

ELIZABETH II



1963 CHAPTER XXIII

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

[31st July 1963]

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

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

Be it therefore 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:—

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

2. This Act may be cited as the Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963.

SCHEDULE

BEMBRIDGE HARBOUR

Provisional Order to provide for the vesting in Bembridge Harbour Improvements Company Limited of the Bembridge Harbour (formerly known as Brading Harbour) to confer powers on the said Company with reference thereto and the maintenance, management and improvement thereof and for other purposes.

Short title.

1. This Order may be cited as the Bembridge Harbour Order 1963.

Commencement of Order.

2.—(1) Sections 1 (Short title), 2 (Commencement of Order), 3 (Interpretation), 4 (Undertakers), 8 (Power to Company to acquire harbour) and 47 (Costs of Order) of this Order shall come into operation upon the day when the Act confirming the Order is passed.

(2) Save as provided in subsection (1) of this section the Order shall come into operation on the day of transfer.

Interpretation.

3. In this Order unless the context otherwise requires words and expressions to which by the enactments incorporated therewith or applied thereto respectively meanings are assigned have the same meanings and—

“ the Board ” means the British Railways Board ;

“ the Company ” means Bembridge Harbour Improvements Company Limited ;

“ the Corporation ” means the mayor, aldermen and burgesses of the borough of Ryde ;

“ the County Council ” means the council for the administrative county of the Isle of Wight ;

“ enactment ” includes any public general local or private Act and any order or other instrument having the force of an Act ;

“ the day of transfer ” means such date as may be agreed between the Company and the Board ;

“ the harbour ” means the Bembridge Harbour (formerly known as Brading Harbour) as described in section 7 (Limits of harbour) of this Order ;

“ the Harbours Clauses Act 1847 ” means the Harbours Docks and Piers Clauses Act 1847 ;

“ houseboat ” means any vessel lying in the water or on the foreshore of the harbour which is used or capable of being used as a place of habitation and if so used whether such use be temporary, intermittent or permanent or as a place for accommodating or receiving persons for purposes of shelter, recreation, entertainment or refreshment or as club premises or as offices but shall not include—

(i) a vessel normally engaged in the transport of persons or goods ; or

(ii) any pleasure vessel used in navigation ; or

(iii) any lightship or watch barge ;

“ hover vehicle ” means a vehicle designed to be supported on a cushion of air ;

“ land ” includes land covered by water ;

“ marina ” means a pier floating on the tide with servicing facilities ;

“ the Minister ” means the Minister of Transport ;

“ the River Board ” means the Isle of Wight River Board ;

“ seaplane ” includes a flying boat and any other aircraft designed to manoeuvre on the water ;

“ the undertaking ” means and includes as the case may require the harbour or the entire undertaking of the Company in connection with the harbour ;

“ vessel ” includes any vessel, ship, lighter, keel, barge, boat, raft, pontoon, hover vehicle, and craft of any kind howsoever navigated, propelled or moved and except for the purpose of levying rates any seaplane on the surface of the water ;

“ the works ” means and includes the jetties, piers, quays, roads, buildings and works and all conveniences connected with the harbour or constructed, purchased or otherwise acquired by the Company in pursuance of the powers of this Order.

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

5.—(1) The Lands Clauses Acts except so much thereof as relates to the purchase and taking of lands otherwise than by agreement and to the entry upon lands by the promoters of the undertaking and except sections 127 to 131 and 150 and 151 of the Lands Clauses Consolidation Act 1845 are hereby incorporated with this Order. Incorporation
of Lands
Clauses Acts.

(2) For the purposes of the incorporation of the said Acts the expression “ the special Act ” in these Acts shall mean this Order.

6.—(1) In the application to this Order of the Harbours Clauses Act 1847 the expression “ the special Act ” shall mean this Order and the word “ vessel ” shall have the same meaning as in section 3 (Interpretation) of this Order: Application
of Harbours
Clauses Act
1847.

Provided that nothing in the Harbours Clauses Act 1847 or this Order shall in any circumstances require or authorise the harbour master or other officer to require the dismantling of a seaplane or any part thereof or the making of any alteration whatever of the structure or equipment of a seaplane.

(2) Sections 6 to 13, 16 to 27, 49, 50, and 84 to 96, of the Harbours Clauses Act 1847 shall not be incorporated with this Order.

(3) Section 28 of the Harbours Clauses Act 1847 in its application to this Order shall have effect as if in the said section for the words from “ or any packet boat ” to “ any such packet boat or packet ” there were substituted “ or any vessel employed by or under the authority of the Postmaster General for the conveyance under contract

of postal packets as defined by the Post Office Act 1953, not being a vessel also conveying passengers or goods for hire or reward, or any mail bag as so defined conveyed by any such vessel."

Limits of
harbour.

7.—(1) The limits within which the Company shall have authority shall comprise the area coloured blue on the map certified on behalf of the Minister and deposited in accordance with the provisions of subsection (2) of this section, and those limits are in this Order termed "the limits of the harbour".

(2) A map showing the limits of the harbour having been signed in triplicate by an assistant secretary of the Ministry of Transport and one copy thereof having been deposited at the office of the Ministry of Transport, another copy thereof shall be deposited at the office of the clerk of the Isle of Wight County Council and another copy thereof shall be deposited at the registered offices of the Company.

(3) The limits within which the power to levy rates and charges may be exercised (in this Order referred to as "the rating limits") shall comprise the harbour and the works.

Power to
Company to
acquire
harbour.

8.—(1) The Board are hereby authorised and empowered to transfer to the Company, and the Company are hereby authorised and empowered to accept from the Board a transfer of the whole of the property, rights and interests of the Board in the harbour and all their powers and obligations in relation thereto, upon such terms and conditions as may be agreed between the Board and the Company.

(2) When the day on which such transfer shall be made has been agreed between the Board and the Company the Company shall not less than fourteen days before the day of transfer give notice of such day by advertisement in a local newspaper circulating in the administrative county of the Isle of Wight and in the London Gazette.

Vesting of
harbour in
Company.

9.—(1) On and from the day of transfer the harbour may be maintained and carried on by the Company.

(2) The harbour shall be known and described as "Bembridge Harbour".

Evidence
of transfer.

10. The production of a copy of the confirming Act for this Order printed by the Queen's Printer together with a receipt for the purchase price purporting to be signed by a member and the chief secretary of the Board shall (unless it be proved that the purchase price has not been paid) be conclusive evidence in all courts and proceedings of the transfer of the harbour of the Board to the Company and its vesting in them.

Repeal of
certain
enactments
relating to
harbour, etc.

11.—(1) The provisions of the Brading Harbour Improvement Railway and Works Act 1874 and the Brading Harbour and Railway Act 1896 set out in the First Schedule to this Order shall be repealed as from the day of transfer.

(2) As from the day of transfer the powers, rights, duties, liabilities and obligations of the Board in relation to the harbour under or by virtue of any enactment, shall be transferred to and vested in

the Company subject to the rights, duties, contracts, liabilities and obligations affecting the same (including all rights of access to landing-places, piers, quays and jetties existing immediately before the day of transfer).

(3) Any question arising between the Company and the River Board as to whether the Company are carrying out or fulfilling their duties, contracts, liabilities and obligations affecting the harbour shall be referred to and determined by arbitration.

12.—(1) Subject to the provisions of this Order the Company may upon any lands within the limits of the harbour maintain and improve the harbour and any works thereof and construct, maintain and improve embankments, walls, footways, approaches, steps, landing-places, piers, quays, jetties, marinas, slips, wharves, groynes, sea defences, buoys, moorings, cranes, lights, beacons, roads, sewers, drains, watercourses, gas and water pipes, apparatus for electric light and power, warehouses, offices, sheds and other works and conveniences which may be found necessary for the accommodation of vessels and traffic and for the protection of the harbour:

Power to construct, maintain and improve works.

Provided that the development of any of the lands referred to in this subsection for the purposes specified in this subsection shall not by virtue only of this subsection be deemed for the purposes of the Town and Country Planning General Development Order 1950, and any enactment amending or replacing the same to be carried out in pursuance of an Act which designates specifically both the nature of the development and the land upon which it may be carried out.

(2) Any electric light and power or other apparatus constructed and maintained under this Order shall be so constructed, used and maintained as to prevent any interference with any telegraphic line (as defined by the Telegraph Act 1878), belonging to or used by the Postmaster General or with telegraphic communication by means of any such line.

13. The Company may within the rating limits subject and according to the provisions of this Order levy and demand for the use of the works (other than those provided by them under the provisions of subsection (1) of section 15 (Powers as to moorings, etc.) of this Order) such reasonable rates as may be approved by the Minister and in respect of persons, goods and animals of every description and for services described in the Second Schedule to this Order any rates not exceeding those specified in that schedule and may receive and recover payment accordingly.

Power to levy rates.

14. The Company may confer or vary exemptions from and compound with any person with respect to the payment of rates or charges authorised by this Order, but so that no preference be in any case given to any person over any other person using the works under the like circumstances and that anything done under this section shall not prejudice the other provisions of this Order:

Power to vary exemptions and compound for rates.

Provided that the Company shall not vary or extinguish any statutory exemption (other than any exemption conferred under this section) from the payment of any rates or charges authorised by this Order.

Powers as to moorings, etc.

15.—(1) The Company may provide, place, lay down, maintain, use and have moorings, buoys, marinas and like apparatus and conveniences for vessels and houseboats on land owned or leased by the Company and on any other land with the consent in writing of the owner and lessee thereof in the harbour.

(2) The Company may demand, receive and recover in respect of any vessel using any of the moorings, buoys, marinas or like apparatus or conveniences provided by the Company under this section such reasonable charges as may be prescribed by the Company and approved by the Minister.

(3) The Company may demand, receive and recover in respect of any houseboat within the harbour such reasonable charges as the Company may from time to time determine.

Penalty for obstructing works, etc.

16.—(1) Any person who—

(a) wilfully obstructs any person acting under the authority of the Company in setting out marinas, moorings or buoys ;
or

(b) wilfully pulls up or removes any marinas, moorings or buoys or any poles or stakes driven into the ground for the purpose of such marinas, moorings or buoys ; or

(c) causes a vessel to be anchored or moored except at a marina, mooring or buoy or like apparatus or convenience provided by the Company under section 15 (Powers as to moorings, etc.) of this Order ; or

(d) places, lays down, maintains or uses any marina, mooring, buoy or like apparatus not provided by the Company under section 15 (Powers as to moorings, etc.) of this Order ;

shall be guilty of an offence and for every such offence be liable to a fine not exceeding twenty pounds.

(2) Nothing in paragraphs (c) and (d) of subsection (1) of this section shall prevent a person mooring or anchoring for a reasonable time or until such time as the harbour master shall give his directions.

(3) This section shall not apply in relation to any act done under or in pursuance of any deed, agreement or assurance to which the Company or their predecessors in title are or were a party.

Exemption of lifeboat crew.

17. All persons going to or returning from any lifeboat or using any apparatus for saving life and being persons either belonging to the crew of the lifeboat or to the coastguard or 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.

18. All persons being officers, servants, agents or contractors of the River Board and for the time being actually employed in exercising or carrying out any powers, duties or functions of the River Board shall at all times have free ingress, passage and egress to, along and from the harbour and without payment.

Exemption for River Board.

19.—(1) In their application to the Company sections 530 and 532 of the Merchant Shipping Act 1894 (which confer powers on the Company with respect to and with respect to anything in or on any vessel sunk, stranded or abandoned in such manner as to be an obstruction or danger to navigation in any part of the harbour or in or near any approach thereto) shall have effect—

Power with respect to disposal of wrecks.

(a) subject to the provisions of the next following section; and

(b) in relation to a vessel sunk, stranded or abandoned before as well as after the commencement of this Order.

(2) Subject to subsection (3) of this section and to any enactment for the time being in force limiting his liability the Company may recover as a simple contract debt from the owner of any vessel in relation to which they have exercised their powers under the said section 530 any expenses reasonably incurred by them under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) Except in a case which is in the opinion of the Company a case of emergency subsection (2) of this section shall not apply in relation to any vessel unless before exercising in relation to that vessel any of the powers conferred on them by the said section 530 other than the power of lighting and buoying the Company have given to the owner of the vessel not less than forty-eight 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 and no direction is served in respect of the vessel under paragraph (b) of subsection (2) of the next following section he shall be at liberty to do so and the Company shall not exercise the powers aforesaid in relation to that vessel until the expiration of seven 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 which may be given to him by the Company.

(4) Notice under the last foregoing subsection to the owner of any vessel may be served by the Company either by delivering it to him or by sending it to him by post in a registered letter addressed to him at his last known place of business or abode in the United Kingdom or if the owner or any such place of business or abode is not known to the Company by displaying the notice at their place of business in the Isle of Wight for the period of its duration.

(5) In this section the expression "owner" in relation to any vessel means the person who was the owner of the vessel at the time of the sinking, stranding or abandoning thereof.

Protection
of Crown
interests in
wrecks.

20.—(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) as modified by any Order in Council made under section 80 of the Merchant Shipping Act 1906, the powers conferred on the Company by sections 530 and 532 of the said Act of 1894 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 Admiralty 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 Admiralty of Her Majesty's ships of war.

(2) The Company shall give notice in writing to the Admiralty and to the Minister of any decision of the Company to exercise in relation to any vessel 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 Company a case of emergency shall not proceed with the exercise thereof—

(a) except with the consent of the Admiralty and the Minister before the expiration of a period of fourteen days from the giving of the notice ; or

(b) if before the expiration of the said period there is served on the Company a direction by the Admiralty or the Minister 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) of this subsection 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 the last foregoing section :

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 the foregoing subsection, 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 subsection and of subsection (3) of the last foregoing section 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 Minister for the purposes of this proviso.

(3) 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 said Act of 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 or excise, purchase tax or surcharge in respect of sugar or molasses, and any sums so discharged shall be deemed to be expenses incurred by the Company under that section.

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

21. Section 52 of the Harbours Clauses Act 1847 in its application to the Company and the harbour master shall extend to empower the harbour master to give directions prohibiting the mooring of vessels in any particular part or parts of the harbour. Directions of harbour master.

22. Section 53 of the Harbours Clauses Act 1847 in its application to the Company and the harbour master shall not be construed to require the harbour master to serve a notice in writing of his directions upon the master of a vessel, but such directions may be given verbally or otherwise communicated to such master, but a notice that is not in writing shall not be deemed sufficient unless in the opinion of the court before whom any case may be heard it was not reasonably practicable to serve a written notice on the master of the vessel. Orders of harbour master need not be in writing.

23.—(1) The Company may enter upon and from time to time dredge, scour, deepen and improve the bed and foreshore of the sea within the harbour and the channels and approaches thereto. Power to dredge and sell materials.

(2) All sand, mud and other materials dredged up or removed shall be the property of the Company and they may sell or otherwise dispose of or remove or deposit the same as they think fit.

(3) The powers of the Company under this section shall be exercisable subject to the provisions of section 46 (Crown rights) of this Order and in particular and without prejudice to that general limitation any consent given to the exercise of such powers by the

Crown Estate Commissioners on behalf of Her Majesty may be given subject to such restrictions and conditions, including the payment by the Company to those Commissioners of royalties, rents or sums of money in respect of materials raised from any place below high-water mark and sold or otherwise disposed of or removed or deposited by the Company under this section or in respect of any place below high-water mark upon which materials may be deposited as may be fixed by the Crown Estate Commissioners:

Provided that no materials raised under the provisions of this section shall be deposited in any place below the level of mean high-water springs otherwise than in such a position and under such restrictions and regulations as may be fixed by the Minister.

(4) The powers of the Company under this section other than for maintenance shall not be exercised without the consent of the River Board, but such consent shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld shall be referred to and determined by arbitration.

(5) The powers of the Company under this section shall be exercisable subject to the provisions of section 16 (Saving rights of Sir Graham Hamond Graeme) of the Brading Harbour and Railway Act 1896, and that section shall have effect as if therein the reference where it secondly occurs to "this Act" included a reference to this Order.

Byelaws.

24.—(1) The Company may from time to time make such byelaws as to them seem meet for all or any of the following purposes:—

- (a) for the regulation of the mooring, careening, beaching or anchoring and keeping of vessels and houseboats in the harbour;
- (b) for the regulation of the placing, laying down, maintaining, using and having existing and future moorings in the harbour and for the prescription of patterns of moorings in the harbour;
- (c) for securing the good and orderly conduct of persons in charge of or using vessels or houseboats in the harbour;
- (d) for the prevention of nuisances and offences against decency in the harbour;
- (e) for the regulation of the disposal of rubbish and sewage from vessels or houseboats in the harbour;
- (f) for the prevention of the disposal of rubbish (including ballast, stones, earth, clay or other refuse) in the harbour;
- (g) for the regulation and control in the harbour of the navigation and speed of vessels and the prevention of obstruction to vessels using the harbour.

(2) The byelaws which may from time to time be made by the Company in exercise of the powers in that behalf conferred on them by section 83 of the Harbours Clauses Act 1847 and by subsection (1) of this section may provide for the imposition of a fine not exceeding twenty pounds for the breach or non-observance of any of the byelaws.

(3) The provisions of subsections (2) to (7) of section 250 and section 252 of the Local Government Act 1933 shall apply to all byelaws to be made by the Company in respect of the undertaking and all fines or penalties imposed for the breach of any such byelaws shall be recoverable in manner provided by that Act for the recovery of penalties and the said sections 250 and 252 shall for the purposes of this subsection be construed as if the Company were a local authority within the meaning of those sections and the secretary of the Company were the clerk of the local authority.

(4) In the application of such last-mentioned provisions the Minister shall be the confirming authority.

(5) The Company shall—

(a) not less than one month before making byelaws furnish the County Council, the Corporation and the River Board with a draft of the proposed byelaws ; and

(b) when applying to the Minister for confirmation of the byelaws, furnish him with a copy of any representations made to the Company in writing by either the County Council, the Corporation or the River Board, and a statement showing the effect, if any, given to any such representation.

(6) The powers of the Company to make byelaws under section 83 of the Harbours Clauses Act 1847 shall extend so as to enable them to make byelaws for prohibiting the mooring of vessels within any area or areas defined in the byelaws, except with the consent of the harbour master and upon such conditions as he may reasonably require.

25. The Company may appoint officers for securing the observance of the byelaws and regulations made by the Company under the Harbours Clauses Act 1847 and this Order in respect of the harbour.

Appointment of officers to enforce byelaws and regulations.

26. Subject to the provisions of this Order the Company may by agreement purchase and hold for the purposes of this Order any lands in addition to those vested in the Company under and in pursuance of this Order, but with respect to such additional lands nothing in this Order or in the Acts incorporated therewith shall exempt the Company from any indictment, action or other proceedings for nuisance in the event of any nuisance being caused or permitted by them thereon.

Power to take lands by agreement.

27.—(1) Any person empowered by the Lands Clauses Acts to sell and convey or release lands may if he thinks fit subject to the provisions of those Acts grant to the Company any easement or right required for the purposes of this Order in, over or affecting any such lands (not being an easement or right of water in which some person other than the grantor has an interest).

Grant of easements by persons under disability.

(2) The provisions of the said Acts with respect to lands and rent-charges so far as they are applicable shall extend and apply to any such grant and to any such easement or right as aforesaid.

28.—(1) Notwithstanding anything in the Lands Clauses Acts to the contrary the Company may—

Retention and disposal of lands.

(a) retain and hold and use for such time as they think fit any land or interest in land acquired by them under this Order ;

- (b) sell, lease, exchange, or otherwise dispose of any such land or interest no longer required for the purpose of the undertaking in such manner, and for such consideration and on such terms and conditions as they think fit (whether in consideration of the execution of works or of the payment of a gross sum or of an annual rent or of payment in any other form);
- (c) sell, exchange or dispose of any rents reserved on the sale, lease, exchange or other disposition of any such land or interest;
- (d) make, do and execute any deed, act or thing proper for effectuating any such sale, lease, exchange or other disposition;
- (e) on any such exchange pay or receive money for equality of exchange.

(2) Nothing in this section shall release the Company or any person purchasing or acquiring any land or interest in land from them under this section from any rents, covenants, restrictions, reservations, terms or conditions made payable by or contained in any conveyance, lease or other deed or instrument by which the land or interest has been conveyed or leased to or otherwise acquired by the Company or any persons from or through whom the Company have derived title to it.

Power to sell
undertaking.

29.—(1) The Company may (if authorised so to do by their memorandum and articles of association and subject to the powers and provisions thereof) with the previous consent in writing of and upon such terms, conditions and restrictions as may be approved by the Minister sell the undertaking and the purchaser to the extent authorised by his conveyance shall have and may exercise all or any of the powers conferred upon the Company by this Order or which the Company have or might exercise under this Order and shall be subject to all the liabilities and obligations in respect of the undertaking to which the Company are subject and shall perform all the duties of the Company under this Order.

(2) The Company shall within one month after the date of any conveyance made under this section deposit a certified copy thereof at the Ministry of Transport and shall upon failure to do so be liable to a fine not exceeding twenty pounds.

Power to lease
undertaking.

30.—(1) The Company may with the previous consent in writing of and upon such terms, conditions and restrictions and for such period as may be approved by the Minister, lease the undertaking to any company, corporation or person.

(2) As from the commencement of any lease made under the last preceding subsection the lessee during the continuance of, and to the extent provided in his lease, shall have and may exercise all or any of the powers conferred upon the Company by this Order or which the Company have or might exercise under this Order and shall be subject to all the liabilities and obligations in respect of the undertaking to which the Company are subject and shall perform all the duties of the Company under this Order.

(3) No lease made under subsection (1) of this section shall be assignable without the previous consent in writing of the Minister and the provisions of this Order with respect to such lease or to the lessee shall apply to any such assignment or to the assignee respectively.

(4) The Company shall within one month after the date of any lease made under this section or of any assignment of the said lease deposit a certified copy thereof at the Ministry of Transport and shall upon failure to do so be liable to a fine not exceeding twenty pounds.

(5) Notwithstanding that under this section the power to levy any rates for which statutory maxima are fixed by this Order is transferred by the Company to some other person the rates in respect of which the power to levy is so transferred shall for the purposes of section 6 of the Transport Charges &c. (Miscellaneous Provisions) Act 1954 be deemed to be charges (within the meaning of the said Act of 1954) which the Company are for the time being authorised to demand and take in pursuance of the said Acts and in connection with any application for the revision of such rates the provisions of the said section 6 shall apply as if the said power to levy had not been so transferred.

31.—(1) If in respect of any financial year of the undertaking the moneys received by the Company on account of the revenue of the undertaking shall exceed the expenses of the undertaking, the Company shall apply such excess in or towards the dredging of the harbour or the renewal, construction or improvement of any of the works. Application of surplus revenue.

(2) In this section "the expenses of the undertaking" means moneys expended or applied by the Company in the working, management and maintenance of the undertaking and in meeting such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund and a reasonable return upon the paid-up share capital of the undertaking.

32.—(1) The Company shall within six months after the date to which their annual accounts and balance sheet are made up send a copy of the same to the Minister, and section 16 of the General Pier and Harbour Act 1861 Amendment Act shall apply to and include the Company and any and every such accounts. Annual accounts to be sent to Minister.

(2) The Company shall as from the expiration of that period be liable to a fine not exceeding twenty pounds for every refusal or neglect to comply with the foregoing provisions.

33. All conveyances, grants, leases, assurances, deeds and agreements (other than any agreement made under section 8 (Power to Company to acquire harbour) of this Order) affecting the undertaking and in force immediately before the day of transfer shall on and from that day be as binding and of as full force and effect in every respect and may be enforced as fully and effectually against or in favour of the Company as if instead of the Board the Company had Saving of agreements, etc.

been a party thereto or bound thereby or entitled to the benefits thereof, but nothing in this Order or done thereunder shall prejudice or affect the right of the Company to terminate any such conveyance, grant, lease, assurance, deed or agreement at such time and in such manner as it might have been terminated if this Order had not been made.

Inquiries by
Minister.

34. The Minister may cause to be held any such inquiry as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval or the making of any order or the confirmation of any byelaw under this Order, and section 290 of the Local Government Act 1933 shall apply to such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

Cables, pipes
or wires under
or across
tidal waters.

35. Notwithstanding anything in this Order any cables, pipes or wires to be laid or placed under the powers of this Order by the Company on, under or over any tidal waters or tidal lands below the level of mean high-water spring tides shall be laid or placed at such depth under or such height over the tidal waters or tidal lands as the Minister may require.

Recovery of
penalties.

36.—(1) All fines, penalties and forfeitures recoverable under this Order or under any byelaw made in pursuance of section 24 of this Order or section 83 of the Harbours Clauses Act 1847 may be recovered in a summary manner.

(2) Any costs or expenses recoverable as aforesaid may be recovered summarily as civil debts where the amount recoverable does not exceed twenty pounds.

Byelaws to
remain in force.

37. All byelaws, rules and regulations and all orders made by the Board under any enactment relating to the harbour or any part thereof and in force at the commencement of this Order shall remain in force for the period of four years beginning on the day of transfer unless revoked by the Company, and all penalties incurred thereunder and all forfeitures which have ensued by reason thereof may be enforced and recovered by the Company in like manner as the same respectively might have been enforced and recovered by the Board in case this Order had not been made.

Charges for
services not
otherwise
provided for.

38. Subject to the provisions of this Order the Company may (so far as the rates and charges for which provision is made in sections 13 and 15 and the Second Schedule to this Order do not extend) demand and recover such reasonable charges or other consideration as they may determine in respect of any services rendered by them in connection with the harbour.

Arbitration.

39. In arbitrations under a provision of this Order the reference shall be to a single arbitrator to be appointed by agreement between the parties, or, in default of agreement, to be appointed by the Minister on the application of any party after giving notice in writing to the other party or parties.

40. Nothing in this Order shall prejudice or derogate from or in any wise alter, affect or interfere with the jurisdiction, authority, rights, powers and privileges of the River Board.

Saving for
River Board.

41. Nothing in this Order shall prejudice or derogate from or in any wise alter or affect or interfere with the rights, powers and privileges of the County Council or the Corporation under any enactment.

Saving for
County
Council and
Corporation.

42. For the protection of the County Council the following provisions shall notwithstanding anything in this Order, and unless in any case it is otherwise agreed between the County Council and the Company, apply and have effect:—

For protection
of County
Council.

(1) If the Board offer to sell to the Company the toll road adjacent to the harbour and the embankment upon which that road is constructed, the Company shall forthwith give notice in writing to the County Council of the offer, and if so requested by the County Council shall request the Board to sell that road and embankment to the County Council:

(2) If the Company fail to maintain the undertaking to the satisfaction of the Minister the Company shall, if so requested by the County Council, sell the undertaking to the County Council in accordance with the provisions of section 29 (Power to sell undertaking) of this Order for such sum as may be agreed between the Company and the County Council or, as failing agreement, shall be determined by the Lands Tribunal to be the amount which the undertaking might have been expected to realise if it were sold as a going concern in the open market by a willing seller to a willing buyer:

Provided that if such sale takes place within a period of five years from the day of transfer such sum shall not be less than the amount of any capital expenditure incurred by the Company for the purposes of the undertaking, including the cost incurred by the Company in acquiring the undertaking:

(3) The Company shall within three months after the date on which their annual accounts are made up send an abstract thereof to the County Council together with a copy of the balance sheet in respect of the same period:

(4) In this section the expression "the undertaking" means and includes the entire undertaking of the Company in connection with the harbour.

43. For the protection of the owners and occupiers for the time being of the Saint Helens Mill the following provisions shall (unless otherwise agreed) have effect, that is to say:—

For protection
of owners and
occupiers of
St. Helens Mill.

(1) Goods specified in paragraph (2) of this section unshipped at the Mill quay or the quay authorised by the Brading Harbour and Railway Act 1896, and conveyed in vessels which can berth at the Mill quay drawing when fully loaded

not more than seven feet six inches of water, shall be free from the goods rates authorised by the Second Schedule to this Order:

- (2) The goods referred to in the preceding paragraph are goods for use at or for storage in Saint Helens Mill as it exists at the date of the commencement of this Order.

Officers exempt from rates.

44. Officers of the Ministry of Transport, British Sea-Fishery officers and police officers acting in the execution of their duty shall at all times have free ingress, passage and egress to, along and from the harbour without payment.

Saving for town and country planning.

45. The provisions of the Town and Country Planning Act 1962 and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

Crown rights.

46. Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular, nothing herein contained authorises the Company to take, use or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land, hereditaments, subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners on behalf of Her Majesty first had and obtained for that purpose.

Costs of Order.

47. All costs, charges and expenses of and incidental to the preparing, applying for, obtaining and passing of this Order or otherwise in relation thereto shall be paid by the Company.

SCHEDULES

FIRST SCHEDULE

PROVISIONS OF THE BRADING HARBOUR IMPROVEMENT RAILWAY AND WORKS ACT 1874 AND THE BRADING HARBOUR AND RAILWAY ACT 1896 REPEALED AS FROM THE DAY OF TRANSFER

Brading Harbour Improvement Railway and Works Act 1874—

- Section 11 (Power to improve Brading Harbour);
- Section 31 (Tolls for use of Embankment);
- Section 46 (Limits within which Piermaster may exercise his authority).

Brading Harbour and Railway Act 1896—

- Section 6 (Harbour of Brading);
- Section 9 (Power to dredge &c. the Harbour);
- Section 10 (As to deposit of dredged materials);

Section 17 (For the protection of the Owners and Occupiers of Saint Helens Mill);

1st Sch.
—cont.

Section 35 (Dues);

Section 36 (Dues payable on Vessels using the Harbour);

Section 37 (Dues payable on Animals and Goods);

Section 38 (Rents for Goods liable to Rates remaining on Works more than Three Days);

Section 39 (Cranage &c. Rates);

Section 40 (Discharge and Supply of Ballast);

Section 41 (Rates on Passengers and Luggage);

Section 42 (Power to vary Dues);

Section 43 (As to calculating fractional part of Rates);

Section 44 (Exemptions and Compositions in respect of Dues);

Section 45 (Power for Company to remit Dues);

Section 46 (Company may load &c. Vessels);

Section 47 (If unnecessary delay Company may discharge Vessels);

Section 48 (Statement of Draught of Water of Vessel entering Harbour);

Section 49 (Vessels only to land &c. at a Licensed Quay);

Section 50 (When Dues to be Paid);

Section 51 (Authorising Deposit on account of Dues);

Section 52 (Securing Duties on Ships entering and departing from Harbour);

Section 53 (Collectors to refuse entry when previous Rates on Vessels are Unpaid and Vessels may be Detained);

Section 54 (Officers of the Admiralty Inland Revenue and of the Board of Trade to have free access to Harbour without Payment of Toll &c.);

Section 55 (Company may License Steam Tugs);

Section 56 (Penalty for Steam Tugs plying without a Licence);

Section 58 (Additional Bye-Laws);

The Schedules.

SECOND SCHEDULE

PART I

RATES FOR USE OF HARBOUR JETTY OF THE COMPANY

s. d.

For every passenger landing on the harbour jetty owned by the Company from or embarking from it on board of any ship, vessel, boat, packet or passage boat for each time any sum not exceeding 3

2ND SCH.
—cont.

PART II

RATES ON GOODS SHIPPED OR UNSHIPED WITHIN THE HARBOUR

	s.	d.
For fish of any description per cwt.	3	0
For unworked stone per ton		8
For coal per ton		8
For sand per ton		9
For scrap iron and steel per ton		9
For rubble ballast per ton		4
All kinds of timber or wooden goods loaded or discharged by vessels using or entering the harbour per load of 50 cubic feet	1	6
All other merchandise, goods, articles and things loaded or discharged by vessels using or entering the harbour per ton	1	6

PART III

RATES ON ANIMALS SHIPPED OR UNSHIPED WITHIN THE HARBOUR

	s.	d.
For each donkey		4
For each horse		9
For each ox or cow		4
For pigs per score	1	0
For sheep or lambs per score	1	0
For each other animal not specified		2

PART IV

RATES FOR THE USE OF CRANES, WEIGHING-MACHINES AND SHEDS
OWNED AND OPERATED BY THE COMPANY

	s.	d.
(1) Cranes—		
All goods or packages per ton or part of a ton ...	2	0
(2) Weighing-machines—		
For goods weighed for each ton or part of a ton ...		7
(3) Sheds—		
For each ton of 40 cubic feet of goods which shall remain in any shed forming part of the harbour works for a longer time than 24 hours the sum of 10d. and the sum of 6d. per ton of 40 cubic feet for each day during which such goods shall remain after the first 24 hours.		
For any portmanteau, trunk, parcel or other article of passengers' luggage for every day or part of day		3

NOTES WITH REFERENCE TO THE FOREGOING SCHEDULE

2ND SCH.
—cont.

1. All returned empties are exempted from payment of rates.

2. All goods landed and re-shipped on board the same or any other vessel shall be liable to one rate only provided that the goods were consigned in the first instance from the original forwarding point through to the destination to which they are re-shipped and no change of ownership of the goods has in the meantime taken place.

3. In charging the rates on goods weighed or measured the gross weight or measurement shall be taken. Fractional parts of any weight, measure, number or value shall be charged proportionately and the minimum charge for a single packet or thing shall be one penny.

4. The following shall be exempt from payment of rates:—

(a) Pilot boats.

(b) Pleasure boats under the burden of five tons let on hire by inhabitants of the parishes of Bembridge, Brading or Saint Helens in the ordinary course of their business or occupation as boatmen.

(c) Registered fishing boats belonging to inhabitants of the parishes of Bembridge, Brading and Saint Helens.

(d) Vessels driven into the harbour by stress of weather and using the harbour solely as a harbour of refuge and remaining not more than forty-eight hours continuously and not breaking bulk.

Table of Statutes referred to in this Act

Short title	Session and chapter
Lands Clauses Consolidation Act 1845	8 & 9 Vict. c. 18.
Harbours Docks and Piers Clauses Act 1847	10 & 11 Vict. c. 27.
General Pier and Harbour Act 1861	24 & 25 Vict. c. 45.
General Pier and Harbour Act 1861 Amendment Act 1862	25 & 26 Vict. c. 19.
Brading Harbour Improvement Railway and Works Act 1874	37 & 38 Vict. c. cxcv.
Telegraph Act 1878	41 & 42 Vict. c. 76.
Merchant Shipping Act 1894	57 & 58 Vict. c. 60.
Brading Harbour and Railway Act 1896	59 & 60 Vict. c. ccxliii.
Merchant Shipping Act 1906	6 Edw. 7 c. 48.
Local Government Act 1933	23 & 24 Geo. 5 c. 51.
Post Office Act 1953	1 & 2 Eliz. 2 c. 36.
Transport Charges, etc. (Miscellaneous Provisions) Act 1954... ..	2 & 3 Eliz. 2 c. 64.
Town and Country Planning Act 1962	10 & 11 Eliz. 2 c. 38.

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