



Whitehaven Harbour Act 1970

CHAPTER lii

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ELIZABETH II



1970 CHAPTER lii

An Act to authorise the Whitehaven Harbour Commissioners to construct further works; and for other purposes. [23rd July 1970]

WHEREAS by the Whitehaven Town and Harbour (Incorporation) Act 1885, trustees of the town and harbour of Whitehaven (hereinafter called "the trustees") were incorporated with power to carry on and improve the harbour undertaking:

And whereas by royal charter dated 11th July, 1894, the town and harbour of Whitehaven within the limits specified in the said charter was created a municipal borough:

And whereas by a scheme prepared in connection with the grant of the said royal charter and duly confirmed on 27th June, 1894, the trustees were abolished and the Whitehaven Harbour Commissioners (hereinafter referred to as "the Commissioners") were established as a body corporate separate from the corporation and all the property that had previously been vested in the trustees for harbour purposes was transferred to the Commissioners:

And whereas in order to meet the requirements of the trade of the harbour of Whitehaven it is expedient that the Commissioners be authorised to acquire the lands and to construct the works in this Act described:

And whereas it is expedient that the other provisions of this Act be enacted:

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

And whereas plans and sections showing the situations, lines and levels of the works authorised by this Act and the lands which may be taken or used compulsorily for the purposes thereof, and a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of those lands, and describing the same, were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons, and with the clerk of the county council of the administrative county of Cumberland, which plans, sections and book of reference are in this Act respectively referred to as the deposited plans, the deposited sections, and the deposited book of reference:

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

PART I

PRELIMINARY

Short and
collective
titles.

1.—(1) This Act may be cited as the Whitehaven Harbour Act 1970.

(2) The Whitehaven Town and Harbour Acts and Order 1708 to 1962 and this Act may be cited together as the Whitehaven Town and Harbour Acts and Order 1708 to 1970.

Application
of Part I
of Compulsory
Purchase
Act 1965.
1965 c. 56.
1946 c. 49.

2.—(1) Part I of the Compulsory Purchase Act 1965 (except section 4, section 24 (5), section 27 and paragraph 3 (3) of Schedule 3 thereof), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies to a compulsory purchase of which Schedule I to the Acquisition of Land (Authorisation Procedure) Act 1946 applies and as if this Act were a compulsory purchase order under the said Act of 1946.

(2) (a) In section 11 (1) of the Compulsory Purchase Act 1965 (which empowers the acquiring authority to enter on and take possession of land the subject of a notice to treat after giving not less than fourteen days' notice) as so applied, for the words "fourteen days" there shall be substituted the words "three months".

PART I
—cont.

1965 c. 56.

(b) In section 11 (3) of the said Act (which permits the acquiring authority to enter land subject to compulsory purchase for the purpose of survey after giving not less than three nor more than fourteen days' notice) for the words "not less than three nor more than fourteen days' notice" there shall be substituted the words "not less than seven days' notice in the case of the first entry and not less than twenty-four hours' notice in the case of a subsequent entry".

(3) The Lands Clauses Consolidation Act 1845 shall not apply to the acquisition of land under this Act.

3.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"the Act of 1965" means the Compulsory Purchase Act 1965;

"the authorised works" means the works authorised by section 11 (Power to construct works) of this Act;

"the Commissioners" means the Whitehaven Harbour Commissioners;

"the county" means the administrative county of Cumberland;

"the county council" means the council of the county;

"enactment" means any Act, whether general, local or personal and any order or other instrument made thereunder and any provisions in any such Act, order or instrument, and includes this Act;

"the existing Acts" means the Whitehaven Town and Harbour Acts and Order 1708 to 1962;

"the harbour" means the harbour of Whitehaven;

"the level of high water" means the level of mean high-water springs;

"the limits of deviation" means the limits of deviation shown on the deposited plans;

PART I
—cont.

“ the Minister ” means the Minister of Transport;

“ reconstruction ” in relation to a work authorised by this Act includes constructing the work on a new line or in a new position; and “ reconstructed ” and “ reconstructing ” shall be construed accordingly;

“ tidal work ” means so much of any work authorised by this Act as is on, under or over tidal waters or tidal lands below the level of high water;

“ the tribunal ” means the Lands Tribunal;

“ the Trinity House ” means the Corporation of Trinity House of Deptford Strond;

“ the undertaking ” means the undertaking for the time being of the Commissioners.

(2) (a) In the existing Acts and the Acts incorporated therewith, and in this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

1968 c. 59. “ hovercraft ” has the same meaning as in section 4 of the Hovercraft Act 1968;

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

“ seaplane ” includes a flying boat and any other aircraft designed to manoeuvre on the water but does not include a hovercraft or hydrofoil vessel;

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

(b) Paragraph (a) of subsection (2) of section 3 (Interpretation) of the Whitehaven Harbour Order 1954 is hereby repealed.

(3) This Act is to be read as if the words “ or thereabouts ” were inserted after each distance mentioned in section 11 (Power to construct works) of this Act.

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

PART II

LANDS

4. Subject to the provisions of this Act, the Commissioners Lands. may enter upon, take and use such parts of the bed, banks and shores of the harbour and such other lands in the county delineated on the deposited plans and described in the deposited book of reference as may be required in connection with or for the purposes of the works authorised by this Act or other the purposes authorised by this Act, or for the inclosing, reclamation or use of land in accordance with the provisions of this Act.

5.—(1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Commissioners, after giving not less than ten days' notice to the owner, lessee and occupier of the land in question, may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof. Correction of errors in deposited plans and book of reference.

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

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments, and a copy thereof in the Private Bill Office, House of Commons, and with the clerk of the county and with every clerk of a local authority with whom a copy of the deposited plans, or so much thereof as includes the land to which the certificate relates, has been deposited in accordance with the standing orders of the Houses of Parliament or who has the custody of any such copy so deposited; and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate, and it shall be lawful for the Commissioners to take the land and execute the works in accordance with the certificate.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

6.—(1) The Commissioners may, instead of acquiring any greater interest in any land that they are authorised to acquire compulsorily under this Act, acquire compulsorily only such easements and rights over or in the land as they may require for the purpose of constructing, using, maintaining or renewing the works authorised by this Act or for the purpose of obtaining access to the said works or to the lands acquired under this Act or for the purpose of doing any other thing necessary in connection with the said works or lands. Power to acquire easements only.

PART II
—cont.

(2) Accordingly the Commissioners may give notice to treat in respect of any such easement or right describing the nature thereof; and references to land in the Act of 1965, as applied by this Act, shall include such easements and rights as aforesaid.

(3) Where the Commissioners have acquired an easement or right only over or in any land under this section—

(a) they shall not be required or, except by agreement or during the execution of the works, entitled to fence off or sever that land from the adjoining land;

(b) the owner or occupier of the land for the time being shall subject to the easement or right have the same right to use the land as if this section had not been enacted.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for an easement or right is given under this section requires the Commissioners to acquire his entire interest in the land, the Commissioners shall not be entitled under this section to acquire the easement or right unless the tribunal determines that the easement or right can be granted without material detriment to such interest in the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house; and, if the tribunal does not so determine, the Commissioners may acquire the entire interest of the owner in the land compulsorily notwithstanding that the three years mentioned in section 4 of the Act of 1965, as applied by this Act, has expired but not later than one year after the determination of the tribunal:

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

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

Disregard of recent improvements and interests.

7. In determining any question of disputed compensation under the Act of 1965, as applied by this Act, the tribunal shall not take into account—

(a) any works executed, improvement or alteration made or building erected after 5th December, 1969; or

(b) any interest in land created after the said date;

which, in the opinion of the tribunal, was not reasonably necessary and was executed, made, erected or created with a view to obtaining or increasing the compensation or purchase money.

Extinction of rights affecting land acquired.

8.—(1) Subject to the provisions of this Act all rights over any land which is subject to compulsory purchase under this Act shall, as from the acquisition of the land, whether compulsorily or by agreement, be extinguished.

(2) Any person who suffers loss by the extinguishment of any private right under this section shall be entitled to be paid by the Commissioners compensation to be determined in case of dispute under and in accordance with the Land Compensation Act 1961. 1961 c. 33.

PART II
—cont.

9.—(1) Any person empowered by the Act of 1965, as applied by this Act, to sell and convey or release lands may, if he thinks fit, subject to the provisions of the Act of 1965, grant to the Commissioners any easement or right required for the purposes of this Act over or in the lands, not being an easement or right of water in which some person other than the grantor has an interest.

Grant of easements by persons under disability.

(2) The provisions of the Act of 1965 with respect to lands and rentcharges so far as they are applicable shall extend and apply to any such grant and to any such easement or right as aforesaid.

PART III

WORKS

10. Subject to the provisions of this Act, the Commissioners may remove Old New Quay and that part of North Pier, Old Quay, Sugar Tongue and the slipway shown on the deposited plans and marked thereon to be demolished.

Power to remove works.

11.—(1) Subject to the provisions of this Act, the Commissioners may construct and place in the harbour and on the bed, banks and shore thereof and on other lands in the situations and lines within the limits of deviation and according to the levels shown on the deposited sections, the works hereinafter described, that is to say:—

Power to construct works.

Work No. 1 An extension to the West Pier 130 feet wide commencing at the northern end of the West Pier, extending in a northerly direction for a distance of 300 feet and terminating at a point 640 feet from the north end of the North Pier.

Work No. 2 A quay 300 feet wide commencing at a point on Custom House Quay 60 feet from the south end of Sugar Tongue, extending in a north-westerly direction for a distance of 750 feet and terminating at a point 150 feet from the west end of Old Quay.

Work No. 3 A breakwater 30 feet wide commencing at a point on the east side of Lime Tongue 20 feet from the northernmost end thereof, extending for a distance of 280 feet in a north-easterly direction and thence for a distance of 120 feet in a north-north-easterly direction and terminating at a point 400 feet from the point of commencement.

PART III
—cont.

Work No. 4 A jetty 60 feet wide commencing at a point on the east side of Lime Tongue 150 feet from the northernmost end thereof, extending in a north-easterly direction for a distance of 330 feet and terminating at a point 190 feet south-west of the termination of Work No. 3.

Work No. 5 A jetty 60 feet wide commencing at a point on the east side of Lime Tongue 325 feet from the northernmost end thereof, extending in a north-easterly direction for a distance of 330 feet and terminating at a point 350 feet south-west of the termination of Work No. 3.

Work No. 6 A retaining wall commencing at a point 450 feet from the northern end of Lime Tongue, extending in a north-easterly direction for a distance of 470 feet and terminating at a point 480 feet from the termination of Work No. 3.

Work No. 7 A roll-on/roll-off terminal commencing at a point 50 feet west of the south end of Lime Tongue consisting of a ramp with all necessary supports together with such strengthening of Lime Tongue as is necessary to permit dredging and terminating 100 feet from the north end of Lime Tongue.

(2) The Commissioners may by means of Work No. 6 authorised by subsection (1) of this section inclose and reclaim the foreshore and bed of the harbour included within the limits of deviation.

Power to
make
subsidiary
works.

12.—(1) Subject to the provisions of this Act, within the limits of deviation the Commissioners may from time to time in connection with or for the purposes of construction, maintenance or use of the works authorised by this Act or any of them, or other the purposes of this Act, or the inclosing, reclaiming or use of the bed, banks or shore of the harbour—

(a) execute, place and keep, either permanently or temporarily, all such caissons, cofferdams, piles, piers, quays, loading ramps for vehicles, abutments, embankments, cuts, channels, approaches, ways, access works, pumping works, wharves, walls, fences, drains, sewers, tunnels, fenders, mooring posts, bollards, booms, dolphins, pontoons, stagings, warehouses, offices, workshops, sheds, lifts, cranes, winches, capstans, gantries, conveyors, staithes, tips, railways, junctions, sidings, turntables, weighbridges, stairs, subways, buildings, towers, tanks, substations and other works and conveniences as they may find necessary or expedient;

(b) temporarily or permanently use, strengthen, widen, enlarge, improve, alter, divert, extend, substitute,

discontinue the use of or otherwise interfere with sewers, drains, submarine cables, telegraphic, telephonic and electric lines, wires and cables, gas and water pipes, pipelines and any works or apparatus ancillary to the same or to any of them (all of which are hereinafter in this section referred to as “service works”), streets, roads, jetties and slipways, lamps, lamp standards and all other matters and things, providing where possible a proper substitute before interrupting the passage of sewage, drainage, electricity, gas, water, oil or other substances in or through any service works.

(2) Any service works rendered unnecessary by the substitution of other service works therefor shall vest in the Commissioners and the substituted service works shall be under the same jurisdiction, care, management and direction as the existing service works for which they may be so substituted.

(3) In the exercise of the powers conferred by this section the Commissioners shall cause as little detriment and inconvenience as the circumstances permit to any person and shall make reasonable compensation for any damage caused by the exercise of such powers.

(4) (a) Not less than twenty-eight days before executing any works under paragraph (b) of subsection (1) of this section affecting any service works the Commissioners shall submit to the appropriate authority sufficient plans, sections and particulars of the proposed works for their reasonable approval.

(b) The Commissioners shall execute such works in accordance with such plans, sections and particulars as may be submitted to and approved by the appropriate authority or, if such approval be refused, as may be settled by arbitration and all such works shall be executed to the reasonable satisfaction of the appropriate authority and the Commissioners shall at all times afford to the representative of the appropriate authority access for the purpose of inspecting such works.

(c) Any dispute or difference which may arise between the appropriate authority and the Commissioners under this subsection shall be settled by arbitration.

(d) In this subsection “the appropriate authority” means in relation to any service works the authority or person to whom it belongs or by whom it is repairable.

(5) Any question of disputed compensation payable under the provisions of this section shall be determined under and in accordance with the Land Compensation Act 1961.

PART III
—cont.

(6) Notwithstanding anything in this section the Commissioners shall not—

(a) use any telegraphic line belonging to or used by the Post Office;

(b) alter any such line except in accordance with and subject to the provisions of paragraphs (1) to (8) of section 7 of the Telegraph Act 1878.

1878 c. 76.

(7) Any electrical works or equipment constructed, erected, laid down, maintained, worked or used in pursuance of the powers conferred by this section shall be so constructed, erected or laid down and so maintained, worked and used as to prevent interference with any telegraphic line belonging to or used by the Post Office or with telecommunication by means of any such line or with any apparatus of the Central Electricity Generating Board or the North Western Electricity Board or with any purpose for which such apparatus is used.

(8) Nothing in this section shall authorise the doing of anything constituting an infringement of the exclusive privilege with respect to telecommunication conferred on the Post Office by subsection (1) of section 24 of the Post Office Act 1969.

1969 c. 48.

(9) Notwithstanding anything in this section, the Commissioners shall not install or use apparatus for wireless telegraphy in contravention of the provisions of the Wireless Telegraphy Act 1949.

1949 c. 54.

(10) In subsection (6) of this section, the expression “alter” has the same meaning as in the Telegraph Act 1878, in subsections (6) and (7) the expression “telegraphic line” has the same meaning as in that Act, and in subsection (9) the expression “apparatus for wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949.

Power to deviate.

13. In the construction of the authorised works, the Commissioners may deviate laterally to any extent within the limits of deviation shown on the deposited plans and may deviate vertically from the levels of those works shown on the deposited sections to any extent downwards, and to any extent, not exceeding 5 feet, upwards.

Maintenance, alteration and extension of works.

14. Subject to the provisions of this Act, the Commissioners may from time to time maintain, renew, enlarge, alter and reconstruct temporarily or permanently the works authorised by this Act or any part thereof:

Provided that nothing in this section shall authorise the Commissioners to deviate laterally beyond the limits of deviation.

15. If the authorised works are not completed before 1st January, 1980, then on that day the powers by this Act granted to the Commissioners for making and completing them shall cease, except as to so much thereof as is then substantially commenced:

PART III
—cont.

Period for
completion of
works.

Provided that nothing in this section shall prejudice the powers of the Commissioners to maintain, renew, enlarge, alter or reconstruct within the limits of deviation the authorised works at any time and from time to time as occasion may require.

16.—(1) A tidal work shall not be renewed, constructed, enlarged, altered or reconstructed except in accordance with plans and sections approved by the Board of Trade and subject to any conditions and restrictions imposed by the Board of Trade before the work is begun.

Tidal works
not to be
constructed
without
approval of
Board of
Trade.

(2) If a tidal work is renewed, constructed, enlarged, altered or reconstructed in contravention of this section or of any condition or restriction imposed under this section—

(a) the Board of Trade may by notice in writing require the Commissioners at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of thirty days from the date when the notice is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Board of Trade may execute the works specified in the notice; or

(b) if it appears to the Board of Trade urgently necessary so to do they may themselves remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Board of Trade in so doing shall be recoverable from the Commissioners as a simple contract debt.

17.—(1) In case of injury to or destruction or decay of a tidal work, or any part thereof, the Commissioners shall forthwith notify the Trinity House, and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Trinity House shall from time to time direct.

Provision
against
danger to
navigation.

(2) If the Commissioners fail to notify the Trinity House as required by this section, or to comply in any respect with a direction given under this section, they shall be liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

18.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Board of Trade may by notice in writing require

Abatement
of works
abandoned
or decayed.

PART III
—cont.

the Commissioners at their own expense either to repair and restore the work, or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Board of Trade think proper.

(2) Where a work authorised by this Act and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Board of Trade may include that part of the work, or any portion thereof, in any notice under this section.

(3) If, on the expiration of thirty days from the date when a notice under this section is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Board of Trade may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Commissioners as a simple contract debt.

Survey of
tidal works.

19. The Board of Trade may at any time, if they deem it expedient, order a survey and examination of a tidal work constructed by the Commissioners or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Board of Trade in any such survey and examination shall be recoverable from the Commissioners as a simple contract debt.

Lights on
tidal works
during
construction.

20.—(1) The Commissioners shall at or near a tidal work during the whole time of the construction, renewal, enlargement, alteration or reconstruction thereof and during the removal of the works referred to in section 10 (Power to remove works) of this Act, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Board of Trade shall from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Permanent
lights on
tidal works.

21.—(1) After the completion of a tidal work the Commissioners shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Trinity House shall from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

PART III
—cont.

22. Subject to the provisions of section 29 (Crown rights) of this Act the Commissioners may deepen, dredge, scour and improve the bed and foreshore within the harbour or in or near any approach thereto and any material taken up or collected in the course of such operations shall (in so far as it is not the property of the Commissioners before being taken up) become the property of the Commissioners and may be used, sold, removed, deposited or otherwise disposed of as the Commissioners think fit:

Provided that no such material shall be laid down or deposited in any place below the level of high water, except in such position as the Board of Trade may approve and subject to such conditions or restrictions as they may impose.

23. The works authorised by this Act and the bed, banks, shores and land acquired or inclosed and reclaimed under the powers of this Act, and each and every of them, and any works connected therewith respectively, shall form part of the undertaking.

24. Nothing in this Act shall authorise the Commissioners to acquire any part of the railway lines and sidings belonging to the National Coal Board so long as they are used and occupied by them in connection with their Haig Colliery or to acquire or extinguish any right of the National Coal Board to occupy or use the railway lines or sidings belonging to the Commissioners leading from the said railway lines and sidings of the National Coal Board to the harbour to the railway lines of the British Railways Board at Bransty Junction and to the railway lines of the National Coal Board at William pit or to obstruct the use of any of the said lines or sidings except at such times and at such places as may be agreed between the Commissioners and the National Coal Board.

25. For the protection of the board the provisions of this section shall, unless otherwise agreed in writing between the Commissioners and the board apply and have effect:—

For protection
of North
Western
Electricity
Board.

(1) In this section unless the subject or context otherwise requires—

“adequate alternative apparatus” means alternative apparatus adequate to enable the board to fulfil their statutory functions in a manner not less efficient than previously;

PART III

—cont.

1882 c. 56.

“ apparatus ” means electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by or lawfully laid or erected by the board and includes any structure for the lodging therein of apparatus;

“ the board ” means the North Western Electricity Board;

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

“ plan ” includes a section and description;

“ position ” includes depth;

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

1950 c. 39.

- (2) Notwithstanding anything in this Act or shown on the deposited plans, the Commissioners shall not, under the powers of this Act, acquire any apparatus otherwise than by agreement:
- (3) The powers conferred on the Commissioners by paragraph (b) of subsection (1) of section 12 (Power to make subsidiary works) of this Act in relation to apparatus shall not be exercised otherwise than in accordance with the provisions of this section:
- (4) If the Commissioners in the exercise of the powers of this Act acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed nor shall any right of the board to use, maintain, repair, renew or inspect any apparatus in that land be extinguished until adequate alternative apparatus has been laid or constructed and is in operation to the reasonable satisfaction of the board:
- (5) (a) If the Commissioners, for the purpose of the execution of any specified work, require the removal of any apparatus, they shall give to the board written notice of such requirement with a plan of the proposed work and, if it is agreed between the Commissioners and the board, or in default of agreement determined by arbitration, that the removal of the apparatus is reasonably required and that it should be removed, the following provisions of this paragraph shall have effect;
(b) If it is so agreed or determined that any apparatus should be removed, or if in consequence of the execution of any specified work the board shall reasonably require to remove any apparatus, the Commissioners shall, if

practicable, afford to the board the necessary facilities and rights for the laying or construction of adequate alternative apparatus in other lands of the Commissioners and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

PART III
—cont.

Provided that if the alternative apparatus or any part thereof is to be laid or constructed elsewhere than in other lands of the Commissioners and the Commissioners are unable to afford such facilities and rights as aforesaid the board shall, on receipt of a written notice to that effect from the Commissioners, forthwith use their best endeavours to obtain the necessary facilities and rights:

- (6) (a) Any alternative apparatus to be laid or constructed in lands of the Commissioners in pursuance of paragraph (5) of this section shall be laid or constructed in such manner and in such line or situation as may be agreed between the board and the Commissioners or, in default of agreement, settled by arbitration;
- (b) The board shall, after the manner of laying or construction and the line and situation of any alternative apparatus has been agreed, or settled by arbitration as aforesaid, and after the grant to the board of any such facilities and rights as are referred to in paragraph (5) of this section, proceed with all reasonable dispatch to lay or construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required to be removed under the provisions of this section and, in default, the Commissioners may remove the apparatus:
- (7) Notwithstanding anything in paragraph (6) of this section, if the Commissioners give notice in writing to the board that they desire themselves to execute any part of so much of the work necessary in connection with the laying or construction of the alternative apparatus or the removal of the apparatus required to be removed as will be situate in any lands of the Commissioners such work, instead of being executed by the board, shall be executed by the Commissioners with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the board:

Provided that nothing in this paragraph shall authorise the Commissioners to execute the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around the apparatus (where the apparatus is laid in a trench) within 12 inches above the apparatus:

PART III
—cont.

- (8) Where in accordance with the provisions of this section the Commissioners afford to the board facilities and rights for the laying or construction, maintenance, repair, renewal and inspection in lands of the Commissioners of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Commissioners and the board or, in default of agreement, determined by arbitration:

Provided that—

(a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be laid or constructed across or through a specified work the arbitrator shall—

(i) give effect to all reasonable requirements of the Commissioners for ensuring the safety and efficient operation of the specified work and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such work; and

(ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus laid or constructed through the lands of the Commissioners for which the alternative apparatus is to be substituted;

(b) if the facilities and rights to be afforded by the Commissioners in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the board than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the Commissioners by or to the board in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case:

- (9) (a) Not less than twenty-eight days before commencing to execute any specified work which is near to, or is likely to affect, any apparatus the removal of which has not been required by the Commissioners under paragraph (5) of this section or the maintenance of any such apparatus the Commissioners shall submit to the board a plan of the work to be executed;
- (b) Such work shall be executed only in accordance with the plan submitted as aforesaid and in accordance with such

reasonable requirements as may be made by the board for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the board shall be entitled by their officer to watch and inspect the execution of such work:

PART III
—cont.

Provided that—

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

(ii) nothing in this sub-paragraph shall preclude the Commissioners from submitting at any time, or from time to time, but in no case less than twenty-eight days before commencing the execution of any such work, a new plan in lieu of the plan previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan;

(c) The Commissioners shall not be required to comply with sub-paragraph (a) of this paragraph in a case of emergency but, in such a case, they shall give to the board notice as soon as reasonably practicable and a plan of the work as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) of this paragraph so far as reasonably practicable in the circumstances:

(10) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed, the Commissioners shall provide an alternative means of access to such apparatus:

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

(a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and laying or construction of any new apparatus under any of the provisions of this section;

(b) the cutting off of any apparatus from any other apparatus; and

(c) any other work or thing reasonably necessary in consequence of the exercise by the Commissioners of any of the powers of this Act:

PART III
—cont.
1950 c. 39.

Provided that subsections (3) and (4) of section 23 of the Public Utilities Street Works Act 1950 shall so far as applicable extend and apply to any payment to be made by the Commissioners under this paragraph as if the Commissioners were the promoting authority and works hereinbefore in this paragraph mentioned were such undertakers' works as are referred to in the said subsection (3), and as if in that subsection for the words "specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority" there were substituted the words "agreed or settled by arbitration under section 25 (For protection of North Western Electricity Board) of the Whitehaven Harbour Act 1970":

- (12) If by reason or in consequence of the execution, user or failure of any of the specified works, or any subsidence resulting from any of those works, any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the board or any interruption in the supply of electricity by the board shall be caused, the Commissioners shall bear and pay the cost reasonably incurred by the board in making good such damage, and shall—

(a) make reasonable compensation to the board for any loss sustained by them; and

(b) indemnify the board against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the board;

by reason or in consequence of any such damage or interruption:

Provided that—

(i) nothing in this paragraph shall impose any liability on the Commissioners with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the board or their contractors or workmen;

(ii) the board shall give to the Commissioners reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Commissioners:

- (13) The foregoing provisions of this section shall have effect in lieu of the provisions of section 26 of the Public

Utilities Street Works Act 1950 in so far as such provisions would otherwise have effect as regards any specified work in relation to apparatus:

PART III
—cont.
1950 c. 39.

- (14) (a) Any difference which may arise between the Commissioners and the board under this section shall be determined by arbitration;
- (b) In determining any difference under this section the arbitrator shall have regard to any duty or obligation which the board may be under in respect of any apparatus and may, if he thinks fit, require the Commissioners to execute any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

26. Nothing in this Act shall exempt the Commissioners from the provisions of sections 9 and 10 of the Harbours Act 1964 in relation to the works authorised by this Act.

Saving for
Harbours
Act 1964.
1964 c. 40.

27. The provisions of the Town and Country Planning Acts 1962 to 1968 and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land, notwithstanding that the development thereof is, or may be, authorised or regulated by or under this Act.

Saving for
town and
country
planning.

28. So much of the works authorised by this Act as are not within the borough of Whitehaven shall for all purposes be deemed to be within that borough.

Certain
works to be
within
borough of
Whitehaven.

29. Nothing in this Act 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 any river, channel, creek, bay or estuary or any land, heritages, subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners on behalf of Her Majesty first had and obtained for that purpose.

Crown rights.

30. Where under this Act any question or dispute is to be referred to or determined by an arbitrator or arbitration, then, unless other provision is made, the reference shall be to a single arbitrator to be agreed upon between the parties or, failing agreement, appointed by the President of the Institution of Civil Engineers on the application of any party to the dispute (after notice in writing to the others of them).

Arbitration.

PART IV

FINANCIAL

Power to
borrow.

31.—(1) In addition to the existing borrowing powers of the Commissioners, the Commissioners may borrow upon the security of all or any of the revenues and property of the Commissioners—

- (a) such sums of money as they think necessary not exceeding five hundred thousand pounds; and
- (b) with the consent of the Minister, such further sums of money as they may require.

(2) Moneys borrowed by the Commissioners under this section shall be applied only—

- (a) to purposes to which capital is properly applicable;
- (b) to the repayment of moneys borrowed or raised by the Commissioners for any purpose; and
- (c) with the consent of the Minister, for any other purpose not covered by sub-paragraphs (a) and (b) of this paragraph.

Lenders not
to be
concerned
with
application of
money lent.

32. It shall not be necessary for a person who lends money to the Commissioners to inquire into the application of that money.

Commis-
sioners not
bound to
recognise any
trust.

33. The Commissioners shall not be bound to see to the execution of, or be affected by notice of, any trust, whether express, implied or constructive to which any document relating to moneys borrowed, or the principal moneys or interest thereby secured, may be subject and the receipt of the person in whose name any such document stands in the books of the Commissioners shall be a sufficient discharge to the Commissioners for any money payable in respect thereof, notwithstanding the trust to which the same may be subject; and the Commissioners shall not be bound to see to the application of the money paid upon such receipt.

Saving for
Treasury.
1946 c. 58.

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

As to
application of
revenue.
1962 c. ix.

35. Section 4 (Application of revenue) of the Whitehaven Harbour Act 1962 is hereby amended as follows:—

- (i) after paragraph (2) the following new paragraph shall be inserted:—

“(2A) in payment to the Minister of sums due by way of capital repayment of loans made to the

Commissioners by the Minister under section 11 of the Harbours Act 1964 and of interest due from time to time on loans so made; ”

PART IV
—*cont.*
1964 c. 40.

- (ii) in paragraph (3) for the words “ two hundred and fifty pounds ” the words “ six hundred and twenty-five pounds ten shillings ” shall be substituted;
- (iii) after paragraph (8) the following new paragraph shall be inserted:—

“ (8A) in payment to the persons entitled thereto of sums due by way of capital repayment of moneys borrowed by the Commissioners under the Whitehaven Harbour Act 1970, other than moneys borrowed under section 11 of the Harbours Act 1964, and of interest due from time to time on moneys so borrowed; ”.

36. All costs, charges and expenses of and incident to the preparing and obtaining of this Act or otherwise in relation thereto shall be paid by the Commissioners and may in whole or in part be defrayed out of revenue.

Costs of Act.

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