a*) If during the construction of or within the prescribed period after the completion of the works it is agreed between the Board and the docks board or, in default of agreement, it is proved to the satisfaction of an arbitrator to be appointed in accordance with section 27 (Arbitration) of this Act that—

(i) the part of the river in the vicinity of the works has silted up to such an extent as materially to affect navigation in the river; and

(ii) such silting up is wholly or partly attributable to the construction of the works;

the Board shall by carrying out such dredging or other operations as may be necessary remove so much of the silt as may be agreed or in default of agreement as may be proved to the satisfaction of the arbitrator to have been accumulated as a result of the construction of the works;

(*b*) In this paragraph—

"silt" includes sand, shingle and gravel and "silted up" shall be construed accordingly;

"the prescribed period" means a period of ten years and if during that period there has been an accumulation of silt such as to give rise to an obligation by the Board under this paragraph to remove it, a further period of ten years:

(8) (*a*) As from the commencement of the construction of the works the Board shall (if the docks board so direct) provide and maintain on the works effective fog-signalling apparatus approved by the docks board and shall duly and properly work such apparatus in conditions of restricted visibility for the purpose of warning passing vessels of the existence of the works;

(*b*) As from the completion of the construction of the works the Board shall—

(i) afford to the docks board all such reasonable facilities as they may request to place and maintain at the expense of the docks board on the works any signals or other apparatus for the safety or benefit of navigation;

(ii) provide and maintain on the works a tide board of a type and set to a datum approved by the docks board and the docks board shall have access to the board at all reasonable times and shall be entitled to copies of all records obtained therefrom:

(9) During any dredging operations carried out by the Board in the course of the construction of the works, the Board shall, if required by the docks board, provide and maintain to the reasonable satisfaction of the docks board—

(*a*) such lighted mooring or other buoys at any deposit ground in the river which may be approved for the deposit of dredgings from the site of the works; and

(*b*) take all such other steps as may be required by the docks board to prevent danger to navigation:

(10) The provisions of section 15 (Abatement of works abandoned or decayed), section 16 (Survey of tidal works) and section 19 (Lights on tidal works during construction) of this Act shall, with any necessary modifications, apply to the docks board as if in the case of the said section 15 the docks board were named therein in addition to the Secretary of State and the river authority and in the case of the other two sections in addition to the Secretary of State and any expenses incurred by the docks board in pursuance of either of the said sections 15 and 16 shall be recoverable from the Board as a simple contract debt:

Provided that—

(*a*) if there is any inconsistency between any requirement or direction of the Secretary of State and of the docks board the former shall prevail and the Board shall be deemed to have complied with the provisions of those sections if they have complied with the requirement or direction of the Secretary of State;

(*b*) the annual survey of the river carried out by the docks board in the performance of their functions as the navigation authority shall not be treated as a survey carried out under the said section 16:

(11) The Board shall at all reasonable times allow the docks board, their officers and servants, access to the works:

(12) The Board shall not acquire compulsorily under the powers of this Act the interests of the docks board in the lands numbered 7 and 8 in the parish on the deposited plans but the Board may in accordance with the provisions of section 23 (Power to acquire easements only) of this Act acquire compulsorily such easements and rights in the said lands as they may reasonably require for the purposes of the works:

(13) Any difference arising between the Board and the docks board under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

For protection of river authority.

32. For the protection of the river authority the following provisions shall unless otherwise agreed in writing between the Board and the river authority apply and have effect—

(1) In this section—

"the authorised works" means the works authorised by section 4 (Power to construct works) of this Act;

" construction " includes execution and placing, renewal, enlargement, diversion or alteration and in relation to temporary works also includes removal, and " construct " and " constructed " have corresponding meanings;

" plans " includes drawings and specifications and a description of the method of carrying out the work; and as regards a work of maintenance, repair or renewal means a description of the work only;

" protective works " means any temporary or permanent works constructed or measures taken under subsection (3) or subsection (7) of this section necessary—

(*a*) to ensure the stability of a sea defence work or to protect it or a watercourse from injury or to ensure the maintenance of the flow of all water which but for the construction of the specified works would have flowed through a watercourse;

(*b*) for the protection of the water resources of the area of the river authority;

" the river " means the river Humber;

" sea defence work " means so much of the sea defence wall as is for the time being under the jurisdiction of the river authority for the purpose of the Land Drainage Acts, 1930 and 1961, and the Water Resources Act, 1963, and includes the land lying between the said wall and the level of high water; 1963 c. 38.

" specified work " means any authorised work or any work for the purposes of or in connection with the construction of such a work carried out under section 5 (Power to make subsidiary works) of this Act which will or may affect—

(*a*) a sea defence work or watercourse under the control of the river authority; or

(*b*) the water resources of the area of the river authority;

" temporary works " means any temporary structures which may be necessary to enable the authorised works to be constructed;

" watercourse " includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers (other than sewers under the control of a local authority within the meaning of the Public Health Act, 1875), and passages through which water flows, other than the river; 1875 c. 55.

"water resources" has the meaning assigned to it by the Water Resources Act, 1963: 1963 c. 38.

(2) (*a*) Not less than twenty-eight days before commencing to construct a specified work the Board shall submit plans of such work to the river authority for their reasonable approval and shall not commence the specified work until such plans have been approved by the river authority or in the case of difference until they have been settled by arbitration:

Provided that if the river authority do not within twenty-eight days after the receipt of any such plans signify to the Board their disapproval thereof and the grounds for their disapproval they shall be deemed to have approved thereof;

(*b*) Not less than fourteen days before commencing any work of maintenance or repair of a specified work the Board shall, except in the case of emergency, submit to the river authority for their information a notice of intention to commence the work and a description of the work:

(3) Upon signifying their approval or disapproval of the said plans the river authority may specify any protective works which in their opinion should be carried out or undertaken by the Board during the construction of the specified work and such of the works so specified as may be reasonably necessary for those purposes shall be constructed by the Board at its own expense and under the supervision (if given) and to the reasonable satisfaction of the river authority:

(4) (*a*) Subject to the provisions of this section, a specified work shall not be constructed except in accordance with such plans as may be approved or deemed to be approved by the river authority as aforesaid or settled by arbitration and shall be constructed to the reasonable satisfaction of the engineer of the river authority who shall be given reasonable notice of the date and time on and at which the work is to be commenced;

(*b*) The Board shall at all reasonable times during the construction of a specified work afford to the engineer of the river authority and his duly authorised representatives access to such specified work for the purposes of inspection;

(*c*) As soon as is reasonably practicable after the completion of a specified work or thereafter upon fourteen days' notice in writing from the river authority requiring it

so to do the Board shall remove so much of the work as consists only of temporary works carried out for the purposes of such construction:

(5) If there shall be any inconsistency between any plans approved or deemed to be approved by the river authority or settled by arbitration under the provisions of this section and the plans approved by the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the specified work shall be constructed in accordance with the plans approved by the Secretary of State:

(6) If by reason of—

(*a*) the construction, maintenance or repair of any specified work;

(*b*) the failure of that work or of the Board to maintain it; or

(*c*) any operations carried out by the Board under section 9 (Power to dredge) of this Act;

a sea defence work shall be breached or (as the case may be) a sea defence work or a watercourse shall at any time be injured or its efficiency as a sea defence work or watercourse is otherwise impaired, the river authority may fill in the breach or (as the case may be) make good such injury and in either such a case restore it to a proper standard of efficiency as a sea defence work or watercourse (as the case may be) and recover the reasonable cost thereof (including a proper proportion of the overhead charges of the river authority) from the Board:

(7) If the river authority have reasonable grounds for believing that damage to a sea defence work or watercourse is likely to take place or its efficiency as a sea defence work or watercourse is likely to be impaired in any of the circumstances mentioned in the last foregoing subsection, they may carry out such protective works as may be agreed between the river authority and the Board or as, in default of agreement, may be settled by arbitration and recover the reasonable cost thereof (including a proper proportion of the overhead charges of the river authority) from the Board:

(8) Any additional expense which may be reasonably incurred by the river authority in maintaining any protective works which become part of the sea defence works or a watercourse shall on demand be repaid to the river authority by the Board:

(9) (*a*) Where a specified work is in, on or under a sea defence work or abuts upon any lands acquired by the Board under this Act the river authority and their officers, servants, workmen, contractors and agents together with any vehicles, plant or machinery shall be entitled at all reasonable times to enter upon the said specified work, the part of the sea defence work in, on or over it or the said land for the purpose of carrying out works or in connection with the sea defence work or of obtaining access to the sea defence work;

(*b*) A specified work shall not be constructed so as to prevent access during construction to a sea defence work or a watercourse by the river authority and their officers, servants, workmen, contractors and agents together with such vehicles, plant and machinery as may be reasonably necessary:

(10) Without prejudice to the powers conferred on the river authority by section 111 of the Water Resources Act, 1963, the river authority for the purpose of performing or in connection with the performance of any of their functions shall be entitled at all reasonable times to inspect any of the authorised works or any work for the purposes of or in connection with the construction of such authorised work carried out under section 5 (Power to make subsidiary works) of this Act:

1963 c. 38.

(11) The Board shall indemnify and hold harmless the river authority from all claims, demands or expenses which may be made on or against them or which they may have to pay by reason or in consequence of any injury or damage which may be caused or result to a sea defence work or watercourse or to the water resources of the area of the river authority by or in consequence of the construction, maintenance or repair of an authorised work or any work for the purposes of or in connection with such first-mentioned work carried out under section 5 (Power to make subsidiary works) of this Act or of the failure or want of repair thereof or any subsidence caused by the construction thereof or in consequence of any act or omission of the Board, its contractors, agents, workmen or servants whilst engaged upon an authorised work or any such other work as aforesaid:

Provided that the river authority shall give to the Board reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement of the Board:

(12) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to

be approved by the river authority or to their satisfaction or in accordance with any directions or award of an arbitrator shall not relieve the Board from any liability under the provisions of this section:

(13) Any difference arising between the Board and the river authority under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

Provisions applicable to last two sections.

33.—(1) If any requirements of the protected authority under the relevant enactment conflict with any requirements of the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the latter shall prevail.

(2) In any case where any plans have been submitted to both protected authorities and either or both those authorities disapprove such plans the plans shall not be deemed to have been approved unless approved by both the authorities and in any arbitration proceedings which may take place as a result of the disapproval of one of the authorities the protected authority which is not a party to those proceedings shall be entitled to be heard in such proceedings and the plans as settled by such arbitration shall be deemed to have been approved by such protected authority (whether or not it has been heard in the proceedings).

(3) In this section—

" the protected authority " means the docks board or the river authority;

" the relevant enactment " means in relation to the docks board section 31 (For protection of docks board) of this Act and in relation to the river authority section 32 (For protection of river authority) of this Act.

For protection of National Coal Board.

34. For the protection of the Coal Board the following provisions shall, unless otherwise agreed in writing between the Board and the Coal Board, apply and have effect:—

(1) In this section—

" the Coal Board " means the National Coal Board and their successors in title or other the owner or owners for the time being of the jetty;

" the jetty " means the works authorised by the South Killingholme Jetty Empowerment Order 1968:

(2) The Board shall—

(*a*) be responsible for and make good to the Coal Board all costs, charges, damages and expenses which

may be occasioned to or reasonably incurred by the Coal Board by reason of the failure of the works or of any act or omission of the Board or of any persons in their employ or of their contractors or others whilst engaged upon the construction or maintenance of the works or upon operations carried out under section 9 (Power to dredge) of this Act; and

(*b*) indemnify the Coal Board from and against all claims and demands arising out of or in connection with the construction or maintenance of the works or any such failure, act or omission as aforesaid;

as a result of which any thing forming part of the works or used in connection with the construction or maintenance of the works or in connection with any such operations as aforesaid is carried downstream and causes damage to the jetty or any vessel moored or about to be moored to the jetty:

Provided that—

(i) nothing in this paragraph shall impose any liability on the Board in respect of any such claim or demand in so far as and to the extent to which it is attributable to the act, neglect or default of any person other than the Board, their contractors, agents, workmen or servants; and

(ii) the Coal Board shall give to the Board immediate notice of any such claim or demand and no settlement or compromise thereof shall be made except with the consent of the Board who (if they so elect) shall at their expense have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the same:

(3) If any vessel or apparatus used in connection with the construction or maintenance of the works or with any operations carried out under the said section 9 is in such a position as is likely to constitute a material interference with the navigation of vessels proceeding to or leaving the jetty, the Board shall on receiving notice in writing from the Coal Board in the case of a vessel move it within twenty-four hours and in the case of apparatus move it within a reasonable time.

Saving for Town and Country Planning Act, 1971. 1971 c. 78.

35.—(1) Section 289 of the Town and Country Planning Act, 1971, shall apply to this Act as if it had been passed during the Session of the 10 & 11 Geo. 6; and accordingly the Town and Country Planning Act, 1971, and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this Act.

(2) 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, 1963, shall have effect as if the authority to develop given by this Act in respect of Work No. 1 were limited to such development begun within five years after the passing of this Act.

(3) In this section the reference to article 3 of and Class XII in Schedule 1 to the Town and Country Planning General Development Order, 1963, includes a reference to corresponding provisions of any general order superseding that order made under section 24 of the Town and Country Planning Act, 1971, or any corresponding provision of an Act repealing that section. 1971 c. 78.

36. 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 Board. Costs of Act.

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