ELIZABETH II

1985 CHAPTER xxv

An Act to authorise the council of the city of Plymouth and Dean and Dyball (Plymouth) Limited to construct works in the Cattewater at Plymouth; to constitute a pier authority; and for other purposes. [16th July 1985]

WHEREAS—

(1) The city of Plymouth (hereinafter referred to as "the city") is under the management and local government of the council of the city of Plymouth (hereinafter referred to as "the Council"):

(2) Dean and Dyball (Plymouth) Limited (hereinafter referred to as "the Company") are a company within the meaning of the Companies Act 1948: 1948 c. 38.

(3) The city and its environs constitute an important holiday, residential and commercial centre:

(4) Leisure activities such as yachting, cruising and boating have, in recent years, considerably expanded and are continuing so to expand around the south-west coast of England:

(5) It would be of public and local advantage to improve and increase the existing facilities within the city for the accommodation of vessels and their owners, which facilities would be of substantial advantage to the residents of the city and to visitors thereto:

(6) There is increasing interest in local, national and international yacht races and other marine events:

(7) The city is well located to cater for such marine events and it would be of public and local advantage to provide a purpose-built centre for such events:

(8) It is expedient that the Council and the Company be authorised to construct the works and the recreational and other facilities hereinafter described in this Act and to purchase the land referred to in this Act:

(9) It is expedient that the other provisions of this Act be enacted:

(10) The objects of this Act cannot be attained without the authority of Parliament:

(11) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed:

1972 c. 70.

(12) A plan and sections showing the lines and levels of the works by this Act authorised and the lands which may be taken or used, and a book of reference to the said plan containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of those lands and describing the same, have been 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 of the Devon County Council, and such plan, sections and book of reference are respectively referred to in this Act as the deposited plan, sections and book of reference:

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

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Plymouth Marine Events Base Act 1985.

Interpretation.

2.—(1) In this Act, except where the context otherwise requires—

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

1847 c. 27.

PART I —*cont.*

"the Cattewater" means the area of the Cattewater harbour within the limits for the time being defined by section 17 of the Pier and Harbour Orders Confirmation (No. 2) Act 1915; 1915 c. xcix.

"the Commissioners" means the Cattewater Harbour Commissioners;

"the Company" means Dean and Dyball (Plymouth) Limited and includes any successor in title to Dean and Dyball (Plymouth) Limited;

"the Council" means the council of the city of Plymouth;

"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 plan;

"the limits of the marina" has the meaning given by section 24 (Limits of marina) below;

"the marina" means such parts of the land and water as lie within the limits of the marina;

"moorings" include mooring posts, floating jetties, pontoons, buoys and similar apparatus or facilities;

"the pier" means the marina and the other works authorised by section 5 (Power to construct works) of this Act;

"the signed map" means the map signed in triplicate by Mr. Ernest Armstrong, the Chairman of the Committee of the House of Commons to whom the Bill for this Act was referred, one copy of which has been deposited at each of the following offices:—

(*a*) the office of the Clerk of the Parliaments, House of Lords;

(*b*) the Private Bill Office, House of Commons; and

(*c*) the office of the Chief Executive and Town Clerk of the Council;

"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;

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

"the undertakers" means the Council and the Company or either of them;

"the undertaking" means the undertaking in connection with the pier;

"vessel" means a ship, boat or raft of any description or any other thing constructed or adapted for floating on or being submerged in water (whether permanently or

PART I —*cont.*

temporarily) including a hovercraft within the meaning of the Hovercraft Act 1968 or any other amphibious vehicle or a seaplane;

1968 c. 59.

"the works" means Works Nos. 1 and 2 authorised by section 5 (Power to construct works) of this Act.

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

Incorporation of Act of 1847.

3.—(1) The Act of 1847, except sections 6 to 27, 29 to 50, 66 to 68, 79 to 82, 84 to 90 and 94 to 96, so far as applicable to the purposes, and not inconsistent with the provisions, of this Act is hereby incorporated with this Act.

(2) In the construction of the Act of 1847, as incorporated with this Act—

(*a*) the expression "harbour, dock or pier" shall mean the pier and any subsidiary works connected therewith and the water area within the limits of the marina;

(*b*) the prescribed limits shall be the limits of control as defined and subject as provided in section 24 (Limits of marina) of this Act;

(*c*) the expression "the undertakers" shall in sections 51 to 65 and 83 of the Act of 1847 mean the Council.

Application of Part I of Compulsory Purchase Act 1965.

1965 c. 56.

4.—(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 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.

1845 c. 18.

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

PART II

WORKS

Power to construct works.

5.—(1) Subject to the provisions of this Act, the undertakers may in the lines and situations and within the limits of deviation shown on the deposited plan, and according to the

PART II —*cont.*

levels shown on the deposited sections, in the city of Plymouth make and maintain the works hereinafter described with all necessary works and conveniences connected therewith:—

Work No. 1: A reclamation with protective rock perimeter incorporating a slipway commencing at the point marked "B" on the deposited plan at ordnance survey national grid co-ordinates SX 48825 53838 and proceeding in a west-south-west direction for a distance of 203 metres to the point marked "Z" on the deposited plan and thence north for 30 metres to the point marked "Y" on the deposited plan, west for 28 metres to the point marked "X" on the deposited plan and north for 33 metres and terminating at the slipway wall at the point marked "A" on the deposited plan;

Work No. 2: A wavescreen supported by a piled and anchored foundation commencing by a junction with Work No. 1 at the point marked "D" on the deposited plan 10 metres to the south and 13 metres to the west of the point marked "Z" on the deposited plan and proceeding in a generally west-south-west direction curving round to the north over a distance of 200 metres, then proceeding north for a distance of 53 metres and terminating at the point marked "C" on the deposited plan.

(2) In the construction of the pier the undertakers may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation, and may deviate vertically from the levels of those works shown on the deposited sections to any extent upwards or downwards.

(3) The undertakers may, within the limits of deviation, from time to time reconstruct, renew, alter, replace or relay the pier and may maintain the same as reconstructed, renewed, altered, replaced or relaid.

(4) The undertakers may enclose, fill in and reclaim from the foreshore and bed of the sea so much of the foreshore and bed of the sea as lies within the limit of deviation of Work No. 1 and as is landward of that work.

Power to make subsidiary and accommodation works.

6. Subject to the provisions of this Act, the undertakers may from time to time construct, maintain and use—

(1) within the limits of deviation all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the pier; and

PART II —*cont.*

(2) within the marina such works for the accommodation or convenience of vessels as they think fit, including, without prejudice to the generality of the foregoing, stagings, quays, piers, piles, walkways, approaches, slipways, landing places, berthing heads, moorings, bollards, navigation marks and lights.

Temporary works.

7.—(1) Subject to subsection (2) below the undertakers may carry out operations and position temporary works outside the limits of deviation for the purposes of constructing, maintaining and repairing the pier.

(2) The right conferred by subsection (1) above may only be exercised with the consent of the Commissioners such consent not to be unreasonably withheld.

(3) Any dispute as to whether or not consent sought pursuant to subsection (2) above is being unreasonably withheld shall be determined by an arbitrator appointed by agreement between the undertakers and the Commissioners or in default of agreement by the President of the Institute of Arbitrators.

Correction of errors in deposited plan and book of reference.

8.—(1) If the deposited plan 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 Council 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, House of Commons, and with the Chief Executive of the Devon County Council with whom a copy of the deposited plan has been deposited in accordance with the Standing Orders of the Houses of Parliament and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate, and it shall be lawful for the Council to take the land and the undertakers to 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 II —*cont.*

Dredging.

9. Subject to the provisions of this Act, the Council may from time to time deepen, dredge, scour, cleanse, alter and improve the foreshore and bed of the sea and blast any rock within the limits of the marina and the channels and approaches thereto and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) from time to time dredged by them:

1894 c. 60.

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

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

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

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

(*a*) the Secretary of State may by notice in writing require the undertakers 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 undertakers they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

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

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

Provision against danger to navigation.

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

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

PART II —*cont.*

Abatement of works abandoned or decayed.

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

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

(3) If, on the expiration of 30 days from the date when a notice under this section is served upon the undertakers 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 undertakers.

Survey of tidal works.

13. 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 undertakers 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 undertakers.

Permanent lights on tidal works.

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

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

Lights on tidal works during construction.

15.—(1) The undertakers shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, alteration, replacement or relaying thereof or the addition thereto, 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 undertakers fail to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine. PART II —*cont.*

PART III
LANDS

16. Subject to the provisions of this Act, the Council may purchase compulsorily such of the land delineated on the deposited plan 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 the undertaking. Purchase of land.

PART IV
CHARGES

17.—(1) The Council shall have power to demand, take and recover such charges for the services and facilities provided at the marina subject to such terms and conditions as they think fit. Power to charge.

(2) Dues and charges for the use of the slipways marked "A" and "B" on the signed map, and any charge for access to those slipways or for car parking associated with such use and access, shall not be applied to meet expenditure incurred in respect of so much of the marina as does not relate to those slipways.

18. Charges demanded at the marina shall be taken and recovered subject to such conditions as the Council may from time to time specify in their published list of charges. Conditions relating to payment of charges.

19. The several charges which the Council for the time being demand in respect of vessels shall be taken and recovered before the removal from the marina of any vessel in respect of which they are payable and may be demanded, taken and recovered by such persons, at such places, at such times and under such regulations as the Council may from time to time appoint. How charges to be paid.

20.—(1) Charges payable to the Council shall be payable by the owner of any vessel in relation to which the charges are payable. As to payment of charges.

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

PART IV —*cont.*

Deposit for charges.

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

Compounding arrangements and rebates. 1964 c. 40.

22. Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship dues to be kept, as required by subsection (1) of that section, charges reduced by virtue of a compounding arrangement in respect of, or rebate allowed on, a due included in the said list.

Penalty for evading payment of charges.

23. If the owner of any vessel shall at any time evade, or attempt to evade, payment of or refuse to pay any charges payable by such owner to the Council at the time when the same shall become due and payable, he shall be liable to pay to the Council a sum of £20 or a sum equal to three times the amount of such charges (whichever shall be the greater), which sum shall be a debt due to the Council.

PART V

MISCELLANEOUS

Limits of marina.

24.—(1) The limits within which the Council shall exercise jurisdiction as a pier authority, and within which the powers of the pier master may be exercised, shall extend over the area within the limits of the marina as defined in subsection (2) below:

Provided that if at any time there is a conflict at the boundary of the Cattewater and the limits of the marina between any directions given by the pier master and any directions lawfully given by the harbour master of the Commissioners the directions given by the harbour master of the Commissioners shall prevail.

(2) The limits of the marina shall be the area bounded—

(*a*) to the south by the outer edge of Works Nos. 1 and 2 authorised by this Act;

(*b*) to the west by the outer edge of the said Work No. 2, and by an imaginary line drawn northwards and parallel to the eastern limit of the approach channel to Sutton Harbour from the extreme north-west point of the said Work No. 2 to a point where that line reaches the limit of jurisdiction of the harbour master of the Sutton Harbour Improvement Company as provided

PART V —*cont.*
1847 c. ccxcvii.

by the Sutton Harbour Act 1847 91·44 metres being there expressed as one hundred yards from the centre of the entrance to Sutton Pool;

(*c*) to the north by the said limit of jurisdiction of the harbour master of the Sutton Harbour Improvement Company;

(*d*) to the north-east and to the east by an imaginary line drawn along the level of high water until it meets the outer edge of the said Work No. 1.

Directions of pier master.

25. Section 52 of the Act of 1847, in its application to the Council and the pier master—

(1) shall extend to empower the pier master to give directions prohibiting the mooring of vessels within the limits of the marina or any part or parts thereof;

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

Orders of pier master need not be in writing.

26. Section 53 of the Act of 1847, in its application to the Council and the pier master, shall not be construed to require the pier master to serve a notice in writing of his directions upon the master of a vessel and such directions may be given orally or otherwise communicated to the master.

Provision of assistant harbour master.

27. On such occasions as the Council and the Commissioners shall agree the Council shall provide a person suitable to be appointed as an assistant harbour master of the Commissioners for the purpose of assisting the Commissioners in the control of activity in the Cattewater generated from the marina.

Power to Council to make byelaws.

28.—(1) The Council may make such byelaws as they think fit for all or any of the following purposes, that is to say:—

(*a*) for limiting entry to the marina or parts of the marina, to certain classes of vessels or to vessels being used for a certain purpose or purposes;

(*b*) (without prejudice to the generality of (*a*) above) for excluding vessels other than those used wholly or mainly for recreational or sporting purposes from the marina or part or parts thereof.

PART V —*cont.*

(2) Byelaws made under this section may provide that a person contravening the byelaws shall be liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale and in the case of a continuing offence to a daily fine not exceeding £40.

(3) Byelaws made by the Council in exercise of the powers in that behalf conferred on them by section 83 of the Act of 1847 or by subsection (1) above shall be subject to the provisions contained in subsections (3) to (8) and subsection (11) of section 236 of the Local Government Act 1972.

1972 c. 70.

(4) Section 236 of the Local Government Act 1972, in its application to byelaws made under this section, shall have effect as if in subsection (7) of that section, after the word "confirm" where it firstly occurs in that subsection, the words "with or without modification" were inserted.

(5) Where the Secretary of State proposes to make a modification by virtue of subsection (4) above which appears to him to be substantial he shall inform the Council and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

Exclusion of area within limits of marina.

29.—(1) On the date determined by the Council as being the date for the commencement of the works authorised by section 5 (Power to construct works) of this Act the area within the limits of the marina shall cease to be part of the Cattewater and the amendment set out in subsection (3) below shall come into effect.

(2) The Council shall give at least 28 days' notice of the date determined for the purposes of subsection (1) above to the Secretary of State, to the Queen's harbour master and to the Commissioners and in such local newspaper as may be appropriate.

(3) In article 17 of the Cattewater Harbour Order 1915 as set out in the Schedule to the Pier and Harbour Orders Confirmation (No. 2) Act 1915 there shall be added after the word "Cattewater" where it secondly occurs—

1915 c. xcix.

> "to the north-westernmost point of the limits of the marina as defined by the Plymouth Marine Events Base Act 1985, thence along the seaward boundary of the said limits of the marina to the south-easternmost point of the said limits of the marina, thence along high-water mark of the shore of Cattewater".

PART V —*cont.*

Saving for Queen's harbour master.

30. Nothing contained in this Act, or in any byelaws made thereunder, shall take away, alter, prejudice or affect the jurisdiction or any of the rights, powers, authorities or privileges of the Queen's harbour master within the limits of the marina.

Local inquiries.

31. The Secretary of State may cause to be held such inquiries as he considers necessary for the purpose of any of his functions under this Act and section 250 (2) to (5) of the Local Government Act 1972 shall apply to any such inquiry. 1972 c. 70.

Power to grant licences.

32.—(1) The Council may from time to time grant a licence to any person to provide or maintain existing or future moorings, facilities or conveniences within the marina on such terms and conditions as they think fit.

(2) The Council may charge a reasonable fee for the grant of a licence under this section.

Provision of moorings outside marina.

33.—(1) The Council may place, lay down, maintain and use moorings on any land outside the marina but within the Cattewater with the consent in writing of—

(*a*) the owner or lessee thereof or any other person having an interest entitling him to give that consent; and

(*b*) the Commissioners.

(2) The Council may charge a reasonable fee for the use of any moorings provided by them under subsection (1) above.

Removal of unauthorised moorings.

34. If any person places, lays down, maintains or uses any mooring within the marina contrary to byelaws made by the Council under section 83 of the Act of 1847 or under section 28 (Power to Council to make byelaws) of this Act the Council may remove the mooring in question and recover from him the expenses incurred in so doing.

Planning permission.

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 permits 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). S.I. 1977/289.

(2) Subject to the provisions of subsection (3) below 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 V —*cont.*

(3) Subsection (2) above shall not apply to the carrying out of any development consisting of a work authorised by subsection (3) of section 5 (Power to construct works) of this Act.

(4) Notwithstanding the terms of article 3 (2) of the Town
S.I. 1977/289. and Country Planning General Development Order 1977, works authorised by section 7 (Temporary works) of this Act and works beneath the level of the sea bed authorised by section 5 (Power to construct works) of this Act shall be deemed, in so far as they may constitute development, to be Class XII development.

Saving rights of Duchy of Cornwall.

36.—(1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Duchy of Cornwall and, in particular and without prejudice to the generality of the foregoing, nothing in this Act authorises the undertakers 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) belonging to the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the consent in writing of two or more of such of the regular officers of the said Duchy or of such other persons as may be authorised under section 39
1863 c. 49. of the Duchy of Cornwall Management Act 1863 or, as the case may be, the consent of such Duke testified in writing under the seal of the said Duchy.

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

Power to sell or lease undertaking or to transfer related powers.

37. The Council may at any time sell or lease (subject to such terms and conditions as may be agreed) any part of the undertaking or transfer or delegate any power conferred upon them for the purposes of the undertaking (including a power to levy any charges) and in that event the purchaser, lessee or transferee, as the case may be, shall have and may exercise to the extent authorised by his conveyance, lease or instrument of transfer, all or any of the powers conferred upon the Council by or under this Act in relation to that part of the undertaking but shall be subject to all the restrictions, liabilities and obligations in respect thereof to which the Council are subject and shall perform all the functions of the Council conferred by or under this Act in respect of that part:

Provided that nothing in this section shall authorise the Council to transfer or delegate the power to make byelaws under section 83 of the Act of 1847 or under section 28 (Power to Council to make byelaws) of this Act.

PART V —*cont.*

For protection of South Western Electricity Board.

38.—(1) Notwithstanding anything in this Act or shown on the deposited plan the Council shall not acquire any apparatus of the South Western Electricity Board under the powers of this Act other than by agreement.

(2) Nothing in this Act shall prejudice or affect the rights of the said board with respect to any apparatus situated in any land acquired under this Act and in exercising the powers of this Act the Council and the Company, or either of them, as the case may be, shall not damage or injuriously affect such apparatus nor, without the consent of the said board, interfere with such apparatus or the access thereto.

For protection of Commissioners.

39. For the protection of the Commissioners the following provisions shall, unless otherwise agreed in writing between the Council and the Commissioners, apply and have effect:—

(1) If, after the construction of tidal works under this Act, there shall be caused or created any accumulation of silt or other material or any scouring or alteration of the tidal flow in the Cattewater in consequence of the exercise by the undertakers of their powers under this Act which shall so adversely affect the navigation channels of the Cattewater as materially to increase the cost to the Commissioners for maintaining those channels in a navigable condition, the Council, if so requested by the Commissioners, shall at their discretion either carry out at their own expense such work as may be reasonably required by the Commissioners or reimburse the Commissioners the amount by which the cost of so maintaining those channels is increased, provided that such cost is reasonably incurred.

(2) Notwithstanding the provisions of section 24 (Limits of marina) above, in the event of an emergency if a vessel is partly within the limits of the marina and partly within the Cattewater, any directions lawfully given in respect of the vessel by the harbour master of the Commissioners shall apply to the vessel.

(3) Notwithstanding anything in section 5 (Power to construct works) above, the undertakers may not construct any part of Work No. 2 to the west of the line marked "Western limit of construction" on the signed map.

(4) Work No. 2 shall be so constructed that the waves reflected thereby do not produce wave heights in the channels of the harbour and outside an area of 10 metres in width from the breakwater to be constructed as part of Work No. 2 more than 50 per centum greater than the present wave heights based on

PART V —*cont.*

incident wave of unit height off Fisher's Nose, Plymouth.

(5) Any difference arising between the Council and the Commissioners under this section shall be determined by an arbitrator appointed by agreement between the parties or in default of agreement by the President of the Institution of Civil Engineers.

For protection of Sutton Harbour Improvement Company.

40. For the protection of the Sutton Harbour Improvement Company the following provisions shall, unless otherwise agreed in writing between the Council and the Harbour Company and the protected interests, apply and have effect:—

(1) In this section—

"the Harbour Company" means the Sutton Harbour Improvement Company;

"the protected area" means the harbour of Sutton Pool as defined by the Sutton Harbour Act 1847.

1847 c. ccxcvii.

(2) If, during the construction of tidal works or within 10 years after the completion of such works, it becomes established that in consequence of the construction of such tidal works an increase arises in the accumulation of silt or other material to the extent that the use of the protected area is adversely and materially affected, the Council, if so requested by the Harbour Company within the period of 10 years after such completion, shall at their discretion either remove such increased accumulation at their own expense or pay to the Harbour Company the reasonable and necessary cost incurred by the Harbour Company in so doing.

(3) Notwithstanding anything in section 5 (Power to construct works) above, the undertakers may not construct any part of Work No. 2 to the west of the line marked "Western limit of construction" on the signed map.

(4) Work No. 2 shall be so constructed that the waves reflected thereby do not produce wave heights in the channels of the harbour and outside an area of 10 metres in width from the breakwater to be constructed as part of Work No. 2 more than 50 per centum greater than the present wave heights based on incident wave of unit height off Fisher's Nose, Plymouth.

(5) Any difference arising between the Council and the Harbour Company under this section shall be determined by an arbitrator appointed by agreement between the parties or in default of agreement by the President of the Institution of Civil Engineers.

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