CHAPTER xxiii.

An Act to confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act 1861 relating to Swanage.

[30th July 1948.]

WHEREAS a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act 1861 is not of any validity or force whatever until confirmation thereof by Act of Parliament: 24 & 25 Vict. c. 45.

And whereas it is expedient that the Provisional Order made by the Minister of Transport under the said Act as set out in the schedule to this Act be confirmed by Act of Parliament:

Be it therefore enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—

1. The Order as set out in the schedule to this Act shall be and the same is hereby confirmed and all the provisions thereof in manner and form as they are set out in the said schedule shall from and after the passing of this Act have full validity and force. Confirmation of Order in schedule.

2. This Act may be cited as the Pier and Harbour Order (Swanage) Confirmation Act 1948. Short title.

SCHEDULE.

SWANAGE PIER.

Provisional Order to authorise the Swanage Pier Company to borrow money and to levy and recover increased rates and charges to provide for the revision of the rates and charges and for other purposes.

Short and collective titles.

1.—(1) This Order may be cited as the Swanage Pier Order 1948.

22 & 23 Vict. c. lxxvii. 59 Vict. c. iv.

(2) The Swanage Pier Act 1859 and the Swanage Pier Order 1895 confirmed by the Pier and Harbour Orders Confirmation (No. 2) Act 1895 may be cited together as the Swanage Pier Act and Order 1859 and 1895.

(3) The Swanage Pier Act and Order 1859 and 1895 and this Order may be cited together as the Swanage Pier Act and Orders 1859 to 1948.

Commencement.

2. This Order shall come into operation upon the day when the Act confirming this Order is passed and that day is in this Order referred to as the commencement of this Order.

Interpretation.

3. In this Order unless the context otherwise requires words and expressions to which by the Swanage Pier Act and Order 1859 and 1895 or by any enactments incorporated therewith or applied thereto respectively meanings are assigned have in this Order the same respective meanings And—

10 & 11 Vict. c. 27.

"The Harbours Clauses Act 1847" means the Harbours Docks and Piers Clauses Act 1847;

"The Act of 1859" means the Swanage Pier Act 1859;

"The Order of 1895" means the Swanage Pier Order 1895 confirmed by the Pier and Harbour Orders Confirmation (No. 2) Act 1895;

"The Company" means the Swanage Pier Company;

"The pier" means Swanage pier as authorised by the Swanage Pier Act and Order 1859 and 1895 and the land buildings works plant property and conveniences connected therewith or any part thereof as the case may be;

"The undertaking" means the undertaking of the Company in connection with the pier;

"Rate" includes toll;

"Authorised rates" and "authorised rate" mean respectively the rates or rate which the Company are for the time being authorised to levy demand and recover in pursuance of the Swanage Pier Act and Order 1859 and 1895 as amended by this Order;

"The Minister" means the Minister of Transport;

"Vessel" includes a seaplane on the surface of the water;

"Seaplane" includes a flying boat and any other aircraft designed to manoeuvre on the water.

Undertakers.

4. The Company shall be the undertakers for carrying this Order into execution.

Incorporation of Clauses Acts.

5.—(1) The following Acts are incorporated with this Order except as expressly varied thereby:—

8 & 9 Vict. c. 16.

The Companies Clauses Consolidation Act 1845 except the provisions thereof with respect to the conversion of borrowed money into capital;

26 & 27 Vict. c. 118.

Part I (relating to cancellation and surrender of shares) and Part III (relating to debenture stock) of the Companies Clauses Act 1863 as amended by subsequent Acts.

(2) For the purpose of the incorporation of the said Acts the expression "the Special Act" shall mean this Order and the word "undertakers" shall mean the Company.

Application of Harbours Clauses Act 1847 &c.

6.—(1) In the application to this Order of the Harbours Clauses Act 1847 the expression "Special Act" shall mean this Order.

(2) The definition of the word "vessel" in section 3 of the Harbours Clauses Act 1847 as incorporated with the Act of 1859 the Order of 1895 and this Order shall be deemed to include a seaplane on the surface of the water Provided that nothing in the Harbours Clauses Act 1847 or this Order shall in any circumstances require or authorise the harbour master or other officer to require the dismantling of a seaplane or any part thereof or the making of any alteration whatever of the structure or equipment of a seaplane.

(3) Sections 12 and 13 16 to 19 and 84 to 87 of the Harbours Clauses Act 1847 shall not be incorporated with this Order.

Power to borrow.

7. The Company may on the security of the undertaking or the authorised rates borrow and re-borrow or expend out of their own money at interest not exceeding without the consent of the Minister six per centum per annum—

(*a*) such sum as may be required for the payment of the costs charges and expenses of and incident to the preparing for and obtaining of this Order or otherwise in relation thereto;

(*b*) with the consent of the Minister such further sum as may from time to time be required for any of the purposes of the undertaking for which capital may properly be applied and not otherwise:

Provided that the total amount borrowed under the provisions of this section shall not exceed one hundred per centum of the amount (including premiums and allowing for discounts) which at the time of borrowing has been raised by the issue of share capital.

Saving for powers of Treasury. 9 & 10 Geo. 6. c. 58.

8. It shall not be lawful to exercise the powers of borrowing or raising capital conferred by this Order otherwise than in compliance with the provisions of any Orders for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946.

Debenture stock.

9. The Company may create and issue debenture stock subject to the provisions of Part III of the Companies Clauses Act 1863 but notwithstanding anything therein contained the interest of all debenture stock and of all mortgages at any time created and issued or granted by the Company under this Order or any subsequent Act or Order shall subject to the provisions of any subsequent Act or Order rank pari passu (without respect to the dates of the securities or of the Act or Order or resolution by which the debenture stock and mortgages were authorised) and shall have priority over all principal moneys secured by such mortgages Notice of the effect of this provision shall be endorsed on all mortgages and certificates of debenture stock issued after the commencement of this Order.

Priority of mortgages and debenture stock over other debts.

10. All moneys raised or to be raised by the Company on mortgage or by the issue of debenture stock under the provisions of this Order shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the commencement of this Order :

Provided that this priority shall not affect any claim against the Company or their property in respect of any rentcharge granted or to be granted by them in pursuance of the Lands Clauses Acts or in respect of any rent or sum reserved by or payable under any lease granted or made to or vested in the Company which is entitled to rank in priority to or pari passu with the interest on their mortgages or debenture stock.

Appointment of receiver.

11. The mortgagees of the undertaking may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a receiver In order to authorise the appointment of a receiver in respect of arrears of principal the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than ten thousand pounds or one-tenth of the amount for the time being borrowed by the Company whichever is the less.

Protection of lenders.

12. Any person advancing money to the Company shall not be bound to require any further or other evidence of the power of the Company to borrow the money advanced by such person than such as is afforded by—

(*a*) a certificate signed by two of the directors and countersigned by the secretary of the Company that the Company are not exceeding the powers of borrowing conferred upon them by this Order ; and

(*b*) by an inspection of the register of mortgages by section 45 of the Companies Clauses Consolidation Act 1845 required to be kept by the Company.

Application of money borrowed.

13. The money borrowed under this Order shall be applied only to the purposes of the Swanage Pier Act and Order 1859 and 1895 or of this Order to which capital money may properly be applied and not otherwise.

Increase of authorised rates.

14. The rates authorised by section XXXVI (Company may take rates) of the Act of 1859 in respect of animals merchandise and goods and the rates authorised by section 14 (Power to levy rates) of the Order of 1895 and specified in the schedule thereto shall be increased by one hundred per centum.

Rates for seaplanes.

15. Subject to the provisions of the Air Navigation Acts 1920 to 1938 or of any order made in pursuance thereof and to the provisions of this Order the Company may demand levy collect and receive in respect of seaplanes using the pier such reasonable rates as may from time to time be approved by the Minister which rates shall be in lieu of the rates leviable by the Company on or in respect of vessels.

Revision of rates.

16.—(1) If it is represented by application in writing to the Minister—

(*a*) by any chamber of commerce or shipping or any representative body of traders or any person who in the opinion of the Minister is a proper person for the purpose ; or

(*b*) by the Company ;

that in the circumstances then existing the authorised rates or any of them should be revised the Minister if he thinks fit may make an order revising the authorised rates referred to in the application or any of them and may fix the date as from which such order shall take effect and every such order shall remain in force until the same expires or is revoked or modified by a further order of the Minister made in pursuance of this section.

(2) An application made to the Minister under this section shall be accompanied by such information and particulars as the Minister may consider relevant certified in such manner as he may require.

(3) Where upon an application for revision of authorised rates or an authorised rate an order has been made or the Minister has decided not to make an order no further application for a revision of the rates or rate to which the application related shall be made within twelve months from the date of such order or decision as the case may be.

(4) Before making an order under subsection (1) of this section the Minister shall cause an inquiry to be held in reference thereto and the provisions of subsections (2) to (5) of section 290 of the Local Government Act 1933 shall apply to such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority : 23 & 24 Geo. 5. c. 51.

Provided that in cases where no objection has been made to the application or where any objection which has been made has either been withdrawn or appears to the Minister to be of a trivial nature the Minister may if he thinks fit dispense with such inquiry.

Repeal.

17. The following provisions of the Swanage Act and Order 1859 and 1895 are hereby repealed :—

The Act of 1859—

Section XI (Power to borrow on mortgage) ;

The Order of 1895—

Section 20 (Board of Trade may reduce rates) ;
Section 42 (Power to borrow) ;
Section 43 (Power to issue debenture stock) ;
Section 44 (Appointment of receiver).

Costs of Order.

18. All costs charges and expenses of and incident to the preparing for and obtaining of this Order and otherwise incurred in reference thereto shall be paid by the Company.

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