

[26 GEO. 5. &  
1 EDW. 8.]

*Pier and Harbour  
Order (Cowes) Confirmation  
Act, 1936:*

[Ch. lxxx.]



**CHAPTER lxxx.**

An Act to confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act 1861 relating to Cowes. A.D. 1936.

[31st July 1936.]

**W**HEREAS a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act 1861 is not of any validity or force whatever until the confirmation thereof by Act of Parliament: 24 & 25 Vict. c. 45.

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

Be it therefore enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—

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

2. This Act may be cited as the Pier and Harbour Order (Cowes) Confirmation Act 1936. Short title.

[Price 6d. net]

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A.D. 1936.

SCHEDULE.

COWES HARBOUR.

*Order to authorise the Commissioners for the Harbour of Cowes to construct works to borrow money to demand new and increased rates dues and charges to enable the Cowes Urban District Council to contribute to the revenues &c. of the Commissioners to alter the constitution of the Commissioners and for other purposes.*

PART I.

PRELIMINARY.

- Short title. 1. This Order may be cited as the Cowes Harbour Order 1936.
- Commencement. 2. This Order shall come into operation upon the day when the Act confirming this Order is passed and that day is in this Order referred to as "the commencement of this Order."
- Interpretation.  
60 & 61 Vict.  
c. cclviii.
- 10 & 11 Vict.  
c. 27.
- 21 & 22  
Geo. 5.  
c. lxxxix.
3. In this Order unless the context otherwise requires—  
 "Act of 1897" means the Cowes Harbour Act 1897;  
 "Commissioners" means the Commissioners for the Harbour of Cowes incorporated by the Act of 1897;  
 "Council" means the Cowes Urban District Council;  
 "Harbour" means the Harbour of Cowes and Cowes Roads as defined by the Order of 1931;  
 "Harbours Clauses Act 1847" means the Harbours Docks and Piers Clauses Act 1847;  
 "Minister" means the Minister of Transport;  
 "Order of 1931" means the Cowes Harbour Order 1931;  
 "Seaplane" includes a flying boat and any other aircraft designed to manoeuvre on the water;  
 "Undertaking" means the undertaking of the Commissioners in connection with the harbour;  
 "Vessel" includes any ship lighter vessel barge keel barque raft craft hulk rowing motor or other boat or pleasure craft and any other kind of craft or vessel whatsoever used or not used in navigation and

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whether propelled by oars steam or otherwise or not capable of propulsion or of being steered and any seaplane on the surface of the water; A.D. 1936.  
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“Works” means the works authorised by this Order or as the case may be any part thereof.

4. In the application to this Order of the Harbours Clauses Act 1847 the expression “vessel” shall have the meaning assigned to it by this Order: Application of Harbours Clauses Act 1847.

Provided that the expression “vessel” in section 28 of the Harbours Clauses Act 1847 shall include—

- (a) any floating dock or seaplane belonging to or employed in the service of His Majesty; and
- (b) any vessel of exceptional construction or method of propulsion belonging to or employed in the service of His Majesty:

Provided further that nothing in the Harbours Clauses Act 1847 or in this Order shall authorise the harbour master or other officer of the Commissioners to require a seaplane or any part thereof to be dismantled or any alteration modifying in any way its structure or equipment or otherwise affecting its airworthiness to be made.

This Order shall be deemed to be a special Act within the meaning of the Harbours Clauses Act 1847.

5. The Act of 1897 and the Order of 1931 as amended by this Order and this Order shall be construed and read together as one Order except so far as may be inconsistent with or repugnant to the purposes thereof. Construction of Order.

6. The Commissioners shall be the undertakers for carrying this Order into execution. Undertakers.

7. The Lands Clauses Acts (except so much thereof as relates to the purchase of lands otherwise than by agreement and to the entry upon lands by the promoters of the undertaking) are hereby incorporated with this Order and for the purpose of that incorporation the term “Special Act” in those Acts shall mean this Order. Incorporation of Lands Clauses Acts.

PART II.

LANDS AND WORKS.

8. For the purposes of the works the Commissioners may purchase by agreement and use all or such parts of the lands shown on the deposited plans as they may think requisite. Power to take lands by agreement.

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Power to  
grant ease-  
ments.

9. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may subject to the provisions of those Acts and of this Order grant to the Commissioners for the purposes of this Order any easement right or privilege (not being an easement right or privilege of water in which other persons than the grantors have an interest) in over or affecting any such lands and the provisions of the said Acts with respect to lands and rentcharges so far as the same are applicable in this behalf shall extend and apply to such easements rights and privileges respectively.

Power to  
retain sell  
&c. lands.

10.—(1) Notwithstanding anything in the Lands Clauses Acts to the contrary the Commissioners may retain hold and use for such time as they may think fit or may sell let lease exchange or otherwise dispose of in such manner and for such consideration and on such terms and conditions as they may think fit and in case of sale either in consideration of the execution of works or of the payment of a gross sum or of an annual rent or of any payment in any other form any lands and premises or any interest therein vested in them as part of the undertaking or acquired by them under this Order which may not be required for the purposes thereof and may sell exchange or dispose of any rents reserved on the sale exchange lease or other disposition of such lands and premises and may make do and execute any deed act or thing proper for effectuating any such sale lease exchange or other disposition and on any exchange may give or take any money for equality of exchange :

Provided that the Commissioners shall not (unless the Minister otherwise directs) sell lease exchange or otherwise dispose of any such lands or any interests therein except at the best price or on the best terms which can be obtained for the same but a purchaser or lessee shall not be concerned to inquire whether the direction of the Minister be necessary or has been obtained.

(2) Nothing in this section contained shall release the Commissioners or any person purchasing or acquiring any lands from them under this section from any rents covenants restrictions reservations terms or conditions made payable by or contained in any conveyance lease or other deed or instrument by which any such lands were or may hereafter be conveyed or leased to or otherwise acquired by the Commissioners or any person from or through whom the Commissioners may have derived or may hereafter derive title to the same but all such rents covenants restrictions reservations terms and conditions shall remain and be of as full force and effect and may be recovered exercised enjoyed and enforced in like manner and to the same extent as if this Order had not been passed.

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11. Subject to the provisions of this Order and subject also to such alterations (if any) on the deposited plans and the deposited sections as the Board of Trade may require before completion of the work the Commissioners may on lands belonging to or acquired by them under this Order and in the lines and according to the levels and within the limits of deviation shown on the deposited plans and sections make and maintain the following works :—

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—  
 Power to  
 construct  
 works.

Work No. 1 A breakwater of solid construction wholly in the parish and urban district of Cowes commencing on the east side of the river Medina at the point of intersection of the line of the north side of Cambridge Road produced with the outer coping line of the esplanade wall and extending thence in a north-westerly direction across the Shrape Mud and terminating at a point four hundred yards or thereabouts from the point of commencement above described and three hundred and seventy-seven yards or thereabouts from the eastern face of the Jubilee Pontoon Pier or Fountain Pier measured in a north-easterly direction ;

Work No. 2 A training bank or wall of solid construction on the bed of the river Medina wholly in the parish and urban district of Cowes commencing at a point forty-three yards or thereabouts measured in a westerly direction from the north-western end of the hard leading from Medina Road on the east side of the river Medina adjoining the south side of the aircraft works of Saunders-Roe Limited extending thence in a northerly direction three hundred and ninety-seven yards or thereabouts from the point of commencement above described and terminating one hundred and fifty-three yards or thereabouts from the eastern face of the Jubilee Pontoon Pier or Fountain Pier measured in an easterly direction.

12. In constructing the works the Commissioners may deviate laterally from the lines thereof as shown on the deposited plans to any extent not exceeding the limits of deviation shown on those plans and may deviate vertically from the levels of the said works as shown on the deposited sections to any extent not exceeding twelve feet upwards or to any extent downwards Provided that no deviation either lateral or vertical below high-water mark shall be made without the consent in writing of the Board of Trade.

Power to  
 deviate.

13. No part of the works below high-water mark shall be commenced without the consent in writing of the Board of Trade and those works shall be executed only in accordance with the terms of such consent.

Consent of  
 Board of  
 Trade to  
 works.

A.D. 1936.

—  
Penalty for  
obstructing  
works.

14. Any person who wilfully obstructs any person acting under the authority of the Commissioners in setting out the lines of the works or who pulls up or removes any poles or stakes driven into the ground for the purpose of setting out the lines of the works shall for every such offence be liable to a penalty not exceeding five pounds.

Powers to  
cease in  
certain  
events.

15.—(1) If Work No. 1 is not completed within five years and if Work No. 2 is not completed within ten years from the commencement of this Order then on the expiration of these respective periods the powers given by this Order for executing Works Nos. 1 and 2 respectively or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

(2) If Work No. 1 is not substantially commenced within two years and if Work No. 2 is not substantially commenced within seven years from the commencement of this Order or such extended times as the Minister may in the circumstances by order direct the powers shall cease.

(3) If the execution of Work No. 1 or Work No. 2 respectively after having been substantially commenced is virtually suspended for twelve consecutive months the said powers shall cease except as to so much of the works as is then completed unless the Minister by order direct that the said powers continue and remain in force but subject to the foregoing provision as to completion in any event within five years and ten years as the case may be from the commencement of this Order.

(4) A certificate of the Minister to the effect that the works have not been substantially commenced or that they have been virtually suspended for twelve consecutive months shall for the purposes of this section be conclusive evidence of the facts stated in such certificate.

Dredging  
mainten-  
ance and  
improvement  
of under-  
taking.

16.—(1) The Commissioners may improve the harbour by dredging and deepening the same and the accesses thereto and may maintain alter improve and extend the harbour and the works connected therewith and also the works authorised by this Order and may also from time to time construct erect and maintain alter improve and extend embankments piles caissons walls stairs landing places approaches jetties piers wharves quays slips steps warehouses offices sheds and other buildings cranes weighing machines machinery buoys moorings lights beacons groynes sluices roads sewers drains watercourses gas and water pipes electric light and power and other works apparatus and conveniences.

(2) Before exercising the powers conferred by this section within a distance of fifty yards of any submarine cable placed and maintained by the Postmaster-General across the river Medina

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between East Cowes and West Cowes the Commissioners shall give to the Postmaster-General seven days' notice in writing in respect of their intention to exercise such powers. A.D. 1936.  
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(3) Any electric light and power and other works apparatus and conveniences constructed or erected under the provisions of this Order shall be so constructed erected maintained and used as to prevent any interference with any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General or with telegraphic communication by means of any such line. 41 & 42  
Vict. c. 76.

(4) The powers of this section shall not be exercised so as to damage or injuriously affect the quay in the river Medina belonging to the Southern Railway Company or to interfere with or obstruct the access to or egress from the said quay.

(5) Nothing in this Order shall extend to or authorise any interference with any works of any undertakers within the meaning of the Electricity (Supply) Acts 1882 to 1936 to which the provisions of section 15 of the Electric Lighting Act 1882 apply except in accordance with and subject to the provisions of that section: 45 & 46  
Vict. c. 56.

Provided that the powers of the Commissioners under this section shall be exercisable subject to the provisions of the section of this Order of which the marginal note is "Crown rights" and in particular and without prejudice to that general limitation any consent given to the exercise of such powers by the Commissioners of Crown Lands or the Board of Trade on behalf of His Majesty may be given subject to such restrictions and conditions including the payment by the Commissioners to the Commissioners of Crown Lands or to the Board of Trade of royalties rents or sums of money in respect of materials raised from any place below high-water mark and sold by the Commissioners under this section or in respect of any place below high-water mark upon which materials may be deposited as may be fixed by the Commissioners of Crown Lands or the Board of Trade as the case may be.

### PART III.

#### MISCELLANEOUS.

17. The Commissioners may (so far as the rates specified in the schedule to the Order of 1931 do not extend) demand and recover such reasonable rates or other consideration as they may determine for the use of any mooring posts cranes buoys works and conveniences belonging to or provided by the Commissioners or in respect of any services rendered by them in connection with the harbour. Rates for  
services and  
accommoda-  
tion not  
otherwise  
provided  
for.

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Tonnage  
rates.

18. The Commissioners may charge for every vessel exceeding 100 tons register coming into or anchoring or making fast in the harbour for every 100 tons register or part thereof twenty shillings for each vessel in lieu of the rate of ten shillings authorised by section 8 (New schedule of rates) and Schedule No. 1 (Rates on vessels (exclusive of passenger vessels tugboats and yachts)) of the Order of 1931 and the said section and Schedule No. 1 shall be read and construed accordingly Provided that unless and except so far as the Minister may hereafter otherwise allow the provisions of this section shall cease to have effect on the expiration of five years from the date of the passing of the Act confirming this Order.

Rates on  
seaplanes  
&c.10 & 11  
Geo. 5. c. 80.

19.—(1) Subject to the provisions of the Air Navigation Act 1920 and any Act amending or extending that Act or of any order made in pursuance thereof and to the provisions of this Order the Commissioners may demand levy collect and receive in respect of seaplanes entering or using the harbour such reasonable rates as may from time to time be approved by the Minister after consultation with the Secretary of State for Air which rates shall be in lieu of the rates leviable by the Commissioners under this Order on and in respect of vessels,

(2) The Commissioners may demand levy collect and receive on and in respect of floating docks or vessels of exceptional construction or method of propulsion entering or using or departing from the harbour such reasonable rates as may from time to time be fixed by the Commissioners Provided that nothing in this subsection shall apply to the Cowes Ferry undertaking of the council.

Power to  
borrow.

20. Section 46 (Power to borrow) of the Act of 1897 shall be read and have effect as if the sum of forty-five thousand pounds were inserted therein in lieu of the sum of fifteen thousand pounds therein mentioned and as if the period of thirty-five years for the repayment of borrowed money were inserted therein in lieu of the period of fifty years therein mentioned Provided that the consent of the Minister or of the Board of Trade shall not be required to the borrowing of money for the purposes of the Act of 1897 and of this Order.

Council may  
contribute  
towards  
payment of  
principal and  
interest on  
money  
borrowed by  
Commis-  
sioners in  
respect of  
Work No. 1.

21. The council may from time to time contribute towards the payment of principal and interest on money which may be borrowed by the Commissioners in respect of the cost of constructing Work No. 1 provided as follows:—

- (i) The time during which the council may so contribute shall not exceed a period of twenty years from the date of the first borrowing by the Commissioners for the purposes of Work No. 1;



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(ii) The amount which the council may so contribute shall not in any financial year exceed the sum of three hundred and sixty pounds or the product of a rate of one penny in the pound on the net rateable value of the urban district of Cowes for that year within the meaning of the Rating and Valuation Act 1925 whichever is the less ;

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 —  
 15 & 16  
 Geo. 5. c. 90.

(iii) If in respect of any year during the said period of twenty years there would be a balance on net revenue account in the audited accounts of the Commissioners (if such balance were calculated on the basis of eliminating from such audited accounts for that year any payments made by the Commissioners whether in respect of repayment of principal and payment of interest on money borrowed for or otherwise in connection with Work No. 2) exceeding five hundred pounds the amount which the council may contribute as aforesaid for that year shall be reduced by an amount equal to the sum by which such balance (calculated as aforesaid) exceeds five hundred pounds.

22.—(1) Subject to the provisions of this Order section 5 (Constitution of Commissioners) of the Act of 1897 as amended by the Isle of Wight Review Order 1933 is hereby amended so as to provide that the members of the Commissioners to be appointed by the council shall be increased from four to six and that the total number of the Commissioners shall be increased to twenty-one.

Representa-  
 tion of  
 Council on  
 Commis-  
 sioners.

(2) The power to the council to appoint the additional members to be appointed by them in pursuance of this section shall not come into operation unless and until the first contribution has been made by the council to the Commissioners in pursuance of the section of this Order of which the marginal note is " Council may contribute towards payment of principal " and interest on money borrowed by Commissioners in respect " of Work No. 1."

23.—(1) Before commencing the works the Commissioners shall apply to the Board of Trade for directions as to the lights to be exhibited and other means to be taken for preventing danger to navigation and shall in all respects obey any directions given upon that application or afterwards from time to time given as to the like matters by the Board of Trade during the construction of the works and compliance with the directions so given shall satisfy and be in place of every other statutory requirement as to lights during the construction of the works.

Lights  
 during con-  
 struction of  
 works.

(2) The Commissioners shall be liable to a penalty not exceeding ten pounds for every day during which they omit so

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to apply or refuse or neglect to observe or comply with any direction so given.

Lights after  
completion  
of works.

24. After completion or permanent discontinuance or abandonment of the works the Commissioners shall exhibit at the outer extremity of the works or the completed portions thereof or in such other places as may be required from sunset to sunrise and according to the requirements of the traffic and the season of the year such lights (if any) and shall take such other steps for the prevention of danger to navigation as shall from time to time be directed by the Corporation of Trinity House of Deptford Strond and shall apply to that Corporation for such directions. If the Commissioners fail to comply in any respect with the provisions of this section they shall be liable to a penalty not exceeding twenty pounds and in the case of a continuing offence to an additional penalty not exceeding two pounds for every day on which after conviction thereof they so fail.

As to buoys  
and lights in  
case of decay  
of works.

25.—(1) In case of injury to or destruction or decay of the works or any part thereof the Commissioners shall lay down such buoys exhibit such lights or take such other means for preventing (so far as may be) danger to navigation as may from time to time be directed by the Corporation of Trinity House of Deptford Strond and shall apply to that Corporation for directions as to the means to be taken.

(2) If the Commissioners fail to comply in any respect with the provisions of this section they shall be liable to a penalty not exceeding ten pounds and in the case of a continuing offence to an additional penalty not exceeding one pound for every day during which they omit after conviction thereof so to apply or refuse or neglect to obey any direction given in reference to the means to be taken.

Survey of  
works by  
Board of  
Trade.

26. If at any time the Board of Trade deem it expedient for the purposes of this Order to order a survey and examination of so much of the works as are constructed on in over through or across tidal lands or tidal waters or of the intended site of the work the Commissioners shall defray the expense of the survey and examination and the amount thereof shall be a debt due from the Commissioners to the Crown and shall be recoverable as a Crown debt or summarily.

Abatement  
of work  
abandoned  
or decayed.

27. If any of the works constructed on in over through or across tidal lands or tidal waters are abandoned or suffered to fall into decay the Board of Trade may abate and remove the same or any part of them and restore the site thereof to its former condition at the expense of the Commissioners and the amount of such expense shall be a debt due from the Commissioners to the Crown and be recoverable as a Crown debt or summarily.

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28. Sections 16 to 19 and 25 and 26 and 84 to 87 of the Harbours Clauses Act 1847 shall not be incorporated with this Order.

Exclusion of sections 16 to 19 and 25 and 26 and 84 to 87 of 10 & 11 Vict. c. 27.

29. All penalties under this Order shall be recovered and applied as penalties are recoverable and applicable under the Harbours Clauses Act 1847.

Recovery of penalties.

30. Subsection (1) of section 15 (Revision of lists of electors of traders' members) of the Act of 1897 is hereby repealed and the following provisions shall be inserted in lieu thereof:—

Revision of lists of electors of traders' members.

“ On or before the fifteenth day of October in every year of election the Commissioners shall appoint two of their number to be two of the revisers of the list of electors of traders' members made out as provided in section 13 (List of electors of traders' members to be made out) of this Act and those two Commissioners shall not later than the nineteenth day of the same month appoint a third person being a person on the said list or a member of a partnership company municipal corporation or council on the said list to be a third reviser and to be their chairman. If such two Commissioners fail to appoint such third reviser and if the reviser appointed by such two Commissioners be unable or unwilling to act the chairman of the Commissioners may appoint some person qualified as aforesaid to be such third reviser.”

31.—(1) The Minister may appoint a person to be auditor to examine and audit the accounts of the Commissioners and may fix the payments to be made to him for salary and for expenses (if any) and the amount of the salary and expenses (if any) shall be paid by the Commissioners out of the rates or other income received by them under this Order.

Auditor.

(2) The Minister may at any time revoke the appointment of any person as auditor and thereupon shall unless he sees special reason to the contrary appoint another person as auditor.

(3) The Commissioners shall on demand by the auditor produce to him all books accounts deeds papers writings and other documents and furnish him with all information in their possession or power and afford him all reasonable facilities for conducting the examination and audit.

(4) If the Commissioners refuse or neglect to comply with any of the provisions of this section they shall be liable to a penalty not exceeding twenty pounds for every month during which they neglect or refuse so to comply.

32.—(1) The byelaws which may from time to time be made by the Commissioners in the exercise of the powers in that behalf

Byelaws.

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conferred on them by the Act of 1897 and by section 83 of the Harbours Clauses Act 1847 may provide for the enforcing of a penalty not exceeding forty shillings for the breach or non-observance of any of the byelaws.

23 & 24  
Geo. 5. c. 51.

(2) Notwithstanding the provisions of the Harbours Clauses Act 1847 relating to the procedure for the making and confirming of byelaws by the Commissioners the provisions of subsections (3) to (6) of section 250 and section 252 of the Local Government Act 1933 shall apply to all byelaws except such as relate solely to the Commissioners and their officers or servants to be made by the Commissioners in respect of the undertaking and in the application of such last-mentioned provisions the Minister shall be the confirming authority :

Provided that—

- (a) In the case of any byelaws which the Minister in consultation with the Board of Trade shall deem primarily to concern the interests of navigation the provisions of subsections (1) and (2) of this section shall apply as if the said Board were substituted for the Minister;
- (b) The confirming authority shall consult the Secretary of State for Air before confirming any byelaw which relates to seaplanes;
- (c) Confirmation of any such byelaws by the Minister or the Board of Trade respectively shall be sufficient evidence of compliance with the provisions of this section.

Repeals.

4 & 5 Geo. 5.  
c. cxiv.9 & 10 Geo. 5.  
c. lxxi.

33. The Pier and Harbour Order Confirmation (No. 1) Act 1914 and the Cowes Harbour Order 1914 confirmed thereby and the Pier and Harbour Orders Confirmation Act 1919 so far as it relates to the Cowes Harbour Order 1919 and the Cowes Harbour Order 1919 confirmed thereby are hereby respectively repealed.

Inquiries by  
Minister.

34. The Minister 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 the Act of 1897 or this Order and subsections (2) to (5) of section 290 of the Local Government Act 1933 shall apply to such inquiries as if they were an inquiry held in pursuance of subsection (1) of that section and the Commissioners were a local authority.

Crown  
rights.

35. Nothing in this Order affects prejudicially any estate right power privilege or exemption of the Crown and in particular nothing herein contained authorises the Commissioners to take use or in any manner interfere with any portion of the shore or

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bed of the sea or of any river channel creek bay or estuary or any land hereditaments subjects or rights of whatsoever description belonging to His Majesty in right of His Crown and under the management of the Commissioners of Crown Lands or of the Board of Trade respectively without the consent in writing of the Commissioners of Crown Lands or of the Board of Trade as the case may be on behalf of His Majesty first had and obtained for that purpose. A.D. 1936.

36. All costs charges and expenses of and incident to the preparation and obtaining of this Order and otherwise incurred in reference thereto shall be paid by the Commissioners out of moneys received by them on revenue account or out of moneys borrowed under the authority of the Act of 1897 or of this Order Provided that any moneys borrowed by the Commissioners for the purposes of this section shall be repaid within five years from the commencement of this Order. Costs of Order.

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