



CHAPTER ix

An Act to make provision in relation to the application of the revenue of the Whitehaven Harbour Commissioners and the payment of interest on bonds of the Commissioners; to authorise the creation of a reserve fund; and for other purposes. [18th April, 1962.]

WHEREAS the harbour of Whitehaven has been operating since the year seventeen hundred and eight and 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 the eleventh day of July, eighteen hundred and ninety-four 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 the twenty-seventh day of June, eighteen hundred and ninety-four, 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 certain bonds issued from time to time by the trustees are still outstanding and certain arrears of interest thereon which accrued due before the thirty-first day of December, nineteen hundred and fifty-seven remain unpaid:

And whereas it is expedient that provision be made for special payments to bondholders in satisfaction of such arrears of interest and that further and new provision be made with respect to the application of the revenue of the Commissioners and the formation and maintenance of a reserve fund:

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

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

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

Short and
collective
titles.

1.—(1) This Act may be cited as the *Whitehaven Harbour Act, 1962*.

(2) The *Whitehaven Town and Harbour Acts and Order, 1708 to 1954*, and this Act may be cited together as the *Whitehaven Town and Harbour Acts and Order, 1708 to 1962*.

Interpretation.

2. In this Act unless the context otherwise requires—

“A bonds,” “B bonds,” “C bonds” and “D bonds” mean respectively the bonds of classes A, B, C and D specified in the First Schedule to this Act; “bond” means any of those bonds and “bondholder” means the holder of any of those bonds;

“the agreement” means the agreement dated the ninth day of June, nineteen hundred and thirty-seven made between the Commissioner for Special Areas in England and Wales and the Commissioners;

“the Commissioners” means the *Whitehaven Harbour Commissioners*;

“the existing enactments” means the *Whitehaven Town and Harbour Acts and Order, 1708 to 1954*;

“the harbour” means the port, harbour and docks of Whitehaven and all docks, quays, piers, wharves, buildings, land, property, houses, offices, sheds, tramways, railways, buoys and moorings connected therewith; the railways numbered 1 and 2 authorised by the Whitehaven Dock and Railways Act, 1871, together with all stations, sidings and signals connected with such railways; and any addition or improvement in the harbour made from time to time by the Commissioners;

“the Harbours Clauses Act, 1847” means the Harbours, Docks and Piers Clauses Act, 1847;

“the Minister” means the Minister of Transport;

“statutory securities” includes any securities in which trustees are for the time being authorised to invest trust moneys;

“the undertaking” means the undertaking of the Commissioners as authorised from time to time.

3.—(1) Subsection (1) of section 4 (Application of Harbours Clauses Act, 1847) of the Whitehaven Harbour Order, 1954, is hereby amended by the substitution of the words and figures “Sections 6 to 13, 16 to 26” for the words and figures “Sections 6 to 26”. Application of Harbours Clauses Act, 1847.

(2) Section 28 of the Harbours Clauses Act, 1847, as incorporated with the existing enactments shall be read and have effect as amended by subsection (2) of section 31 of the Post Office Act, 1953.

4. After the commencement of this Act all moneys received by the Commissioners for each half year, being in the nature of revenue, shall be applied by them to the following purposes and in the following order, that is to say:— Application of revenue.

- (1) in payment of the expenses properly chargeable to revenue, of the maintenance, repair, renewal and management of the undertaking and all conveniences connected therewith;
- (2) in payment half-yearly into the sinking fund established pursuant to section 4 (Sinking fund) of the Whitehaven Harbour Act, 1937, of the amount from time to time required by that section to be so paid;
- (3) in payment half-yearly into the reserve fund established by section 5 (Reserve fund) of this Act of the sum of two hundred and fifty pounds or such less amount, if any, as shall be necessary to bring the amount for the time being standing to the credit of the fund to one hundred thousand pounds;

- (4) in payment half-yearly to the holders of A bonds *pari passu* of interest at the rate of three and one-half per centum per annum upon the amount of their respective bonds;
- (5) in payment half-yearly to the holders of B bonds *pari passu* of interest at the rate of two and one-half per centum per annum upon the amount of their respective bonds;
- (6) in payment half-yearly to the holders of C bonds *pari passu* of interest at the rate of one and one-half per centum per annum upon the amount of their respective bonds;
- (7) in payment half-yearly to the holders of D bonds *pari passu* of interest at the rate of one per centum per annum upon the amount of their respective bonds;
- (8) in payment half-yearly to the Minister, as successor to the Commissioner for the Special Areas in England and Wales established under the Special Areas (Development and Improvement) Act, 1934 in accordance with the agreement of interest at the rate of three and a quarter per centum per annum upon the sum of twenty-two thousand three hundred and ninety-nine pounds twelve shillings and tenpence;
- (9) in payment half-yearly to the reserve fund established under the said section 5 of such sum as shall be necessary to bring the amount for the time being standing to the credit of the fund to one hundred thousand pounds:

Provided that, where the revenue available for a payment under this paragraph is not sufficient to bring the amount standing to the credit of the fund to one hundred thousand pounds, the amount of the payment made under this paragraph shall not exceed a multiple of two hundred and fifty pounds;
- (10) in payment to the holders of A bonds *pari passu* of such additional sum, if any, as shall be required to make up the interest paid to them on the amount of their bonds during the preceding ten half-years to three and one-half per centum per annum;
- (11) in payment to the holders of B bonds *pari passu* of such additional sum, if any, as shall be required to make up the interest paid to them on the amount of their bonds during the preceding ten half-years to two and one-half per centum per annum;

- (12) in payment to the holders of C bonds *pari passu* of such additional sum, if any, as shall be required to make up the interest paid to them on the amount of their bonds during the preceding ten half-years to one and one-half per centum per annum;
- (13) in payment to the holders of D bonds *pari passu* of such additional sum, if any, as shall be required to make up the interest paid to them on the amount of their bonds during the preceding ten half-years to one per centum per annum;
- (14) in payment into any contingency fund established by the Commissioners under section 12 of the Whitehaven Harbour and Dock Act, 1887, of such amount, if any, as the Commissioners think fit, not exceeding five per centum of the gross receipts in the year in question;
- (15) if and whenever in any half-year there is sufficient money remaining to pay interest on the amount of all the B, C and D bonds at the rate of not less than one-quarter per centum per annum, then in payment of such an amount of interest to the holders of such respective bonds *pari passu* as will with the payments hereinbefore in this section provided for on each such class of bonds, not exceed in any year the rate of three and one-half per centum per annum on each such bond;
- (16) if and whenever in any half-year there is sufficient money remaining to pay interest on the amount of all the A, B, C and D bonds at the rate of not less than one-quarter per centum per annum, then in payment of such an amount of interest to the holders of such respective bonds *pari passu* as will, with the payments hereinbefore in this section provided for, on each such class of bond not exceed in any year the rate of four per centum per annum on each such bond;
- (17) in the improvement of the harbour and for carrying into effect the powers, duties and obligations of the Commissioners.

5.—(1) The Commissioners shall for purposes of forming and Reserve fund. maintaining a reserve fund not exceeding at any time the sum of one hundred thousand pounds (hereinafter in this section referred to as “the prescribed amount”) set apart in each half-year, subject to the provisions of section 4 (Application of revenue) of this Act, the sums required to be set apart by paragraphs (3) and (9) of the said section 4 and, unless the amount so set aside

is applied in any other authorised manner, shall invest the same in statutory securities until the fund so formed amounts to the prescribed amount.

(2) The reserve fund established under this section may be applied in meeting any extraordinary claim or demand at any time arising against the Commissioners in respect of the undertaking or in or towards the costs of renewing vessels, plant or machinery, renewing, improving or extending any works forming part of the undertaking, and otherwise for the benefit of the undertaking; and, if the fund is at any time reduced in amount, it may thereafter be restored to the prescribed amount and so from time to time as often as such reduction happens.

(3) Resort may be had to the reserve fund established under this section although such fund may not at the time have reached or may have been reduced below the prescribed amount.

(4) The moneys standing to the credit of the reserve funds of the Commissioners at the commencement of this Act shall be credited to and form part of the reserve fund established under this section.

Special
payments on
bonds.

6.—(1) In addition to any sums payable to bondholders under the provisions of section 4 (Application of revenue) of this Act the Commissioners shall on the thirty-first day of December, nineteen hundred and sixty-two, the thirtieth day of June, nineteen hundred and sixty-three, the thirty-first day of December, nineteen hundred and sixty-three, and the thirtieth day of June, nineteen hundred and sixty-four pay—

- (a) to the holders of A bonds—for each one hundred pounds held, the sum of one pound fifteen shillings;
- (b) to the holders of B bonds—for each one hundred pounds held, the sum of one pound five shillings;
- (c) to the holders of C bonds—for each one hundred pounds held, the sum of fifteen shillings;
- (d) to the holders of D bonds—for each one hundred pounds held, the sum of ten shillings.

(2) The sums paid under the provisions of subsection (1) of this section to the respective bondholders shall be in full satisfaction of all arrears of interest upon their bonds which accrued due before the thirty-first day of December, nineteen hundred and fifty-seven.

(3) Each bond shall after the commencement of this Act be endorsed as follows:—

“ This bond is subject to the provisions of the Whitehaven Harbour Act, 1962 ”;

and the bondholders shall within six months after the commencement of this Act transmit or produce to the clerk to the Commissioners their respective bonds for the purpose of having the endorsement made thereon.

(4) The sums payable under this section shall be paid out of the net revenues of the undertaking and, so far as those revenues are not sufficient for that purpose, out of the amount for the time being standing to the credit of the reserve fund established under section 5 (Reserve fund) of this Act.

7. When one person only is or has become the holder of a bond the following provisions shall have effect:—

Transmission
of bond in
sole
ownership.

- (i) On the death of the holder the executors who have proved his will or the administrators of his estate or, if the holder is entered in the register as the executor or administrator of the estate of another person, the executors or administrators of the estate of that other person, shall alone be recognised by the Commissioners as having any title to or interest in the bond and the Commissioners shall not be required to allow such executors or administrators to transfer the bond or to receive or otherwise deal with any interest or other sum payable in respect thereof until the probate of the will or the letters of administration under which they act have been produced to them, and the Commissioners may in their discretion require all such executors or administrators to join in any transfer;
- (ii) If any other person becomes entitled to a bond or to the interest or other sum payable in respect thereof in consequence of the bankruptcy of the holder or of any devolution in law from the holder otherwise than by the death of the holder or by transfer of the bond, the Commissioners shall not be required to allow such other person to transfer the bond or to receive or otherwise deal with the interest or other sum payable in respect thereof until such evidence of his title as may be reasonably required by the Commissioners has been produced to them, which evidence may be a statutory declaration of one or more competent persons;
- (iii) Paragraph (ii) of this section shall apply to an apparent transmission of a bond in consequence of the change of name of the holder thereof although the actual ownership of the bond may remain unaltered.

Transmission
of bond in
joint
ownership.

8. When two or more persons are the joint holders of any bond the following provisions shall have effect:—

- (i) The joint holders shall be deemed to be joint owners with the right of survivorship between them;
- (ii) On the death of any one of the joint holders the Commissioners shall not be required to allow the survivor or survivors of the joint holders to transfer the bond or to receive or otherwise deal with the interest or other sum payable in respect thereof until such evidence of that death as may be reasonably required by the Commissioners has been produced to them;
- (iii) Paragraph (ii) of section 7 (Transmission of bond in sole ownership) of this Act shall apply to any apparent transmission of the bond in consequence of the change of name of any of the joint holders thereof although the actual ownership of the bond may remain unaltered.

Evidence of
title to be
recorded.

9. Whenever any evidence of title shall be produced to the Commissioners under section 7 (Transmission of bond in sole ownership) or section 8 (Transmission of bond in joint ownership) of this Act in relation to any bond the clerk to the Commissioners—

- (i) shall enter a memorandum thereof in the transfer book; and
- (ii) shall endorse on the bond to which the evidence relates (unless a new bond is issued by the Commissioners) a memorandum in writing signed by him specifying the date and purport of the facts entered in the transfer book; and
- (iii) may for every entry in the transfer book, including the necessary endorsements, demand a fee not exceeding the sum of two shillings and sixpence which fee, when a new bond is issued, shall be in addition to the fee, if any, payable to the Commissioners for issuing the new bond.

Powers with
respect to
disposal of
wrecks.

10.—(1) In their application to the Commissioners, sections 530 and 532 of the Merchant Shipping Act, 1894 (which confer powers on the Commissioners with respect to, and with respect to anything in or on, any vessel sunk, stranded or abandoned in such manner as to be an obstruction or danger to navigation in the harbour or in or near any approach thereto), shall have effect—

- (a) subject to the provisions of section 11 (Protection of Crown interests in wrecks) of this Act;
- (b) in relation to a vessel sunk, stranded or abandoned before, as well as after, the commencement of this Act.

(2) Subject to subsection (3) of this section, and to any enactment for the time being in force limiting his liability, the Commissioners may recover as a simple contract debt from the owner of any vessel in relation to which they have exercised their powers under the said section 530, being a vessel sunk, stranded or abandoned after the commencement of this Act, any expenses reasonably incurred by them under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) Except in a case which is in the opinion of the Commissioners a case of emergency, subsection (2) of this section shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by the said section 530 other than the power of lighting and buoying, the Commissioners have given to the owner of the vessel not less than forty-eight hours' notice of their intention to do so; and if before the notice expires the Commissioners receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, and no direction is served in respect of the vessel under paragraph (b) of subsection (2) of the said section 11 he shall be at liberty to do so, and the Commissioners shall not exercise the powers aforesaid in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to him by the Commissioners.

(4) Notice under subsection (3) of this section to the owner of any vessel may be served by the Commissioners either by delivering it to him or by sending it to him by post in a registered letter addressed to him at his last-known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to the Commissioners, by displaying the notice at the offices of the Commissioners for the period of its duration.

(5) In this section the expression "owner" in relation to any vessel means the person who was the owner of the vessel at the time of the sinking, stranding or abandoning thereof.

11.—(1) Without prejudice to section 741 of the Merchant Shipping Act, 1894 (which relates to the exemption from the provisions of that Act of vessels belonging to Her Majesty), as modified by any Order in Council made under section 80 of

Protection
of Crown
interests in
wrecks.

the Merchant Shipping Act, 1906, the powers conferred on the Commissioners by sections 530 and 532 of the said Act of 1894 shall not be exercisable—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;
- (b) except with the consent of the Admiralty, which may be given with or without such a direction as is referred to in paragraph (b) of subsection (2) of this section, in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty but which, at the time when the vessel was sunk, stranded or abandoned—
 - (i) had been required to be placed at the disposal of Her Majesty or of a government department; and
 - (ii) was appropriated to the service, under the direction and control of the Admiralty, of Her Majesty's ships of war.

(2) The Commissioners shall give notice in writing to the Admiralty and to the Minister of any decision of the Commissioners to exercise in relation to any vessel any of the powers aforesaid other than the power of lighting and buoying and, except in a case which is in the opinion of the Commissioners a case of emergency, shall not proceed with the exercise thereof—

- (a) except with the consent of the Admiralty and the Minister before the expiration of a period of fourteen days from the giving of the notice; or
- (b) if before the expiration of the said period there is served on the Commissioners a direction by the Admiralty or the Minister that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where in any such case as aforesaid, the Commissioners proceed to exercise those powers without the consent and before the expiration of the period mentioned in paragraph (a) of this subsection or after a direction has been served on them as aforesaid, they shall not in the exercise of those powers use any explosives and, if before the expiration of the period aforesaid such a direction as aforesaid is served on them, shall not be

entitled to exercise the power of sale conferred by the said section 530 or the power conferred by subsection (2) of section 10 (Powers with respect to disposal of wrecks) of this Act:

Provided that—

- (i) the Commissioners shall not be required to give notice under this subsection in respect of any vessel in respect of which they have received a consent under paragraph (b) of subsection (1) of this section, but any direction such as is referred to in paragraph (b) of this subsection accompanying that consent shall be deemed for the purposes of this subsection and of subsection (3) of the said section 10 to have been duly served under paragraph (b) of this subsection;
- (ii) the prohibition on the use of explosives imposed by this subsection shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may for the time being be approved by the Minister for the purposes of this proviso.

(3) Without prejudice to the power of sale conferred on the Commissioners by the said section 530, the Commissioners shall hold and dispose of any wreck within the meaning of Part IX of the said Act of 1894 raised, removed or recovered under that section, and any surplus proceeds of sale within the meaning of that section, in accordance with such directions, if any, as may be given to them by the receiver of wreck; and on exercising the said power of sale in the case of any property the Commissioners shall discharge any sums payable in respect of that property by way of duties of customs or excise, purchase tax, or surcharge in respect of sugar or molasses, and any sums so discharged shall be deemed to be expenses incurred by the Commissioners under that section.

(4) Any limitation on the powers of the Commissioners in relation to any vessel arising by virtue of subsection (1) or subsection (2) of this section shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Corporation of Trinity House by section 531 of the said Act of 1894.

12. Section 52 of the Harbours Clauses Act, 1847, in its application to the Commissioners and the harbour-master shall extend to empower the harbour-master to give directions prohibiting the mooring of vessels in any particular part or parts of the harbour. ^{Harbour-master may give directions as to mooring.}

Directions
of harbour-
master need
not be in
writing.

13. Section 53 of the Harbours Clauses Act, 1847, in its application to the Commissioners and the harbour-master shall not be construed to require the harbour-master to serve a notice in writing of his directions upon the master of a vessel and such directions may be given orally or otherwise communicated to the master on any occasion when it is not reasonably practicable for a written notice to be served on the master.

Byelaws.

14.—(1) The byelaws which may from time to time be made by the Commissioners in exercise of the powers conferred on them by the existing enactments, may provide for the imposing of a penalty not exceeding ten pounds for the breach or non-observance of any of the byelaws.

(2) 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 (7) of section 250 and section 252 of the Local Government Act, 1933, shall apply to all byelaws to be made by the Commissioners and in the application of such last-mentioned provisions the Minister shall be the confirming authority.

(3) The Minister may hold such inquiries as he may consider necessary in regard to the confirmation of any byelaw under this Act and section 290 of the Local Government Act, 1933, shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Commissioners were a local authority.

Repeals.

15. The enactments specified in the Second Schedule to this Act are hereby repealed to the extent specified in that schedule.

Costs of
Act.

16. All costs, charges and expenses of and incidental to the preparing for, obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Commissioners.

SCHEDULES

FIRST SCHEDULE

Section 2

CLASSES OF BONDS REFERRED TO IN THIS ACT AND RESPECTIVE AMOUNTS THEREOF

Class	Granted and dated	Amount
A	On or before the 4th day of July, 1876 ...	£ s. d. 85,531 12 7
B	After the 4th day of July, 1876, and on or before the 4th day of July, 1882	91,914 10 0
C	After the 4th day of July, 1882, and on or before the 4th day of September, 1883	42,889 6 8
D	After the 4th day of September, 1883, and before the 8th day of April, 1885	24,350 0 0

SECOND SCHEDULE

Section 15

REPEALS

Act or Order (1)	Section (2)	Marginal note (3)	Extent of repeal (4)
Whitehaven Town and Harbour (Incorporation) Act, 1885	45	Application of harbour revenues	The whole section.
Whitehaven Harbour and Dock Act, 1887	7	Payment of interest to bondholders for 1886 and 1887	The whole section.
	8	Application of harbour revenue after 1887	The whole section.
	9	Further provision as to interest on bonds	The whole section.
	10	Indorsement to be made on the bonds	The whole section.
	11	Contingent provisions as to remedies of bondholders	The whole section.

2ND SCH.
—cont.

Act or Order (1)	Section (2)	Marginal note (3)	Extent of repeal (4)
The Pier and Harbour Order Confirmation (No. 1) Act, 1930	2	Amendment of Act of 1887	The whole section.
	3	Short title	The whole section.
Whitehaven Harbour Act, 1937	3	Application of harbour revenue	The whole section.
Whitehaven Harbour Order, 1954	19	Amendment of Whitehaven Harbour Dock Act, 1887	The whole section.

 cos

Table of Statutes referred to in this Act

Title	Session and chapter
Harbours, Docks and Piers Clauses Act, 1847	10 & 11 Vict. c. 27.
Whitehaven Dock and Railways Act, 1871 ...	34 & 35 Vict. c. xci.
Whitehaven Town and Harbour (Incorporation) Act, 1885	48 & 49 Vict. c. cxxv.
Whitehaven Harbour and Dock Act, 1887 ...	50 & 51 Vict. c. cxiv.
Merchant Shipping Act, 1894	57 & 58 Vict. c. 60.
Merchant Shipping Act, 1906	6 Edw. 7 c. 48.
Local Government Act, 1933	23 & 24 Geo. 5 c. 51.
Special Areas (Development and Improvement) Act, 1934	25 Geo. 5 c. 1.
Whitehaven Harbour Act, 1937	1 Edw. 8 & 1 Geo. 6 c. xcvi.
Post Office Act, 1953	1 & 2 Eliz. 2 c. 36.

PRINTED BY THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., FOR
PERCY FAULKNER, C.B.

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

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

Price 1s. 3d. net

PRINTED IN ENGLAND

Whitehaven Harbour Act, 1962

10 & 11 ELIZ. 2 Ch. ix

ARRANGEMENT OF SECTIONS

Section

1. Short and collective titles.
2. Interpretation.
3. Application of Harbours Clauses Act, 1847.
4. Application of revenue.
5. Reserve fund.
6. Special payments on bonds.
7. Transmission of bond in sole ownership.
8. Transmission of bond in joint ownership.
9. Evidence of title to be recorded.
10. Powers with respect to disposal of wrecks.
11. Protection of Crown interests in wrecks.
12. Harbour-master may give directions as to mooring.
13. Directions of harbour-master need not be in writing.
14. Byelaws.
15. Repeals.
16. Costs of Act.

SCHEDULES:

First Schedule—Classes of bonds referred to in this Act and respective amounts thereof.

Second Schedule—Repeals.