



CHAPTER xxv

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

[1st August 1951.]

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

And whereas it is expedient that the Provisional Order made by the Minister of Transport under the said Act as 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 is 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.

2. This Act may be cited as the Pier and Harbour Order (Lymington) Confirmation Act 1951.

SCHEDULE

LYMINGTON RIVER AND HARBOUR

Provisional Order to incorporate Commissioners of the river and harbour of Lymington to transfer to them the undertaking known as Lymington River and Harbour to authorise them to construct new works to maintain manage and improve the said river and harbour to borrow money for the purposes thereof and otherwise and to levy tolls rates and charges and for other purposes.

Preliminary

- Short title. 1. This Order may be cited as the Lymington River and Harbour Order 1951.
- Commencement. 2. Except as otherwise expressly provided in this Order this Order shall come into operation on the appointed day:
Provided that for the purposes of the election or appointment of Commissioners the provisions of this Order relating thereto shall come into operation upon the day when the Act confirming this Order is passed.
- Interpretation. 3. In this Order unless the context otherwise requires—
- “The appointed day” means the first day of November nineteen hundred and fifty-one;
- “Authorised rates” means the rates which the Commissioners are for the time being authorised to levy demand and recover in pursuance of this Order or any order made under section 39 (Revision of rates) of this Order;
- “The borough” means the borough of Lymington;
- “Commercial user of the harbour” in relation to an election of a Commissioner under this Order means any person partnership or company (other than the commission) who during the year immediately preceding the month in which the election is held has—
- (a) paid harbour rates or charges under this Order or the Order of 1913 in respect of any trade or business carried on by him; or
- (b) paid rates or charges under this Order or the Order of 1913 on goods shipped or unshipped; or
- (c) paid the general rate assessed on premises which are situate in either the Lymington South Lymington East or Lymington West ward of the borough and are used by him for carrying on the trade or business of shipbuilding or any other trade or business directly connected with the use of the harbour;
- “The commission” means the British Transport Commission and any reference to the commission in relation to any functions of the commission which are for the time being delegated to an executive in pursuance of section 5 of the Transport Act 1947 shall be construed as a reference to that executive;

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- “ The Commissioners ” means the Lymington Harbour Commissioners constituted by this Order;
- “ The corporation ” means the mayor aldermen and burgesses of the borough;
- “ Fishing vessel ” means a bona fide fishing vessel owned by a person partnership or company who or which derives at least seventy-five per centum of his their or its income from fishing;
- “ The harbour ” means the part of Lymington river or creek within the area defined in section 21 (Limits of the harbour) of this Order as “ the limits of the harbour ” and the land buildings works plant property and conveniences connected therewith or any part thereof as the case may be;
- “ The Harbours Clauses Act 1847 ” means the Harbours Docks and Piers Clauses Act 1847; 10 & 11 Vict.
c. 27.
- “ The harbour revenue ” means and includes the rates tolls dues rents and other moneys and receipts which may be taken and received by way of income from or in respect of the undertaking under the authority of this Order;
- “ The Minister ” means the Minister of Transport;
- “ The Order of 1913 ” means the Lymington River and Harbour Order 1913 confirmed by the Pier and Harbour Orders Confirmation (No. 1) Act 1913; 3 & 4 Geo. 5.
c. cxlvi.
- “ Seaplane ” includes a flying boat and any other aircraft designed to manoeuvre on the water;
- “ Statutory security ” means any security in which trustees are for the time being by or under any Act of Parliament passed or to be passed authorised to invest trust money and any mortgage bond debenture or debenture stock stock or other security authorised by or under any Act of Parliament passed or to be passed of any county council or municipal corporation or other local authority as defined by section 34 of the Local Loans Act 1875 but does not include annuities rentcharges or securities transferable by delivery or securities of the Commissioners; 38 & 39 Vict.
c. 83.
- “ The town clerk ” means the town clerk of the borough;
- “ The undertaking ” means and includes the harbour and the right to levy rates and tolls and all other rights conferred on or vested in the Commissioners by this Order and the entire undertaking of the Commissioners in connection with the harbour;
- “ Vessel ” includes a seaplane on the surface of the water;
- “ The works ” means the works authorised by this Order or as the case may require any part thereof;
- “ Yacht-owner ” in relation to an election of a Commissioner under this Order means any person partnership or company (not being a commercial user of the harbour) who during the three years immediately preceding the month in which the election is held has paid annual rates fees or dues under this Order or the Order of 1913 in respect of a yacht or yachts lying in the harbour.

**Incorporation
of Acts.**

4.—(1) The following Acts (so far as the same are applicable for the purposes and are not inconsistent with the provisions of this Order) are incorporated with this Order:—

10 & 11 Vict.
c. 16.

(a) The Commissioners Clauses Act 1847 (except sections 6 7 17 to 35 40 42 43 45 54 84 and 89 to 95):

Provided that—

(i) with reference to section 36 of the said Act the first meeting of the Commissioners shall be held at the town hall in the borough on the first day of November nineteen hundred and fifty-one at half-past two o'clock in the afternoon;

(ii) with reference to section 39 of the said Act the prescribed number to constitute a quorum of the Commissioners shall be four;

(iii) in the application of section 57 of the said Act to the proceedings of the Commissioners the sum of one thousand pounds shall be substituted for the sum of one hundred pounds mentioned in that section;

(iv) notwithstanding anything in the said Act the same person may be appointed both clerk and treasurer to the Commissioners;

8 & 9 Vict. c. 18.

(b) The Lands Clauses Acts (except so much thereof as relates to the purchase and taking of lands otherwise than by agreement and to the entry upon lands by the promoters of the undertaking and except sections 127 to 131 of the Lands Clauses Consolidation Act 1845).

(2) For the purposes of the incorporation of the said Acts the expression "the Special Act" in those Acts shall mean this Order.

**Application of
Harbours
Clauses Act
1847.**

5.—(1) In the application to this Order of the Harbours Clauses Act 1847 the expression "the special Act" shall mean this Order and the word "vessel" shall include a seaplane on the surface of the water:

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

(2) Sections 12 and 13 16 to 19 25 26 and 84 to 87 of the Harbours Clauses Act 1847 shall not be incorporated with this Order.

*Undertakers***Undertakers.**

6. The Commissioners shall on taking office become and be the undertakers for carrying this Order into execution and are in this Order referred to as the Commissioners.

*Constitution of Commissioners***Commissioners
constituted and
incorporated.**

7.—(1) For carrying this Order into effect there shall be and there is by this Order constituted a body of Commissioners not exceeding fourteen in number as in this Order provided.

(2) The Commissioners and their successors shall be and they are hereby for the purposes of this Order incorporated by the name of the Lymington Harbour Commissioners and by that name shall be

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a body corporate with perpetual succession and a common seal with power to purchase take hold and dispose of land and other property for the purposes but subject to the restrictions of this Order.

8. On the appointed day the following provisions shall have effect:— Transfer of property to Commissioners.

(1) The Order of 1913 shall be and the same is hereby repealed subject and without prejudice to anything which may have been done or any proceedings pending under that Order at the date of such repeal:

(2) Notwithstanding such repeal all the estates rights and property belonging to or vested in the corporation by virtue of the Order of 1913 or otherwise in relation to the harbour shall become vested in and belong to the Commissioners but subject to all charges and incumbrances (if any) upon and affecting the same:

(3) In and under all contracts actions and other proceedings which relate to the harbour and to which the corporation is a party the Commissioners shall become and be substituted in place of the corporation and such contracts actions and other proceedings shall continue in full force and have effect accordingly.

9. The Commissioners shall be appointed and elected as follows:— Appointment and election of Commissioners.

(1) six shall be appointed by the corporation;

(2) three shall be appointed by the commission;

(3) one may be appointed by the Minister (if he thinks fit);

(4) two shall be elected by the commercial users of the harbour;

(5) two shall be elected by the yacht-owners.

10.—(1) The corporation and the commission respectively shall on or before the fifteenth day of October nineteen hundred and fifty-one appoint the Commissioners whom they are by this Order respectively authorised to appoint and the Commissioners so appointed shall take office on the appointed day and shall continue in office until the thirty-first day of October nineteen hundred and fifty-four. Mode of appointment of Commissioners.

(2) The Minister may if he thinks fit at any time before the thirty-first day of October nineteen hundred and fifty-four appoint the Commissioner whom he is by this Order authorised to appoint and the Commissioner so appointed shall take office on such day not being earlier than the appointed day as the Minister may determine and shall continue in office until the said thirty-first day of October nineteen hundred and fifty-four.

(3) The corporation and the commission shall and the Minister may if he thinks fit from time to time respectively appoint such Commissioners as may be necessary in order to bring the number of Commissioners appointed by them or him up to the number of Commissioners whom they are or he is by this Order authorised to appoint to hold office for such period not being more than three years as they or he may respectively determine.

(4) All appointments made under this section shall be made in writing and shall be notified forthwith (if made before the appointed day) to the town clerk or (if made on or after the appointed day) to the clerk of the Commissioners.

Election of
Commissioners
by commercial
users of harbour.

11. With respect to the election of Commissioners by the commercial users of the harbour the following provisions shall have effect:—

- (1) A company shall have the same powers of voting as an individual and shall vote by its secretary or other duly appointed nominee;
- (2) In every case of several persons in partnership being entitled to vote at the election of a Commissioner the member of the firm agreed upon by the members of the firm in writing shall alone be entitled to exercise on behalf of the firm the right of voting at such election;
- (3) As to the election of the first Commissioners—
 - (a) The meeting for their election shall be held at the town hall in the borough in the month of October nineteen hundred and fifty-one;
 - (b) The town clerk shall give notice of the day and place of the meeting at least fourteen days before the date of the meeting by affixing the notice to the town hall and also by advertisement in a local newspaper circulating in the borough and in such other manner (if any) as appears to him desirable for giving publicity to the notice;
 - (c) The books of the corporation's harbour undertaking shall be evidence as to what persons are duly qualified electors;
 - (d) The persons elected shall take office on the appointed day and shall go out of office on the thirty-first day of October nineteen hundred and fifty-four;
 - (e) The chairman of the meeting shall within seven days after the meeting report to the town clerk the names of the persons elected:
- (4) As to elections of Commissioners subsequent to the first—
 - (a) The meeting for their election shall be held in the month of October and not later than the third Monday in that month in the year nineteen hundred and fifty-four and in every third subsequent year at a convenient place to be appointed by the Commissioners;
 - (b) The clerk to the Commissioners shall give notice of the day and place of the meeting at least fourteen days before the date of the meeting by affixing the notice on the office of the Commissioners and also by advertisement in a local newspaper circulating in the borough and in such other manner (if any) as appears to him desirable for giving publicity to the notice;
 - (c) The books of the Commissioners shall be evidence as to what persons are duly qualified electors;
 - (d) The persons elected shall take office on the first day in the month next following their election and shall go out of office at the end of the day next preceding the day on which their successors are to take office;
 - (e) The chairman of the meeting shall within seven days after the meeting report to the clerk to the Commissioners the names of the persons elected:

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(5) As to the election of the first and subsequent Commissioners—

(a) Subject to the provisions of this section any commercial user of the harbour may attend the meeting and vote;

(b) Any elector may at the meeting propose any commercial user of the harbour as a candidate and if not more than two persons are proposed the chairman shall declare them elected without taking a vote;

(c) The Commissioners to be from time to time elected shall be elected by a majority of the votes of the persons present and entitled to vote at the meeting for the election such votes to be given in such manner as may be directed by the chairman but a proxy is not in any case to be admitted:

Provided that in every case of an equality of votes the chairman of the meeting shall have an additional or casting vote;

(d) At every meeting a person appointed by the meeting shall preside as chairman and the person so presiding shall receive the votes of the electors and shall act in all other respects as chairman of the meeting and the only business to be transacted or discussed at such meeting shall be the election by the meeting of the persons to be elected Commissioners thereat.

12. All the provisions of the last preceding section of this Order with reference to the election of Commissioners by the commercial users of the harbour shall apply and have effect so far as they can be made applicable and as the circumstances of the case admit to the first and subsequent elections of Commissioners by the yacht-owners. Election of Commissioners by yacht-owners.

13.—(1) Whenever a vacancy arises by death resignation or otherwise in the office of a Commissioner the authority person or body by whom such Commissioner was appointed or elected shall appoint or elect another person to fill the vacancy and in the case of an election the provisions of the last but one preceding section or (as the case may be) of the last preceding section shall so far as they can be made applicable and as the circumstances of the case admit apply to such election. Casual vacancies.

(2) Each person appointed or elected to fill such vacancies as are referred to in this section shall hold office so long only as the person in whose place he is appointed or elected would have been entitled to continue in office.

14. No person shall be deemed to be ineligible for appointment or election as a Commissioner by reason only of the fact that he has previously held office as a Commissioner. Eligibility for re-appointment or re-election.

15. All expenses of or incidental to an election of Commissioners under this Order shall be paid by the Commissioners out of the harbour revenue or other income of the Commissioners. Expenses of election.

16.—(1) The Commissioners shall be deemed fully constituted and have power to act under this Order as soon as four persons have been appointed or elected Commissioners. Proceedings not to be invalidated by vacancies among Commissioners.

(2) Proceedings of the Commissioners shall not be invalidated or be illegal by reason of any vacancy in their body or of the non-appointment or non-election of or any defect in the appointment or election of a Commissioner.

Meetings of
Commissioners.

17. The meetings of the Commissioners (including their annual meetings) subsequent to the first meeting shall be held at such places and on such days and at such times as the Commissioners may from time to time appoint.

Acquisition of lands

Power to take
lands by
agreement.

18. Subject to the provisions of this Order the Commissioners may by agreement purchase and use such of the lands shown on the plan deposited for the purposes of this Order as may be requisite for the purposes of the works and they may further by agreement purchase and hold for the purposes of this Order any additional lands not exceeding in the whole fifty acres but with respect to such additional lands nothing in this Order or in the Acts incorporated therewith shall exempt the Commissioners from any indictment action or other proceedings for nuisance in the event of any nuisance being caused or permitted by them thereon.

Grant of
easements by
persons under
disability.

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

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

Retention and
disposal of land.

20.—(1) The Commissioners may—

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

Provided that the Commissioners shall not without the consent of the Minister sell lease exchange or otherwise dispose of any such land or any interest therein at a price or rent or for a consideration of a value less than the current market value of the land or interest but a purchaser or lessee shall not be concerned to inquire whether the consent of the Minister is necessary or has been obtained.

(2) Nothing in this section shall release the Commissioners or any person purchasing or acquiring any land or interest in land from them under this section from any rents covenants restrictions reservations

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terms or conditions made payable by or contained in any conveyance lease or other deed or instrument by which the land or interest has been conveyed or leased to or otherwise acquired by the Commissioners or any persons from or through whom the Commissioners have derived title to it.

Limits

21.—(1) The limits within which the Commissioners shall have authority and within which the powers of the harbour master may be exercised shall comprise that part of the Lymington river or creek below high-water mark which is shown within the thick black line marked on the map or plan certified by the Minister and signed and deposited in accordance with the provisions of subsection (3) of this section and those limits are in this Order termed “the limits of the harbour”.

Limits of the harbour.

(2) The limits within which the power to levy rates may be exercised hereinafter termed “the rating limits” shall comprise the harbour.

(3) A map or plan showing the limits of the harbour having been signed in triplicate by an assistant secretary in the Ministry of Transport and one copy thereof having been deposited at the office of the Ministry of Transport another copy thereof shall be deposited at the office of the clerk of the Southampton County Council and another copy thereof shall be deposited at the office of the Commissioners.

Works and powers

22. Subject to the provisions of this Order and subject also to such alterations (if any) in the plan and sections deposited with reference to this Order as the Minister may require before completion of the works the Commissioners may on the lands belonging to them or acquired 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 works.

Power to construct works.

23. The works authorised by this Order will be situate in the borough and are—

Description of works.

Work No. 1. A retaining wall on the westerly bank of the Lymington river commencing at the junction of the existing river wall with the slipway of the Royal Lymington Yacht Club and terminating at a point on the said river wall 300 feet or thereabouts north-west of the boundary between the Bath Road Recreation Ground and Beckleys Marsh;

Work No. 2. A yacht basin to be formed by excavating the bed of the Lymington river such basin to be bounded on the south-westerly side by the retaining wall Work No. 1 authorised by this Order the centre line of such basin commencing at the northerly corner of the said slipway of the Royal Lymington Yacht Club and terminating at a point 270 feet or thereabouts from the termination of Work No. 1 authorised by this Order measured in a north-easterly direction and at right angles to the existing river wall.

Power to deviate.

24. Subject to the provisions of this Order in constructing the works the Commissioners may deviate laterally from the lines thereof as shown on the deposited plan to any extent not exceeding the limits of deviation shown on that plan and they may deviate vertically from the levels of the said works as shown on the deposited sections to any extent:

Provided that no deviation either lateral or vertical below high-water mark shall be made without the consent in writing of the Minister.

Power to maintain and improve harbour.

25. Subject to the provisions of this Order the Commissioners may maintain and from time to time with the consent of the Minister improve the harbour and may in connection with the harbour construct maintain alter improve and enlarge embankments landing-places piers quays jetties slips wharves beaches for hauling boats buoys mooring lights beacons roads sewers drains watercourses gas and water pipes electric mains lighting apparatus and other works and conveniences which may be found necessary for the accommodation of vessels and traffic:

Provided that—

- (a) no line of rails or tramway constructed under this Order shall be used for the public conveyance of passengers until it has been certified by the Minister to be fit for that use;
- (b) any electric light and power or other apparatus constructed and maintained under this Order shall be so constructed used and maintained as to prevent any interference with any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General or with telegraphic communication by means of any such line;
- (c) 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 1935 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.

41 & 42 Vict.
c. 76.

45 & 46 Vict.
c. 56.

Penalty for obstructing works.

26. 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 such setting out shall for every such offence be liable to a penalty not exceeding five pounds.

Powers to cease in certain events.

27.—(1) If the works are not substantially commenced within five years from the appointed day or such extended time as the Minister may in the circumstances by order direct the said powers shall cease.

(2) If the execution of the works 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 six years from the appointed day.

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(3) 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.

28. Subject to the provisions of this Order the Commissioners may construct and maintain on any land for the time being belonging to them and may furnish and equip pavilions lecture waiting refreshment reading and other rooms automatic-machines bicycle-stands band-stands shops kiosks lavatories baths and sanitary and other conveniences and may make such reasonable charges as they may determine for the use of such conveniences and for admission to such buildings or places as aforesaid. Power to erect pavilions and other buildings.

29.—(1) The Commissioners may deepen dredge scour and excavate any portion of the harbour and the approaches thereto to the extent necessary to secure a sufficient waterway and approach to the harbour for vessels using the same. Power to dredge.

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

Provided that no sand mud or other materials raised under the provisions of this section shall be deposited in any place below high-water mark of ordinary spring tides otherwise than in such a position and under such conditions and regulations as may be fixed by the Minister.

(3) All moneys arising from any sale or other disposition of sand mud and other materials under this section after payment of the expenses connected therewith shall be deemed to form part of the harbour revenue.

(4) The powers of the Commissioners under this section shall be exercisable subject to the provisions of section 77 (Crown rights) of this Order and in particular and without prejudice to that general limitation any consent given to the exercise of such powers by the Commissioners of Crown Lands 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 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.

(5) The Commissioners and the commission may enter into and carry into effect agreements for the exercise by the commission on such terms as to payment and otherwise as may be specified in the agreement of all or any of the powers conferred by this section.

30. The Commissioners may provide purchase take on lease hire and use such steam or other dredgers eroders engines lighters or other vessels machinery and apparatus as they may think necessary for effecting the purposes of this Order and may let the same on hire Power to purchase dredgers etc.

for such sums and upon and subject to such terms and conditions as they may think fit or may sell and dispose of the same. All sums received in respect of any such letting on hire shall be deemed to form part of the revenue of the undertaking and all moneys realised by any such sale shall be applied towards carrying into effect any of the purposes of this Order to which capital is properly applicable.

Rates

Power to levy rates.

31. The Commissioners may within the rating limits subject and according to the provisions of this Order levy and demand for the use of the harbour and the conveniences connected therewith in respect of all vessels persons and goods of every description and for services described in the First Schedule to this Order any rates not exceeding those specified in that schedule and may receive and recover payment accordingly:

Provided that fishing vessels shall not be required to pay any berth fees as set out in section (D) of Part I of the said schedule nor shall they pay any of the rates specified in Part II of the said schedule.

Rates on seaplanes.
12 13 & 14
Geo. 6.
c. 67.

32.—(1) Subject to the provisions of the Civil Aviation Act 1949 the Commissioners may demand receive and recover on and in respect of seaplanes entering or using or leaving the harbour such reasonable rates as may from time to time be approved by the Minister.

(2) The rates authorised by this section in respect of seaplanes shall be paid by or be recoverable from either the owner or other person in charge of such seaplane as the Commissioners may determine.

Confirmation of scheduled agreement.

33. The agreement set forth in the Second Schedule to this Order is hereby confirmed and made binding upon the Commissioners the commission and the railway executive as if—

- (1) the Commissioners had been a party to the agreement in place of the corporation;
- (2) in clauses 1 2 3 5 and 8 of the agreement references to the Commissioners and to this Order were respectively substituted for references to the corporation and to the Order of 1913;
- (3) in clause 5 of the agreement “the expiration of five years after the day when the Act confirming the Lymington River and Harbour Order 1951 is passed” shall be substituted for “the thirtieth day of June nineteen hundred and fifty-five”; and
- (4) the agreement had been made under the common seal of the Commissioners;

and shall be carried into effect accordingly.

Power to vary exemptions and compound for rates.

34. The Commissioners may subject to the proviso to section 31 (Power to levy rates) of this Order confer vary or extinguish exemptions from and compound with any person with respect to the payment of rates or charges authorised by this Order but so that no preference be in any case given to any person over any other person using the harbour under the like circumstances and that anything done under this section shall not prejudice the other provisions of this Order.

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35. The Commissioners may demand and recover such reasonable rates or other consideration as they may determine for the use of the works and (so far as the rates specified in the First Schedule to this Order do not extend) for the use of any warehouses sheds buildings yards weighing machines 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 accommodation not otherwise provided for.

36. The harbour master may prevent the removal or sailing from within the limits of the harbour of any vessel in respect of which or of the goods imported or exported therein any rates are payable until evidence has been produced to him of the payment of those rates to the collector (and in the case of a vessel with a take or cargo of fish until the master or owner of the vessel has given in the account of his take or cargo of fish required by this Order).

Harbour master may prevent sailing of vessels.

37. All persons going to or returning from any lifeboat or using any apparatus for saving life and being persons either belonging to the crew of the lifeboat or to the coastguard or being persons for the time being actually employed in saving life or in exercising or using the lifeboat or the apparatus for saving life and all persons brought ashore from any vessel in distress shall at all times have free ingress passage and egress to along and from the harbour.

Exemption of lifeboat crew.

38. For the protection of the commission the following provisions shall unless otherwise agreed in writing between the Commissioners and the commission apply and have effect:—

For protection of Commission.

(1) The rates which the Commissioners may levy and demand under the provisions of this Order in respect of any ships or vessels of the commission using the harbour and loading or unloading at the commission's pier or slipway shall be the rates set out in paragraph (2) of section (A) of Part I of the First Schedule to this Order:

(2) No rates under section (c) of Part I of the said schedule shall be levied or demanded by the Commissioners in respect of passengers or other persons conveyed in such ships or vessels and landed from or embarked at the commission's said pier or slipway.

39.—(1) If it is represented by application in writing to the Minister—

Revision of rates.

(a) by any chamber of commerce or shipping or any representative body of yacht-owners or yachtsmen or of traders or ship-owners or by the commission; or

(b) by any person who in the opinion of the Minister has a substantial interest in the trade of the harbour and is a proper person to make an application; or

(c) by the Commissioners;

that in the circumstances then existing the authorised rates should be revised in whole or in part the Minister if he thinks fit may make an order revising all or any of the authorised rates referred to in the

application and may fix the date as from which such order shall take effect and thenceforth such order shall remain in force until the same expires or is revoked or modified by a further order of the Minister made in pursuance of this subsection.

(2) An application made to the Minister under subsection (1) of this section shall be accompanied by such information and particulars as the Minister may consider relevant certified in such manner as he may require.

(3) Where upon an application under subsection (1) of this section an order has been made or the Minister has decided not to make an order no further application for a revision of any of the rates to which the application related shall be made within twelve months from the date of such order or decision as the case may be.

(4) Before making an order under subsection (1) of this section the Minister shall consult with such bodies or persons as aforesaid as appear to him to be appropriate including the Commissioners where they are not the applicants and for the purpose of ascertaining such bodies or persons may require public notice of the application to be given and where an objection to an application is made by the Commissioners or by any such body or person as aforesaid and is not withdrawn the Minister unless it appears to him that the objection is of a trivial nature shall cause an inquiry to be held in reference to the application.

(5) Subject to the proviso to this subsection the Minister shall not by an order under subsection (1) of this section make any such revision of the authorised rates as in his opinion would so far as can be estimated be likely to result in the annual revenue of the Commissioners being insufficient or more than sufficient to enable the Commissioners with efficient management of the undertaking to make adequate provision for paying all proper expenses of and connected with the working management and maintenance of the undertaking including interest on loan capital (regard being had by him to any capital which the Commissioners may reasonably be expected to expend) making good depreciation providing for any contributions which the Commissioners may reasonably and properly carry to any reserve fund contingency fund or sinking fund and meeting all other costs charges and expenses if any properly chargeable to revenue:

Provided that in any case where the Minister is satisfied that there are special circumstances affecting the undertaking taking into account its financial condition during such period preceding the date on which an application is made under subsection (1) of this section as the Minister considers to be appropriate the Minister may revise the authorised rates in such manner as he thinks just and reasonable with due allowance for such special circumstances notwithstanding that such revision is likely to result in the revenue of the Commissioners being insufficient to enable the Commissioners to make adequate provision for all of the matters referred to in the foregoing provisions of this subsection.

(6) The provisions of section 63 (Inquiries by Minister) of this Order shall apply to inquiries which the Minister may cause to be held under this section.

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(7) The power of the Minister to make an order under subsection (1) of this section shall be exercisable by statutory instrument.

Powers of sale and leasing

40.—(1) The Commissioners may with the previous consent in writing and upon such terms conditions and restrictions as may be approved by the Minister sell the undertaking or any part thereof and the purchaser to the extent authorised by his conveyance shall have and may exercise all or any of the powers conferred upon the Commissioners by this Order or which the Commissioners have or might exercise under this Order and shall be subject to all the liabilities and obligations to which the Commissioners are subject and shall perform all the duties of the Commissioners under this Order.

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

41. The Commissioners may let for hire or lease for any term not exceeding seven years any pavilions rooms shops baths sheds warehouses or other buildings separately from any other part of the undertaking to any company corporation or person upon such terms pecuniary or otherwise and under such restrictions and conditions as they may determine.

Transfer of officers compensation and superannuation

42. In the next three immediately succeeding sections of this Order the expression "officer" unless the context otherwise requires includes a servant.

Meaning of "officer" in certain sections of this Order.

43.—(1) On the appointed day such persons as at the date of the passing of the Act confirming this Order are officers employed whole time by the corporation exclusively in relation to the harbour shall be transferred to and become officers of the Commissioners.

Existing officers.

(2) Every officer so transferred shall hold his office by the same tenure and upon the same terms and conditions as if this Order had not been made and while performing analogous duties to those which he was required to perform immediately before the appointed day shall receive not less salary or remuneration and be entitled to not less superannuation allowance (if any) than the salary remuneration or superannuation allowance to which he would have been entitled if this Order had not been made.

44.—(1) Every existing officer who suffers loss of employment or diminution of emoluments which is attributable to this Order shall be entitled to have his case considered for the payment of compensation by the Commissioners such compensation to be determined in accordance with the provisions of the schedule to the Local Government (Compensation) Regulations 1948 and subject to the provisions of this section this Order shall have effect as though the provisions of those regulations were set out in this Order with any modifications which the Minister of Local Government and Planning may by Order

Compensation to existing officers.

consider it necessary or expedient to make for the purpose of applying the provisions of those regulations to the payment of compensation under this section.

(2) For the purposes of this section and the said regulations the expression "existing officer" means a person who immediately before the passing of the Act confirming this Order devoted the whole of his time and had devoted the whole of his time for a period of not less than eight years previously after attaining the age of eighteen years without a break of more than twelve months at any one time either—

(a) to any of the following employments or to two or more or to any combination of such employments namely:—

(i) employment under the Crown or in the local government service in Great Britain; or

(ii) employment by any authority or body for the purposes of the Crown or of local government service in Great Britain; or

(iii) employment under any officer engaged in any such employment as aforesaid for the purposes of the functions of the employing authority or body; or

(b) partly to any such employment as aforesaid or to two or more or to any combination of such employments and partly to war service as defined by the said regulations undertaken on ceasing to follow any of the employments mentioned in paragraph (a) of this subsection or any combination thereof.

(3) Nothing in this section or in the said regulations shall entitle a person to have his case considered for the payment of compensation unless—

(a) the cause of the claim arises not later than ten years after the passing of the Act confirming this Order;

(b) the claim is made not later than two years after the date on which the cause of claim arises; and

(c) the other conditions prescribed by paragraph (b) of regulation 5 of the said regulations are fulfilled.

Application
of Local
Government
Superannuation
Acts.
1 Edw. 8. &
1 Geo. 6. c. 68.

45.—(1) This Order shall have effect as though the Commissioners were such a joint board as is referred to in Part I of the First Schedule to the Local Government Superannuation Act 1937 and as though the provisions of the Local Government Superannuation Acts 1937 and 1939 in relation to such a joint board were set out in this Order.

(2) Any statutory resolution passed under subsection (2) of section 3 of the said Act of 1937 by the corporation and in force immediately before the appointed day in respect of a servant or part-time officer who becomes on that day a servant or part-time officer of the Commissioners shall continue in force and have effect as if it had been passed by the Commissioners.

(3) In determining whether to exercise their powers under paragraph (i) of the proviso to subsection (2) of section 8 of the said Act of 1937 the Commissioners shall have regard to any probability that the corporation would in the light of their practice

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at the time have exercised their powers under that proviso in the case of the employee concerned had he been in their service on becoming entitled to a superannuation allowance.

Finance

46.—(1) Subject to the provisions of this section the Commissioners may from time to time borrow on mortgage and on the security of the harbour revenue for any purposes of the undertaking and at a rate of interest not exceeding six per centum a sum not exceeding one hundred and fifty thousand pounds. Power to borrow.

(2) All moneys borrowed by the Commissioners under this section shall be repaid within a period of thirty years from the date or dates of borrowing which period shall be the fixed period for the purposes of this Order.

(3) It shall not be lawful to exercise the powers of borrowing conferred by this Order otherwise than in accordance with the provisions of any Order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946. 9 & 10 Geo. 6.
c. 58.

47. The money borrowed under this Order shall be applied only for the purposes of this Order for which capital money may properly be applied and not otherwise. Application of money borrowed.

48. Any person advancing money to the Commissioners shall not be bound to require any further or other evidence of the power of the Commissioners to borrow the money advanced by such person than such as is afforded— Protection of lenders.

(a) by a certificate signed by the clerk to the Commissioners and two of the Commissioners that the Commissioners are not exceeding the powers of borrowing conferred on them by this Order;

(b) by an inspection of the register of mortgages by section 76 of the Commissioners Clauses Act 1847 required to be kept by the undertakers.

49. Capital money received by the Commissioners in respect of a transaction under section 20 (Retention and disposal of land) of this Order shall be applied in such manner as the Minister may approve towards the discharge of any debt incurred under this Order or otherwise for any purpose for which capital money may properly be applied. Proceeds of sale of lands to be treated as capital.

50.—(1) The holders of any security given in respect of money borrowed under this Order may enforce payment of arrears of interest or principal or principal and interest due on their securities by the appointment of a receiver. Appointment of a receiver.

(2) In order to authorise the appointment of a receiver in respect of arrears of interest or principal or principal and interest the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than ten per centum of the total amount of the money then borrowed under this Order and not paid off.

(3) In sections 86 and 87 of the Commissioners Clauses Act 1847 as incorporated with this Order the expressions "mortgage" and "mortgagee" shall respectively include any security for money borrowed under this Order and the holder of any such security.

Annual
statement need
not be printed.

51. It shall not be obligatory on the Commissioners under section 90 of the Commissioners Clauses Act 1847 as incorporated with this Order to cause the statement and accounts therein mentioned to be printed.

Reserve fund.

52. The Commissioners may if they think fit for the purpose of forming and maintaining a reserve fund not exceeding at any time the sum of ten thousand pounds which fund shall be applicable to answer any deficiency at any time happening in the income of the Commissioners or to meet any extraordinary claim or demand in respect of the undertaking or for payment of the cost of renewing any part of the works forming part thereof appropriate and set apart subject to the provisions of this Order as to application of revenue any amount which they think fit in any year out of the revenue received under this Order and shall deposit any such amount in some joint stock bank to be increased by accumulation in the way of compound interest or otherwise or shall invest the same in statutory securities until required for any of the purposes aforesaid.

Application of
harbour
revenue.

53.—(1) The revenue received from rates or otherwise under this Order shall be applicable for the purposes and in the order following and not otherwise:—

- (a) in payment of the costs of and connected with the preparation and making and confirmation of this Order;
- (b) in payment of the expenses properly chargeable to revenue of the maintenance repair renewal and management of the undertaking and all conveniences connected therewith;
- (c) in payment year by year of the interest accruing on moneys borrowed under this Order;
- (d) in payment of the instalments as they become due in discharge of any moneys so borrowed and repayable by instalments and in forming a sinking fund in accordance with this Order for payment of principal moneys borrowed under this Order;
- (e) in making such payments (if any) as the Commissioners think fit into a reserve fund established under the provisions of this Order.

(2) The surplus (if any) after providing for the purposes aforesaid shall be applied for the general purposes of the undertaking.

Mode of
payment off of
money
borrowed.

54. The Commissioners shall pay off all moneys borrowed by them under the powers of this Order either by equal yearly or half-yearly instalments of principal or of principal and interest combined or by means of a sinking fund or partly by one of those methods and partly by another or others of them and the payment of the first instalment or the first payment to the sinking fund shall be made within twelve months or when the money is repayable by half-yearly instalments within six months from the date of borrowing.

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- 55.—(1) The Commissioners may borrow for the purpose of— Power to
reborrow.
- (a) paying off any moneys previously borrowed under this Order by the Commissioners which are intended to be repaid forthwith; or
 - (b) replacing moneys which during the preceding twelve months have been temporarily applied from other moneys of the Commissioners in repaying moneys previously borrowed under this Order and which at the time of such repayment it was intended to replace by borrowed moneys:

Provided that the Commissioners shall not have power to borrow under this section—

- (a) for the purpose of making any payment to a sinking fund or of paying any instalment or making any annual payment which has or may become due in respect of borrowed moneys; or
- (b) for the purpose of replacing any moneys previously borrowed which have been repaid—
 - (i) by instalments or annual payments; or
 - (ii) by means of a sinking fund; or
 - (iii) out of moneys derived from the sale of land; or
 - (iv) out of any capital moneys properly applicable to the purpose of the repayment other than moneys borrowed for that purpose.

(2) Any moneys borrowed under this section shall for the purposes of repayment be deemed to form part of the original loan and shall be repaid within that portion of the fixed period which remains unexpired and the provisions which are for the time being applicable to the original loan shall apply to the moneys borrowed under this section.

56.—(1) If the Commissioners determine to repay by means of a sinking fund any moneys borrowed under this Order the sinking fund shall be formed and maintained either—

- (a) by payment to the fund throughout the fixed period of such equal annual sums as will be sufficient to pay off within that period the moneys for the repayment of which the sinking fund is formed. A sinking fund so formed is hereinafter called a non-accumulating sinking fund; or
- (b) by payment to the fund throughout the fixed period of such equal annual sums as with accumulations at a rate not exceeding such rate as the Minister may approve will be sufficient to pay off within that period the moneys for the repayment of which the sinking fund is formed. A sinking fund so formed is hereinafter called an accumulating sinking fund.

(2) Every sum paid to a sinking fund and in the case of an accumulating sinking fund the interest on the investments of the sinking fund shall unless applied in repayment of the moneys for the repayment of which the sinking fund is formed be immediately invested in statutory securities but the Commissioners may from time to time vary and transpose the investments.

(3) In the case of a non-accumulating sinking fund the interest on the investments of the fund may be applied by the Commissioners towards the equal annual payments to the fund.

(4) The Commissioners may at any time apply the whole or any part of a sinking fund in or towards the discharge of the moneys for the repayment of which the sinking fund was formed:

Provided that in the case of an accumulating sinking fund the Commissioners shall pay into the fund each year and accumulate during the residue of the fixed period a sum equal to the interest which would have been produced by such sinking fund or part thereof so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

(5) If at any time the income of an accumulating sinking fund is not equal to the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the equal annual payments to the fund are based any deficiency shall be made good by the Commissioners.

(6) If at any time the income of an accumulating sinking fund is in excess of the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the equal annual payments to the fund are based any such excess may be applied towards such annual payments.

(7) Any surplus of a sinking fund remaining after the discharge of the whole of the moneys for the repayment of which it was formed shall be applied to such capital purposes as the Commissioners with the consent of the Minister may determine.

(8) Any expenses connected with the formation maintenance investment application or management of or otherwise in relation to any sinking fund under this Order shall be paid by the Commissioners in addition to the payments provided for by this Order.

Adjustments to
sinking fund.

57.—(1) If at any time it appears to the Commissioners that the amount in a sinking fund together with the sums which will be payable thereto in accordance with the provisions of this Order and in the case of an accumulating sinking fund with the accumulations thereon will not be sufficient to repay within the fixed period the moneys for the repayment of which the sinking fund is formed the Commissioners shall either temporarily or permanently make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose and if it appears to the Minister that any such increase is necessary the Commissioners shall increase the payments to such extent as the Minister may direct.

(2) If the Commissioners desire to accelerate the repayment of any moneys borrowed they may with the approval of the Minister increase the amounts payable to the sinking fund.

(3) If the amount in a sinking fund together with the sums which will be payable thereto in accordance with the provisions of this Order and also in the case of an accumulating sinking fund together with the accumulations thereon will in the opinion of the Minister be more than sufficient to repay within the fixed period the moneys for the

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repayment of which the sinking fund is formed the Commissioners may reduce the payment to the sinking fund either temporarily or permanently to such amounts as will in the opinion of the Minister be sufficient to repay within the fixed period the moneys for the repayment of which the sinking fund is formed.

(4) If at any time the amount in a sinking fund together with the accumulations thereon in the case of an accumulating sinking fund will in the opinion of the Minister be sufficient to repay the moneys for the repayment of which the sinking fund is formed within the fixed period the Minister may authorise the Commissioners to suspend the annual payments to the sinking fund until the Minister otherwise directs.

58.—(1) The clerk to the Commissioners shall within two months after the expiration of each financial year transmit to the Minister a return showing the provision made by the Commissioners for the repayment of moneys borrowed by them under the authority of this Order. Return to
Minister.

(2) The return shall show such particulars shall be made up to such date and shall be in such form as the Minister may require shall be certified by the treasurer or other person whose duty it is to keep the accounts of the Commissioners and shall if so required by the Minister be verified by statutory declaration made by that person.

(3) If it appears to the Minister from any return made under this section or otherwise that the Commissioners—

- (a) have failed to pay any instalment or annual payment required to be paid; or
- (b) have failed to appropriate to the discharge of any loan any sum required to be so appropriated; or
- (c) have failed to set apart any sum required for a sinking fund; or
- (d) have applied any portion of a sinking fund to a purpose other than those authorised;

the Minister may by order direct that such sum as is specified in the order not exceeding the amount in respect of which default has been made shall be paid or applied in the manner and by the date set out in the order and the Commissioners shall notify the Minister as soon as the order has been complied with.

(4) An order made under the last preceding subsection may be enforced at the instance of the Minister by mandamus.

(5) If a return required to be made under this section is not made within the time specified in subsection (1) of this section the person in default shall be liable to a penalty not exceeding twenty pounds and notwithstanding the recovery of any such penalty the making of the return may be enforced at the instance of the Minister by mandamus.

59.—(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) Auditor.

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.

(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) No person shall be qualified for appointment as auditor of the accounts of the Commissioners unless he is a member of one or more of the following bodies:—

The Institute of Chartered Accountants in England and Wales;
The Society of Incorporated Accountants and Auditors;
The Society of Accountants in Edinburgh;
The Institute of Accountants and Actuaries in Glasgow;
The Society of Accountants in Aberdeen;
The Association of Certified and Corporate Accountants;
The Institute of Chartered Accountants in Ireland.

(4) 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.

(5) 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.

Annual account
to be sent to
Minister.

25 & 26 Vict.
c. 19.

60.—(1) The Commissioners shall within three months after the date to which their annual accounts and balance sheet are made up send a copy of the same to the Minister and the sixteenth section of the General Pier and Harbour Act 1861 Amendment Act shall apply to and include the Commissioners and any and every such accounts.

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

(3) The accounts of the Commissioners referred to in this section and in section 50 of the Harbours Clauses Act 1847 respectively shall be made up to the end of the thirty-first day of March in each year.

Byelaws

Byelaws.

23 & 24 Geo. 5.
c. 51.

61.—(1) Notwithstanding the provisions of the Harbours Clauses Act 1847 relating to the procedure for the making and confirmation 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 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.

(2) In addition to the powers of making byelaws contained in the Harbours Clauses Act 1847 the Commissioners may subject to the

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provisions of this Order from time to time make vary or repeal such byelaws to take effect within the limits of the harbour for the purpose of regulating the taking on board and landing or discharging of passengers.

(3) The byelaws which may from time to time be made by the Commissioners in exercise of the powers on that behalf conferred on them by section 83 of the Harbours Clauses Act 1847 or by this section may provide for the imposing of a penalty not exceeding five pounds for the breach or non-observance of any of the byelaws.

62. The Commissioners may appoint officers for securing the observance of the byelaws and regulations made by the Commissioners under this Order in respect of the harbour.

Appointment of officers to enforce byelaws and regulations.

Inquiries

63. 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 this Order and 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.

Inquiries by Minister.

Life-saving apparatus

64.—(1) The Commissioners shall whenever required by the Minister provide at their own expense within the period specified by and to the satisfaction of the Minister a site in or near the harbour and build on that site a house or other proper accommodation for a lifeboat rocket apparatus and other life-saving apparatus.

Provision for life-saving apparatus.

(2) If the Commissioners fail to comply with this section they shall be liable to a penalty not exceeding ten pounds for every month during which the failure continues.

65. The officers of the coastguard and all other persons for the time being actually employed in connection with the lifeboat or the apparatus for saving life may either permanently or temporarily without payment attach or cause to be attached to any part of the harbour spars and other apparatus for saving life and may also either in course of using or of exercising the apparatus for saving life fire rockets over the harbour.

Life-saving apparatus may be attached to harbour.

66. The Commissioners shall at all times keep at convenient places on the harbour and in obedience to any requirements which may be made by the Minister lifebuoys and lifelines in good order and fit and ready for use.

Lifebuoys to be kept.

Wrecks

67.—(1) Whenever any vessel is sunk stranded or abandoned in any part of the harbour or in or near any approach thereto the Commissioners may if they think fit cause the vessel or any part thereof to be raised removed blown up or destroyed.

Removal of sunk stranded or abandoned vessels.

(2) The Commissioners may cause any such vessel and the furniture and tackle and apparel thereof or any part thereof respectively which shall be raised or salvaged and also all or any part of the cargo goods chattels and effects which may be raised or salvaged from any such vessel to be sold in any such manner as they may think fit and out of the proceeds of sale may reimburse themselves for the expenses incurred by them under this section and also for any expenses incurred by them in marking buoying watching lighting or otherwise controlling the vessel and shall hold the surplus (if any) of the proceeds of the sale in trust for the persons entitled thereto:

Provided that the Commissioners shall before selling any such cargo goods chattels or effects as aforesaid pay all duties of customs or excise which shall be payable in respect of the cargo goods chattels or effects to be sold and they may retain the amount of the duties of customs or excise so paid out of the proceeds arising from the sale of such cargo goods chattels or effects.

(3) If the proceeds of the sale are insufficient to reimburse the Commissioners for the aforesaid expenses and duties of customs or excise the Commissioners may recover the deficiency or in case of an appeal under subsection (4) of this section such sum as is awarded by the arbitrator to be payable in respect of the deficiency from the owner of any such vessel either summarily as a civil debt where the amount recoverable does not exceed twenty pounds or as a debt in any court of competent jurisdiction.

(4) If on demand being made under this section for payment of any deficiency the owner of the vessel is dissatisfied with the amount demanded he may within fourteen days after the receipt of the demand appeal to the Minister who shall appoint an arbitrator to determine and award whether any and if so what sum is payable in respect of the deficiency and the award of the arbitrator appointed by the Minister that no sum is payable or as to the sum payable as the case may be shall be conclusive and binding on both parties. The costs of the appeal and the award shall be in the absolute discretion of the arbitrator and he shall award and order how those costs are to be borne and paid and any costs so awarded and ordered to be paid by either party may be recovered by the other party in the same manner as the sum payable in respect of the deficiency is recoverable under subsection (3) of this section.

(5) The Commissioners shall (except in any case which in their opinion is a case of emergency) before raising removing blowing up or destroying any vessel under the provisions of this section give to the owner of the vessel twenty-four hours' notice of their intention so to do and if within twelve hours after the expiration of such notice the owner gives to the Commissioners notice in writing of his intention himself to raise and remove the vessel he shall be at liberty to do so in lieu of the Commissioners:

Provided that if the owner gives any such notice as last aforesaid—

- (a) he shall in raising or removing the vessel comply with any directions which may from time to time be given to him by or on behalf of the Commissioners for the purpose of preventing interference with navigation; and

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(b) he shall forthwith after giving such notice commence and shall with all diligent dispatch proceed with and complete the raising or removal of the vessel;

and if such raising or removal be not completed within seven days after the giving of such notice by the owner such notice shall be null and void and the Commissioners shall be at liberty to cause the vessel to be raised removed blown up or destroyed in accordance with the provisions of this section as if the owner had not given such notice.

(6) The Commissioners shall (except in any case which in their opinion is a case of emergency or when required by the owner to sell) before selling any vessel or any part thereof or any part of the cargo goods chattels and effects thereof under the provisions of this section give to the owner seven days' notice of their intention so to do.

(7) Any notice given by the Commissioners pursuant to subsection (5) or subsection (6) of this section shall be given by delivering the same to the owner or by posting a prepaid letter addressed to the owner at the place in the United Kingdom where he carries on business or at his last known place of abode in the United Kingdom or if the owner or his place of business or abode is not known to the Commissioners then by exhibiting such notice at the principal office of the Commissioners for twenty-four hours in the case of a notice given under the said subsection (5) or for seven days in the case of a notice given under the said subsection (6).

(8) In this and the following section the expression—

“owner” in relation to any vessel sunk stranded or abandoned as aforesaid means the owner of that vessel at the time of the giving of the notice or notices by the Commissioners in accordance with subsection (7) of this section or if there was then no owner of the vessel the owner of the vessel at the time of the sinking stranding or abandonment thereof;

“vessel” includes a seaplane and other aircraft.

(9) The powers conferred on the Commissioners by this section shall be in addition to and not in derogation of any other powers exercisable by them for or with respect to the removal of wrecks.

(10) Except for the purpose of removing any obstruction to the harbour nothing in this section shall entitle the Commissioners to remove any wreck (as defined in section 510 of the Merchant Shipping Act 1894) to the prejudice or in derogation of the rights with respect to such wreck of the receiver of wreck under the provisions of Part IX of the said Merchant Shipping Act and if the Commissioners shall for any such purpose as aforesaid remove any such wreck they shall (without prejudice to the rights of sale conferred upon them by the foregoing provisions of this section) hold and dispose of the same or any such surplus of the proceeds of sale thereof as is referred to in subsection (2) of this section in accordance with such directions (if any) as may be given to them by the said receiver.

(11) For the removal of doubt it is expressly provided that nothing in this section shall apply to any vessel belonging to His Majesty or held by any person on behalf of or for the benefit of the Crown nor

shall any of the powers conferred by this section be exercised if by such exercise the Crown would become liable directly or indirectly otherwise than as an insurer or reinsurer under a contract of insurance or reinsurance for any expenses incurred by the Commissioners except where such consent is given as is provided for in section 68 (As to vessels in which the Crown have an interest) of this Order and the vessel was not such a vessel as aforesaid at any such time as is mentioned in subsection (8) of this section.

As to vessels
in which the
Crown have an
interest.

68.—(1) The Commissioners shall before taking possession of raising removing blowing up or destroying any vessel sunk stranded or abandoned under the powers conferred upon them by this Order or by any other enactment give to the Admiralty and to the Minister notice in writing of their intention so to do and if within fourteen days after the receipt of such notice the Admiralty or the Minister gives to the Commissioners—

- (a) a certificate that the vessel was sunk stranded or abandoned by a person acting on behalf of His Majesty or otherwise by an officer or servant of the Crown acting in the course of his duty as such and that it is not in the national interest that the Commissioners should take possession of the vessel or that the vessel should be raised removed or blown up or destroyed; or
- (b) a notice that the exercise by the Commissioners of the rights of recovery conferred by subsection (2) of section 67 (Removal of sunk stranded or abandoned vessels) of this Order would render the Crown liable directly or indirectly otherwise than as an insurer or reinsurer under a contract of insurance or reinsurance for all or a substantial proportion of the expense incurred by the Commissioners;

the Commissioners shall not without the consent in writing of the authority by whom the certificate was issued or the notice given take possession of raise remove blow up or destroy such vessel:

Provided that in any case which in their opinion is a case of emergency the Commissioners may take possession of raise remove blow up or destroy any vessel without giving notice of their intention so to do to the Admiralty or to the Minister and in that event the Commissioners shall not be entitled to recover from any person the expenses incurred by them in so doing if the effect of such recovery would be to render the Crown so liable.

(2) If the Commissioners shall mark light watch buoy control or give warning to shipping of the presence of any vessel in respect of which the Admiralty or the Minister have refused their consent under subsection (1) of this section the Commissioners shall not be entitled to recover the expenses of so doing from the owner of the vessel.

Lights

Permanent
lights on works.

69.—(1) After the completion or the permanent discontinuance or abandonment of the works the Commissioners shall at the outer extremity of those works below high-water mark of ordinary spring tides exhibit and keep burning every night from sunset to sunrise

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such lights (if any) and take such other steps for the prevention of danger to navigation as the Corporation of Trinity House of Deptford Strond shall from time to time direct.

(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 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.

70.—(1) In case of injury to or destruction or decay of the works or any part thereof so far as the same shall be constructed on under or over any tidal waters or tidal lands below high-water mark of ordinary spring tides 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 shall 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.

Provision
against danger
to navigation.

(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.

Miscellaneous

71. The Commissioners and the corporation may enter into agreements for the use by either party on such terms as may be agreed of any lands buildings or property of the other party.

Agreements
with
Corporation.

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

Cables pipes
or wires under
or across tidal
waters.

73. The Commissioners shall have the appointment of meters and weighers within the limits of the harbour.

Meters and
weighers.

74.—(1) Save as otherwise expressly provided by any enactment from time to time relating to the Commissioners all offences against any such enactment and all penalties and forfeitures imposed or recoverable thereunder or under any byelaw made thereunder or by virtue thereof may be prosecuted and recovered in a summary manner.

Recovery of
penalties etc.

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

75. Officers of the Ministry of Transport British sea-fishery officers and other fishery officers and police officers acting in the execution of their duty shall at all times have free ingress passage and egress to along and from the harbour without payment.

Officers exempt
from rates.

Local lighthouse authority. 76. The Commissioners shall within the limits of the harbour be a local lighthouse authority for the purposes of the Merchant Shipping Act 1894.

Crown rights. 77. 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 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 without the consent in writing of the Commissioners of Crown Lands on behalf of His Majesty first had and obtained for that purpose.

Saving for town and country planning. 78. This Order shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning Act 1947 for the purposes of subsection (4) of section 13 and subsection (1) of section 118 of that Act.
10 & 11 Geo. 6.
c. 51.

Costs of Order. 79. All costs charges and expenses of and incident to the preparing and obtaining of this Order and otherwise incurred in reference thereto shall be paid by the Commissioners.

FIRST SCHEDULE

PART I

SECTION (A)

RATES ON VESSELS (OTHER THAN FISHING VESSELS AND YACHTS) WITHIN THE RATING LIMITS

(1) For every ship or vessel which shall load or unload the several rates following (viz.):—

Under 100 tons	...	...	...	2d. per ton register tonnage.
Of 100 tons but not exceeding 150 tons	...	...	...	3d. per ton register tonnage.
150 tons but not exceeding 250 tons	...	...	...	4d. per ton register tonnage.
Upwards of 250 tons	...	...	...	6d. per ton register tonnage.

(2) For every ship or vessel which shall enter the harbour and shall neither load nor unload therein (except windbound vessels vessels entering the harbour for the purpose of repairs only and steam tugs entering for coaling only) the rates following (viz.):—

Under 100 tons	...	...	...	2d. per ton register tonnage.
Of and over 100 tons	...	...	...	3d. per ton register tonnage.

(3) For every ship or vessel which shall enter the harbour windbound or for the purpose of repairs only and for every steam tug that shall enter the harbour for the purpose of coaling only ½d. per ton register tonnage.

1ST SCH.
—cont.

SECTION (B)

RATES FOR TUGS FOR TOWING PURPOSES

	s.	d.
For every tug of or under 20 tons register for each entry ...	5	0
For every tug over 20 tons register for each entry for every ton register		4

SECTION (C)

PASSENGERS OTHER THAN YACHTSMEN

	d.
For every passenger or other person (not being a member of the crew) who shall use the harbour for the purpose of landing from or embarking on board of any vessel	2

SECTION (D)

ANNUAL RATES FOR YACHTS VESSELS AND OTHER CRAFT LYING IN THE HARBOUR (OTHER THAN CRAFT BELONGING TO VISITORS FOR WHICH A CHARGE WILL BE MADE UNDER SECTION (E))

	Mooring fees			Berth fees		
	£	s.	d.	£	s.	d.
Up to 14 feet length over all	3	0	0	15	0	0
Over 14 feet and up to 16 feet length over all ...	3	7	6			
Over 16 feet and up to 22 feet length over all ...	6	7	6			
Over 22 feet and up to 25 feet length over all ...	8	5	0	1	10	0
Over 25 feet and up to 30 feet length over all ...	11	5	0			
Over 30 feet and up to 35 feet length over all ...	14	5	0			
Over 35 feet and up to 40 feet length over all ...	17	12	6	2	5	0
Over 40 feet and up to 45 feet length over all ...	20	12	6			
Over 40 feet and up to 50 feet length over all ...	24	15	0	4	10	0

SECTION (E)

RATES FOR YACHTS VESSELS AND OTHER CRAFT BELONGING TO VISITORS WHICH USE THE MOORING FACILITIES PROVIDED BY THE COMMISSIONERS

- (1) For periods of one month or less—
- | | s. | d. |
|--|----|----|
| Up to 25 feet length over all per day | 1 | 6 |
| Over 25 feet and up to 50 feet length over all per day ... | 3 | 0 |
| Over 50 feet length over all per day | 6 | 0 |
- (2) For each day in excess of one month—
Twice the above rates.

1ST SCH.
—cont.

PART II

RATES ON GOODS SHIPPED OR UNSHIPED AT THE TOWN QUAY OR OTHER QUAY OR WORKS BELONGING TO THE COMMISSIONERS OR TRANSHIPPED IN ANY PART OF THE HARBOUR

	s.	d.
Asphalt per ton	9	
Bricks per 1,000	1	0
Cement per ton	6	
Coal per ton	3	
Corn wheat malt etc. per ton	6	
Iron lead copper or other metals per ton	2	0
Mineral waters per ton	1	6
Oil petroleum per 40 gallons	3	
Sand chalk shingle or gravel per ton	3	
Tar or pitch per cwt.	2	
Timber per ton	5	
All other commodities not enumerated above per cwt. ...	2	

The Commissioners may demand for goods remaining on the quay for a longer time than 48 hours threepence per ton each day during which the goods shall remain after the first 48 hours.

PART III

RATE FOR SUPPLYING WATER

	s.	d.
For every 25 gallons or part of 25 gallons of drinking water supplied to any vessel	3	

SECOND SCHEDULE

AN AGREEMENT made the twenty-second day of March nineteen hundred and fifty-one Between the MAYOR ALDERMEN AND BURGESSES OF THE BOROUGH OF LYMINGTON (hereinafter referred to as "the Corporation") of the first part the BRITISH TRANSPORT COMMISSION (hereinafter referred to as "the Commission") of the second part and the RAILWAY EXECUTIVE (hereinafter referred to as "the Executive") of the third part.

Whereas—

(1) By the Lymington River and Harbour Order 1913 (hereinafter referred to as "the Order of 1913") confirmed by the Pier and Harbour Orders Confirmation (No. 1) Act 1913 powers were conferred upon the Corporation with reference to the maintenance management and improvement of the Lymington River and Harbour and by that Order the Corporation were authorised (inter alia) to deepen dredge scour and excavate the said harbour and the approaches thereto and to demand receive and recover for the use of the said harbour and the

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conveniences connected therewith and in respect of vessels boats persons goods animals fish and things any rates not exceeding those specified in the schedule to that Order:

2ND SCH.
—cont.

(2) The Executive operate a service of vessels (hereinafter referred to as "the railway service") between Lymington and Yarmouth in the Isle of Wight:

(3) The Corporation have made application to the Minister of Transport in the year nineteen hundred and fifty for a Provisional Order (hereinafter referred to as "the intended Order") to incorporate Commissioners of the river and harbour of Lymington to transfer to them the undertaking known as "the Lymington River and Harbour" and to authorise them (inter alia) to maintain manage and improve the said river and harbour to deepen dredge scour and excavate any portion of the said harbour and the approaches thereto and to levy demand and recover rates for the use of the said harbour in respect of vessels persons and goods.

(4) It has been agreed that this agreement should apply with the necessary modifications as between the Executive and the Commissioners proposed to be incorporated as aforesaid and that provision should be made accordingly in the said Provisional Order:

Now therefore this agreement witnesseth and it is hereby agreed between the parties as follows:—

1. During the continuance of this agreement the Corporation shall not levy demand or recover under the Order of 1913 any rates in respect of passengers landing from or embarking upon any vessel employed in the railway service or in respect of any goods shipped unshipped or transhipped on or from any such vessel.

2. (a) In lieu of paying rates under the Order of 1913 on vessels employed in the railway service the Executive shall as from the thirtieth day of June nineteen hundred and fifty pay to the Corporation an annual sum of one thousand two hundred pounds in commutation of such rates and the railway service may be diverted from Yarmouth to any other port or ports in the Isle of Wight without the Executive being liable to pay to the Corporation a higher annual sum than the said one thousand two hundred pounds in commutation of such rates.

(b) The said commutation shall be paid to the Corporation by equal half-yearly payments. The first of such payments shall be made on the date of the execution of this agreement and the subsequent payments shall be made on the first day of January and the first day of July in each year during the continuance of this agreement:

Provided that if this agreement is terminated at any time other than the thirtieth day of June or the thirty-first day of December in any year the Executive shall pay to the Corporation a sum calculated at the rate of one thousand two hundred pounds a year from the date up to which the last half-yearly payment was due to the date of such termination.

3. Subject to the provisions of the Order of 1913 the Executive may deepen dredge scour and excavate so much of the Lymington

2ND SCH.
—cont.

river lying within the limits of the harbour as defined in the Order of 1913 as may be necessary for the purposes of the railway service:

Provided that before commencing to deepen dredge scour or excavate such portion of the Lymington river as aforesaid the Executive shall submit to the Corporation for their approval details of their proposals in regard thereto and shall not carry out the same except in accordance with such details as may be approved by the Corporation but such approval shall not be unreasonably withheld and any question as to whether such approval is or is not unreasonably withheld shall be determined by arbitration.

4. The Commission shall refrain from all opposition to the intended Order and to any Bill which may be introduced into Parliament to confirm the same.

5. This agreement shall continue in force during such time as the Executive continue the railway service:

Provided that the Corporation or the Executive may at any time after the thirtieth day of June nineteen hundred and fifty-five by not less than three months' notice in writing given to the other of them require a revision of this agreement in such manner as may be equitable having regard to any changes in circumstances which may have taken place between the date of this agreement and the date of such notice. Such revision shall be such as may be agreed between the Executive and the Corporation or in default of agreement determined on the application of either the Executive or the Corporation by an arbitrator to be appointed by the President of the Law Society and any such revision shall take effect as from the expiration of the said notice requiring a revision.

6. Nothing in this agreement shall be construed as imposing on the Commission or the Executive an obligation to continue the railway service and in the event of its discontinuance this agreement shall be determined.

7. This agreement shall be scheduled to the intended Order. If any material alteration which is not acceptable to either the Corporation or the Executive is made in this agreement by the Minister of Transport or by Parliament it shall be competent for that party to withdraw from this agreement on giving not less than six months' notice in writing to the other in which case unless otherwise agreed between the Corporation and the Executive this agreement shall cease and terminate on the expiration of the said notice.

8. Any difference arising under or out of this agreement (except clause 5 thereof) between the Corporation and the Commission or the Executive as the case may be shall be referred to and determined by an arbitrator to be agreed upon between the parties concerned or in default of agreement to be appointed by the President of the Institution of Civil Engineers on the application of either of the parties concerned after notice in writing to the other and subject as aforesaid the provisions of the Arbitration Act 1950 shall apply to such reference.

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9. The costs and expenses of and incidental to the preparation execution and stamping of this agreement shall be borne and paid by the Executive.

2ND SCH.
—cont.

In witness whereof the Corporation the Commission and the Executive have caused their respective common seals to be hereunto affixed the day and year first above written.

THE COMMON SEAL of the mayor aldermen and burgesses of the borough of Lymington was hereto affixed in the presence of

STUART DAVID

Mayor

F. J. BEECHING

Town Clerk

THE COMMON SEAL of the British Transport Commission was hereto affixed in the presence of

RUSHOLME

Member

S. B. TAYLOR

Deputy Secretary

THE COMMON SEAL of the Railway Executive was hereto affixed in the presence of

D. G. WATSON

Member

E. G. MARSDEN

Secretary

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ARRANGEMENT OF SECTIONS

Section

1. Confirmation of Order in Schedule.
2. Short title.

SCHEDULE

LYMINGTON RIVER AND HARBOUR

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6. Undertakers.

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Section

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Part II.

Part III.

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