

ELIZABETH II



1973 CHAPTER xxii

An Act to authorise the disposal of the Nuevo burial ground in the London borough of Tower Hamlets and to authorise the use for other purposes of the site thereof; and for purposes incidental thereto.

[18th July 1973]

WHEREAS Queen Mary College (hereinafter referred to as "the College") was incorporated by Royal Charter dated 29th November, 1934, with objects which include the provision of instruction in subjects of or cognate to a university education and the doing of all such things as may be incidental and conducive to promoting education, learning and research:

And whereas the College is authorised to acquire and hold lands and hereditaments for the purposes aforesaid:

And whereas the College owns certain premises situate in the Mile End Road in the London borough of Tower Hamlets (hereinafter referred to as "the College premises"):

And whereas the charity known as "The Charity consisting of certain Trust Properties held in connection with the Spanish and Portuguese Jews' Synagogue" (hereinafter referred to as

“the charity”) is a charity regulated by a scheme under the Charitable Trusts Acts, 1853 to 1939, sealed on 29th May, 1958, by the Board of Charity Commissioners for England and Wales

1948 c. 38.

And whereas London Sephardi Trust (hereinafter referred to as “the Trust”) is a company within the meaning of the Companies Act, 1948, and is a company limited by guarantee:

And whereas the Trust is the custodian trustee of the charity and the managing trustees of the charity are the members for the time being of the Board of Elders of the Spanish and Portuguese Jews’ Synagogue (hereinafter referred to as “the Managing Trustees”):

1884 c. 72.

And whereas certain land comprising 1.9 hectares or thereabouts adjoining the College premises is vested in the Trust as such custodian trustee and the said land is a disused burial ground within the meaning of the Disused Burial Grounds Act, 1884 (hereinafter referred to as “the Nuevo burial ground”):

And whereas the last known interment in the Nuevo burial ground (other than in that part thereof which is in this Act referred to as “the restricted area”) was in about 1850 and the last interment in the said restricted area was in about 1953:

And whereas the College desires to acquire the Nuevo burial ground for the purpose of extending the College premises and erecting buildings thereon:

And whereas by an agreement dated 21st November, 1972 (hereinafter referred to as “the scheduled agreement”) the Trust acting by the direction of the Managing Trustees has agreed to dispose of the Nuevo burial ground to the College on terms which include the transfer by the College to the Trust for the purposes of the charity of certain land belonging to the College in the urban district of Brentwood in the administrative county of Essex for the purpose of establishing a new burial ground (hereinafter referred to as “the Brentwood burial ground”):

And whereas outline planning permission has been granted by the local planning authority concerned both for the development of the Nuevo burial ground for teaching, residential and ancillary purposes of the College and for the development of the Brentwood burial ground as a burial ground and memorial garden:

And whereas it is expedient that the scheduled agreement should be confirmed:

And whereas it is expedient that the provisions contained in this Act with respect to the removal of human remains interred in the Nuevo burial ground should be enacted:

And whereas the objects of this Act cannot be effected without the authority of Parliament:

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

1. This Act may be cited as the Queen Mary College Act 1973. Short title.

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

“ the Brentwood burial ground ” means the lands at Dytchleys, Coxtie Green, in the urban district of Brentwood in the administrative county of Essex edged red on the signed plan;

“ the College ” means Queen Mary College;

“ the date of consent ” means the date on which the Managing Trustees referred to in the Preamble to this Act give their consent in writing to the removal of human remains from the restricted area;

“ enactment ” has the same meaning as in the Town and Country Planning Act, 1971; 1971 c. 78.

“ the Nuevo burial ground ” means the disused burial ground known as the Nuevo burial ground being the lands in the London borough of Tower Hamlets comprising 1·9 hectares or thereabouts and edged blue on Plan No. 1;

“ Plan No. 1 ” means Plan No. 1 annexed to the scheduled agreement, copies of which were in the month of November, 1972, deposited in the office of the Clerk of the Parliaments, House of Lords, in the Private Bill Office of the House of Commons, in the office of the registrar of the College and in the registered office of London Sephardi Trust;

“ the relevant date ” means—

(a) in the case of the Nuevo burial ground, other than the restricted area, the date of the passing of this Act; and

(b) in the case of the restricted area, the date of consent;

“ the restricted area ” means the portion of the Nuevo burial ground comprising 0·4 hectare or thereabouts and shown hatched black on Plan No. 1:

“the scheduled agreement” means the agreement set out in the Schedule to this Act;

“the signed plan” means the plan which has been signed in quadruplicate by the Earl of Listowel, the chairman of the Committee of the House of Lords to whom the Bill for this Act was referred, of which plan one copy has been deposited in the office of the Clerk of the Parliaments, House of Lords, one copy in the Private Bill Office of the House of Commons, one copy in the office of the registrar of the College and one copy in the registered office of London Sephardi Trust.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by, or by virtue of, any subsequent enactment, including this Act.

Confirmation of scheduled agreement.

3. The scheduled agreement is hereby confirmed and made binding on the parties thereto, their successors and assigns and effect may and shall be given thereto accordingly subject to such modifications (if any) as may be agreed in writing between the parties, their successors or assigns:

Provided that the said agreement shall have effect as if—

- (a) for references therein to Plan No. 2 annexed thereto there were substituted references to the signed plan; and
- (b) in the sixth recital for the words “18th March 1970” there were substituted the words “4th April 1973”.

Discharge of trusts, etc., and saving for private rights.

4. As from the relevant date the Nuevo burial ground shall be freed and discharged from all trusts, uses, obligations, disabilities and restrictions whatsoever (including the effects of consecration) relating or appertaining to the use or setting apart of the Nuevo burial ground as a place for the interment of human remains which immediately before the relevant date attached thereto, and from all rights and interests of any person who is an executor, administrator or relative of any deceased person whose remains are interred in the Nuevo burial ground, or any part thereof:

Provided that nothing in this Act shall operate to affect prejudicially any private right or easement (not being a right in respect of a grave) over the Nuevo burial ground, or any part thereof, which attached thereto immediately before the relevant date.

5. Notwithstanding anything contained in any enactment but subject to the provisions of this Act, it shall be lawful at any time after the passing of this Act to use, develop, deal with or dispose of the Nuevo burial ground or any part thereof, for any purpose in like manner as if no part thereof had ever been used or set apart for the interment of human remains: Power to use Nuevo burial ground for other purposes.

Provided that the provisions of this section shall not apply to the restricted area until the date of consent.

6.—(1) Before the College begin to use or develop any part of the Nuevo burial ground for any purpose they shall remove, or cause to be removed, from that part of the Nuevo burial ground the remains of all deceased persons interred therein and shall cause them to be reinterred in the Brentwood burial ground or in such other burial ground as the Managing Trustees referred to in the Preamble to this Act may agree. Removal of human remains from Nuevo burial ground.

(2) The expenses of such removal and reinterment shall be defrayed by the College.

(3) The removal of the remains of deceased persons under this section shall be carried out in accordance with any directions that may be given by the Secretary of State.

7. Section 289 of the Town and Country Planning Act, 1971 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the Session of 10 & 11 Geo. 6 for authorisation or regulation of development of the land), shall apply to this Act as if it had been passed during that Session; and accordingly the Town and Country Planning Act, 1971, and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this Act. Saving for Town and Country Planning Act, 1971. 1971 c. 78.

8. The costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Act or otherwise in relation thereto shall be paid by the College. Costs of Act.

Section 2.

SCHEDULE

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THIS AGREEMENT is made the 21st day of November, 1972, between QUEEN MARY COLLEGE of Mile End Road, London, E.1 (hereinafter called "the College") of the first part the persons whose names appear in the Schedule hereto being the members at the date hereof of THE BOARD OF ELDERS OF THE SPANISH AND PORTUGUESE JEWS' SYNAGOGUE (hereinafter called "the Managing Trustees") of the second part and LONDON SEPHARDI TRUST a body corporate whose registered office is at The Vestry Offices, Heneage Lane, Bevis Marks in the City of London (hereinafter called "the Trust") of the third part.

WHEREAS:

(1) The College was incorporated by Royal Charter dated the 29th November 1934 with objects which included providing instruction in subjects of or cognate to a University education and doing all such things as might be incidental and conducive to promoting education learning and research and for such purposes to acquire and hold lands and hereditaments; and the premises of the College include certain land situate in the Mile End Road aforesaid (hereinafter called "the College premises").

1948 c. 38.

(2) The Managing Trustees are the managing trustees of a Charity known as "The Charity consisting of certain Trust Properties held in connection with the Spanish and Portuguese Jews' Synagogue" under a Scheme made by the Charity Commissioners on 29th May 1958 and the Trust (being a company incorporated under the Companies Act 1948 and limited by guarantee) is the custodian trustee (inter alia) of the endowments of the said Charity under the said Scheme.

(3) Part of the said endowments is the land (hereinafter called "the Nuevo burial ground") adjoining the College premises and comprising 1.9 hectares or thereabouts being the land edged blue (including that hatched black which comprises 0.4 hectare or thereabouts) on Plan No. 1 annexed hereto.

1884 c. 72.

(4) The Nuevo burial ground is vested in the Trust under the said Scheme as such custodian trustee as aforesaid and is a disused burial ground within the meaning of the Disused Burial Grounds Act 1884 wherein (other than the said part hatched black) the last known interment of human remains took place in about 1850; and the Trust or its predecessors in title have been in undisputed enjoyment and possession thereof for upwards of 100 years.

1962 c. 38.

(5) The College desires to extend the College premises and outline planning permission under the Town and Country Planning Act 1962 for the development of the Nuevo burial ground for that purpose was granted by the Greater London Council on 15th April 1969 and extended on the 30th March 1972 (hereinafter called "the GLC permission").

(6) The College is the owner in fee simple in possession free from incumbrances of certain land at Dytchleys Coxtie Green near Brentwood in the County of Essex being the land edged red on Plan No. 2 annexed hereto in respect of which outline planning permission under the said

Act of 1962 was granted by the Brentwood Urban District Council on 18th March 1970 for development as a burial ground and memorial garden (hereinafter called "the Brentwood permission").

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(7) Pursuant to the provisions of the said Act of 1884 it will not be lawful to erect any buildings upon the Nuevo burial ground unless restrictions on the use thereof resulting from the application of the said Act are removed by Act of Parliament.

(8) The Managing Trustees are willing to dispose of the Nuevo burial ground to the College upon and subject to the terms herein contained but so that for the purpose of ensuring that no building on or disturbance of the said part hatched black on the said Plan No. 1 shall take place except with the consent of the Managing Trustees such terms include the granting of a Lease of the said part hatched black in lieu of the transfer of the freehold thereof.

(9) This Agreement is executed in the names and on behalf of the Managing Trustees by two of their number acting under the authority of a resolution of a meeting of the Managing Trustees held on 29th October 1972 pursuant to section 34 of the Charities Act 1960.

1960 c. 58.

NOW IT IS HEREBY AGREED as follows:—

1. Hereafter in this Agreement "the main burial ground" means the Nuevo burial ground but excluding the said part thereof which is hatched black on the said Plan No. 1; "the restricted area" means the said part hatched black; and "the Brentwood burial ground" means the said land edged red on the said Plan No. 2.

2. The College shall promote in the present (1972-73) Session of Parliament a Bill for an Act (hereinafter called "the Bill") to obtain the authority of Parliament for the purposes and to the extent hereinbefore recited.

3. The Bill shall contain (inter alia) provisions (a) for the removal of human remains from the Nuevo burial ground before any development takes place thereon, (b) for the reinterment of the said human remains in the Brentwood burial ground or in such other burial ground as the Managing Trustees may agree, (c) for the expenses of such removal and reinterment to be borne by the College and (d) that the restricted area shall not be freed and discharged from the restrictions and prohibitions imposed by virtue of the said Act of 1884, except with the Managing Trustees' consent in writing.

4. The College shall use its best endeavours to procure the passing into law of the Bill in the present (1972-73) Session of Parliament and the Managing Trustees shall use their best endeavours to support the Bill and shall for that purpose, if the College so require, appear before Parliament by themselves, their Counsel or Agents in support thereof.

5. If the Bill shall receive the Royal Assent then:—

(a) The Managing Trustees will sell and cause the Trust to convey to the College and the College will buy the main burial ground

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(b) The Managing Trustees will cause the Trust to grant to the College a Lease of the restricted area in accordance with the provisions of Clause 7 hereof and

(c) The College will transfer the Brentwood burial ground to the Trust as custodian trustee on behalf of the Managing Trustees.

6. The College hereby undertakes with the Managing Trustees that all work for the removal of human remains from the main burial ground and their reinterment in the Brentwood burial ground and for the removal of the gravestones shall be carried out by the College, their Agents or Contractors in accordance with the religious requirements of the Haham (Chief Rabbi) of the Spanish and Portuguese Jews' Congregation of London or if he should die or not be available the person for the time being performing his functions who shall be at liberty to provide a Shomer to superintend the said work and the College shall procure that all reasonable facilities are provided for such superintendence.

7. The lease of the restricted area to the College shall be for a term of 999 years at a peppercorn rent and shall be in the form of the draft Lease which has been agreed between the Managing Trustees and the College and initialled on their behalf, such Lease containing (inter alia) a covenant by the College that until the Managing Trustees shall consent in writing to the removal of human remains from the restricted area, the College shall keep the restricted area in a neat and tidy condition and shall not otherwise disturb the surface thereof and it shall at all times provide a sufficient means of access thereto and, on request by the Managing Trustees, permit access thereto (over the main burial ground or other lands of the College) for all persons authorised by the Managing Trustees.

8. (i) The conveyance of the Brentwood burial ground to the Trust shall include the grant of a right of way, for all purposes of access thereto, over the land coloured brown on the said Plan No. 2; and shall contain a covenant by the Trust and the Managing Trustees for the benefit and protection of the adjoining lands of the College, that the Brentwood burial ground will not, without the consent of the College, at any time be used otherwise than for the purposes permitted by the Brentwood permission and that no buildings of any kind shall without such consent as aforesaid be erected thereon or on any part thereof.

(ii) Within six months of such conveyance the College shall erect chain link fences or such other type of fences as may be approved by the planning authorities along the boundaries of the Brentwood burial ground marked A-B, B-C, C-D, D-E, E-F and F-G on the said Plan No. 2, but shall not thereafter be liable to maintain such fences.

9. (i) The price to be paid by the College for the main burial ground and for the said leasehold interest in the restricted area shall be the current market value thereof, ascertained as hereinafter provided, less the aggregate of the expenditure incurred in (a) removing the human

remains from the main burial ground and reintering the same in accordance with the provisions of the Bill as hereinbefore provided and (b) the negotiation for and promotion of the Bill as hereinafter defined.

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(ii) The current market value of the main burial ground and the said leasehold interest in the restricted area shall be the sum of £240,000 being the amount agreed between the District Valuer (on behalf of the College) and Mr. K. D. Rubens of Messrs. H. I. & A. Rubens (on behalf of the Managing Trustees) as representing the market value thereof as at 16th June 1972, after deducting the market value of the Brentwood burial ground, on the basis of the Land Compensation Act 1961 and on the assumption that the Nuevo burial ground had been notionally restored and was available for development in accordance with the G.L.C. permission, but so that the said sum shall be adjusted by such amount as may be necessary to reflect any change in the said market values, on the same basis and assumptions, between the said 16th June 1972 and the date on which the Royal Assent is given to the Bill. 1961 c. 33.

(iii) Expenditure incurred in the negotiation for and promotion of the Bill shall include the legal costs and disbursements of and incidental to this Agreement (except such as are covered by the legal conveyancing costs hereinafter referred to) and all costs, disbursements and expenses of promoting the Bill, including printing and House fees, advertising charges, Solicitors' and Parliamentary Agents' fees, Counsel's fees and the fees and expenses of witnesses attending any Parliamentary Committee, but shall not include Surveyors' fees incurred by the Managing Trustees nor the legal conveyancing costs specified in Clause 15 hereof.

(iv) In the event of any dispute arising between the parties as to the price to be paid by the College under the provisions of this Clause then the same shall be referred to the Lands Tribunal, for its determination as an arbitrator, and the parties hereto consent to such reference pursuant to the provisions of section 1 (5) of the Lands Tribunal Act 1949. 1949 c. 42.

10. (i) The College shall pay to the Trust the said purchase price forthwith upon the same being ascertained; and the College may (and shall if so required by the Managing Trustees made at any time after a period of 6 weeks from the Royal Assent being given to the Bill, up to an aggregate of £100,000) make payments on account thereof pending such ascertainment: Provided that if such payments exceed the ascertained purchase price, the excess shall forthwith be repaid by the Trust to the College.

(ii) Upon payment of the full amount of the said purchase price, the Managing Trustees and the Trust shall execute and deliver to the College (a) the said lease of the restricted area (the College executing and delivering to the Trust a counterpart thereof) and (b) a conveyance of the main burial ground free from all incumbrances and freed and discharged from all trusts uses obligations disabilities and restrictions whatsoever and from all rights and interests of any person who is an executor, administrator, or relative of any deceased person whose remains are interred in the main burial ground or any part thereof and from all other trusts uses obligations disabilities and restrictions

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whatsoever which attached thereto by reason of the main burial ground or any part thereof having been used or set apart for the interment of human remains.

(iii) Vacant possession of the main burial ground and the restricted area shall be given on the conveyance and lease thereof and the College shall be entitled to enter into occupation of the same at any time after the Royal Assent is given to the Bill and shall whether or not they so enter pay interest on the purchase money or such part thereof as shall for the time being remain unpaid, at a rate equal to 1% over the Bank of England minimum lending rate for the time being as from the date of such occupation or from a date six weeks after the date of the Royal Assent (whichever be the earlier) until payment.

(iv) Within 14 days after the Royal Assent is given to the Bill the College as beneficial owner shall execute and deliver to the Trust a conveyance of the Brentwood burial ground free from all incumbrances and thereafter the Trust and the Managing Trustees shall permit the College and their contractors and all persons authorised by them to have access to the Brentwood burial ground for the reinterment of the human remains as provided in Clause 6 hereof.

(v) The conveyances referred to in this clause shall be in forms respectively to be prepared by the transferees and approved by the transferors.

11. The title of the Trust to the Nuevo burial ground and of the College to the Brentwood burial ground, having already been investigated by the College and the Trust respectively, shall be accepted by each of them without objection or requisition; and the Trust and the College mutually covenant not to create any incumbrance or liability of any kind on, or to deal in any way with, their respective properties pending the transfer and leasing thereof hereunder.

12. The Trust shall be entitled to retain any title deeds prior to the Scheme of the Charity Commissioners sealed on the 29th day of May 1958 subject to giving the College the usual acknowledgment for production.

13. (i) Neither party shall be bound to show any title to boundaries, fences, hedges, ditches or walls relating to the property to be transferred hereunder by that party.

(ii) It is hereby mutually declared that neither party is aware of any latent rights, easements, quasi easements, liabilities or public rights affecting the property to be transferred or leased hereunder by that party, but that the same shall be so transferred and leased subject to any such as may exist.

14. If at any time prior to the agreement or ascertainment of the price to be paid by the College pursuant to Clause 9 hereof or of the College entering into occupation pursuant to Clause 10 (iii) hereof (whichever time be the earlier) it shall come to the knowledge of the College that an authority having powers of compulsory purchase has declared by resolution its intention to acquire the Nuevo burial ground

or any part thereof for a purpose for which that authority is or could be authorised to acquire the same compulsorily, the College may by notice in writing to the Trust or their Solicitors rescind this Agreement: Provided that if a part only of the Nuevo burial ground shall be affected by the provisions of this Clause, then at the option of the College, such part shall be excluded from this Agreement subject to an abatement of the purchase price equal to the proportion which the area of the part so affected bears to the area of the whole of the Nuevo burial ground.

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15. The College shall pay to Messrs. H. I. & A. Rubens, Surveyors to the Managing Trustees, the Surveyors' fees amounting to £2,125 and shall pay all the legal conveyancing costs and disbursements in connection with the transfer of the main burial ground and the Brentwood burial ground and the grant of the lease of the restricted area, such costs (excluding disbursements) being agreed at £727.50 for each of them, the Managing Trustees and the College and to cover such of the costs attributable to this Agreement as relate to such conveyancing.

16. It is hereby declared that this Agreement shall be scheduled to the Bill and that it is made subject to such alterations as Parliament may think fit to make therein but if the Committee on the Bill make any material alteration in such Agreement or the Bill it shall be competent to either the College or the Managing Trustees to rescind this Agreement.

17. It is hereby agreed that with the consent of the College the lease of the restricted area may also include any part of the main burial ground not required by the College for their proposed development.

18. This Agreement is subject to the College obtaining in the present (1972-73) Session of Parliament the powers and authority which are sought by the Bill and if the said powers and authority be not so obtained either the Managing Trustees or the College may by notice in writing served upon the other withdraw from this Agreement and thereupon this Agreement shall be void and of no effect.

IN WITNESS whereof the parties hereto have duly entered into this Agreement.

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THE SCHEDULE

Names of the Members of the Board of Elders of The Spanish and Portuguese Jews' Synagogue

The Hon. Sir Alan A. Mocatta, O.B.E.—President.

Mr. Robert Nunes Carvalho—Vice-President.

Dr. Richard David Barnett.

Mr. Acher Benroy.

Mr. Ernest Brandon.

Mr. Haim Manuel Cansino.

Mr. Mosy Abraham Cohen.

Mr. Sigmund Gomez da Costa.

Mr. Norman Neville Ereira.

Mr. Ernest Ettinghausen.

Mr. Percy Sassoon Gourgey.

Mr. Lucien Ezra Gubbay.

Mr. Joshua Stanley Horesh.

Mr. Stuart Maurice Lisbona.

Mrs. Esther Barbara Lisbona.

Mr. Jacques Madjar.

Mr. Samuel Israel Mendoza.

Mr. Vivian Pereira-Mendoza.

Mr. August Gomez de Mesquita.

Mr. Ivor Gomez de Mesquita.

Mr. Jack Gomez de Mesquita.

Mr. Francis David Abraham Mocatta.

Mr. Denzil Charles Sebag-Montefiore.

Mr. Oliver Robert Marne Sebag-Montefiore.

Mr. Alan David Nunes Nabarro.

Mr. Eric John Nunes Nabarro.

Mr. Jacques O'Hana.

Mr. Ralph Pinto.

Mr. Roderick Anidjar Romain.

Mr. Kenneth David Rubens.

Mr. Nathan David Saatchi.

Mrs. Violet Hannah Whitehill.

Mr. Raphael James Loewe.

THE COMMON SEAL of Queen Mary College }
was hereunto affixed in the presence of:— }

(L.S.)

R. F. LESLIE,

E. A. BEVAN,

Governors.

SIGNED SEALED and DELIVERED by Sir Alan Abraham Mocatta and Mr. Robert Nunes Carvalho on behalf of the Board of Elders of The Spanish and Portuguese Jews' Synagogue in the presence of:—

A. A. MOCATTA.

(L.S.)

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R. N. CARVALHO.

(L.S.)

DAVID MELLOWS,

4 Heneage Lane, E.C.3,

Secretary.

THE COMMON SEAL of London Sephardi Trust was hereunto affixed in the presence of:—

(L.S.)

N. D. SAATCHI,

E. J. N. NABARRO,

Members of the Council.

DAVID MELLOWS,

Secretary.



PRINTED IN ENGLAND BY OYEZ PRESS LTD.

FOR C. H. BAYLIS, C.B.

Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

13p net

SBN 10 512273 4



Queen Mary College Act 1973

CHAPTER xxii

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