

Parkeston Quay Act 1983

CHAPTER vi

LONDON
HER MAJESTY'S STATIONERY OFFICE

Parkeston Quay Act 1983

CHAPTER vi

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ELIZABETH II



1983 CHAPTER vi

An Act to empower Sealink Harbours Limited to construct works and to acquire land at Parkeston Quay; to confer further powers on the Company; and for other purposes.

[13th May 1983]

WHEREAS—

(1) By the Sealink Harbours Scheme 1981, made by Sealink U.K. Limited in exercise of their powers under section 2 of the Transport Act 1981, there was transferred from Sealink U.K. Limited (a wholly-owned subsidiary of the British Railways Board) to Sealink Harbours Limited (a wholly-owned subsidiary of Sealink U.K. Limited and hereinafter referred to as "the Company") on 11th July 1982 (inter alia) all the property, rights and liabilities comprised in that part of the undertaking of Sealink U.K. Limited which consists of the harbour known as Parkeston Quay in the district of Tendring in the county of Essex: 1981 c. 56.

(2) It is expedient that the Company should be empowered to construct the works at Parkeston Quay authorised by this Act and to purchase the land referred to in this Act:

(3) It is expedient that the other powers in this Act contained should be conferred upon the Company, as therein provided, and that the other provisions in this Act contained should be enacted:

(4) Plans and sections showing the lines or situations and levels of the works to be constructed under the powers of this Act, and plans of the land authorised to be purchased or used by this Act, and a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the said land were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the Chief Executive and Clerk of the Essex County Council, which plans, sections and book of reference are respectively referred to in this Act as the deposited plans, the deposited sections and the deposited book of reference:

(5) The purposes of this Act cannot be effected without the authority of Parliament:

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:—

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Parkeston Quay Act 1983.

Interpretation.

2.—(1) In this Act, unless there be something in the subject or context repugnant to such construction, the several words and expressions to which meanings are assigned by the enactments incorporated herewith have in relation to the relative subject-matter the same respective meanings; and—

"the Company" means Sealink Harbours Limited;

"the conservancy board" means the Harwich Harbour Conservancy Board;

"the existing quay" means the quay of the Company comprising the eastern end of the West Fisher Berth of Parkeston Quay West and the Mid West Berth of Parkeston Quay;

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

"the limits of deviation" means the limits of deviation shown on the deposited plans;

"the river" means the river Stour;

"the statutory maximum" means the prescribed sum as defined in section 32 (9) of the Magistrates' Courts Act 1980;

1980 c. 43.

PART I —*cont.*

"telegraphic line" has the same meaning as in the Telegraph Act 1878; 1878 c. 76.

"tidal work" means so much of the works, or any of them, as is on, under or over tidal waters or tidal land below the level of high water;

"the tribunal" means the Lands Tribunal;

"vessel" means every description of vessel, however propelled or moved, including a hovercraft (within the meaning of the Hovercraft Act 1968), a hydrofoil vessel and anything constructed or used to carry persons or goods by water; 1968 c. 59.

"the works" means the works authorised by Part II (Works, etc.) of this Act.

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

(3) Unless the 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.

Application of Part I of Compulsory Purchase Act 1965. 1965 c. 56.

3.—(1) Part I of the Compulsory Purchase Act 1965 (except sections 4 and 27 thereof and paragraph 3 (3) of Schedule 3 thereto), 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 purchase of land under this Act as it applies to a compulsory purchase to which Schedule 1 to the Acquisition of Land Act 1981 applies and as if this Act were a compulsory purchase order under the said Act of 1981. 1981 c. 67.

(2) In section 11 (1) of the Compulsory Purchase Act 1965 (which empowers the acquiring authority to enter on and take possession of land the subject of a notice to treat after giving not less than fourteen days' notice), as so applied, for the words "fourteen days" there shall be substituted the words "three months".

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

PART II
WORKS, ETC.
Works

Power to make works.

4.—(1) Subject to the provisions of this Act, the Company may, in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the works hereinafter described with all necessary works and conveniences connected therewith:—

In the county of Essex—

In the district of Tendring—

Partly in the parish of Ramsey and Parkeston and partly on the foreshore and bed of the river adjacent thereto—

(Quay wall) Work No. 1 A quay wall commencing by a junction with the existing quay at a point 243 metres east of the western corner of the existing quay and extending in a northerly direction for a distance of 21 metres, thence proceeding in an easterly direction for a distance of 215 metres and terminating at a point on the existing quay 212 metres east of the point of commencement, measured along the face of the existing quay:

(Link span and pontoon) Work No. 2 A hinged link span and supporting pontoon, the centre of the hinged link span commencing at a point on Work No. 1 12 metres north of its point of commencement and extending in a westerly direction for a distance of 74 metres and there terminating.

(2) The Company may, within the limits of deviation of the works, from time to time extend, enlarge, alter, renew, replace or reconstruct temporarily or permanently the works.

(3) The Company may for the purposes of the works fill in and reclaim from the foreshore and bed of the river and may hold and use as part of their undertaking so much of the foreshore and bed of the river as is situated within the limits of deviation and is required for or in connection with the works or for other the purposes of their undertaking.

Power to make subsidiary works.

5. The Company may, in connection with the works, from time to time construct or place and maintain in, under or over any of the land delineated on the deposited plans relating to the

PART II —*cont.*

works and described in the deposited book of reference all such works and conveniences subsidiary or ancillary to the works and all such appliances, machinery and apparatus as they may from time to time deem necessary or convenient for any purpose of, or in connection with, the works or the accommodation of vessels and traffic thereat.

Power to dredge.

6.—(1) The Company may (subject to the consent required by section 34 (Crown rights) of this Act) from time to time deepen, dredge, scour, cleanse, alter and improve the bed, channel and foreshore of the river in the vicinity of the works and the approaches thereto, and blast any rock therein, for the purpose of constructing and maintaining the works and obtaining, preserving and improving uninterrupted access to and from the works or any of them.

(2) Any materials taken up or collected in the course of such operations shall (subject to the consent required by section 34 (Crown rights) of this Act) be the property of the Company and may be used, sold, removed, deposited or otherwise disposed of as the Company may think fit:

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

Power to deviate.

7. In the execution of any part of the works the Company may deviate from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation of the works and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Agreements between Company and British Railways Board.

8.—(1) In this section "the board" means the British Railways Board and includes—

(*a*) any related company (within the meaning of paragraph 1 (9) of Schedule 1 to the Transport Act 1981); or

(*b*) any subsidiary (within the meaning of section 154 of the Companies Act 1948) of the board.

1981 c. 56.
1948 c. 38.

(2) The Company and the board may enter into and carry into effect agreements—

(*a*) as to the construction, maintenance and operation of the works and as to any other matters incidental thereto or consequential thereon; and

(*b*) as to the defraying of, or the making of contributions towards, the cost of the matters referred to in paragraph (*a*) of this subsection by the Company or by the board, or by the Company and the board jointly.

PART II —*cont.*

(3) Any agreement may provide (inter alia) for the exercise by the board of all or any of the powers of the Company in connection with the works subject to the like provisions in relation thereto as would apply if those powers were exercised by the Company.

Underpinning of buildings near works.

9.—(1) The Company at their own expense may, subject as hereinafter provided, underpin or otherwise strengthen any house or building within 35 metres of any of the works and the following provisions shall have effect:—

(*a*) At least 14 days' notice shall (except in case of emergency) be given to the owner, lessee and occupier of the house or building intended to be so underpinned or otherwise strengthened;

(*b*) Each such notice shall be served in manner prescribed by section 30 of the Compulsory Purchase Act 1965, as applied by this Act;

1965 c. 56.

(*c*) If any owner, lessee or occupier of any such house or building shall, within 10 days after the giving of such notice, give a counter-notice in writing that he disputes the necessity of such underpinning or strengthening, the question of the necessity shall be settled by arbitration;

(*d*) In any case in which any house or building shall have been underpinned or strengthened under the powers of this section the Company may, from time to time after the completion of such underpinning or strengthening, and during the execution of the work in connection with which such underpinning or strengthening was done, or within five years after the completion of that work, enter upon and survey such house or building and, after complying with the foregoing provisions of this section, do such further underpinning or strengthening as they may deem necessary or expedient;

(*e*) The Company shall be liable to compensate the owner, lessee and occupier of every such house or building for any loss or damage which may result to them by reason of the exercise of the powers of this section;

(*f*) Nothing in this section nor any dealing with any property under this section shall relieve the Company from the liability to compensate under section 10 (2) of the Compulsory Purchase Act 1965, as applied by this Act, or under any other enactment in respect of loss or damage arising from the execution of any works, other than works of underpinning or strengthening authorised by this section;

(*g*) Any dispute as to a person's entitlement to compensation under this section or as to the amount of the compensation shall be determined by the tribunal, and sections 2(2) to (5) and 4 of the Land Compensation Act 1961 (which relate to conduct of certain proceedings before the tribunal and costs) shall with the necessary modifications apply in relation to the determination by the tribunal of such a dispute. 1961 c. 33.

(2) The Company shall, so far as is reasonably practicable, so exercise the powers of this section as not to obstruct or render less convenient the access to any telegraphic line belonging to, or used by, British Telecommunications.

Use of sewe etc., for removing water.

10.—(1) In this section "the water authority" means the Anglian Water Authority.

(2) The Company may use for the discharge of any water pumped or found by them during the construction of the works any available stream or watercourse, or any sewer or drain of the water authority and for that purpose may lay down, take up and alter conduits, pipes and other works and may make any convenient connections with any such stream, watercourse, sewer or drain at Parkeston Quay:

Provided that—

(*a*) the Company shall not discharge any water into any sewer or drain vested in or under the control of the water authority except with the consent of the water authority and subject to such terms and conditions as the water authority may reasonably impose; and

(*b*) the Company shall not make any opening into any such sewer or drain save in accordance with plans reasonably approved by, and under the superintendence (if given) of, the water authority.

(3) (*a*) Notwithstanding anything in section 11 (7) of the Rivers (Prevention of Pollution) Act 1951, the discharge of any water under this section into any stream as defined in that section shall be subject to the provisions of section 2 of that Act. 1951 c. 64.

(*b*) On the coming into force of section 31 of the Control of Pollution Act 1974 paragraph (*a*) of this subsection shall cease to have effect and the said section 31 shall apply to, or to the consequence of, a discharge under the powers of this section into any relevant waters for the purposes of the said section 31 as if this section were excluded from the reference to any provision of a local Act mentioned in subsection (2) (*b*) (ii) of the said section 31 and as if no matter so discharged were trade or sewage effluent or other matter mentioned in subsection (2) (*e*) of the said section 31. 1974 c. 40.

PART II —*cont.*

(4) The Company shall take all such steps as may reasonably be required to secure that any water discharged by them under this section shall be as free as may be reasonably practicable from any gravel, soil or other solid substance or matter in suspension.

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

For protection of tidal works

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

11.—(1) A tidal work shall not be constructed, extended, enlarged, altered, renewed, replaced or reconstructed 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, extended, enlarged, altered, renewed, replaced or reconstructed in contravention of this section or of any condition or restriction imposed under this section—

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

(*b*) if it appears to the Secretary of State urgently necessary so to do, he may 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 Company.

Survey of tidal works.

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

Lights on tidal works during construction, etc.

13.—(1) The Company shall at or near a tidal work during the whole time of the construction, extension, enlargement, alteration, renewal, replacement or reconstruction 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 and the conservancy board, or as, failing agreement between them, the Secretary of State, shall from time to time direct.

PART II —*cont.*

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

Permanent lights on tidal works.

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

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

Abatement of works abandoned or decayed.

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

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

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

Provision against danger to navigation.

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

(2) If the Company fail to notify the conservancy 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 the statutory maximum and on conviction on indictment to a fine.

PART II —*cont.*

Defence of due diligence.

17.—(1) (*a*) In proceedings for an offence under any provision of this Act mentioned in paragraph (*b*) of this subsection it shall be a defence for the Company to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(*b*) The provisions referred to in paragraph (*a*) of this subsection are—

Section 13 (Lights on tidal works during construction, etc.);

Section 14 (Permanent lights on tidal works);

Section 16 (Provision against danger to navigation).

(2) If in any case the defence provided by paragraph (*a*) of subsection (1) of this section involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

General

Works to form part of Parkeston Quay.

1874 c. cxxviii.

18. The works shall be deemed to form part of Parkeston Quay and the provisions of the Great Eastern Railway Act 1874 and all other enactments relating to Parkeston Quay shall (so far as the same are applicable and are not inconsistent with or varied by the provisions of this Act) apply to the works as if the same had been authorised by the said Act of 1874:

Provided that, in its application to the works the expression "the prescribed limits" in the Harbours, Docks, and Piers Clauses Act 1847 shall mean a distance of 200 metres measured from any part of the existing quay.

1847 c. 27.

Works to be within parish of Ramsey and Parkeston, etc.

19. So much of the works as is beyond mean low water shall be deemed to be within—

(*a*) the parish of Ramsey and Parkeston; and

(*b*) the petty sessional division of Harwich.

PART III

LANDS

Purchase of land.

20. Subject to the provisions of this Act, the Company may purchase compulsorily and use such of the land delineated on

PART III —*cont.*

the deposited plans and described in the deposited book of reference as they may require for the purposes of the works or for any purpose connected with or ancillary to their undertaking.

Purchase of rights over land.

21.—(1) In this section—

"the 1965 Act" means the Compulsory Purchase Act 1965; and 1965 c. 56.

references to the purchase by the Company of new rights are references to the purchase of rights to be created in favour of the Company.

(2) The Company may, for the purposes of constructing, maintaining, altering, renewing and using the works or for the purpose of doing any other thing necessary in connection with the works, purchase compulsorily such new rights as they may require over any of the land delineated on the deposited plans and described in the deposited book of reference instead of purchasing that land under section 20 (Purchase of land) of this Act.

(3) The 1965 Act, as applied by this Act, shall have effect with the modifications necessary to make it apply to the compulsory purchase of new rights under subsection (2) of this section as it applies to the compulsory purchase of land so that, in appropriate contexts, references in the 1965 Act to land are read as referring, or as including references, to the new rights or to land over which the new rights are, or are to be, exercisable, according to the requirements of the particular context.

(4) Without prejudice to the generality of subsection (3) of this section, in relation to the purchase of new rights under subsection (2) of this section—

(*a*) Part I of the 1965 Act shall have effect with the modifications specified in the Schedule to this Act;

(*b*) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

Time for purchase of land and rights over land.

22. The powers of the Company for the compulsory purchase of the land and rights over land which they are authorised by this Act to purchase shall cease on 31st December 1988.

PART III —*cont.*

Disregard of recent improvements and interests.

23. In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land under this Act, the tribunal shall not take into account—

(*a*) any interest in land; or

(*b*) 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 purchased or on any other land with which the claimant is, or was at the time of the erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned);

if the tribunal are 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.

Correction of errors in deposited plans and book of reference.

24.—(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 Company after giving not less than 10 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 of the House of Commons, and with the proper officer or chairman of a local authority with whom a copy of the deposited plans has been deposited in accordance with the Standing Orders of the Houses of Parliament, or who has the custody of any such 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 Company 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.

PART IV

ANCILLARY WORKS

Interpretation of Part IV and incorporation of enactments

25.—(1) In this Part of this Act—

"ancillary works" means all or any of the following:— caissons, cofferdams, piles, jetties, link spans, quays, walls, wharves, fenders, mooring posts, bollards, booms, dolphins, pontoons, stagings and other works, apparatus and conveniences;

"the designated area" means so much of Parkeston Quay and of the river as lies within the limit of ancillary works as shown on the deposited plans;

"designated works" means such works at Parkeston Quay as are within the designated area and have been provided under any enactment including this Act.

(2) Sections 30 to 44 of the Railways Clauses Consolidation Act 1845, so far as the same are applicable to the purposes and are not inconsistent with, or varied by, the provisions of this Act, are hereby incorporated with and form part of this Act, and this Act shall be deemed to be the special Act for the purposes of the said sections 30 to 44: 1845 c. 20.

Provided that for the purposes of the said sections 30 to 44—

(i) the ancillary works shall be deemed to be the railway; and

(ii) the expression "the company" where used means the Company.

Power to make ancillary works.

26.—(1) Subject to the provisions of this Act the Company may, within the designated area—

(*a*) construct, execute, lay down, place, keep and maintain; and

(*b*) extend, enlarge, alter, renew, replace or reconstruct;

permanently or temporarily all such ancillary works as they may from time to time require for the purposes of or in connection with the designated works or their undertaking at Parkeston Quay or for the purposes of or in connection with the accommodation of vessels thereat.

(2) The Company may for the purpose of carrying out any ancillary works permanently or temporarily alter, remove or otherwise interfere with any drains, sewers, submarine cables, telegraphic, telephonic, electric, gas, water and other pipes, lines, wires, works and apparatus within the designated area.

PART IV —*cont.*

(3) In the exercise of the powers conferred by this section, the Company shall cause as little damage and inconvenience to any person as the circumstances permit and shall make compensation for any damage caused to any person by the exercise of such powers.

(4) Any dispute as to a person's entitlement to compensation under subsection (3) of this section or as to the amount of the compensation shall be determined by the tribunal, and sections 2(2) to (5) and 4 of the Land Compensation Act 1961 (which relate to conduct of certain proceedings before the tribunal and costs) shall with the necessary modifications apply in relation to the determination by the tribunal of such a dispute.

1961 c. 33.

(5) This Part of this Act shall have effect without prejudice to the functions of the conservancy board under Part II of the Harwich Harbour Act 1974 and, without prejudice to that generality, nothing in this Part of this Act shall be taken as specific authorisation of the ancillary works or authorisation to carry out works without any such licence as may be required under section 19 (Restriction on works, dredging and moorings) of the said Act of 1974.

1974 c.i.

Application of provisions of Parts II and V of this Act.

27.—(1) The provisions of Parts II (Works, etc.) and V (Protective provisions) of this Act mentioned in subsection (2) of this section, shall apply to the ancillary works and for the purposes of such application—

(*a*) the expression "tidal work" where used in the said provisions means so much of the ancillary works as is on, under or over tidal waters or tidal land below the level of high water; and

(*b*) the expressions "any works" or "works" where so used mean the ancillary works.

(2) (*a*) The provisions of Part II (Works, etc.) of this Act referred to in subsection (1) of this section are—

Section 6 (Power to dredge);
Section 8 (Agreements between Company and British Railways Board);
Section 9 (Underpinning of buildings near works);
Section 10 (Use of sewers, etc., for removing water);
Section 11 (Tidal works not to be executed without approval of Secretary of State);
Section 12 (Survey of tidal works);
Section 13 (Lights on tidal works during construction, etc.);
Section 14 (Permanent lights on tidal works);
Section 15 (Abatement of works abandoned or decayed);
Section 16 (Provision against danger to navigation);

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Section 17 (Defence of due diligence);
Section 18 (Works to form part of Parkeston Quay);
Section 19 (Works to be within parish of Ramsey and Parkeston, etc.).

(*b*) The provisions of Part V (Protective provisions) of this Act referred to in subsection (1) of this section are—

Section 28 (For protection of British Telecommunications);
Section 30 (For protection of Harwich Harbour Conservancy Board);
Section 32 (For protection of electricity, gas and water undertakers);
Section 33 (Saving for Trinity House);
Section 34 (Crown rights).

PART V

PROTECTIVE PROVISIONS

For protection of British Telecommunications.

28. For the protection of British Telecommunications (in this section referred to as "the corporation") the following provisions shall, unless otherwise agreed in writing between the Company and the corporation, apply and have effect:—

(1) In this section "cable" means any sub-aqueous cable belonging to, or used by, the corporation:

(2) (*a*) Before the Company exercise any of their powers under section 6 (Power to dredge) of this Act within 50 metres of a cable, they shall give to the corporation in writing as long notice as is practicable of their intention to do so and, except in case of emergency, such notice shall be not less than 28 days;

(*b*) No materials shall be laid down or deposited under the said section 6 in any place or manner so as to cover a cable or unreasonably to impede the inspection, maintenance, removal or renewal of a cable:

Provided that the protection afforded by this paragraph shall only apply to a cable the position of which has been notified in writing by the corporation to the Company and which lies within the area of jurisdiction of the conservancy board:

(3) Any difference arising between the Company and the corporation under this section shall be settled by arbitration.

PART V —*cont.*

For protection of conservancy and navigation in Harwich Harbour. 1874 c. cxxviii.

29. The following provisions shall have effect unless otherwise agreed between the Company and the conservancy board in place of the proviso to section 8 of the Great Eastern Railway Act 1874 as applied by section 18 (Works to form part of Parkeston Quay) of this Act:—

(1) In this section "plans" includes sections, drawings and specifications, and reference to the plans of any tidal work includes reference to plans of any dredging or other operations affecting tidal waters to be carried out for the purposes of the construction of that work and of obtaining access thereto:

(2) Before commencing the construction of any tidal work the Company shall supply to the conservancy board plans of that work for their reasonable approval:

Provided that in the case of any work to be carried out under section 5 (Power to make subsidiary works) of this Act, being a work which is required in an emergency, the Company shall not be required to submit plans of that work before its commencement but shall give immediate notice of the work to the conservancy board and shall submit plans of the work to the conservancy board as soon as reasonably practicable after its commencement:

(3) The conservancy board may disapprove plans submitted to them under this section or approve them conditionally or unconditionally, and, if the conservancy board do not within 56 days of the submission to them of any plans notify the Company in writing of their approval of those plans (conditionally or unconditionally), they shall be deemed to have approved the plans:

(4) A tidal work, and any dredging or other operations to be carried out for the purpose thereof, shall not be constructed or, as the case may be, carried out, except in accordance with such plans as may have been approved (conditionally or unconditionally) by the conservancy board under this section or, in the event of the disapproval or a conditional approval of plans which is unacceptable to the Company, settled by arbitration:

(5) The Company shall give to the conservancy board not less than 28 days' notice of the commencement of any of the works:

(6) Plans of a tidal work shall not be submitted by the Company to the Secretary of State for his approval under section 11 (Tidal works not to be executed with-

PART V —*cont.*

out approval of Secretary of State) of this Act until plans of that work have been approved by the conservancy board or settled by arbitration under this section and, if on the submission of plans to him the Secretary of State requires the alteration of the plans of any work so approved or settled under this section, the Company shall, not less than 28 days before commencing the work, notify the conservancy board of the alteration:

(7) Subject to compliance with paragraph (6) of this section, if there shall be any inconsistency between the plans of any tidal work approved or settled under this section and the plans approved by the Secretary of State under the said section 11, the work shall be constructed in accordance with the plans approved by the Secretary of State:

(8) The exercise by the Company of the powers of section 6 (Power to dredge) of this Act for the purpose of improving access to and from the works shall not, for the purpose of section 19 (Restriction on works, dredging and moorings) of the Harwich Harbour Act 1974, be taken to be specifically authorised by any enactment: 1974 c. i.

(9) Any difference arising between the Company and the conservancy board under this section shall be settled by arbitration.

For protection of Harwich Harbour Conservancy Board.

30. For the protection of the conservancy board the following provisions shall, unless otherwise agreed in writing between the Company and the conservancy board, apply and have effect:—

(1) In this section "the protected area" means so much of the river as is now eastward of the west boundary of Parkeston Anchorage and westward of the Guard Buoy and the area within the limits of Felixstowe Dock with the navigational approaches thereto:

(2) (*a*) If, during the construction of the works on the foreshore or bed of the river or of any temporary structures in connection therewith respectively or within five years after the completion of such works or after the removal of such temporary structures, any accumulation of silt or other material shall be created within the protected area in consequence of—

(i) the construction of the works or such temporary structures; or

(ii) dredging carried out to afford access for vessels to the works;

PART V —*cont.*

which shall cause an impediment to the free navigation of the protected area, the Company, if so requested by the conservancy board within the period of five years after such completion, shall remove such accumulation of silt or other material, and, if they refuse or fail to do so, the conservancy board may recover from the Company the reasonable cost of any work which they cause to be done for that purpose;

(*b*) Should any such accumulation arise within the said period of five years and be removed in accordance with the provisions of sub-paragraph (*a*) of this paragraph, then any recurrence of such accumulation shall from time to time be removed as aforesaid during a period of 10 years after the completion of the works or the removal of such temporary structures, as the case may be:

(3) Any difference arising between the Company and the conservancy board under this section shall be settled by arbitration.

For protection of Felixstowe Dock and Railway Company.

31. For the protection of the Felixstowe Dock and Railway Company (in this section referred to as "the Felixstowe Company") the following provisions shall, unless otherwise agreed in writing between the Company and the Felixstowe Company, apply and have effect:—

(1) In this section "the protected area" means the area within the limits of Felixstowe Dock with the navigational approaches thereto:

(2) Paragraphs (2) and (3) of section 30 (For protection of Harwich Harbour Conservancy Board) of this Act shall extend and apply as respects the protected area for the protection of the Felixstowe Company as if—

(*a*) for references therein to the conservancy board there were substituted references to the Felixstowe Company;

(*b*) the works included any ancillary works carried out under Part IV (Ancillary works) of this Act.

For protection of electricity, gas and water undertakers.

32. For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Company and the undertakers concerned, apply and have effect:—

(1) In this section—

"adequate alternative apparatus" means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

PART V
—*cont.*

"apparatus" means—

(*a*) electric lines or works (as respectively defined in the Electricity (Supply) Acts 1882 to 1936) belonging to or maintained by the Central Electricity Generating Board or the Eastern Electricity Board;

(*b*) mains, pipes or other apparatus belonging to or maintained by—

(i) the Anglian Water Authority (in their capacity as an authority authorised to carry on an undertaking for the supply of water within their area); or

(ii) the British Gas Corporation;

(not being in any case apparatus in respect of which the relations between the Company and the undertakers are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950) and includes any building, structure or works for the lodging therein of apparatus; 1950 c. 39.

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"the undertakers" means—

the Anglian Water Authority (in their capacity as an authority authorised to carry on an undertaking for the supply of water within their area);

the British Gas Corporation;

the Central Electricity Generating Board; and

the Eastern Electricity Board;

or any of them, and in relation to any apparatus means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained:

(2) The Company, in the case of the powers conferred by section 9 (Underpinning of buildings near works) of this Act, shall so far as is reasonably practicable so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason or in consequence of the exercise of those powers, any damage to any apparatus (other than

PART V —*cont.*

apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertakers or any interruption in the supply of electricity, gas or water, as the case may be, by the undertakers shall be caused, the Company shall bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply and shall—

(*a*) make reasonable compensation to the undertakers for any loss sustained by them; and

(*b*) indemnify the undertakers against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the undertakers;

by reason or in consequence of any such damage or interruption:

Provided that—

(i) nothing in this paragraph shall impose any liability on the Company with respect to any damage or interruption to the extent that such damage or interruption may be attributable to the act, neglect or default of the undertakers or their contractors or workmen;

(ii) the undertakers shall give to the Company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Company:

(3) Notwithstanding anything in section 10 (Use of sewers, etc., for removing water) of this Act, no use shall be made by the Company in the construction of the works of pumping or other like modes of removing water except where reasonably necessary or in the case of emergency or unforeseen accident or for the purpose of removing rainwater or other small amounts of water, and the provisions of section 26 of the Public Utilities Street Works Act 1950, shall apply to, and in relation to, the laying down, taking up or altering of conduits, pipes or other works under the said section 10 as if executed by the Company as operating undertakers within the meaning of the said section 26:

1950 c. 39.

(4) Notwithstanding anything in this Act or shown on the deposited plans the Company shall not acquire any apparatus under the powers of this Act otherwise than by agreement:

PART V —*cont.*

(5) If the Company in the exercise of the powers of this Act acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this section and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus shall have been constructed and be in operation to the reasonable satisfaction of the undertakers:

(6) If the Company for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Act, require the removal of any apparatus placed in that land and shall give to the undertakers written notice of such requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, or if, in consequence of the exercise of any of the powers of this Act, the undertakers shall reasonably require to remove any apparatus, the Company shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the Company and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the Company, and the Company are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or such part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Company, forthwith use their best endeavours to obtain the necessary facilities and rights in such last-mentioned land:

(7) (*a*) Any alternative apparatus to be constructed in land of the Company in pursuance of this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Company or in default of agreement settled by arbitration;

(*b*) The undertakers shall, after the alternative apparatus to be provided or constructed shall have been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (6) of this section,

PART V
—cont.

proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Company to be removed under the provisions of this section:

(8) Notwithstanding anything in paragraph (7) of this section, if the Company give notice in writing to the undertakers that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will be situate in any land of the Company, such work, in lieu of being executed by the undertakers, shall be executed by the Company with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers:

Provided that nothing in this paragraph shall authorise the Company to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around the apparatus extending (where the apparatus is laid in a trench) to not less than 300 millimetres above the apparatus:

(9) Where, in accordance with the provisions of this section, the Company afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Company of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Company and the undertakers or in default of agreement determined by arbitration:

Provided that—

(*a*) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed in land of the Company the arbitrator shall—

(i) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the undertaking of the Company at Parkeston Quay and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company; and

PART V —*cont.*

(ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions applicable to the apparatus, if any, for which the alternative apparatus is to be substituted;

(*b*) if the facilities and rights to be afforded by the Company in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Company to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the particular case:

(10) (*a*) Not less than 28 days before commencing to execute any such works as are referred to in paragraph (6) of this section and are near to or will or may affect any apparatus the removal of which has not been required by the Company under the said paragraph (6), the Company shall submit to the undertakers a plan, section and description of the works to be executed;

(*b*) Such works shall be executed only in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of such works:

Provided that—

(i) if the undertakers within 14 days after the submission to them of any such plan, section and description, shall, in consequence of the works proposed by the Company, reasonably require the removal of any apparatus and give written notice to the Company of such requirement, the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required by the Company under the said paragraph (6); and

PART V
—cont.

(ii) nothing in this sub-paragraph shall preclude the Company from submitting at any time, or from time to time, but in no case less than 28 days before commencing the execution of any such works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan, section and description;

(*c*) The Company shall not be required to comply with sub-paragraph (*a*) of this paragraph in a case of emergency but in such a case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of the works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (*b*) of this paragraph so far as reasonably practicable in the circumstances:

(11) The Company shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (6) of this section, less the value of any apparatus removed under the provisions of this section (such value being calculated after removal) and shall also make compensation to the undertakers—

(*a*) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this section); and

(*b*) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

by reason or in consequence of the execution, maintenance, user or failure of any such works or otherwise by reason or in consequence of the exercise by the Company of the powers of this Act:

(12) Any difference arising between the Company and the undertakers under this section shall be settled by arbitration:

(13) Nothing in this section shall be deemed to prejudice or affect the provisions of any enactment or agreement regulating the relations between the Company

and the undertakers in respect of any apparatus laid or erected in land belonging to the Company at the date of the passing of this Act. PART V —*cont.*

Saving for Trinity House.

33. Nothing in this Act shall prejudice or derogate from any of the rights or privileges or the jurisdiction or authority of the Corporation of Trinity House of Deptford Strond.

Crown rights.

34.—(1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Act authorises the Company to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

(*a*) 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; or

(*b*) 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.

(2) A consent under subsection (1) of this section may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

PART VI

MISCELLANEOUS

Planning permission.

S.I. 1977/289.

35.—(1) In this section "Class XII development" means development authorised by Article 3 of, and Class XII in Schedule 1 to, the Town and Country Planning General Development Order 1977 (which permit development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out).

(2) Subject to the provisions of subsection (3) of this section, in its application to development authorised by this Act, the planning permission granted for Class XII development shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.

PART VI —*cont.*

(3) Subsection (2) of this section shall not apply to the carrying out of any development consisting of the extension, enlargement, alteration, renewal, replacement, reconstruction, maintenance or repair of works or the substitution of new works therefor.

Arbitration.

1965 c. 56.

36. Where under any provision of this Act any difference (other than a difference to which the provisions of the Compulsory Purchase Act 1965, as applied by this Act, apply or as to the meaning or construction of any such provision) is to be referred to or settled by arbitration, then such difference shall be referred to and settled by a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the president of the Institution of Civil Engineers.

Costs of Act.

37. All costs, charges and expenses of and incidental to the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by the Company and may in whole or in part be defrayed out of revenue.

SCHEDULE

Section 21 (4)(*a*).

MODIFICATION OF PART I OF COMPULSORY PURCHASE ACT 1965

1. In the Compulsory Purchase Act 1965 (hereinafter in this Schedule referred to as "the 1965 Act") for section 7 (which relates to compensation) there shall be substituted the following:— 1965 c. 56.

"7.—(1) In assessing the compensation to be paid by the Company under this Act regard shall be had not only to the extent, if any, to which the value of the land over which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.

(2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that for the words 'land is acquired or taken' there shall be substituted 'a right over land is purchased' and for the words 'acquired or taken from him' there shall be substituted 'over which the right is exercisable'." 1973 c. 26.

2. For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following:—

"8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (hereafter in this subsection referred to as 'the relevant land')—

(*a*) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (hereafter in this section referred to as 'the Tribunal'); and

(*b*) before the Tribunal has determined that question the person satisfies the Tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs;

the Parkeston Quay Act 1983 shall, in relation to that person, cease to authorise the purchase of the right and be deemed to

SCH. —*cont.*

authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the Tribunal directs.

(2) Any question as to the extent of the land in which the Parkeston Quay Act 1983 is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the Tribunal.

(3) Where, in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1) of this section, the Parkeston Quay Act 1983 is deemed by virtue of that subsection to authorise the purchase of an interest in land, the Company may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the Company to withdraw the notice.

1973 c. 26.

(4) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1) of this section, are that at the beginning of paragraphs (*a*) and (*b*) there shall be inserted the words 'a right over', for the word 'severance' there shall be substituted 'right on the whole of the house, building or manufactory or of the house and the park or garden' and for the words 'part proposed' and 'part is' there shall be substituted respectively 'rights proposed' and 'right is'."

3. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), namely:—

section 9 (4) (failure of owners to convey);

paragraph 10 (3) of Schedule 1 (owners under incapacity);

paragraph 2 (3) of Schedule 2 (absent and untraced owners); and

paragraphs 2 (3) and 7 (2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be purchased compulsorily is vested absolutely in the Company.

4. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the Company have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff's warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

SCH. —*cont.*

5. Section 20 of the 1965 Act (compensation for short term tenants) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the interests but taking into account only the extent, if any, of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

6. Section 22 of the 1965 Act (protection of acquiring authority's possession of land where by inadvertence an interest in the land has not been purchased) shall be so modified as to enable the Company, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right in question, subject to compliance with that section as respects compensation.

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