



Hayle Harbour Act 1989

CHAPTER xii

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Hayle Harbour Act 1989

ELIZABETH II



1989 CHAPTER xii

An Act to establish The Hayle Harbour Company Limited as a harbour authority and to confer upon that company certain powers to enable them to operate Hayle harbour as a public harbour undertaking; to construct works in the harbour; and for other purposes.

[27th July 1989]

W HEREAS-

- (1) The Hayle Harbour Company Limited ("the Company") operate the harbour facilities at Hayle harbour ("the harbour") in Cornwall:
- (2) Commercial operations other than fishing at the harbour have declined and facilities for the fishing fleet are in need of improvement:
- (3) The entrance to the harbour is dangerous and the absence of a marked and dredged channel has contributed to the decline of the harbour:
- (4) It is expedient that the Company should be given certain other powers in order to ensure that the harbour is efficiently managed and to secure its commercial future:
- (5) It is expedient that the Company should be authorised to construct works at the harbour:
- (6) It is expedient that the Company should be constituted harbour authority for the harbour:
- (7) A map showing the area of jurisdiction as defined by this Act was in the month of November 1988 deposited in the office of the Clerk of the Parliaments and in the Private Bill Office, House of Commons, and in the office of the Company and is in this Act called "the harbour limits plan":

(8) Plans and sections showing the lines or situations and levels of the works by this Act authorised have been deposited in the office of the Clerk of the Parliaments, in the Private Bill Office of the House of Commons and with the proper officer of the Cornwall County Council; which plans and sections are in this Act referred to respectively as the deposited plans and the deposited sections:

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

1. This Act may be cited as the Hayle Harbour Act 1989.

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

"the Company" means The Hayle Harbour Company Limited;

"the harbour" means the area the limits whereof are set out in section 15 (Limits of jurisdiction) of this Act;

"the harbour land" means, subject to section 16 (Harbour land) of this Act, the land delineated on the harbour land plan and thereon shown coloured pink and any land reclaimed by Work No. 3:

"the harbour land plan" means the plan signed in triplicate by the Right Honourable the Lord Aberdare the Chairman of the Committee of the House of Lords 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 Company at the Harbour Office, The Old Customs House, Hayle;

"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;

"owner" in relation to any vessel, includes any part-owner, any charterer (including but not limited to a charterer by demise) or any mortgagee in possession of the vessel;

"tidal works" means so much of the works 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 undertaking" means the undertaking of the Company at the harbour as authorised by this Act;

"vessel" means a ship, boat or raft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968 or any other amphibious vehicle or a seaplane;

"the works" means the works authorised by Part 11 (Works) of this Act..

(2) References in this Act to grid references refer to the map co-ordinates on the National Grid used by the Ordnance Survey and shall be construed as if the words "or thereabouts" were inserted after each grid reference.

PART I
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(3) Unless the context otherwise requires any reference to a work identified by a number of such work shall be construed as a reference to the work of that number authorised by this Act.

3. The Harbours, Docks, and Piers Clauses Act 1847 (except sections 6 to 20, 24, 25, 31, the proviso to section 32, sections 42, 43, 48 to 50, 83 to 90 and 95 to 98) so far as applicable to the purposes of and not inconsistent with the provisions of this Act, is hereby incorporated with this Act subject to the following modifications, that is to say:-

Incorporation of
Harbours, Docks,
and Piers Clauses
Act 1847.
1847 c. 27.

(a) section 23 shall be read and have effect as if the words "provided that no such lease be granted for a longer term than three years" were omitted;

(b) section 63 shall be read and have effect as if for the words from "liable to" to the end of the section there were substituted the words "be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale"; and

(c) section 69 shall be read and have effect as if for the words from "shall forfeit" to the end of the section there were substituted the words "shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale".

PART II WORKS

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

Power to construct
works.

Work No. 1 A barrage and flood protection incorporating a lock with lock gates and control buildings, water control sluices and gates, an access road with fixed and movable bridges commencing on the existing foreshore at grid reference SW 5525 3795 and terminating at grid reference SW 5524 3779:

Work No. 2 Water control sluices and gates with control building, access road and protected earthworks commencing at grid reference SW 5532 3742 and terminating at grid reference SW 5525 3735:

Work No. 3 A reclamation embankment and sea defence commencing at the termination of Work No. 1 and extending in a southerly direction for 800 metres and terminating at grid reference SW 5551 3721

Work No. 4 A quay wall commencing at grid reference SW 5569 3758 and extending in a southerly direction for 400 metres and terminating at grid reference SW 5583 3724.

(2) The Company may enclose, fill in and reclaim from the foreshore and bed of the harbour so much of the foreshore and bed of the harbour as lies within the limits of deviation of Works Nos. 3 and 4.

PART II

-cont.

(3) The barrage (Work No. 1) shall be so constructed that the water upstream of the barrage can normally be maintained at a level within the range of 1.00 metre to 3.00 metres or thereabouts above Ordnance Datum (Newlyn).

(4) In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plans 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 not exceeding 10.00 metres upwards and to any extent downwards.

(5) The Company may, within the limits of deviation, from time to time reconstruct, renew, alter, replace or re-lay the works and may maintain the same as reconstructed, renewed, altered, replaced or re-laid.

(6) Subject to the provisions of this Act, the Company may from time to time construct, maintain and use 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 works.

(7) In the construction of any bridge forming part of Work No. 1 the Company shall erect a good and sufficient fence on each side of that bridge.

(8) If any of the works authorised by subsection (1) above has not been substantially commenced within 10 years from the passing of this Act, the powers of that subsection for the construction of that work shall cease except so far as those powers shall have been exercised.

Works in
harbour.

5.--(1) The Company, subject to obtaining the necessary rights in or over land, may execute, place, maintain and operate in and over the harbour such works and equipment as are required for or in connection with the exercise by them of any of their functions and may alter, renew or extend any works so executed or placed.

(2) In this section "works" means works of any description, and includes the reclamation of land reasonably required for the purpose of executing works.

Dredging.

6.--(1) Subject to the provisions of this Act, the Company 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 harbour 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.

(2) The Company shall not exercise the powers under subsection (1) above upstream of the line marked "Limit of dredging" on the harbour land plan.

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

7.--(1) A tidal work shall not be constructed, reconstructed, renewed, altered, replaced or re-laid 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 re-laid 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 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.

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

(2) If the Company fail to notify 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.

9.—(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 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 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.

10. 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 Company 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.

11.—(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 Trinity House 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.

PART II
-cont.

Provision against
danger to
navigation.

Abatement of
works abandoned
or decayed.

Survey of tidal
works.

Permanent lights
on tidal works

PART II

-cont

Lights on tidal works during construction.

12.—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, alteration, replacement or re-laying 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 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.

Diversion and temporary stoppage of footpaths.

13.--(1) The Company during and for the purpose of the execution of the works may temporarily stop up and divert and interfere with the footpaths between the points marked "X", "Y" and "Z" on the deposited plans and may for any reasonable time prevent all persons from passing along and using the same.

(2) As soon as may be after the completion of the works the Company shall construct new footpaths between the points marked "X", "Y" and "Z" on the deposited plans and when the highway authority are satisfied that the new footpaths have been completed in accordance with their reasonable requirements and are open for public use all rights of way over the former footpaths shall be extinguished.

PART III

POWERS AND DUTIES OF COMPANY

General powers in respect of harbour.

14.--(1) Subject to the provisions of this Act, the Company may take such steps as they consider necessary for the improvement, maintenance and management of the harbour and the facilities afforded therein or in connection therewith.

(2) For those purposes, and without prejudice to the generality of subsection (1) above, the Company may

- (a) improve, maintain, regulate, manage, mark, sluice and light the harbour and provide port services and facilities therein;
- (b) construct, alter, demolish and reconstruct structures and works in the harbour, and
- (c) do all other things which they consider necessary or expedient to facilitate the proper carrying on or development of the undertaking.

Limits of jurisdiction

15.—(1) The limits within which the Company shall exercise jurisdiction as a harbour authority, and within which the powers of the harbourmaster may be exercised, shall extend over the area within the limits of the harbour as defined in subsection (2) below.

(2) The limits of the harbour shall be

- (a) the harbour land; and
- (b) the area shown on the harbour limits plan, being the area bounded on the east by an imaginary straight line commencing on the high-water point at reference point SW 555 389 and drawn in a northerly direction to the point SW 555 398, on the west by an imaginary straight line commencing on the high-water point at reference point SW 535 388 and drawn in a north-north-easterly direction to the point SW 539 395, on the north by an imaginary straight line drawn between the points SW 555 398 and SW 539 395, and on the south by the level of high water including all bays, creeks, pools, inlets and rivers as far as the tide flows.

- 16.**—(1) The Company may, with the consent of the Secretary of State, by resolution exclude from the harbour land any land which they consider no longer to be appropriate to be harbour land. PART III
-cont.
Harbour land.
- (2) As soon as may be after the passing of the resolution referred to in subsection (1) above, the Company shall give notice thereof by advertisement in a newspaper circulating in the district of Penwith.
- (3) A copy of the harbour land plan and a copy of any resolution of the Company passed under subsection (1) above shall at all reasonable hours be open to public inspection without payment at the offices of the Company.
- 17.**—(1) In formulating or considering any proposals relating to their functions under this Act, and in discharging any of their functions under this Act, the Company shall without prejudice to their responsibility to maintain safety of navigation in the harbour ensure Protection of amenities.
- (a) the preservation of natural beauty and historical or archaeological features of special interest;
- (b) the conservation of flora, fauna and geological and physiographical features of special interest; and
- (c) that they take account of the significance of the designation of any part of the harbour as a site of special scientific interest.
- (2) The Company shall take such measures as from time to time may be necessary to make good the effects of any breach by the Company of the duties imposed by subsection (1) above.
- 18.** The Company may appropriate and set apart any part of the harbour for the exclusive use of any particular vessel or class of vessel. Use of harbour.
- 19.**—(1) Subject to the provisions of this Act, the Company may make Byelaws for the good rule and government of the harbour (other than Byelaws prohibiting the entry or regulating the entry, carriage, handling and storage of dangerous substances. within the meaning of the Dangerous Substances in Harbour Areas Regulations 1987) and, without prejudice to the generality of the foregoing, the Company may make Byelaws applicable within all or any part of the harbour for all or any of the following purposes: Byelaws as to harbour.
S.I. 198737.
- (a) for the purposes specified in section 83 of the Harbours, Docks, and Piers Clauses Act 1847; 1847 c. 27.
- (b) for regulating the use of any works and facilities provided by the Company;
- (c) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour,
- (d) for regulating the conduct of all persons in the harbour, not being
- (i) members of a police force;
- (ii) officers or servants of the Crown; or
- (iii) members of a fire brigade acting in pursuance of the Fire Services Act 1947; whilst in the exercise of their duties as such; 1947 c. 41.
- (e) for regulating the anchoring, mooring, unmooring and placing of vessels in the harbour,

PART III

-cont.

- (f) for regulating the placing, laying down, maintaining or using of any mooring (including a mooring placed or laid before the coming into operation of any such byelaw) in the harbour otherwise than under the authority of a licence in that behalf granted by the Company in accordance with the conditions subject to which it is so granted;
 - (g) for prohibiting (otherwise than in a case of emergency) the use of any mooring laid down by the Company, in respect of which a licence affording the privilege of preferential right of user of such mooring is for the time being in force, by any person other than the licensee;
 - (h) for preventing obstructions or impediments within the harbour,
 - (i) for regulating the launching of vessels within the harbour,
 - (j) for regulating or prohibiting the use in the harbour or on board any vessel therein of fires, lights or any other equipment, tools or appliances which the Company consider involves a risk of fire;
 - (k) for requiring the use of effectual silencers on vessels in the harbour,
 - (l) for regulating vessels in the harbour and their entry into and departure from the harbour and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour,
 - (m) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour limits and on the harbour land;
 - (n) for regulating the embarkation of persons into, or their disembarkation from, vessels within the harbour,
 - (o) for prescribing the lights and signals to be exhibited or made
 - (i) by vessels aground within the harbour, and
 - (ii) by vessels used for marking obstructions within the harbour;
 - (p) for prohibiting or regulating the discharge into the harbour of any material or substance;
 - (q) for regulating fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf or other installation or structure of any kind within the harbour,
 - (r) for regulating or prohibiting bathing, and for securing the protection of bathers, within the harbour,
 - (s) for prescribing parts of the harbour where vessels or a specified class of vessels may not enter;
 - (t) for regulating the use of ferries within the harbour and the conduct of boatmen, ferrymen and others plying for hire in the harbour and of persons resorting to any works constructed or operated by the Company;
 - (u) for regulating or prohibiting the use by vehicles of the foreshore within the harbour;
 - (v) for prohibiting the use of or regulating the movement, speed and parking of, vehicles within the harbour; and
 - (w) for imposing upon any person contravening or failing to comply with any byelaw under this section a fine not exceeding level 3 on the standard scale, recoverable on summary conviction.
- (2) In this section “signals” includes sound signals.

(3) Byelaws under this section-

- (a) may make different provision in relation to different classes of vessels; and
- (b) may otherwise make different provision for different circumstances.

PART III
-cont.

(4) Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972 (which relate to the procedure for making, and evidence of, byelaws) shall apply to any bye laws made by the Company under this section as if the Company were a local authority and the secretary of the Company were a proper officer of a local authority; but, subject to subsection (5) below, the Secretary of State may confirm the byelaws with such modifications as he thinks fit.

1972 c. 70.

(5) Where the Secretary of State proposes to make a modification which appears to him to be substantial, he shall inform the Company 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 Company and by other persons who have been informed of it.

20. Section 52 of the Harbours, Docks, and Piers Clauses Act 1847, in its application to the Company and the harbourmaster

Directions of
harbourmaster.
1847 c. 27.

- (1) shall extend to empower the harbourmaster to give directions prohibiting the mooring of vessels within any part or parts of the harbour;
- (2) shall not be construed to require the harbourmaster 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 harbourmaster shall be entitled in emergency to give general directions applicable to all vessels or to particular classes of vessels.

Penalty for not
complying with
directions of
harbourmaster.

21. Any person who fails to comply with any direction lawfully given by the harbourmaster under this Act or under any byelaw made by the Company shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

22. Section 53 of the Harbours, Docks, and Piers Clauses Act 1847, in its application to the Company and the harbourmaster, shall not be construed to require the harbourmaster to serve 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.

Orders of
harbourmaster
need not be in
writing.

23.—(1) The Company may grant, upon such terms and conditions as they may think fit, licences for pleasure craft to be let for hire to the public in the course of trade or business or to be used for carrying passengers for hire within the harbour, and to the boatmen or persons assisting in the charge or navigation of such craft, and may charge reasonable annual fees for such licences.

Power to license
pleasure craft and
boatmen.

(2) Any such licence may be granted for such period as the Company may think fit, and may be suspended or revoked by the Company whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public:

Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

PART III

-cont.

(3) No person shall

- (a) let for hire to the public a pleasure craft not so licensed; or
- (b) carry, or permit to be carried, passengers for hire in a pleasure craft unless the craft, and the boatman in charge thereof and the navigator, are so licensed:

Provided that this subsection shall not be taken to require a person to be licensed as a boatman who takes on hire a pleasure craft for purposes other than for profit.

1968 c. 59.

(4) A licence under this section shall not be required for any craft which has a passenger certificate issued by the Department of Transport and valid for the voyage intended or, in the case of hovercraft within the meaning of the Hovercraft Act 1968, a certificate of safety valid for the voyage intended.

(5) No person shall carry or permit to be carried in any pleasure craft a greater number of passengers for hire than shall be specified in the licence applying to such craft, and every owner of any such craft shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said craft, his own name and also the number of persons which it is licensed to carry, in the form "Licensed to carry-persons".

(6) Any person who shall act in contravention of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(7) Any person aggrieved by the withholding, suspension or revocation of any licence or by any term or condition subject to which a licence has been granted under the provisions of this section may appeal to a magistrates' court held after the expiration of two clear days after such withholding, suspension or revocation:

Provided that the person so aggrieved shall give 24 hours' written notice of such appeal, and the ground thereof, to the Company, and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt.

(8) Any person aggrieved by an order of the court under subsection (7) above may appeal to the Crown Court.

(9) The Company may not refuse, suspend or revoke a licence under this section otherwise than for the purposes of ensuring safety.

(10) In this section "pleasure craft" means any vessel of not more than 100 tons gross used wholly or mainly for recreation or for the carriage of passengers for reward and includes pleasure boats.

Houseboats.

24.—(1) In this section "houseboat" means any boat, barge, vessel or habitable structure, whether or not it shall be floating at any stage of the tide, used at any time or intended to be used for human habitation, but does not include a vessel bona fide used for navigation.

(2) It shall not be lawful without the written consent of the Company to moor, place, keep or maintain a houseboat in the harbour:

Provided that no consent given under this subsection shall prejudice or affect any obligation existing under any other enactment to obtain the consent of any local authority within whose area the houseboat is or is proposed to be moored, placed, kept or maintained to such mooring, placing, keeping or maintaining.

(3) (a) If any houseboat shall be moored, placed, kept or maintained contrary to the provisions of subsection (2) above the Company may by notice in writing to be given in the manner hereinafter provided require the person having the control of the houseboat to remove it.

(b) Any such notice shall be given by leaving it or sending it in a prepaid letter addressed to the person having the control of such houseboat at his usual or last known residence or (if it is not practicable after reasonable inquiry to ascertain the name and address of such person) by posting the notice in a conspicuous position on the houseboat or on the land or foreshore near to the houseboat, and shall specify the period (which shall be not less than 60 days) within which such removal shall be completed.

(4) (a) If a person fails without reasonable cause to comply with any notice given by the Company under subsection (3) above he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and the Company may at any time after the expiration of the period specified in such notice remove the houseboat referred to in the notice.

(b) Subject to subsection (6) below, the costs and expenses reasonably incurred by the Company in or in connection with any such removal may be recovered by the Company from the person having the control of such houseboat unless a fine shall have been recovered from that person under paragraph (a) of this subsection.

(5) For the purposes of subsections (3) and (4) above the owner of any houseboat shall until the contrary be proved be deemed to be the person having the control thereof.

(6) (a) Where a houseboat has been removed by the Company as aforesaid the Company may retain it and may and shall if so required by the owner sell or dispose of the same and subject to paragraph (b) below retain the proceeds of such sale or disposal.

(b) For the purpose of ascertaining the amount recoverable by the Company under subsection (4) (b) above credit shall be given for the net amount (if any) received by the Company from the proceeds of the sale or disposal (after deduction of any costs and expenses incurred by the Company in effecting the same) of such houseboat. If such net amount exceeds the amount of the costs and expenses incurred by the Company in or in connection with such removal as aforesaid they shall, on receipt of a written request from the owner of such houseboat, pay to him the amount of such excess.

25.—(1) Any person aggrieved by any refusal of consent or any requirement of the Company under section 24 (Houseboats) of this Act may appeal to the Secretary of State.

Appeals.

(2) The time within which any such appeal may be brought shall be six weeks from the date on which notice of the refusal or requirement was given to the person desiring to appeal.

(3) When application is made to the Company for consent to moor, place, keep or maintain any houseboat in the harbour then unless within two months from the date on which the Company receive such application, or within such extended period as may at any time be agreed upon in writing between the applicant and the Company, the Company give written notice to the applicant of their decision on the application the provisions of this section shall apply in relation to the application as if the consent to which it relates had been refused by the Company and as if notification of their decision had been received by

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the applicant at the end of the said period of two months or at the end of the said extended period, as the case may be.

(4) On the hearing of an appeal the Secretary of State may dismiss or allow the appeal.

(5) In any case in which such an appeal lies, the document notifying the refusal or requirement in the matter shall state the right of appeal to the Secretary of State and the time within which such an appeal may be brought.

(6) Where any refusal or requirement against which a right of appeal is conferred by this section becomes the subject of an appeal no proceedings shall be brought or taken by the Company under the said section 24 until the appeal has been disposed of or withdrawn or fails for non-prosecution thereof.

(7) Where the Secretary of State allows an appeal under this section effect shall be given to the order of the Secretary of State and in particular any necessary consent shall be granted.

Liability for safety of goods.

26. The Company shall not be responsible for the safety of any goods deposited in any part of the harbour land not specifically set apart by the Company for the purpose of warehousing.

Power to remove goods.

27.—(1) If any goods are left on or in any part of the undertaking otherwise than in accordance with arrangements made with the Company, the Company may require the owner to remove them and if the goods are not so removed within six hours after the requirement has been made the Company may cause the goods to be removed to their own or any other public warehouse or store.

(2) Any such removal shall be carried out at the expense and risk of the owner of the goods.

(3) Notwithstanding any such removal on behalf of the Company, the goods shall be liable to a general lien for the cost of removal, and for any charges payable to the Company by the owner.

(4) The power of the Company to prevent the recovery of the goods until the cost of removal and the charges have been paid shall extend and apply to any goods removed or placed in store under this section.

Boarding vessels.

28. A duly authorised officer of the Company may, on producing if so required his authority, enter and inspect a vessel in the harbour

(1) for the purposes of any enactment relating to the Company or of any byelaw of the Company including the enforcement thereof;

(2) to prevent or extinguish fire.

Lighting and Buoying.
1894 c. 60

29. In the performance of any functions with respect to the lighting and buoying of the harbour the Company shall be a local lighthouse authority for the purposes of the Merchant Shipping Act 1894.

Access to works.

30. The officers, servants and agents of the Company duly authorised by the Company shall, on producing if so required their authority and subject to compliance with the reasonable requirements of the owner or person in charge of the works, be permitted access both by water and by land without payment or hindrance at all reasonable times on, to or over any works in the harbour

(1) during the construction thereof for the purpose of inspection; and

(2) after the construction thereof whilst in the execution of their duties.

31.—(1) The Company may place, lay down, maintain and use moorings on land within the harbour or on any other land with the consent in writing of the owner or lessee thereof or any other person having an interest entitling him to give that consent.

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Powers as to moorings, etc.

(2) The Company may from time to time grant a licence to any person to place, lay down, maintain, or use existing or future moorings at such place or places within the harbour and for such number of boats as may be specified in the licence, and on such terms and conditions as they think fit:

Provided that

- (a) such a licence shall not entitle a person to place, lay down, alter, renew or extend, or maintain, moorings, buoys or similar apparatus on land in respect of which he does not hold such rights as are necessary to enable him to enjoy the benefit of the licence;
- (b) the Company shall not unreasonably refuse an application for such a licence and any question whether the grant of a licence has been unreasonably refused shall be determined by the Secretary of State.
- (3) A licence granted under subsection (2) above shall be valid for such period not exceeding three years, as may be specified in the licence.
- (4) The Company may charge a reasonable fee for the grant of a licence under this section, and for the use of any apparatus provided by them under subsection (1) above.
- (5) The Company may confer total or partial exemptions from, allow rebates to, or make compositions with, any person with respect to the fees prescribed by them under this section.
- (6) A licence to lay a mooring issued by the Company and in force immediately before the commencement of this Act shall, unless revoked (and except during any suspension thereof) continue to have effect until the date of expiry provided for in the licence, and shall be deemed for the purposes of this Act to have been granted under this section.

32.—(1) Any person who, in the harbour-

Obstruction of moorings etc.

- (a) intentionally obstructs any person acting under the authority of the Company in placing, laying down, maintaining, or using any mooring;
- (b) intentionally and without lawful authority or reasonable excuse pulls up or removes any mooring;
- (c) other than in the case of an emergency, causes a vessel to be moored except at a mooring provided or licensed by the Company under section 31 (Powers as to moorings, etc.) of this Act or with the consent of the harbourmaster, or
- (d) places, lays down, maintains, or without reasonable excuse uses any mooring not so provided or licensed;

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person contravenes subsection (1) (d) above, the Company may remove the mooring in question and recover from him the expenses incurred in so doing.

33.—(1) In the case of any mooring buoy or similar apparatus which before the commencement of this Act has been placed or laid down within the harbour without the written permission of the Company, the Company may

Removal of moorings.

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by notice to the person using such mooring, buoy or similar apparatus, require the same to be removed unless the Company grant a licence under section 31 (Powers as to moorings, etc.) of this Act authorising the maintenance of the mooring, buoy or similar apparatus in question.

(2) Any person who without reasonable excuse fails to comply with a notice under this section within the time stated in that notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Power to raise
and remove
wrecks.

34.—(1) Where any vessel is sunk, stranded or abandoned (whether the sinking, stranding or abandoning occurred before or occurs after the commencement of this Act) in the harbour or in or near any approach thereto, the Company may —

(a) take such steps until the vessel is raised, removed, destroyed or disposed of as the Company may consider necessary or expedient for the prevention of interference with navigation or the safety of navigation therein comprising the marking, buoying, watching, lighting or otherwise controlling such vessel and its cargo, giving warning to shipping of the presence of the vessel and giving directions;

(b) subject to subsection (4) below, raise, remove, blow up or otherwise destroy or dispose of the vessel.

(2) Where the Company have exercised any of their powers under subsection (1) above they may cause the vessel or its cargo or anything associated with the vessel which may be removed or saved from the vessel to be sold in such manner as they think fit and may, out of the proceeds of the sale, retain the expenses incurred by them in the exercise of their powers under this section and any expenses incurred by them in removing or saving the cargo or anything associated with the vessel which may be removed or saved from the vessel, and an amount equal to any sum (including a sum equivalent to any customs duties or value added tax in respect of the vessel or its cargo due to the Commissioners of Customs and Excise) which they have been required by law to pay in connection with the vessel or its cargo and shall pay the surplus, if any, to the person entitled thereto provided that a sale shall not (except in the case of property which is of a perishable nature, or which would deteriorate in value by delay) be made under this section until at least 7 clear days' notice of the intended sale has been given by advertisement in a newspaper circulating in the district of Penwith.

(3) If the proceeds of sale are insufficient to reimburse the Company for the said expenses, they may recover any such expenses which are not reimbursed out of the proceeds of sale, or, if there is no sale, the whole of those expenses from the person who, at the time of the sinking, stranding or abandonment of the vessel, is or was the owner thereof.

(4) (a) The Company shall not commence to exercise their powers under subsection (1) (b) above in relation to any vessel if and so long as, in the opinion of the Company, every practicable measure for proceeding with the removal or disposal of the vessel is being taken with all reasonable diligence and in accordance with any requirements of the Company for the prevention of interference with navigation or with the safety of navigation in the harbour and the approaches thereto.

(b) Except as provided in paragraph (c) below, before exercising in relation to any vessel any of the powers conferred on them by subsection (1) (b) above the Company shall give to the owner of the vessel not less than 48 hours' notice of their intention to do so; and if before the notice expires the Company receive

from the owner counter-notice in writing that he desires to dispose of the vessel himself, the Company shall not exercise the powers of the said subsection (1) (b) in relation to that vessel until the expiration of 7 days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation or the safety of navigation in the harbour and the approaches thereto which may be given to him by the Company.

(c) Subject to paragraph (a) above, in any case where there is, in the opinion of the harbourmaster, an emergency affecting navigation or the safety of navigation in the harbour and the approaches thereto, they shall not be required to give notice to the owner of a vessel before exercising their powers under subsection (1) (b) above, but in that case shall, subject to subsection (5) below, as soon as is practicable notify the owner.

(5) If the owner of a vessel to whom notice is to be given under subsection (4) above, or who is to be notified under that subsection, is not known to the Company, or if neither the address of his business nor of his abode is so known or if neither is within the United Kingdom, the notice or notification may be given by displaying it at the office of the Company, in the case of the notice, for the period of its duration and, in the case of a notification under subsection (4) (c) above, for 7 days.

(6) The powers conferred by this section shall be in addition to the powers exercisable by the Company under sections 530 and 532 of the Merchant Shipping Act 1894.

35.—(1) Without prejudice to section 741 of the Merchant Shipping Act 1894 (which relates to the exemption from the provisions of that Act of vessels belonging to Her Majesty), the powers conferred on the Company by sections 530 and 532 of the said Act of 1894, and by section 34 (Power to raise and remove wrecks) of this Act shall not be exercisable

(a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;

(b) except with the consent of the Secretary of State, which may be given with or without such a direction as is referred to in paragraph (b) of the next following subsection, in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty but which, at the time when the vessel was sunk, stranded or abandoned

(i) had been required to be placed at the disposal of Her Majesty or of a government department; and

(ii) was appropriated to the service, under the direction and control of the Secretary of State, of Her Majesty's ships of war.

(2) The Company shall give notice in writing to the Secretary of State for Defence and the Secretary of State for Transport of any decision of the Company to exercise in relation to any vessel referred to in paragraph (b) of subsection (1) above any of the powers aforesaid other than the power of lighting and buoying and, except in a case which is in the opinion of the harbourmaster a case of emergency, shall not proceed with the exercise thereof

(a) except with the consent of the Secretary of State for Defence and the Secretary of State for Transport, before the expiration of a period of 14 days from the giving of the notice; or

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1894 c. 60.

Protection of
Crown interest in
wrecks.

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(b) if before the expiration of the said period there is served on the Company a direction by the Secretary of State for Defence or the Secretary of State for Transport that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where in any such case as aforesaid the Company proceed to exercise those powers without the consent and before the expiration of the period mentioned in paragraph (a) above or after a direction has been served on them as aforesaid, they shall not in the exercise of those powers use any explosives and, if before the expiration of the period aforesaid such a direction as aforesaid is served on them, shall not be entitled to exercise the power of sale conferred by the said section 530 or the power conferred by subsection (2) of section 34 (Power to raise and remove wrecks) of this Act: Provided that

(i) the Company shall not be required to give notice under this subsection in respect of any vessel in respect of which they have received a consent under paragraph (b) of subsection (1) above, but any direction such as is referred to in paragraph (b) of this subsection accompanying that consent shall be deemed for the purposes of this and the next following subsection to have been duly served under paragraph (b) of this subsection;

(ii) the prohibition on the use of explosives imposed by this subsection shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may for the time being be approved by the Secretary of State for the purposes of this proviso.

(3) Where a direction is served in respect of any vessel under paragraph (b) of subsection (2) above the Company may from time to time apply to the authority by whom the direction was given for the reimbursement of any expenses reasonably incurred by the Company in marking, lighting, watching, buoys, controlling or giving warning to shipping of the presence of that vessel and that authority may make to the Company such payments as the Treasury may determine.

(4) Without prejudice to the power of sale conferred on the Company by the said section 530 the Company shall hold and dispose of any wreck within the meaning of Part IX of the Merchant Shipping Act 1894 raised, removed or recovered under that section, and any surplus proceeds of sale within the meaning of that section, in accordance with such directions, if any, as may be given to them by the receiver of wreck; and on exercising the said power of sale in the case of any property the Company shall discharge any sums payable in respect of that property by way of duties of customs and excise, or value added tax, and any sums so discharged shall be deemed to be expenses incurred by the Company under that section.

(5) Any limitation on the powers of the Company in relation to any vessel arising by virtue of subsection (1) or subsection (2) above shall not operate to authorise the exercise in relation to that vessel of the powers conferred on Trinity House by section 531 of the Merchant Shipping Act 1894.

1894 c. 60.

Powers relating
to derelict vessels
and structures.

36.—(1) If at any time the Company are satisfied that a derelict vessel or structure moored in or lying in the water or on the foreshore of the harbour is in such a condition as to be seriously injurious to the amenity of that part of the harbour in which it is moored or lying, the Company may by notice require the owner thereof within such time as may be specified in the notice (the period being not less than six weeks) to take such steps as may be necessary to abate the injury to amenity.

- (2) If in the case of a derelict vessel or structure referred to in subsection (1) above the Company are unable, after making reasonable inquiry to ascertain the name and address of the owner thereof, the Company shall attach to the vessel or structure, or otherwise display in its immediate vicinity, a notice requiring the owner thereof within such time as may be specified in the notice (the period being not less than six weeks) to take such steps as may be necessary to abate the injury to amenity.
- (3) Any person aggrieved by a requirement of the Company under this section may appeal to a magistrates' court.
- (4) (a) In the event of failure to comply with the requirements of a notice under this section, or, in the case of an appeal, with the requirements of any order of the court, the Company may themselves take all such steps as may be necessary to carry out such requirement.
- (b) The reasonable costs and expenses incurred by the Company in carrying out such requirement shall be repaid to the Company by the person in default and may be recovered by the Company.
- (5) (a) Where a derelict vessel or structure has been removed or demolished by the Company under this section the Company may retain it or the materials thereof and may and shall if so required by the owner sell or dispose of the same or of such materials and subject to paragraph (b) below retain the proceeds of such sale or disposal.
- (b) For the purpose of ascertaining the amount recoverable by the Company under subsection (4)(b) above credit shall be given for the net amount (if any) received by the Company from the proceeds of the sale or disposal (after deduction of any costs and expenses incurred by the Company in effecting the same) of such derelict vessel or structure or the materials thereof. If such net amount exceeds the amount of the costs and expenses incurred by the Company in or in connection with such removal or demolition as aforesaid they shall, on receipt of a written request from the owner of such derelict vessel or structure, pay to him the amount of such excess.
- (6) In this section
 "structure" includes the remains or wreckage of a structure;
 "vessel" means any vessel or part thereof and includes the remains or wreckage of a vessel.

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PART IV CHARGES

- 37.** The Company shall have power to demand, take and recover such reasonable charges for the services and facilities provided at the harbour subject to such terms and conditions as they think fit.
- 38.** Charges demanded at the harbour shall be taken and recovered subject to such conditions as the Company may from time to time specify in their published list of charges.
- 39.** The several charges which the Company for the time being demand in respect of vessels and goods shall be taken and recovered before the removal from the harbour 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 Company may from time to time appoint.

Power to charge

Conditions relating to payment of charges.

How charges to be paid.

<p>PART IV <i>-cont.</i> As to payment of charges.</p> <p>Deposit for charges.</p> <p>Compounding arrangements and rebates. 1964 c. 40.</p> <p>Penalty for evading payment of charges.</p> <p>Exemption of lifeboat crew from charges.</p>	<p>40.—(1) Charges payable to the Company shall be payable by the owner of any vessel or goods in relation to which the charges are payable.</p> <p>(2) Where charges payable to the Company may be recovered by them from more than one person, the said persons shall be jointly and severally liable.</p> <p>41. The Company may, if they think fit, require any person liable, or who may become liable, to pay charges to the Company to deposit with the Company, or to guarantee such sum as, in the opinion of the Company, is reasonable having regard to the probable amount of the charges.</p> <p>42. Nothing in section 30 of the Harbours Act 1964 shall require the Company 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.</p> <p>43. If the owner of any vessel shall at any time evade, or attempt to evade, payment of any charges payable by such owner to the Company at the time when the same shall become due and payable, he shall be liable to pay to the Company 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 Company.</p> <p>44. All persons going to or returning from any lifeboat or using any apparatus for saving life and being persons for the time being actually employed in saving life or in exercising or using the lifeboat or the apparatus for saving life and all persons brought ashore from any vessel in distress shall at all times have free ingress, passage and egress to, along and from the harbour without payment.</p>
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PART V

MISCELLANEOUS

<p>Power to sell or lease undertaking.</p> <p>Obstruction of officers.</p>	<p>45. --(1) The Company may at any time, sell or lease the undertaking; and the purchaser or lessee</p> <p style="padding-left: 40px;">(a) shall have and may exercise to the extent authorised by his conveyance or, as the case may be, lease all or any of the powers conferred upon the Company by this Act in relation to the undertaking;</p> <p style="padding-left: 40px;">(b) shall be subject to all the restrictions, liabilities and obligations in respect of the undertaking to which the Company are subject; and</p> <p style="padding-left: 40px;">(c) shall perform all the duties of the Company under this Act in respect of the undertaking.</p> <p>(2) Subsection (1) above applies in relation to any part of the undertaking as it applies in relation to the whole undertaking.</p> <p>46. Any person who —</p> <p style="padding-left: 40px;">(1) intentionally obstructs an officer of the Company acting in pursuance of this Act; or</p> <p style="padding-left: 40px;">(2) without reasonable excuse fails to comply with a requirement properly made by such an officer, or</p> <p style="padding-left: 40px;">(3) without reasonable excuse fails to give such an officer any information which he may reasonably require for the purpose of the performance of his functions; or</p>
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- (4) in giving such information makes a statement which he knows to be false in a material particular, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 47.** None of the provisions of this Act shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.
- 48.** Nothing in this Act shall affect the operation of section 18 of the Coast Protection Act 1949 (which concerns the removal of materials from the seashore) and sections 34 to 36 of that Act (which require the consent of the Secretary of State to certain operations and contain other provisions for the safety of navigation).
- 49.** Nothing in this Act shall affect the operation of sections 28 and 29 of the Land Drainage Act 1976 (which control obstructions in and structures in, over or under watercourses).
- 50.** Nothing in this Act shall affect the operation of the Sea Fish (Conservation) Act 1967, the Salmon and Freshwater Fisheries Act 1975 and the Salmon Act 1986.
- 51.** Nothing in this Act, and nothing done under it, shall prejudice or affect the operation of any of the relevant statutory provisions (whenever made) as defined in Part I of the Health and Safety at Work etc. Act 1974.
- 52.**—(1) In proceedings for an offence under any provision of this Act mentioned in subsection (2) below, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) The provisions referred to in subsection (1) above are the following
- Section 8 (Provision against danger to navigation);
 - Section 11 (Permanent lights on tidal works);
 - Section 12 (Lights on tidal works during construction);
 - Section 23 (Power to license pleasure craft and boatmen).
- (3) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession, identifying, or assisting in the identification of, that other person.
- 53**—(1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown including (without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall) the Duchy of Cornwall, 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)

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Saving for Trinity House.

Saving for Coast Protection Act 1949.
1949 c. 74.

Saving for Land Drainage Act 1976. 1976 c. 70.

Saving for Fisheries Acts. 1967 c. 84. 1975 c. 51. 1986 c. 62.

Saving for Health and Safety at Work etc. Act 1974.
1974 c. 37.

Defence of due diligence.

Crown rights.

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1863 c. 49.

- (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 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 of the Duchy of Cornwall Management Act 1863, or as the case may be, the consent of the Duke of Cornwall testified in writing under the seal of the said Duchy; or
- (c) 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 this section may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

For protection of
British Railways
Board.

54. For the protection of the British Railways Board (in this section referred to as "the railways board") the following provisions shall unless otherwise agreed in writing between the Company and the railways board apply and have effect:

(1) In this section

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer to be appointed by the railways board;

"plans" includes sections, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction);

"railway property" means any railway of the railways board and any works connected therewith for the maintenance or operation of which the railways board are responsible and includes any land held or used by the railways board for the purposes of such railway or works;

"specified works" means so much of the works (whether temporary or permanent) as may be situated upon, across, under or over or within 25.00 metres of, or may in any way affect railway property and includes the construction, maintenance and renewal of such works:

(2) The Company shall before commencing the specified works (other than works of maintenance or repair) furnish to the railways board proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that if within 56 days after such plans have been furnished to the railways board the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:

(3) If within 56 days after such plans have been furnished to the railways board, the railways board shall give notice to the Company that the railways board desire themselves to construct any part of the

specified works which in the opinion of the engineer will or may affect the stability of railway property then, if the Company desire such part of the specified works to be constructed, the railways board shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Company in accordance with the plans approved or deemed to be approved or settled as aforesaid:

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(4) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Company if the railways board so desire, with all reasonable dispatch and the Company shall not commence the construction of the specified works until the engineer shall have notified the Company that the protective works have been completed to his reasonable satisfaction:

The Company shall give to the railways board 28 days' notice in writing of their intention to commence the construction of any of the specified works and, except in emergency (when they shall give such notice as may be reasonably practicable), also of their intention to carry out any works for the repair or maintenance of the specified works:

- (6) The specified works shall, when commenced, be carried out
- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid; (b) under the supervision (if given) and to the reasonable satisfaction of the engineer,
 - (c) in such manner as to cause as little damage to railway property as may be; and
 - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of the railways of the railways board or the traffic thereon and the use by passengers of railway property; and, if any damage to railway property or any such interference or obstruction shall be caused or take place, the Company shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:
- (7) The Company shall
- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
 - (b) ensure access for the engineer at all reasonable times to all working sites, depots and premises at which materials to be employed in the construction of the specified works are being made, constructed or assembled;
 - (c) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof
- (8) The railways board shall at all times afford reasonable facilities to the Company and their agents for access to any works carried out by the

PART V

-cont.

railways board under this section during their construction and shall supply the Company with such information as they may reasonably require with regard to such works or the method of construction thereof.

(9) If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary in consequence of the construction of the specified works, such alterations and additions may be effected by the railways board after not less than 28 days' notice has been given to the Company and the Company shall pay to the railways board on demand the cost thereof as certified by the engineer including, in respect of permanent alterations and additions, a capitalised sum representing the increased or additional cost of maintaining, working and, when necessary, renewing any such alterations or additions:

(10) The Company shall repay to the railways board all costs and charge and expenses reasonably incurred by the railways board

- (a) in constructing any part of the specified works on behalf of the Company as provided by paragraph (3) of this section or in constructing any protective works under the provisions of paragraph (4) of this section including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, repair or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;
- (e) in respect of the approval by the engineer of plans submitted by the Company and the supervision by him of the specified works:

(11) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board shall give notice to the Company informing them that the state of repair of the specified works appears to be such as prejudicially to affect railway property, the Company shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of repair as not prejudicially to affect railway property and, if and whenever the Company fail to do so, the railways board may make and do in and upon the land of the railways board or of the Company all such works and things as shall be requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the railways board in so doing shall be repaid to them by the Company:

(12) The Company shall be responsible for and make good to the railways board all costs, charges, damages and expenses not otherwise

provided for in this section which may be occasioned to or reasonably incurred by the railways board

- (a) by reason of the specified works or the failure thereof, or
- (b) by reason of any act or omission of the Company or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

and the Company shall effectively indemnify and hold harmless the railways board from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the railways board on behalf of the Company or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the Company from the liability under the provisions of this section:

Provided that the railways board 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:

(13) Any difference arising between the Company and the railways board under this section (other than a difference as to the meaning or construction of this section) 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 of them (after notice in writing to the other) by the President of the Institution of Civil Engineers.

55. For the protection of the undertakers the provisions of this section shall, unless otherwise agreed in writing between the Company and the undertakers, apply and have effect-

(1) In this section unless the subject or context otherwise requires

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

"apparatus" means any electric lines or works (as respectively defined in the Electric Lighting Act 1882) mains, pipes or other apparatus belonging to the undertakers or for the maintenance of which they are responsible and includes any structure for the lodging therein of apparatus;

"in" in a context referring to apparatus includes under, over, across, along or upon;

"plan" includes a section and description;

"specified work" means any work or thing done under powers conferred by this Act;

"the undertakers" means the South Western Electricity Board and a public gas supplier within the meaning of Part I of the Gas Act 1986 or either of them:

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

(3) If the Company in the exercise of the powers of this Act acquire any interest in or use any land in which any apparatus is placed, that

PART V
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For protection of
undertakers.

1882 c. 56.

1986 c. 44.

PART V

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apparatus shall not be removed nor shall any right of the undertakers to use, maintain, repair, renew or inspect any apparatus in that land be extinguished until adequate alternative apparatus has been laid or constructed and is in operation to the reasonable satisfaction of the undertakers:

(4) (a) If the Company, for the purpose of the execution of any specified work, require the removal of any apparatus, they shall give to the undertakers not less than 28 days' written notice of such requirement with a plan of the proposed work, and if it is agreed between the Company and the undertakers or, in default of agreement, determined by arbitration that the removal of the apparatus is reasonably required and that it should be removed the following provisions of this paragraph shall have effect;

(b) If it is agreed or determined by arbitration in accordance with subparagraph (a) above that any apparatus should be removed or if in consequence of the execution of any specified work the undertakers shall reasonably require to remove any apparatus, the Company shall, if practicable, afford to the undertakers the necessary facilities and rights for the laying or construction of adequate alternative apparatus in other lands 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 laid or constructed elsewhere than in other lands 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 laid or 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:

(a) Any alternative apparatus to be laid or constructed in lands of the Company in pursuance of paragraph (4) above shall be laid or 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 manner of laying or construction and the line and situation of any alternative apparatus has 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 (4) above proceed with all reasonable dispatch to lay or construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required to be removed under the provisions of this section and, in default, the Company may remove the apparatus:

(6) Notwithstanding anything in paragraph (5) above if the Company give notice in writing to the undertakers that they desire themselves to execute any part of the work necessary in connection with the laying or construction of the alternative apparatus in, or the removal of the apparatus required to be removed from, any lands of the Company, such work, instead 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, erection, 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) within 300 millimetres (12 inches) above the apparatus:

Where in accordance with the provisions of this section the Company afford to the undertakers facilities and rights for the laying or construction, maintenance, repair, renewal and inspection in lands 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 across or through a specified work the arbitrator shall
 - (i) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the specified work and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such work; and
 - (ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus laid or constructed through the lands of the Company 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, more or less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the Company by or to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the particular case:
- (8) (a) Not less than 28 days before commencing to execute any specified work which is near to, or is likely to affect, any apparatus the removal of which has not been required by the Company under paragraph (4) above the Company shall submit to the undertakers a plan of the work to be executed;
- (b) Such work shall be executed only in accordance with the plan 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 work:

Provided that

- (i) if the undertakers, within 14 days after the submission to them of any such plan, shall, in consequence of the work 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 paragraph (6) above; and

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(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 work, a new plan in lieu of the plan previously submitted and thereupon the provisions of this paragraph shall apply to and in respect of such new plan;

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

(9) if in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed, the Company shall provide an alternative means of access to such apparatus:

(10) The Company shall repay to the undertakers the reasonable costs, charges and expenses incurred by the undertakers in or in connection with

(a) the removal and re-laying or replacing, alteration or protection of any apparatus or the provision and construction of any new apparatus under any of the provisions of this section;

(b) the cutting off of any apparatus from any other apparatus; and

(c) any other work or thing reasonably necessary in consequence of the exercise by the Company of any of the powers of this Act:

1950 c. 39.

Provided that subsections (3) and (4) of section 23 of the Public Utilities Street Works Act 1950 shall so far as applicable extend and apply to any payment to be made by the Company under this paragraph as if the Company were the promoting authority and works hereinbefore in this paragraph mentioned were such undertakers' works as are referred to in the said subsection (3), and as if in that subsection for the words "specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority" there were substituted the words "agreed or settled by arbitration under section 55 (For protection of undertakers) of the Hayle Harbour Act 1989":

(11) If by reason or in consequence of the execution, user or failure of any of the specified works, or any subsidence resulting from any of those works, any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the undertakers or any interruption in the supply of gas or electricity 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 in restoring the supply of gas or electricity 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 is 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:

(12) Notwithstanding the provisions of section 13 (Diversion and temporary stoppage of footpaths) of this Act the undertakers, their engineers or workmen and others in their employ shall at all times have such powers and rights (including rights of access) in respect of any apparatus situate in such footpath or part thereof as they had immediately before such stopping up and shall be at liberty to execute or do all such works and things in, upon or under such footpath or part thereof as may be necessary for inspecting, repairing, maintaining, renewing or removing such apparatus:

Provided that this paragraph shall not apply in any case in which any footpath or part of a footpath is permanently stopped up and the apparatus therein is replaced by adequate alternative apparatus by or at the cost of the Company:

(13) (a) Any difference arising between the Company and the undertakers under this section shall be referred to and settled by an arbitrator appointed by agreement between the parties or, in default of agreement, by an arbitrator appointed on the application of either party, after giving to the other not less than one week's notice in writing, by the President of the Institution of Civil Engineers:

(b) In settling any difference under this section the arbitrator shall have regard to any duty or obligation which the undertakers may be under in respect of any apparatus and may, if he thinks fit, require the Company to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with any purposes for which the apparatus is used.

56. For the protection of the South West Water Authority (in this section referred to as "the water authority") the following provisions shall, unless otherwise agreed in writing between the Company and the water authority, apply and have effect:

- (1) In constructing the works, the Company shall incorporate such flood protection measures as the water authority may reasonably require:
- (2) Subject to the requirements of safety for navigation, the Company shall operate the lock, water control sluices and gates forming part of Work No. 1 in accordance with the reasonable requirements of the water authority in relation to their flood prevention and pollution functions:
- (3) Any difference between the Company and the water authority under this section shall be referred to and settled by an arbitrator appointed by agreement between the parties or, in default of agreement, by an arbitrator appointed on the application of either party, after giving to the other not less than one week's notice in writing, by the President of the Institution of Civil Engineers.

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For protection of
South West Water
Authority.

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Saving for town
and country
planning.

S.I. 1988/1813.
1971 c. 78.

57. The works authorised by subsection (1) of section 4 (Power to construct works) of this Act shall not be deemed for the purposes of the Town and Country Planning General Development Order 1988 (or any general order superseding that order made under section 24 of the Town and Country Planning Act 1971, or any corresponding provision of an Act repealing that section), to be;

- (a) development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out; or
- (b) development by dock, pier or harbour undertakers or their lessees of operational land of the undertaking being development which is required for the purpose of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers or goods at a dock, pier or harbour.

Local inquiries.
1972 c. 70.

58. The Secretary of State may cause a local inquiry to be held for the purpose of the exercise of any of his functions under this Act, and the provisions of section 250(2) to (5) of the Local Government Act 1972 (which relates to the giving of evidence at, and defraying the cost of, local inquiries) shall apply to any such inquiry as if it were held by the Secretary of State under subsection (1) of that section and as if references therein to a local authority included references to the Company:

Provided that subsection (4) of that section (which requires the Secretary of State's costs of such an inquiry to be defrayed by the parties thereto) shall not apply in relation to any inquiry unless so directed by the Secretary of State.

Advisory
committee.

59.—(1) The Company shall establish and maintain an advisory committee to provide advice to the Company on any question in connection with the discharge of the Company's functions under this Act which the Company may refer to it or on which it considers it should offer its advice.

(2) There shall be not less than 10 members of the advisory committee, of whom not more than two may be members, directors or employees of the Company.

(3) Membership of the advisory committee shall include persons appointed by-

- (a) Cornwall County Council, Penwith District Council and Hayle Town Council;
- (b) users of the harbour, or bodies representing such users; and
- (c) bodies representing environmental interests.

(4) Without prejudice to the generality of section 45 (Power to sell or lease undertaking) of this Act, if any person purchases part of the undertaking or takes a lease of the undertaking or any part thereof under that section, the references to the Company in subsection (1) above shall be construed as references to him and to the Company.