



Zetland County Council Act 1974

CHAPTER viii

LONDON
HER MAJESTY'S STATIONERY OFFICE

ZETLAND COUNTY COUNCIL ACT 1974
(1974 c. viii)

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Zetland County Council Act 1974

CHAPTER viii

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ELIZABETH II



1974 CHAPTER viii

An Act to impose upon the county council of Zetland duties of conservancy and development, and harbour duties; to enable the Council to exercise harbour jurisdiction and powers, including powers to construct works and to acquire lands; and for other purposes.

[10th April 1974]

WHEREAS—

(1) The county council of the county of Zetland (hereinafter respectively referred to as “the Council” and “the county”) are the local authority for that county entrusted under the Local Government (Scotland) Act 1947 with the management of the administrative and financial business of the county:

(2) Having regard to the development of industry in the areas of and near to the boundaries of the county dependent on the provision of proper marine facilities, and to the desirability of securing that such facilities be provided in an orderly, co-ordinated

and effective manner under the administration of one authority, it is expedient that powers be conferred on the Council for the improvement, conservancy and development of the coastal area of the county, for the exercise of harbour jurisdiction in respect of the facilities aforesaid, and for the acquisition of lands for the purposes of this Act:

(3) Plans showing the lines and situations of the aforesaid lands and a book of reference to the plans showing the names of the owners or reputed owners, and of the occupiers, of the lands which may be acquired or used compulsorily for the purposes or under the powers of this Act were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the sheriff-clerk of the county of Zetland, which plans and book of reference are in this Act referred to respectively as the deposited plans and the deposited book of reference:

(4) 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:—

PART I

PRELIMINARY

- | | |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Short title. | 1. This Act may be cited as the Zetland County Council Act 1974. |
| Division of Act into Parts. | 2. This Act shall be divided into Parts as follows:—
Part I.—Preliminary.
Part II.—General duties and powers.
Part III.—Lands.
Part IV.—Regulation of harbour areas.
Part V.—Financial.
Part VI.—Miscellaneous. |
| Interpretation. | 3.—(1) In this Act—
“the appropriate authority” means—
(a) in relation to works of the Council, the Council;
(b) in relation to works of a licensee, the licensee;
“charges” includes charges, rates, tolls and dues of every description for the time being payable under any enactment to the Council in relation to the harbour undertaking; |

- “the coastal area” means the area of the territorial waters of the United Kingdom adjacent to the Shetland Islands; and includes any part thereof but does not include—
- (a) the areas from time to time within the jurisdiction of the Lerwick Harbour Trust, the Blacksness Pier Trust or the Broonies Taing Pier Trust;
- (b) any marine work as defined in section 57 of the Harbours Act 1964; 1964 c. 40.
- “the Council” means the county council of the county;
- “the county” means the county of Zetland;
- “daily fine” means a fine for each day on which an offence is continued after conviction;
- “dangerous goods” means any goods declared by the rules made under section 23 of the Merchant Shipping (Safety Convention) Act 1949 to be dangerous in their nature; 1949 c. 43.
- “dredging licence” means a licence granted under section 12 (Licence to dredge) of this Act;
- “enactment” means any Act, whether general, local or personal (including this Act), and any order or other instrument made thereunder and any provision in such Act, order or instrument;
- “the gas undertakers” means the British Gas Corporation;
- “gas work” means any main, pipe, apparatus, building, structure or other work required for or in connection with the supply or transmission of gas and wholly owned or operated by the gas undertakers for the execution of their statutory duties, in respect of which the gas undertakers have given to the Council in writing particulars of its location and such further information as the Council may reasonably require;
- “general direction” means a direction given under section 38 (General directions to vessels) of this Act;
- “goods” includes all corporeal movables of any kind whatsoever;
- “harbour area” means a sea area within which the Council for the time being exercise jurisdiction as a harbour authority under section 6 (Harbour jurisdiction of Council) of this Act and includes port premises adjacent thereto;
- “harbourmaster” means a person appointed by the Council to be a harbourmaster and includes the deputies and assistants of a person so appointed;
- “harbour undertaking” means the harbour undertaking for the time being of the Council authorised by this Act;

PART I
—cont.

PART I
—cont.
1968 c. 59.

“hovercraft” has the meaning assigned to that expression by the Hovercraft Act 1968;

“hydrofoil vessel” means a vessel, however propelled, designed to be supported on foils;

“land” includes land covered by water, and includes any rights in or over land;

“landing places” means wharves and other waterside landing places, piers, jetties and similar installations and includes approaches from land to such installations;

“level of high water” means the level of mean high-water springs;

“licensee” means a person in whose favour a works licence has been granted and is in operation;

“master” in relation to a vessel means any person having or taking the command, charge or management of a vessel for the time being;

“mooring” includes anchoring;

“owner” in relation to a vessel includes a charterer;

“port premises” means landing places and all other works and land at any time belonging to or administered by the Council for the purpose of the harbour undertaking;

“special direction” means a direction given under section 39 (Special directions to vessels) of this Act;

“the tribunal” means the Lands Tribunal for Scotland;

“vessel” means every description of vessel however propelled or moved and includes any thing constructed or used to carry persons or goods by water, and includes a seaplane on or in the water, a hovercraft and a hydrofoil vessel;

“works licence” means a licence granted under section 11 (Licensing of works) of this Act;

“works” means works of every description.

(2) Reference in this Act to any enactment shall be construed as reference to that enactment as re-enacted, extended or amended by or by virtue of any other enactment.

Incorporation
of enactments.

4. The following enactments, so far as they are applicable for the purposes and are not inconsistent with the provisions of this Act, are hereby incorporated with and form part of this Act :—

(a) the Lands Clauses Acts, except sections 120 to 124 and 127 of the Lands Clauses Consolidation (Scotland) Act 1845;

1845 c. 19.

- (b) the Harbours, Docks and Piers Clauses Act 1847 (except sections 6 to 13, 16 to 19, 22, 25, 26, 28, 41, 43, 48 to 53, 77 and 83 to 101):

PART I
—cont.

1847 c. 27.

Provided that in construing the provisions so incorporated the expression “the special Act” shall mean this Act:

Provided further that in construing the provisions of the Harbours, Docks and Piers Clauses Act 1847 so incorporated—

- (i) the expressions “the promoters of the undertaking” and “the undertakers” shall mean the Council and the expression “the harbour, dock or pier” shall mean a harbour area;
- (ii) the meaning of the word “vessel” as defined in section 3 (Interpretation) of this Act shall be substituted for the meaning assigned to that word by section 3 of that Act;
- (iii) section 15 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 to a fine not exceeding one hundred pounds”;
- (iv) 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;
- (v) section 63 shall be read and have effect as if for the words from “penalty” to the end of the section there were substituted the words “penalty not exceeding one hundred pounds”;
- (vi) section 69 shall be read and have effect as if for the words from “sum” to the end of the section there were substituted the words “sum not exceeding fifty pounds”.

PART II

GENERAL DUTIES AND POWERS

5.—(1) It shall be the duty of the Council, subject to the General provisions of this Act, to take all such action as they consider necessary or desirable for or in connection with—

- (a) the conservancy of, and the control of development in, the coastal area and in the vicinity of a harbour area;
- (b) the promotion of development and the provision, maintenance, operation and improvement of port and harbour services and facilities in, and in the vicinity of, a harbour area.

PART II
—*cont.*

(2) The Council shall have power either themselves or by arrangement between themselves and other persons to take such action as the Council consider necessary or desirable whether or not in, or in the vicinity of, the coastal area—

- (a) for the purposes of discharging or facilitating the discharge of any of their duties under this Act, including the proper development or operation of the harbour undertaking;
- (b) for the provision, maintenance and operation in connection with the harbour undertaking of—
 - (i) warehousing services and facilities;
 - (ii) services and facilities for the consignment of goods on routes which include port premises;
- (c) for the purpose of turning resources of the harbour undertaking to account so far as not required for the purposes of that undertaking.

(3) Particular powers conferred upon the Council by this Act shall not be construed as derogating from each other or from the generality of subsections (1) and (2) of this section.

**Harbour
jurisdiction
of Council.**

6. The Council shall exercise jurisdiction as a harbour authority and the powers of the harbourmaster shall be exercised within—

- (a) the Sullom Area and the Baltasound Area the respective limits of which are described in Schedule 1 to this Act; and
- (b) any area designated by the Secretary of State under section 33 (Harbour jurisdiction in respect of works) of this Act.

**Works in
coastal area.**

7.—(1) The Council may construct, place, maintain and operate in and over the coastal area such works as are required for or in connection with the exercise by them of any of their functions under this Act and may alter, renew or extend any works so constructed or placed.

(2) If the Council intend to construct under the powers of this section works outside a harbour area they shall publish in each of two successive weeks, in a newspaper circulating in the county, a notice of their intention, describing generally the nature of the proposed works, naming a place where a copy of the plans, sections (if any) and particulars of the works may be seen at reasonable hours and stating that any person who desires to object to the construction should do so in writing to the Secretary of State, stating the grounds of his objection, before the expiration of the period of twenty-eight days from the date of the first publication.

(3) If the Council under the powers of this section intend to construct outside a harbour area works the cost of which will exceed the sum of fifty thousand pounds they shall, in addition

to publication of the notice as required by subsection (2) of this section, publish the notice once in Lloyds List and in the London and Edinburgh Gazettes.

PART II
—cont.

(4) In a case where notice is required under subsection (2) of this section the Council shall not construct the works in question without the consent of the Secretary of State (which may be given subject to conditions), and in deciding whether to give such consent the Secretary of State shall take into consideration any objection made to him in writing within the period specified in the notice.

(5) The Secretary of State may, if he thinks fit, direct that, in relation to any specified work or part thereof, an application for consent under this section shall be considered together with an application under section 33 (Harbour jurisdiction in respect of works) of this Act.

8. At any time after any works have been constructed or placed by the Council under the powers of section 7 (Works in coastal area) of this Act the Council may, with the previous consent in writing of and upon such terms, conditions and restrictions as may be approved by the Secretary of State, sell the works, and the purchaser, to the extent authorised by his conveyance, shall have and may exercise in relation to the works all or any of the powers conferred upon the Council by this Act, or which the Council has or might exercise under this Act, and shall be subject to all the restrictions, liabilities and obligations to which the Council is subject, and shall perform all the duties of the Council under this Act in respect of the works. Power to sell works.

9.—(1) The Council may, with the previous consent in writing of and upon such terms, conditions, and restrictions and for such a period as may be approved by the Secretary of State, lease to any person any works constructed or placed by the Council under the powers of section 7 (Works in coastal area) of this Act. Power to lease works.

(2) As from the commencement of any lease made under subsection (1) of this section the lessee, during the continuance of and to the extent provided in his lease, shall have and may exercise in relation to the works all or any of the powers conferred upon the Council by this Act, or which the Council has or might exercise under this Act, and shall in respect of the works be subject to all the liabilities and obligations to which the Council is subject, and shall perform all the duties of the Council under this Act in respect of the works.

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

PART II
—*cont.*
Power to
dredge.

10.—(1) The Council may deepen, widen, dredge, scour, cut and improve the bed and banks of a harbour area and the seaward approaches thereto, and for such purpose may blast any rock within such area or approaches.

1894 c. 60.

(2) Any materials, other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894, taken up or collected in the exercise of the powers of this section (in so far as they are not the property of the Council before being taken up or collected) shall become the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council think fit:

Provided that no such materials shall be deposited below the level of high water except in such position as the Secretary of State may approve and subject to such conditions or restrictions as he may impose.

(3) Not less than twenty-eight days before exercising the powers of subsection (1) of this section outwith a harbour area the Council shall give written notice of their intention and of the position, nature, extent and manner of the proposed operations, by—

- (a) displaying a copy of such notice at the fish markets at Lerwick and Scalloway and in the vicinity of the harbour area at Baltasound;
- (b) publishing the notice in a newspaper circulating in the county; and
- (c) serving the notice upon the Shetland Fishermen's Association and the Shetland Fishmerchants' Association in the manner prescribed by section 48 of the Harbours Act 1964.

1964 c. 40.

(4) In exercising the powers conferred by subsection (1) of this section outwith a harbour area the Council shall comply with the reasonable requirements of the Shetland Fishermen's Association and the Shetland Fishmerchants' Association or either of them for preventing disturbance of shell fish beds or interference with customary fishing rights in such area.

(5) (a) In the exercise of the powers conferred by this section the Council shall not interfere with, damage or injuriously affect any gas work without the consent of the gas undertakers.

(b) The Council shall not exercise the powers of subsection (1) of this section—

(i) to blast any rock within 150 yards of a gas work; or

(ii) in any other respect within 50 yards of a gas work;

except after giving to the gas undertakers not less than twenty-eight days' written notice of their intention so to do.

(c) No materials taken up or collected shall be laid down or deposited in such a place or manner as to cover any gas work or in any way obstruct or impede any work of or connected with the inspection, maintenance, removal, renewal or repair of any gas work without the consent of the gas undertakers.

PART II
—cont.

11.—(1) The Council may upon such terms and conditions as they think fit grant to any person a licence to construct, place, maintain, alter, renew or extend any works on, under or over tidal waters or tidal land below the level of high water in the coastal area notwithstanding any interference with public rights of navigation or other public rights by such works as constructed, placed, maintained, altered, renewed or extended.

Licensing of
works.

(2) Application for a works licence shall be made in writing to the Council and shall—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable him to enjoy the benefits of the licence and, if not, the action taken to enable him to obtain such rights if the licence is granted; and
- (c) be accompanied by a copy of a notice published in a newspaper circulating in the county stating that application is being made to the Council for the grant of a licence, containing a general description of the nature of the works for which application is being made and of the land upon which the works are proposed to be constructed, placed, altered, renewed or extended, naming a place where a copy of the plans, sections and particulars of the proposed works may be seen at any reasonable hours and stating that any person who desires to object to the Council to the granting of the application should do so in writing stating the grounds of his objection before the expiration of a period of twenty-eight days from the date of the newspaper advertisement.

(3) In deciding whether or not to grant a licence or as to the terms and conditions to be included in the licence the Council shall take into consideration any objection in writing made to them by any person within the time specified in the newspaper notice (hereinafter in this section and in section 13 (Appeals in respect of works or dredging licence) referred to as a valid objection) and in granting a licence the Council may require modifications in the plans, sections and particulars submitted to them by the applicant.

PART II
—*cont.*

(4) (a) If the Council decide to grant a works licence they shall, in addition to the applicant, give notice of their decision to any person who has made a valid objection and has not withdrawn it.

(b) If within three months from the date of the making of an application under subsection (2) of this section the Council do not grant a works licence in accordance with the application, they shall be deemed to have refused the application.

(5) In the exercise of the powers of a works licence the licensee shall not damage or injuriously affect any submarine cable maintained by the North of Scotland Hydro-Electric Board or any gas work or, without the consent of that board or (as the case may require) the gas undertakers, interfere with or adversely affect the operation of any such cable or work.

**Licence to
dredge.**

12.—(1) The Council may upon such terms and conditions as they think fit grant to any person a licence to dredge in any part of the coastal area.

(2) Application for a dredging licence shall be made in writing to the Council and shall be accompanied by—

(a) plans, sections and particulars defining the nature, extent and manner of the operations to be carried out in the exercise of the powers granted by the licence; and

(b) a copy of a notice published in a newspaper circulating in the county stating that it is intended to make the application, containing a general description of the position, nature, extent and manner of the operations in respect of which the application is made, naming a place where a copy of the plans, sections and particulars of the proposed operations may be seen at all reasonable hours and stating that any person who desires to object to the Council to the grant of the application should do so in writing stating the grounds of his objection before the expiration of a period of twenty-eight days from the date of the publication.

(3) In deciding whether or not to grant a dredging licence or as to the terms and conditions to be included in the licence the Council shall take into consideration any objection made in accordance with the notice referred to in subsection (2) (b) of this section, and in granting a licence the Council may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) If the Council decide to grant a dredging licence they shall give notice of their decision to the applicant and to any person who has made a valid objection and has not withdrawn it.

(5) If within three months from the date of making an application under subsection (2) of this section the Council do not grant a dredging licence in accordance with the application, they shall be deemed to have refused the application.

PART II
—cont.

(6) Unless otherwise agreed between the Council and the licensee any materials, other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894, taken up or collected by means of dredging in pursuance of a dredging licence shall (in so far as they are not the property of the Council before being taken up or collected) become the property of the Council and the provisions of subsection (2) of section 10 (Power to dredge) of this Act shall apply to such materials which are or become the property of the Council. 1894 c. 60.

(7) In the exercise of the powers conferred by a dredging licence the holder of the licence shall not damage or injuriously affect any submarine cable maintained by the North of Scotland Hydro-Electric Board or any gas work or, without the consent of that board or (as the case may require) the gas undertakers, interfere with or adversely affect the operation of any such cable or work.

13.—(1) (a) A person who has made a valid objection and has not withdrawn his objection and who is aggrieved by the decision of the Council to grant a works licence or a dredging licence and an applicant for a works licence or for a dredging licence who is aggrieved by—

Appeals in
respect of
works or
dredging
licence.

- (i) the refusal of the Council to grant the licence;
- (ii) any terms or conditions subject to which the licence is granted; or
- (iii) any modifications required by the Council in the plans, sections and particulars submitted by the applicant;

may within twenty-eight days from the date on which the Council give notice of their decision or the date on which the Council are under subsection (4) (b) of section 11 (Licensing of works) or of subsection (5) of section 12 (Licence to dredge) of this Act deemed to have refused the application, as the case may be, appeal to the Secretary of State.

(b) An appeal shall be made by notice in writing stating the grounds of the appeal.

(2) A person who appeals to the Secretary of State under this section shall at the same time send a copy of his statement of appeal to the Council and the Council shall as soon as practicable thereafter furnish the Secretary of State with all relevant documents including a copy of any valid objection made to the original application which has not been withdrawn.

PART II
—cont.

(3) The Council may within twenty-eight days from the receipt of the statement of appeal furnish the Secretary of State with their observations on the appeal.

(4) On an appeal under this section the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including amendment of the terms and conditions or modification of the plans, sections and particulars.

(5) The Council shall give effect to any requirement made by the Secretary of State under subsection (4) of this section.

Restriction
of works and
dredging.

14.—(1) No person other than the Council shall—

- (a) construct, place, alter, renew or extend any works on, under or over tidal waters or tidal lands below the level of high water in the coastal area unless he is licensed so to do by a works licence and except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of section 11 (Licensing of works) of this Act;
- (b) dredge in the coastal area unless he is licensed so to do by a dredging licence and except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of section 12 (Licence to dredge) of this Act:

Provided that this subsection shall not apply to the construction, placing, alteration, renewal or extension of any such works or to the carrying out of dredging in the coastal area specifically authorised under any enactment or to fishing operations in the coastal area involving an element of dredging.

(2) Any person who offends against the provisions of this section or who contravenes or fails to comply with any term or condition of a works licence or dredging licence granted to him shall be guilty of an offence and liable to a fine not exceeding one thousand pounds and to a daily fine not exceeding one hundred pounds.

Provision of
vessels.

15. The Council may construct, purchase, contract for or hire, and may maintain and use, vessels required by them for carrying out their functions under this Act, including towage, and may sell or dispose of any such vessels belonging to them.

16.—(1) In their application to the Council sections 530 and 532 of the Merchant Shipping Act 1894 (which confer powers on the Council 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 the harbour area or in or near any approach thereto) shall have effect—

PART II
—cont.
Powers with respect to disposal of wrecks.
1894 c. 60.

- (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 passing of this Act.

(2) Subject to subsection (3) of this section, and to any enactment for the time being in force limiting his liability, the Council 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 Council 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 buoys, the Council 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 they 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 Council 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 Council.

(4) Notice under the last foregoing subsection to the owner of any vessel may be served by the Council either by delivering it to him or by sending it to him by the recorded delivery service 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 Council, by displaying the notice at the office of the Council 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.

PART II
—cont.
Protection of
Crown
interests in
wrecks.
1894 c. 60.
1906 c. 48.

17.—(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 Council 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 Secretary of State for Defence, which may be given with or without such a direction as is referred to in paragraph (b) of subsection (2) of this section, 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 for Defence, of Her Majesty's ships of war.

(2) The Council shall give notice in writing to the Secretary of State for Defence and to the Secretary of State for Trade of any decision of the Council 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 Council 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 Trade 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 Council a direction by the Secretary of State for Defence or the Secretary of State for Trade 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 Council 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:

PART II
—cont.

Provided that—

- (i) the Council 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 Secretary of State for Trade for the purposes of this proviso.

(3) Without prejudice to the power of sale conferred on the Council by the said section 530, the Council 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 Council shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by the Council under that section.

(4) Any limitation on the powers of the Council 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 Commissioners of Northern Lighthouses by section 531 of the said Act of 1894.

18.—(1) The Council may remove—

- (a) anything which is neither a vessel nor (within the meaning of Part IX of the Merchant Shipping Act 1894) wreck, causing or likely to become an obstruction or impediment in any part of a harbour area;
- (b) anything, other than a vehicle, causing or likely to become an obstruction or impediment to the proper use of any port premises.

Removal of
obstructions
other than
vessels.
1894 c. 60.

PART II
—cont.

(2) (a) If anything removed by the Council under subsection (1) of this section is so marked as to be readily identifiable as the property of any person, the Council shall within one month of its coming into their custody give notice, as required by subsection (5) of this section, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in the Council.

(b) If anything removed by the Council under subsection (1) of this section which is not so marked is not within three months of its coming into the custody of the Council proved to their reasonable satisfaction to belong to any person it shall thereupon vest in the Council.

(3) The Council may at such time and in such manner as they think fit dispose of anything referred to in paragraph (b) of subsection (2) of this section which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Council under this section, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by them under this section in relation to the thing, and any balance—

(a) shall be paid to any person who within three months from the time when the thing came into the custody of the Council proves to their reasonable satisfaction that he was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall vest in the Council.

(4) If anything removed under this section—

(a) is sold by the Council and the proceeds of sale are insufficient to reimburse them for the amount of the expenses incurred in the exercise of their powers of removal; or

(b) is unsaleable;

the Council may recover as a debt due to them the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

(5) A notice given under paragraph (a) of subsection (2) of this section shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Council possession may be retaken at a place named in the notice within the time specified therein, being not less than fourteen days after the date when the notice is served.

(6) The Council shall not under the powers of this section move anything placed or constructed by a local authority or statutory undertakers under the provisions of any enactment or of a consent or licence given or issued by the Council thereunder.

PART II
—cont.

(7) In subsection (6) of this section—

“local authority” has the meaning assigned to that expression by section 379 of the Local Government (Scotland) Act 1947;

1947 c. 43.

“statutory undertakers” means a person authorised by statute to carry on any undertaking for the supply of electricity or gas, or a harbour authority within the meaning of section 57 (1) of the Harbours Act 1964.

1964 c. 40.

19.—(1) The Council may by notice require the owner or occupier of a landing place or embankment which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

Repair of
landing
places and
embank-
ments.

- (a) dangerous to persons or vessels using a harbour area;
- (b) injurious to the condition of a harbour area as a navigable waterway; or
- (c) a hindrance to the navigation of a harbour area;

to remedy its conditions to the satisfaction of a duly authorised officer of the Council within a reasonable time specified in the notice.

(2) If a person to whom notice is given under this section fails to comply with it within the time stated in the notice, or, if he appeals and the appeal is not allowed, within the time stated in the notice or such other time as the court may substitute therefor—

- (a) he shall be guilty of an offence and liable to a fine not exceeding one hundred pounds and to a daily fine not exceeding ten pounds; and
- (b) the Council may carry out the works they consider necessary to remedy the condition of the landing place or embankment in question and may recover the expenses of so doing from the person on whom the notice was served as a debt due to them.

(3) A notice under subsection (1) of this section shall have annexed to it a copy of this section.

(4) A person aggrieved by a notice served by the Council under subsection (1) of this section may appeal to the sheriff.

(5) Where such a landing place or embankment as is referred to in subsection (1) of this section—

- (a) is in existence at the commencement of this Act; and

PART II
—cont.

(b) has become dangerous, injurious or a hindrance as mentioned in that subsection wholly or mainly by reason of a substantial change which has occurred after the commencement of this Act in the type or the number of vessels which navigate the waters of the harbour area in question;

the provisions of subsections (1) to (3) of this section shall not apply but the Council, after giving reasonable notice of their intention to the owner of the landing place or embankment, may carry out the works they consider necessary to remedy its condition at their own expense. It shall be a ground of appeal under subsection (4) of this section that the case is one to which this subsection applies.

Power to appropriate lands and works for particular trades, etc.

20.—(1) Notwithstanding anything in this or any other statutory provision of local application, the Council may from time to time set apart or appropriate any lands, works, buildings, machinery, equipment or other property of the Council in a harbour area for the exclusive partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels or goods, subject to the payment of such charges and to such terms and conditions as the Council think fit.

(2) No person or vessel shall make use of any lands, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbourmaster or other duly authorised officer of the Council, and the harbourmaster or, as the case may be, such officer may order any person or vessel making use thereof without such consent to leave or be removed.

Power to hire out plant.

21. The Council may let upon hire (with or without the services of their employees) on such terms and conditions as they think fit any vessel, plant, equipment or other property belonging to them and forming part of the harbour undertaking.

Council may contract for police.

22. The Council may contract and agree from time to time with the police authority for the county for the execution by constables of the police force maintained for that area of police duty within a harbour area on such terms and conditions and upon such payment or consideration as the Council shall think proper and as shall be agreed between them and the police authority.

Power to invest in securities of bodies corporate.

23.—(1) In order to provide or facilitate the provision of funds for—

(a) the establishment, carrying on or extension by any body corporate of warehouses, factories or works at or near a harbour area;

- (b) the establishment or carrying on by any body corporate of an undertaking or business (including an undertaking or business concerned with the transport or handling of goods) connected with or ancillary to the carrying on of the harbour undertaking;
- (c) the carrying on by any body corporate of any other undertaking or business which appears to the Council to be advantageous or convenient for, or in connection with, the functions of the Council under this Act;
- (d) the carrying out of an arrangement made under subsection (2) of section 5 (General duties) of this Act;

PART II
—cont.

and, to the extent requisite therefor, the Council may subscribe for, purchase, take up and hold or dispose of any shares, stock, mortgages, debentures or debenture stock of such body corporate and may in respect of any such shares, stock, mortgages, debentures or debenture stock for the time being held by them exercise either by themselves or through some person nominated by them for the purpose all or any of the rights exercisable by an individual holder of such shares, stock, mortgages, debentures or debenture stock.

(2) The Council may apply for the purposes of this section any moneys for the time being standing to the credit of a reserve fund established under section 67 (Reserve fund), or moneys borrowed under section 64 (Power to borrow), of this Act.

PART III

LANDS

A. Acquisition of specific lands

24.—(1) The Council may, by order made by them and submitted to and confirmed by the Secretary of State in accordance with the provisions of Schedule 2 to this Act, be authorised to acquire compulsorily for the purposes of this Act so much of the land in the district of Delting delineated on the deposited plans and described in the deposited book of reference, as is specified in Schedule 3 to this Act other than the land separately specified in Schedule 4 to this Act.

Power to
acquire
lands.

(2) The power of the Council to make any order under this section shall cease on 31st December, 1978.

25.—(1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of

Correction of
errors in
deposited
plans and
book of
reference.

PART III
—*cont.*

any land, the Council, after giving ten days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof.

(2) If on any such application it appears to the said sheriff that the misstatement or wrong description arose from mistake, he shall certify the fact accordingly and he shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, and with the sheriff-clerk of Zetland, and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Council to take the land and execute the works in accordance with the certificate.

(4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

Set-off of
betterment
against
compensation.

26. In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Act in a case where—

- (a) he has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the execution of any works authorised by this Act or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money:

Provided that any such enhancement in value of an interest in land shall be estimated on the assumption that planning permission in respect of that land would be granted under the Town and Country Planning (Scotland) Act 1972 for the operations or uses specified in Schedule 6 to that Act but not for any other development.

1972 c. 52.

As to private
rights of way
over lands
taken
compulsorily.

27. All private rights of way over any lands which under the powers of this Act are acquired compulsorily shall as from the date of such acquisition be extinguished:

Provided that the Council shall make compensation to all parties interested in respect of any such rights and such compensation shall be settled, failing agreement, in the manner provided by the Land Compensation (Scotland) Act 1963 for settling disputed compensation for lands authorised to be acquired compulsorily.

PART III
—cont.

1963 c. 51.

28.—(1) An authorised officer of the Council may enter, examine and lay open the lands authorised by this Act to be taken and used or any of them for the purpose of surveying, measuring, taking levels, examining works and valuing the said lands or any other purpose ancillary to the powers conferred by this Act:

Power to enter, survey, etc., lands.

Provided that such power shall not be exercised with respect to any lands unless notice of the intention to enter such lands and the nature of the operations to be carried out has been given to the occupier not less than seven days before the first entry and in any case further notice shall not be required in respect of any subsequent entry on the lands for the purpose of carrying out the operations specified in the notice.

(2) An authorised officer acting in the exercise of the powers conferred by the preceding subsection shall cause as little detriment or inconvenience to any person as the circumstances allow, and the Council shall, subject to the provisions of this Act, make compensation to the owners and occupiers of any lands injuriously affected by the exercise of these powers.

29. At any time after notice to treat has been served for any land which the Council are authorised by this Act to purchase compulsorily the Council may, after giving to the owner and occupier of the land not less than twenty-eight days' notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act 1845 but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

Further powers of entry.

1845 c. 19.

30.—(1) In lieu of acquiring any land that may be acquired compulsorily under this Act the Council may acquire compulsorily such servitudes and rights in that land as they may require for the purposes of this Act.

Power to acquire servitudes only.

(2) Accordingly the Council may give notice to treat in respect of any such servitude or right describing the nature thereof and

PART III
—cont.

the provisions of the Lands Clauses Acts shall apply in relation to the acquisition of such servitudes and rights as if they were lands within the meaning of those Acts.

(3) Where the Council have acquired a servitude or right only in any land under this section—

- (a) they shall not be required or (except by agreement) entitled to fence off or sever that land from the adjoining land; and
- (b) the owner or occupier of the land for the time being shall, subject to the servitude or right, have the same right to use and cultivate the land as if this Act had not been passed.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for a servitude or right is given under this section requires the Council to acquire the land, the Council shall not be entitled to acquire the servitude or right unless the tribunal determines that the servitude or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house:

Provided that nothing in this subsection shall apply to land forming part of a street.

(5) A notice to treat given under this section shall be endorsed with notice of the effect of subsection (4) of this section.

Compensation
in case of
recently
altered
buildings.

31. In settling any question of disputed purchase money or compensation payable by the Council in relation to lands acquired under section 24 (Power to acquire lands) of this Act, the tribunal shall not award any sum of money for or in respect of any improvement, alteration or building made for or in respect of any interest in the lands created after the 20th November, 1972, if in the opinion of such tribunal the improvement, alteration or building or the creation of the interest in respect of which the claim is made was not reasonably necessary and was made or created with a view to obtaining or increasing purchase money or compensation under this Act.

B. General power to acquire and dispose of lands

Power to
acquire and
dispose of
land.

32.—(1) The Council may for the purposes of the harbour undertaking acquire land by agreement, whether by way of purchase, exchange, feu, lease or otherwise.

(2) The Secretary of State may authorise the Council to purchase compulsorily any land which they require for the purposes of the harbour undertaking and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply as if this Act had been in force immediately before that Act. PART III
—cont.
1947 c. 42.

(3) The Council may dispose of land belonging to them and held for the purposes of the harbour undertaking which is no longer required for those purposes in such manner whether by way of sale, exchange, feu, lease, the creation of any servitude, right or privilege or otherwise, for such period, upon such conditions and for such consideration as they think fit.

(4) Nothing in subsection (2) of this section shall authorise the compulsory acquisition of any land belonging to any local authority within the meaning of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or of any operational land of any electricity undertakers or the gas undertakers.

(5) In this section “operational land” has the same meaning as in section 211 of the Town and Country Planning (Scotland) Act 1972. 1972 c. 52.

PART IV

REGULATION OF HARBOUR AREAS

33.—(1) Where any works are to be constructed, placed, altered, renewed or extended under the powers of this Act, outside a harbour area, whether by the Council or a licensee, the Secretary of State may on the written application of the Council by order made by statutory instrument— Harbour jurisdiction in respect of works.

- (a) designate a sea area in relation to those works within which (in addition to the exercise of any such jurisdiction or powers elsewhere) the Council shall exercise jurisdiction as a harbour authority; and
- (b) specify the administrative area in which the works and the sea area are to be deemed to be situated for all purposes and, where a sea area so designated includes any harbour managed and maintained by a harbour authority (other than the Council), the Secretary of State may by order made by statutory instrument—
 - (i) repeal or amend, after consultation with that harbour authority, any provisions of any enactment (other than a general Act) conferring powers upon

PART IV
—cont.

that harbour authority, where it appears to him that the provision is inconsistent with or has become unnecessary in consequence of the making of an order under this subsection; and

(ii) exclude or amend any provisions of this Act in relation to the jurisdiction which the Council may exercise in respect of the sea area or any part thereof where it appears to him to be expedient to do so in consequence of any provisions of any enactment conferring powers upon that harbour authority.

(2) An application made under subsection (1) of this section shall designate the proposed sea area of jurisdiction and shall specify the administrative area in which the works and the sea area are to be deemed to be situated for all purposes and, in making an order under this section, the Secretary of State may confirm or vary the terms of the application both as to the limits of the sea area and the district in which it is to be deemed to be situated.

(3) The power to make an order under subsection (1) of this section shall include power to vary or revoke any such order.

(4) When the Council make application under this section they shall publish in each of two successive weeks, in a newspaper circulating in the county, and shall also publish in *Lloyds List* and in the *London and Edinburgh Gazettes*, a notice stating that the application has been made, naming a place where a copy of the application and of a map of the proposed sea area may be seen at all reasonable hours, and stating that any person who desires to object to the application should do so in writing to the Secretary of State (setting out the grounds of his objection) before the expiration of the period of twenty-eight days from the date (specifying it) of the first publication of the notice.

Declaration
of draught
of vessel.

34.—(1) The master of a vessel entering or leaving or intending to enter or leave a harbour area shall if required to do so by the harbourmaster state the draught of his vessel.

(2) The master of a vessel who in response to a requirement under subsection (1) of this section gives incorrect information shall, without prejudice to any right of the Council to compensation for loss or damage occasioned thereby, be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(3) For the purposes of this section “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat

and not supported on a cushion of air or foils or by any other means and in relation to a seaplane means its draught when afloat.

PART IV
—cont.

35. Any duly authorised officer of the Council may, on producing if so required his authority, enter and inspect a vessel in a harbour area—

Boarding
vessels.

- (a) for the purposes of any enactment relating to the Council or of any byelaw of the Council, including the enforcement thereof; or
- (b) to prevent or extinguish fire.

36.—(1) Except in case of emergency, the owner or master of a vessel—

Notice before
entry of
dangerous
goods.

- (a) which it is intended to bring into a harbour area carrying dangerous goods; or
- (b) which is within a harbour area and on which it is intended to place dangerous goods;

shall, not less than twenty-four hours before that vessel enters the harbour area or before the dangerous goods are placed on board, as the case may be, give notice to the harbourmaster of the nature and quantity of the dangerous goods in question and, if such notice is not given, the owner or master of the vessel shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(2) Where the owner or master of the vessel is charged with an offence under subsection (1) of this section it shall be a defence to prove that he did not know and could not with reasonable diligence have ascertained the nature of the goods in respect of which the proceedings are taken.

(3) This section does not apply to dangerous goods to which byelaws made by the Council under the Explosives Act 1875 or 1875 c. 17. the Petroleum (Consolidation) Act 1928 for the time being 1928 c. 32. apply.

37.—(1) The Council may—

Exclusion of
scheduled
goods.

- (a) refuse entry into a harbour area of any goods which in their opinion would endanger or be liable to endanger persons or property; or
- (b) permit the entry of any such goods subject to such terms and conditions (including specification of the part or parts of the port premises where such entry is permitted) as they think fit.

PART IV
—cont.

(2) The Council shall publish a schedule of such goods—

- (a) entry of which is forbidden by them; and
- (b) entry of which is permitted by them only upon terms and conditions specified in the schedule.

(3) A person who after publication of the schedule referred to in subsection (2) of this section—

- (a) brings or causes or permits to be brought into a harbour area any goods the entry of which is forbidden; or
- (b) fails in relation to any goods brought into port premises to comply with any terms or conditions imposed by the Council under subsection (1) of this section;

shall—

- (i) be guilty of an offence and liable to a fine not exceeding one hundred pounds, and on conviction on indictment to a fine; and
- (ii) indemnify the Council against all claims, demands, proceedings, costs, damages and expenses which may be made against or recovered from or incurred by the Council in consequence of the commission of the offence;

and the Council may remove the goods in question and may recover from the owner or offender the costs of such removal and of placing or storing the goods elsewhere.

General
directions
to vessels.

38.—(1) The Council may, after consultation in each case with the Chamber of Shipping of the United Kingdom and the local pilotage authority, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in a harbour area, and, without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) for designating areas, routes or channels within a harbour area which vessels are to use or refrain from using for movement or mooring;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) requiring the master of a vessel to give to the harbour-master information relating to the vessel reasonably required by the harbourmaster in order to effect the objects of this subsection.

(2) Directions given under subsection (1) of this section may apply—

PART IV
—cont.

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
- (b) to the whole of a harbour area or to a part designated, or the designation of which is provided for, in the direction; and
- (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction made under this section shall specify the extent of its application in relation to the matters referred to in paragraphs (a), (b) and (c) of this subsection.

(3) The Council may, after such consultation as aforesaid, revoke or amend directions given under this section.

39.—(1) The harbourmaster may give a direction under this section to a vessel anywhere in a harbour area for any of the following purposes:—

Special
directions
to vessels.

- (a) requiring a vessel to comply with a requirement made in or under a general direction pursuant to section 38 (General directions to vessels) of this Act;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of a vessel;
- (c) regulating the manner in which a vessel takes in or discharges cargo, fuel, water or ship's stores and the dispatch of its business at port premises;
- (d) the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) the use of its motive power;
- (f) prohibiting or restricting the use of fires or lights;
- (g) the loading, discharging and methods of storing and safeguarding, of cargo, fuel, water or ship's stores;
- (h) the use of ballast;
- (i) requiring the removal from port premises or from a harbour area of a vessel if—
 - (i) it is on fire;
 - (ii) it is in a condition where it is liable to become immobilised or waterlogged, or to sink;
 - (iii) it is making an unlawful or improper use of port premises;
 - (iv) it is interfering with the use of port premises by other vessels, or is otherwise interfering with the proper use of port premises or the dispatch of business therein; or

PART IV
—cont.

(v) its removal is necessary to enable maintenance or repair work to be carried out to port premises or to premises adjacent thereto.

(2) A direction under this section may be given in any manner considered by the harbourmaster to be appropriate.

Publication of
designations
and general
directions.

40.—(1) Except in an emergency, notice of a general direction and of the amendment or revocation of a general direction shall, so soon as practicable after it is made, be published by the Council once in Lloyds List or some other newspaper specialising in shipping news, and, if the notice relates to the making of a designation or the making or amendment of a general direction, it shall state a place at which copies of the designation or direction may be inspected and bought and the price thereof.

(2) In an emergency notice of a general direction or of the amendment or revocation of a general direction may be given in any manner the Council consider appropriate.

Failure to
comply with
directions.

41.—(1) The master of a vessel who fails to comply with a general direction or a special direction shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(2) It shall be a defence to the master of a vessel charged with an offence under subsection (1) of this section to prove that he had reasonable ground for supposing that compliance with the direction in question would be likely to imperil his vessel or that in the circumstances compliance was impracticable.

Enforcement
of directions.

42.—(1) Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the harbourmaster may, where practicable, put persons aboard the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board a vessel to attend to a special direction, the harbourmaster may proceed as if the direction had been given and not complied with:

Provided that the powers of this subsection shall not be exercised—

- (a) in relation to a vessel other than a lighter, unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing the access to or exit from port premises or otherwise interfering with navigation in a harbour area.

(3) Expenses incurred by the Council in the exercise of the powers conferred by subsection (1) of this section shall be recoverable by them as if they were a charge of the Council in respect of the vessel.

PART IV
—cont.

43. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property.

Master's
responsibility
in relation
to directions.

44.—(1) The Council may from time to time by byelaws make provision for any matter falling within their duties under section 5 (General duties) of this Act and in particular, but without prejudice to the generality of the foregoing, for any of the following purposes:—

General
byelaws.

- (a) for securing the conservation and improvement of any harbour area as a navigable waterway and for promoting the ease and convenience of navigation;
- (b) for the regulation of vessels in a harbour area and their entry into and departure from the area and, without prejudice to the generality of the foregoing, for prescribing rules for navigation and the lights and signals to be exhibited or made by or for the benefit of vessels navigating in a harbour area;
- (c) for regulating the use and for preventing the misuse of services and facilities provided by the Council at port premises;
- (d) for promoting the safety of persons and vessels at port premises;
- (e) for regulating the conduct of persons using a harbour area or its banks or shores whether for business, recreation, training or any other purpose;
- (f) for the prevention of nuisances in or beside a harbour area.

(2) Different byelaws may be made under this section in relation to different classes of vessels.

(3) Byelaws made under this section may provide for imposing upon persons offending against them fines not exceeding two hundred pounds and a daily fine of fifty pounds.

45.—(1) The Council may make byelaws as to the loading and discharging by vessels within a harbour area of dangerous goods

Byelaws as to
dangerous
goods.

PART IV
—cont.

and generally as to the precautions to be observed with respect to vessels carrying dangerous goods while in a harbour area and such byelaws may in particular provide—

- (a) for regulating places at which vessels are to load and discharge dangerous goods and the time and mode of, and the precautions to be taken on, such loading and discharging;
- (b) for regulating the places at which vessels carrying dangerous goods are to be moored.

(2) If a person is charged with an offence against a byelaw in force under this section it shall be a defence for him to prove that the offence was not caused or facilitated by any act or neglect on his part, or on the part of any person engaged or employed by him and, if the person so charged is the owner or master of a vessel, that all reasonable steps were taken by the master to prevent the commission of the offence.

(3) Byelaws made under subsection (1) of this section may provide for imposing on persons offending against them fines not exceeding one hundred pounds.

1875 c. 17.
1928 c. 32. (4) This section does not apply to dangerous goods to which byelaws made by the Council under the Explosives Act 1875 or the Petroleum (Consolidation) Act 1928 for the time being apply.

Confirming authority for byelaws.
1947 c. 43. 46. For byelaws made by the Council under this Part of this Act the confirming authority for the purposes of section 301 of the Local Government (Scotland) Act 1947 shall be the Secretary of State.

Council to be local lighthouse authority.
1894 c. 60. 47. The Council shall within a harbour area be a local lighthouse authority for the purposes of sections 652 to 654 of the Merchant Shipping Act 1894.

PART V

FINANCIAL

Charges for floating plant, etc.
1964 c. 40. 48. The Council may demand, take and recover in respect of a dracone or floating dock crane, rig, drilling rig or any floating plant which is not a ship, as defined by section 57 of the Harbours Act 1964, entering or leaving a harbour area such charge as they think fit, and the provisions of sections 30, 31, 32 and 34 of that Act shall, with any necessary modifications, apply to the charges authorised by this section as they apply to ship, passenger and goods dues.

Charges for services and facilities. 49. The Council may demand, take and recover for services and facilities provided by them in a harbour area such reasonable charges as they may from time to time determine.

50.—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in their published list of charges.

PART V
—cont.
Conditions as to payment of charges.

(2) Without prejudice to the generality of subsection (1) of this section the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

51.—(1) Charges on or in respect of—

Liability for charges.

- (a) a vessel, shall be payable by the owner or master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

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

52. Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues to be kept under subsection (1) of that section subject to compounding arrangements in respect of, or reduced by a rebate allowed on, any due included in that list.

Compounding, etc., of charges. 1964 c. 40.

53. The Council may require a person who incurs or intends to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or to guarantee the sum of money required the Council may detain a vessel in the harbour area, or goods on port premises, in respect of which a charge has been or will be incurred, until the requirement has been complied with or charge paid.

Security for charges.

54. Where a person who has paid, or by agreement with the Council given security for, a charge on or in respect of a vessel or goods, requests a certificate of his having done so for production to a customs officer in order to prevent refusal to receive a report inwards or to grant a clearance outwards or refusal to pass an entry under section 57 (Refusal of customs clearance) of this Act, the Council shall give him such a certificate in such form as they shall determine.

Certificate of payment.

- PART V**
—*cont.*
- Entry on vessels. **55.**—(1) A duly authorised officer of the Council may, on producing if so required his authority, board a vessel in a harbour area to ascertain the charges payable on or in respect of the vessel of, on or in respect of goods carried therein, and to obtain any other information required for or in connection with the assessment and collection of charges.
- (2) A master of a vessel who refuses to comply with a reasonable request for information or for the production of a document made by an officer of the Council who has boarded his vessel pursuant to subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds.
- Claims for repayment of charges. **56.** Any person claiming the return of the whole or part of any charges paid to the Council shall make such claim and produce all documents and give all information required by the Council in proof of such claim within twelve months from the time of payment and, in default thereof, the claim shall no longer be enforceable.
- Refusal of customs clearance. **57.** A customs officer may refuse—
- (a) to receive a report inwards or to grant a clearance outwards to a vessel; and
- (b) to pass an entry for imported goods liable to charges;
- unless he is satisfied that all charges payable to the Council on or in respect of that vessel, or on those goods, as the case may be, have been paid or that a sum of money or guarantee in respect thereof has been deposited with, or given to, the Council under section 53 (Security for charges) of this Act.
- Recovery of charges. **58.** In addition to the remedy given by any enactment, the Council may recover charges as a debt due to them.
- Liens for rates. **59.**—(1) A person who by agreement with the Council collects charges on their behalf and who pays, or gives security for the payment of charges on goods in his possession, shall have a lien on the said goods for the amount paid or security given in respect thereof.
- (2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in his custody and, in that event, he shall have a like lien on the said goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.
- Weighing, etc., of goods for purposes of rates. **60.**—(1) A person in possession of goods in respect of which information relating to the assessment or collection of charges

has been given to the Council shall give to a duly authorised officer of the Council, on production of his authority, reasonable facilities for weighing, measuring and examining the goods and shall, if so requested, give to such an officer any information he may reasonably require for the purpose of checking or amplifying the information already given to the Council in respect of the goods.

PART V
—cont.

(2) A person who fails to comply with subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

61. An officer of the Council may prevent a vessel from using a landing space provided by the Council, if the master of the vessel refuses to pay the charges for such use. Refusal to pay charges for landing place.

62.—(1) Except in so far as may be agreed between the Council and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to make charges shall extend to authorise them to make a charge on— Exemption from charges for Crown, etc.

(a) a vessel—

(i) belonging to or in the service of Her Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(c) troops landed at port premises or a person employed by the Secretary of State for Defence while in the execution of his duties;

(d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department of Trade in the execution of their duty shall at all times have free ingress, passage and egress on, into, from, over, along, through and out of a harbour area and any works of the Council by land, and with their vessels and otherwise.

63. This Act shall not extend to confer jurisdiction on the Council or the harbourmaster in respect of vessels which merely pass through the limits of a harbour area without making use of any facilities provided by the Council or by a licensee unless such vessels shall obstruct the approaches to any works, or to subject any person to liability for charges in respect of any such vessel. Exemption for certain vessels.

PART V
—cont.
Power to
borrow.

64.—(1) The Council may with the sanction of the Secretary of State borrow such sums as may be necessary for any of the purposes of this Act, and any sum borrowed under the powers of this section shall be repaid within such period, not exceeding twenty-five years, from the date of borrowing as the Council with the consent of the Secretary of State may determine.

1946 c. 58.

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

Accounts of
harbour
undertaking.

65.—(1) The Council shall keep separate accounts in respect of the harbour undertaking so as to distinguish capital from revenue and as regards revenue to show under a separate heading or division on the one side all income in respect of the harbour undertaking and on the other side all expenditure in respect of the harbour undertaking, such expenditure being divided so as also to show the amounts representing—

- (a) the working and establishment expenses and cost of maintenance of the harbour undertaking;
- (b) the interest on moneys borrowed by the Council for the purposes of or connected with the harbour undertaking;
- (c) the requisite appropriations, instalments or sinking fund payments in respect of moneys borrowed; and
- (d) all other expenses, if any, of the harbour undertaking properly chargeable to revenue.

(2) The Council shall show in their accounts relating to the harbour undertaking all items (including receipts and payments in respect of loans applicable thereto) which ought to be entered therein in order to show the financial position of the harbour undertaking.

(3) In all cases in which the Council keep separate accounts in relation to the harbour undertaking for separate purposes they shall so far as is reasonably practicable apportion between those accounts or carry to any of them any income and expenditure which from time to time ought to be so apportioned or carried.

Income and
expenditure

66.—(1) All moneys received by the Council in connection with the harbour undertaking whether on capital or revenue account shall be carried to and form part of the county fund as receipts for general county purposes and all payments and expenses made and incurred by the Council in respect of the harbour undertaking

or in carrying into execution the powers and provisions of this Act (including interest on moneys borrowed by the Council) shall be paid or transferred out of the county fund:

PART V
—cont.

Provided that an amount equivalent to the interest and other annual proceeds as aforesaid shall (subject in the case of any of the said funds to any prescribed limit on the amount thereof) be credited in the accounts to the fund on the investments of which the same is received.

(2) Nothing in this section shall authorise the Council to apply capital money to any purpose other than a purpose to which capital money is properly applicable.

67.—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the harbour undertaking exceed the moneys expended or applied by the Council in respect thereof, the Council may in respect of that year apply out of the county fund and carry to the credit of a reserve fund in respect of the harbour undertaking such a sum as they consider reasonable not exceeding the amount of such excess. Reserve fund.

(2) Any moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which trustees are for the time being authorised to invest trust moneys and any debenture stock or other security created by the Council.

(3) Any reserve fund provided under this section may be applied—

- (a) in making good to the county fund any deficiency at any time arising in the income of the Council from the harbour undertaking; or
- (b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the harbour undertaking; or
- (c) for defraying any expenditure in connection with the harbour undertaking for which capital is properly applicable, or in providing money for repayment of loans (but not in making any annual payment required to be made in respect of loans); or
- (d) for defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing any buildings, works, plant, vessel, equipment or article forming part of the harbour undertaking; or
- (e) for any other purpose which in the opinion of the Council is solely in the interests of the county or its inhabitants.

PART VI

MISCELLANEOUS

Harbour
Advisory
Committee.

68.—(1) There shall be constituted a body to be known as the Zetland Harbour Advisory Committee (hereinafter referred to as “the Committee”) whose functions shall be to advise and assist the Council in the exercise and discharge of the powers, duties, functions and obligations of the Council so far as they relate to the management, conservancy, control, and development of the coastal area and the maintenance, operation and improvement of port and harbour services and facilities in and in the vicinity of a harbour area, and upon any matter relevant to the foregoing matters which may from time to time be referred to the Committee by the Council.

(2) Subject to the next following subsection, the Committee shall consist of such number of members, not exceeding twelve, as the Secretary of State shall determine, and each member shall hold office for such period as the Secretary of State shall, in making the appointment, specify.

(3) The members of the Committee shall be appointed by the Secretary of State as follows:—

- (a) one shall be a member of the Council;
- (b) one shall be an officer of the Council;
- (c) of the remaining members to be appointed, none of whom shall be a member or officer of the Council—
 - (i) at least three shall be persons appearing to the Secretary of State to be representative of the interests of those engaged in the fishing industry using a harbour area (including at least one representative of each of the Shetland Fishermen’s Association and the Shetland Fishmerchants’ Association);
 - (ii) at least one shall be a person appearing to the Secretary of State to be representative of the interests of those engaged in the hydrocarbon oil industry using or intending to use a harbour area;
 - (iii) one may be a person appearing to the Secretary of State to represent amenity interests;
 - (iv) the remainder shall be persons representative of those using or providing port services or facilities in a harbour area:

Provided that the Secretary of State shall only appoint to membership of the Committee under this paragraph persons who appear to him, after consultation with the National Ports Council, to have special knowledge,

experience or ability appropriate to assist the Council in the efficient and economical discharge by the Council of their duties under this Act.

PART VI
—cont.

- (4) The Council shall make available to the Committee—
 - (a) all minutes of meetings of the appropriate committee of the Council;
 - (b) periodical financial statements;
 - (c) all statistical returns, traffic reports and information or memoranda on tariffs; and
 - (d) all investment proposals and development projects which have been or are about to be submitted formally to the Council;

relating to the discharge of the functions of the Council as a harbour authority.

(5) The Committee may regulate their own procedure and shall elect their own chairman.

(6) The quorum of the Committee shall be four.

(7) Minutes shall be kept of the proceedings of every meeting of the Committee and shall contain any recommendations of the Committee to the Council, and copies of the minutes relating to any meeting shall be sent to the Council, who shall consider and have regard to the advice of the Committee indicated therein and shall decide whether to give effect to any recommendations contained therein.

(8) A member of the Committee may resign his office at any time by notice in writing given to the Secretary of State and to the Committee.

(9) The proceedings of the Committee shall not be invalidated by any vacancy in the membership of the Committee or any defect in the appointment of any member.

(10) The Council shall provide the Committee with such officers and servants and such office accommodation as appear to the Council to be appropriate.

(11) The Council shall pay all costs and expenses properly incurred in connection with the performance of the functions of the Committee and may pay to members of the Committee such fees and such allowances as the Council may from time to time determine.

69.—(1) A person who—

- (a) in response or in purported response to a requirement made on him under this Act gives any information or makes a statement which he knows to be false in a material particular; or

False information and evasion of charges.

PART VI
—cont.

- (b) with intent to evade or to enable another person to evade a charge fails within the time prescribed by the Council in their published list of charges to give information in response to a requirement to do so made on him thereby;

shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(2) A person who eludes or evades or attempts to elude or evade payment of, or refuses to pay, a charge due from him to the Council shall—

- (a) be liable to pay to the Council, in addition to the charge, a sum equal to the amount thereof, which sum shall be a debt due to the Council and shall be recoverable by them in any court of competent jurisdiction; and
- (b) be guilty of an offence and liable to a fine not exceeding one hundred pounds;

notwithstanding the fact that subsequent to the commission of the offence he has tendered or paid to the Council the charge in question.

Mode of
prosecution.

70. Proceedings against any person offending against or committing any breach or contravention of any of the provisions of this Act shall, unless otherwise provided, be instituted and conducted under and in conformity with the Summary Jurisdiction (Scotland) Acts.

Harbour areas.

71. So much of the Sullom Area and of the Baltasound Area as is not within a district shall be deemed for all purposes to be within the Delting District and the Unst District respectively.

Inquiries by
Secretary of
State.

72. The Secretary of State may cause to be held such inquiries 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 Act and section 355 of the Local Government (Scotland) Act 1947 shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section.

1947 c. 43.

For
protection of
North of
Scotland
Hydro-Electric
Board.

73. For the protection of the board the provisions of this section shall, unless otherwise agreed in writing between the Council and the board, 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 board to fulfil their statutory functions in a manner not less efficient or costly than previously;

“ apparatus ” means electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the board; PART VI
—cont.
1882 c. 56.

“ the board ” means the North of Scotland Hydro-Electric Board;

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

“ plan ” includes a section and description;

“ position ” includes depth;

“ specified work ” means any work or thing done under the powers of this Act (not being a work or thing to which section 26 of the Public Utilities Street Works Act 1950 applies); 1950 c. 39.

- (2) Notwithstanding anything in this Act or shown on the deposited plans the Council shall not, under the powers of this Act, acquire any apparatus otherwise than by agreement:
- (3) The powers conferred on the Council by Part II (General duties and powers) of this Act in relation to apparatus shall not be exercised otherwise than in accordance with the provisions of this section:
- (4) If the Council in the exercise of the powers conferred upon them by this Act acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed nor shall any right of the board to use, maintain, repair, renew, extend or inspect any apparatus in that land be extinguished until adequate alternative apparatus has been laid or constructed and is in operation:
- (5) (a) If the Council, for the purpose of the execution of any specified work, require the alteration, protection or removal of any apparatus, they shall give to the board written notice of such requirement with a plan of the proposed work and, if it is agreed between the Council and the board, 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 so agreed or determined that any apparatus should be removed, or if in consequence of the execution of any specified work the board shall reasonably require to remove any apparatus the Council shall, to the reasonable satisfaction of the board, afford to the board the necessary facilities and rights for the laying or construction of adequate alternative apparatus in

PART VI
—cont.

other lands of the Council 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 Council and the Council are unable to afford such facilities and rights as aforesaid the board shall, on receipt of a written notice to that effect from the Council, forthwith make every effort to assist the Council to obtain the necessary facilities and rights:

- (6) (a) Any alternative apparatus to be laid or constructed in lands of the Council in pursuance of paragraph (5) of this section shall be laid or constructed in such manner and in such line or situation as may be agreed between the board and the Council or, in default of agreement, settled by arbitration;
 - (b) The board 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 board of any such facilities and rights as are referred to in paragraph (5) of this section, 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:
- (7) Where in accordance with the provisions of this section the Council afford to the board facilities and rights for the laying or construction, maintenance, repair, renewal and inspection in lands of the Council of alternative apparatus in substitution for apparatus to be removed as aforesaid, these facilities and rights shall be granted upon such terms and conditions as may be agreed between the Council and the board 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 laid or constructed across or through a specified work the arbiter shall—

(i) give effect to all reasonable requirements of the Council 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 also to all reasonable requirements of the board for ensuring the safety and efficient operation of the alternative apparatus; and

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—cont.

(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 Council for which the alternative apparatus is to be substituted;

(b) if the facilities and rights to be afforded by the Council 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 arbiter, less favourable on the whole to the board than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbiter shall make such provision for payment of compensation by the Council to the board in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case:

(8) (a) Not less than twenty-eight days before commencing to execute any specified work which is near to, or is likely to affect, any apparatus the alteration, protection or removal of which has not been required by the Council under paragraph (5) of this section or the maintenance of any such apparatus the Council shall submit to the board 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 board for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the board shall be entitled by their officer to watch and inspect the execution of such work:

Provided that—

(i) if the board, within fourteen days after the submission to them of any such plan, shall, in consequence of the work proposed by the Council, reasonably require the alteration, protection or removal of any apparatus and give written notice to the Council of such requirement, the foregoing provisions of this section shall apply and have effect as if the alteration, protection and removal of such apparatus had been required under paragraph (5) thereof; and

PART VI
—cont.

(ii) nothing in this sub-paragraph shall preclude the Council from submitting at any time, or from time to time, but in no case less than twenty-eight 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 Council shall not be required to comply with sub-paragraph (a) of this paragraph in a case of emergency but, in such a case, they shall give to the board notice as soon as reasonably practicable and a plan of the work as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) of this paragraph 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 Council shall provide an alternative means of access to such apparatus:

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

(a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and laying or 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 any such operations as are referred to in this paragraph:

Provided that where other apparatus is provided and laid or placed in lieu of any existing apparatus in accordance with the provisions of paragraphs (4) and (5) of this section the Council shall not be required to make any payment to the board for any such existing apparatus which has been rendered derelict, useless or unnecessary and such last-mentioned apparatus shall, so soon as the new apparatus has been laid, become the property of the Council:

(11) (a) Section 14 (Restriction of works and dredging) and section 12 (Licence to dredge) of this Act shall not apply to the construction, alteration, maintenance, renewal or extension by the board of any apparatus or make unlawful

the carrying out by the board in an emergency of any works not authorised by section 11 (Licensing of works) of this Act or the said section 12;

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—cont.

- (b) If the board carry out any such works or any such dredging they shall inform the Council as soon as practicable of the works or dredging being carried out:
- (12) (a) Before granting to any person a works licence or a dredging licence to carry out works or dredging at, over, under or near to any apparatus, the Council shall submit to the board particulars of the proposed works or dredging, as the case may be, and furnish them with such further particulars with respect thereto as the board may reasonably require and, if so required by the board, the Council shall include in such licence conditions requiring the licensee to comply with such of the provisions of this section as the board think fit as if for the references therein to the Council there were substituted references to the licensee;
- (b) Upon the grant of a licence in respect of which notice of the application is required to be given under paragraph (a) of this subsection, the Council shall supply to the board a copy of the licence and any conditions subject to which it is granted:
- (13) (a) Any difference which may arise between the Council and the board under this section shall be referred to and determined by an arbiter to be mutually agreed upon between the Council and the board, or failing agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers;
- (b) In settling any difference under this section the arbiter shall have regard to any duties or obligations which the board may be under in respect of any apparatus and may if he thinks fit require the Council to execute any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

74.—(1) (a) Nothing in section 14 (Restriction of works and dredging) of this Act shall apply to the construction, alteration, renewal, extension or maintenance by the gas undertakers of any gas work from time authorised under or by virtue of any enactment or any consent, wayleave, servitude or other instrument given or made under any enactment or make it unlawful for the gas undertakers to carry out in an emergency any work not so authorised or any dredging necessary for the protection of, or to

For protection of gas undertakers.

PART VI
—cont.

ensure the efficient operation of, any gas work, subject to any directions necessary for the protection of navigation from time to time given by the Council to the gas undertakers.

(b) If in an emergency the gas undertakers carry out any work or any dredging they shall inform the Council as soon as practicable of the works or dredging being carried out.

(2) (a) Before granting a licence to any person for the construction, placing, maintenance, alteration, renewal or extension of any works under section 11 (Licensing of works) or for dredging under section 12 (Licence to dredge) of this Act, the Council shall, in any case where the proposed works or dredging would be at, over, under or near to any gas work situated on or under tidal waters or tidal land below the level of high water in the coastal area or in such a position as to be likely to affect or endanger any such work or in any case where reasonably so requested by the gas undertakers, submit to the gas undertakers detailed particulars of the proposed works or dredging, as the case may be, and furnish them with such further particulars with respect thereto as the gas undertakers may reasonably require; and such licence shall only be granted subject to such conditions as may be reasonably necessary to safeguard the gas work including, without prejudice to the generality of the foregoing, conditions empowering the gas undertakers from time to time to inspect the works or dredging to which the licence relates and to take any steps necessary to prevent damage to the gas work or to ensure that the gas work can operate efficiently and to recover from the holder of the licence the reasonable cost of any works carried out by the gas undertakers for those purposes.

(b) If in any case any difference arises between the Council and the gas undertakers with respect to the particulars required to be furnished to the gas undertakers by the Council or with respect to the conditions which the gas undertakers require to be attached to any licence granted under either of the said sections 11 and 12, such difference shall be determined by a single arbiter to be agreed between the Council and the gas undertakers or in default of agreement to be appointed on the application of either party after notice in writing to the other party by the President of the Institution of Civil Engineers.

(c) If within three weeks of the receipt by the gas undertakers from the Council of the particulars of any proposed works or dredging the gas undertakers do not require any further particulars to be furnished or, in any case where further particulars are required, within two weeks of the receipt thereof by the gas undertakers, the gas undertakers do not intimate that they require conditions to be attached to the licence for such works or dredging, the gas undertakers shall be deemed to have acquiesced in the granting thereof.

(d) Upon the grant of any licence to which this subsection applies the Council shall supply to the gas undertakers a copy of the licence and of any conditions subject to which it is granted.

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—cont.

(3) Except in a case which is, in the opinion of the Council, a case of emergency, the Council shall before raising, removing or destroying any vessel sunk, stranded or abandoned in a harbour area and within a distance of 150 yards of any gas work give to the gas undertakers, as soon as is reasonably practicable, notice of their intention to do so.

75. In ascertaining the rateable value of any lands or heritages no account shall be taken of any oil pipelines on or in them which are situated below mean high-water level.

Saving for rating of pipelines.

76. The provisions of the Town and Country Planning (Scotland) Act 1972 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 regulated by or under this Act.

Saving for town and country planning. 1972 c. 52.

77. Nothing in this Act shall exempt the Council or any other person from the provisions of sections 9 and 10 of the Harbours Act 1964.

Saving for Harbours Act 1964. 1964 c. 40.

78. Nothing in this Act shall affect prejudicially any estate, right, power, privilege or exemption of the Crown, and in particular nothing in this Act shall authorise the Council or any licensee of the Council to take, use or interfere with any land or rights—

Crown rights.

- (i) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners on behalf of Her Majesty; or
- (ii) 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 the Crown Estate Commissioners or, as the case may be, that department.

79. Nothing in this Act shall exempt the Council or any other person from the provisions of Part I of the Coast Protection Act 1949 nor affect the application to any operation of sections 34 to 36 of that Act, which require the consent of the Board of Trade or the Secretary of State for Trade to certain operations and contain other provisions for the safety of navigation.

Saving for Coast Protection Act. 1949 c. 74.

80. The costs, charges and expenses of and incidental to the preparing for, obtaining and passing of this Act, and otherwise in relation thereto, shall be paid by the Council.

Costs of Act.

SCHEDULES

Section 6.

SCHEDULE 1

AREAS OF HARBOUR JURISDICTION

SULLOM AREA

The area comprises the entire area of Sullom Voe and adjacent inlets within a line commencing at its southern end at Ell Wick, thence in a northerly direction along the line of low-water mark on the west side to the most northerly point of Gluss Isle, thence in an easterly direction following a straight line to the most northerly point on Little Roe, thence in an easterly direction following a straight line to the most northerly point of Mio Ness, thence generally in a southerly and westerly direction along the line of low-water mark on the east side to the point of commencement.

BALTASOUND AREA

The area bounded by a line commencing at low-water mark at Qui Ness, thence running in a generally north-easterly, westerly, easterly and northerly direction along the line of low water to the headland immediately on the north side of the Muckle Geo of the Keen; thence in a straight line in a south-easterly direction to the northernmost point on Balta Isle; thence along the line of low water on the east side of Balta Isle to the southernmost point on that isle; thence in a straight line in a south-westerly direction to the point of commencement.

Section 24.

SCHEDULE 2

PROCEDURE FOR COMPULSORY ACQUISITION

1.—(1) A compulsory purchase order made under section 24 of this Act—

- (a) shall designate the land to which it relates by reference to a map or maps annexed thereto, either with or without descriptive matter; and
- (b) subject to that, shall be in such form as may be prescribed.

(2) In the case of any discrepancy between the map or maps and any such descriptive matter, the descriptive matter shall prevail except in so far as may be otherwise provided by the order.

2.—(1) After submitting the order to the Secretary of State, the Council shall publish a notice in the prescribed form describing the land, stating that an order authorising the compulsory acquisition thereof has been submitted to the Secretary of State, naming a place where a copy of the order and of the map or maps and any descriptive matter annexed thereto may be seen at any reasonable hour, and specifying the time (not being less than twenty-eight days from the first local advertisement) within which, and the manner in which, objections to the order may be made.

(2) The notice required to be published by sub-paragraph (1) (a) above shall be published in the *Edinburgh Gazette* and, in each of

two successive weeks, in one or more newspapers circulating in the county, and by affixing a copy of the notice, addressed to "the owners and any occupiers" of the land (describing it), to some conspicuous object or objects on the land.

SCH. 2
—cont.

(3) Publication in accordance with the foregoing provisions of this paragraph shall be effected as soon as may be after the order has been submitted.

(4) In this paragraph "the first local advertisement", in relation to a notice, means the first publication of the notice in a newspaper circulating in the county and includes, in relation to a notice so published once only, the publication thereof.

3. Subject to the provisions of paragraph 4 below in any case in which these provisions have effect, the Secretary of State may confirm the order with or without modification, but shall not, unless all persons interested consent, so modify it as to extend it to any land which was not designated by the order as submitted.

4.—(1) If any objection is duly made to the order and is not withdrawn, the following provisions of this paragraph shall have effect.

For the purposes of this schedule an objection shall not be treated as duly made unless—

- (a) it is made within the time and in the manner specified in the notice required by paragraph 2 above; and
- (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.

(2) Unless the Secretary of State decides apart from the objection not to confirm the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the Secretary of State shall, before making a final decision, consider the grounds of the objection as set out in the statement, and may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.

(3) In so far as the Secretary of State, after considering the grounds of the objection as set out in the original statement and any such further statement, is satisfied—

- (a) that the objection relates to a matter which can be dealt with by the Lands Tribunal for Scotland in assessing compensation; or
- (b) that the objection is made on the grounds that the acquisition is unnecessary or inexpedient;

the Secretary of State may treat the objection as irrelevant for the purpose of making a final decision.

(4) If, after considering the grounds of the objection as set out in the original statement, and any such further statement, the Secretary of State is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates, or if, where a further statement has been required, it is not submitted within the specified period the Secretary of State may make a final decision without further investigation as to those matters.

SCH. 2
—cont.

(5) Subject to sub-paragraphs (3) and (4) above, the Secretary of State, before making a final decision, shall afford to the objector an opportunity of appearing before and being heard by a person appointed for the purpose by the Secretary of State; and if the objector avails himself of that opportunity, the Secretary of State shall afford an opportunity of appearing and being heard on the same occasions to the Council and to any other persons to whom it appears to the Secretary of State to be expedient to afford it.

(6) Notwithstanding anything in the foregoing provisions of this paragraph, if it appears to the Secretary of State that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held; and where he determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time when he so determines shall be dispensed with.

(7) In this paragraph any references to making a final decision, in relation to an order, is a reference to deciding whether to confirm the order or what modification, if any, ought to be made.

5. As soon as may be after the order has been confirmed the Council shall publish in one or more newspapers circulating in the county a notice in the prescribed form describing the land, stating that the order has been confirmed and naming a place where a copy of the order and of the map or maps and any descriptive matter annexed thereto may be seen at any reasonable hour, and shall serve a like notice on—

- (a) any owner or occupier of any of the land thereby designated who, at any time after the publication of the notice of the order as submitted, has sent to the Council a request in writing to serve him with the notice required by this paragraph giving an address for service and the prescribed particulars of his interest;
- (b) any person who has duly made an objection to the order and at the time of making it or thereafter has sent to the Council such a request as aforesaid; and
- (c) such other persons, if any, as the Secretary of State may specify, whether individually or as members of a class of persons.

6. If any person aggrieved by a compulsory purchase order desires to question the validity thereof, or of any provisions contained therein, on the ground that it is not within the powers of this Act or that any requirement of this Act or any prescribed requirement has not been complied with in relation to the order, he may, within six weeks from the date on which notice of the confirmation or making of the order is first published in accordance with the provisions of this schedule in that behalf make an application to the Court of Session; and on any such application the court—

- (a) may by interim order suspend the operation of the order or any provisions contained therein either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and

- (b) if satisfied that the order or any provision contained therein is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by any requirement of this Act or any prescribed requirement not having been complied with, may quash the order or any provision contained therein either generally or in so far as it affects any property of the applicant.

SCH. 2
—cont.

7. The power to confirm an order in accordance with the provisions of this schedule shall be exercisable by statutory instrument, which shall be laid before Parliament after being made and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

8. Subject to the provisions of paragraph 6 above, a compulsory purchase order shall not, either before or after it has been made or confirmed, be questioned in any legal proceedings whatsoever, and shall become operative on the date on which notice is first published as mentioned in the said paragraph 6.

9. In this schedule “prescribed” means prescribed by regulations made under the New Towns (Scotland) Act 1968 and any such regulations shall apply to anything authorised or required to be prescribed under this schedule with the necessary modifications, as they apply to any like thing authorised or required to be prescribed under that Act. 1968 c. 16.

SCHEDULE 3

Section 24.

DESCRIPTION OF LANDS SUBJECT TO COMPULSORY ACQUISITION (District of Delting)

The lands numbered on the deposited plans 8 to 10, 13 to 15, 17 to 22, 26, 28, 30 and 33.

That portion of the lands numbered 7 on the deposited plans which lies within the area bounded as follows:—

By a line commencing on the boundary fence between Midfield and Hill of Dale at a point 450 feet on a bearing of 228° 30' from true north where the fence crosses the Burn of Oxnabool; thence on a bearing of 3° for 1,650 feet to a point north of the Burn of Laxobigging; thence on a bearing of 250° for 3,940 feet to a junction with the Burn of Scatsta; thence on a bearing of 139° for 1,800 feet to a point 120 feet west of the Burn of Westerbutton; thence on a bearing of 80° for 2,630 feet to the point of commencement.

Those portions of the lands numbered 7, 11, 12, 16, 24, 25 and 27 on the deposited plans which lie within the area bounded as follows:—

By a line commencing at a point on L.W.M.O.S.T. 540 feet west of the west shore of Otter Loch; thence on a bearing of 166° for 3,940 feet to a bend in the fence 50 feet north of the northernmost point of the Loch of Trondavoe; thence along that fence on a bearing of 118° for 160 feet; thence on a bearing of 88° 30' for 1,950 feet; thence on a bearing of 72° for 5,920 feet passing 5 feet south of the old church building at Scatsta to a

SCH. 3
—cont.

point between the Burns of Leegill and Berdigill; thence on a bearing of 33° for 670 feet to the boundary fence between Green Hill and the Hill of Graven; thence on the same bearing for a distance of 440 feet; thence on a bearing of $339^\circ 30'$ for 260 feet to the east-west boundary fence, continuing on the same bearing for 860 feet; thence on a bearing of $81^\circ 30'$ for 1,850 feet; thence on a bearing of 102° for 1,240 feet to the boundary fence on the north side of the Hill of Graven at a point 230 feet north of the bend in that fence; thence on a bearing of 136° for 1,000 feet to the boundary fence on the east side of the Hill of Graven; thence on the same bearing for 740 feet to a point 250 feet west of the Burn of Laxobigging; thence on a bearing of 58° for 1,350 feet on a line running approximately parallel to the Burn of Laxobigging to a point approximately 300 feet south of the Laxobigging Bridge and 100 feet west of the said burn; thence on a bearing of 78° for 1,660 feet, partly following the boundary fence along the north side of the public road, to a bend in the fence; thence along the fence on a bearing of $51^\circ 30'$ for 1,000 feet to a point 50 feet west of the intersection of the fence and the Burn of Moorfield; thence on a bearing of $88^\circ 30'$ for 1,520 feet to the north edge of the public road at a point 120 feet west of the point where the road crosses the Stenswall Burn; thence on a bearing of 49° for 1,100 feet to a point 370 feet from the point where the public road crosses the Sodles Burn and 70 feet west of the public road; thence on a bearing of 20° for 1,140 feet to the boundary fence crossing the Sodles Burn; thence on the same bearing for 630 feet to a point on the Burn of Sandwater 120 feet upstream from its junction with Sodles Burn; thence on a bearing of 73° for 1,485 feet to a bend in the public road to Toft immediately north-west of the church at Toft junction; thence following the west side of the Toft public road for 2,050 feet in a north-westerly direction to a point where that road begins to bend northwards; thence on a bearing of $224^\circ 30'$ past the south shore of the Loch of Bordigarth for 4,525 feet; thence on a bearing of 276° for 1,700 feet crossing the North Burn to a point at an old ruin south of that burn; thence on a bearing of 293° for 3,070 feet passing through the ruins of Milburn to the footbridge over the North Burn; thence along the west bank of that burn to L.W.M.O.S.T. and by the line of L.W.M.O.S.T. to the point of commencement.

That portion of the lands numbered 25 on the deposited plans, which lies within the area bounded as follows:—

By a line commencing at a point on L.W.M.O.S.T. 1,020 feet south-east of Booth of Calback; thence on a bearing of $64^\circ 30'$ from true north for a distance of 4,170 feet to the north of Hill of Garth; thence on a bearing of 24° for 1,050 feet to the Burn of Crooksetter; thence on a bearing $293^\circ 30'$ for 3,740 feet to L.W.M.O.S.T. at the Vadill at a point 600 feet on a bearing of 334° from the intersection of that burn and H.W.M.O.S.T.; thence by the line of L.W.M.O.S.T. commencing in a south-westerly direction and following the line round Calback Ness and Vats Houlland to the point of commencement.

SCHEDULE 4

Section 24.

DESCRIPTION OF LAND EXCLUDED FROM COMPULSORY ACQUISITION
(*District of Delting*)

That portion of the lands numbered 7 on the deposited plans comprising that area of land extending to approximately 150 acres disposed by disposition granted by Eleanor Halcrow or Hunter and Frank Hunter in favour of Total Oil Marine Limited dated 18th June and recorded in the Division of the General Register of Sasines applicable to the Counties of Orkney and Shetland on 9th July both months in the year 1973.



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