



CHAPTER xxix.

An Act to confirm a Provisional Order under the A.D. 1929.
Private Legislation Procedure (Scotland) Act 1899 —
relating to Nith Navigation. [10th May 1929.]

WHEREAS the Provisional Order set forth in the
schedule hereunto annexed has been made by
one of His Majesty's Principal Secretaries of State under
the provisions of the Private Legislation Procedure
(Scotland) Act 1899 as read with the Secretaries of 62 & 63 Vict.
State Act 1926 and it is requisite that the said Order c. 47.
should be confirmed by 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 Provisional Order contained in the schedule Confirma-
hereunto annexed shall be and the same is hereby tion of
confirmed. Order in
schedule.

2. This Act may be cited as the Nith Navigation Short title.
Order Confirmation Act 1929.

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SCHEDULE.

NITH NAVIGATION.

Provisional Order for the reconstitution and incorporation of the Nith Navigation Commissioners and for authorising the reconstituted Commissioners to maintain and improve the navigation of the river Nith acquire land execute works borrow money and exercise other powers for authorising certain county councils and town councils to guarantee repayment of moneys borrowed by the Commissioners to contribute to the funds of the Commissioners and to levy rates and for other purposes.

WHEREAS by the Act 51 George III. cap. cxlvii. certain Acts relative to the harbour of Dumfries and the navigation of the river Nith were repealed and provision made for the constitution of Commissioners for improving the harbour of Dumfries and the navigation of the river Nith :

And whereas it is expedient that the constitution of the Commissioners under the said Act should be altered that the reconstituted Commissioners (in this Order called "the Commissioners") should be incorporated that provisions with respect to the appointment and election of the Commissioners should be made and that further powers should be conferred upon the Commissioners as provided in this Order :

And whereas it is expedient that the county councils of the county of Dumfries and of the county of the Stewartry of Kirkcudbright and the town councils of the royal burgh of Dumfries and of the police burgh of Maxwelltown should be empowered to guarantee repayment of moneys borrowed (with the consent of the said councils) by the Commissioners and to make contributions to the funds of the Commissioners as provided in this Order :

And whereas it is expedient that other provisions should be made as set forth in this Order :

And whereas the purposes aforesaid cannot be effected without an Order confirmed by Parliament under the Provisions of the Private Legislation Procedure (Scotland) Act 1899 : A.D. 1929.

Now therefore in pursuance of the powers contained in the last mentioned Act as read with the Secretaries of State Act 1926 the Secretary of State orders as follows :—

1. This Order may be cited for all purposes as the Short title.
Nith Navigation Order 1929.

2. The following parts of Acts so far as the same are applicable for the purposes of and are not varied by or inconsistent with the provisions of this Order are hereby incorporated with this Order (namely) :— Incorporation of Acts.

(1) The Lands Clauses Acts except the provisions thereof with respect to the purchase and taking of land otherwise than by agreement and in construing these Acts for the purposes of this Order the Commissioners shall be the promoters of the undertaking : and

(2) The Harbours Docks and Piers Clauses Act 1847 (except sections 16 to 19 (unless the Commissioners shall be required by the Board of Trade to provide and maintain a lifeboat a tide gauge and a weather gauge or barometer) and except sections 25 26 49 50 79 80 83 to 90 and 92 to 96 of that Act) but subject to the following modifications and variations of the said Act and to the following provisions (namely) :—

(a) The expression “ vessel ” used in section 28 of the said Act shall for the purposes of this Order include seaplanes hydroplanes and similar craft and hired transports and the expressions “ packet boat or Post Office packet ” and “ Post Office bag of letters ” used in the said section shall mean respectively a vessel employed by or under the Post Office or the Admiralty for the conveyance under contract of postal packets as defined by the Post Office Act 1908 and a mail bag as defined by the same Act; and

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(b) The provisions of the said section 28 of the said Act as varied by and for the purposes of this Order exempting vessels in the service of the Crown from rates shall not extend to or exempt any vessel specified or referred to in that section as so varied from any of the dues rates or charges leviable under and for the purposes of this Order if such vessel also conveys passengers or goods for hire.

This Order shall be deemed a special Act within the meaning and for the purposes of the Acts partially incorporated with this Order.

Interpreta-
tion.

3. In this Order unless there is something in the subject or context inconsistent with or repugnant to such construction the several words and expressions to which meanings are assigned by the Acts partially incorporated with this Order shall have the same respective meanings and the following words and expressions shall have the meanings hereby respectively assigned to them (namely) :—

- (1) “The Dumfries County Council” means the county council of the county of Dumfries “the Kirkcudbright County Council” means the county council of the county of the Stewartry of Kirkcudbright and the “county councils” means the Dumfries County Council and the Kirkcudbright County Council;
- (2) “The Dumfries Town Council” means the provost magistrates and councillors of the royal burgh of Dumfries in the county of Dumfries “the Maxwelltown Town Council” means the provost magistrates and councillors of the police burgh of Maxwelltown in the Stewartry of Kirkcudbright and “the town councils” means the Dumfries Town Council and the Maxwelltown Town Council;
- (3) “The councils” means the county councils and the town councils;
- (4) “The traders” means the shipowners and other persons paying dues rates or charges to the

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Commissioners under this Order who are qualified and registered for the purpose of the election of commissioners in terms of this Order;

- (5) "The existing commissioners" means the commissioners holding office immediately before the appointed day;
- (6) "The Commissioners" means the Nith Navigation Commissioners appointed and elected in pursuance of the provisions of this Order;
- (7) "Commissioner" means a member of the Commissioners "appointed commissioner" means a commissioner appointed by one of the councils and "elected commissioner" means a commissioner elected by the traders;
- (8) "The clerk" means the clerk "the treasurer" means the treasurer and "the collector" means the collector in each case of the Commissioners;
- (9) "The Minister" means the Minister of Transport;
- (10) "The Board" means the Board of Trade;
- (11) "The river" means and includes (a) so much of the river Nith and the estuary of that river in the two counties of Dumfries and the Stewartry of Kirkcudbright and the bed and foreshore thereof up to high-water mark of ordinary spring tides as extends between the weir or caul at Dumfries and four imaginary straight lines drawn (the first) from the lighthouse at Southernness in the parish of Kirkbean in the said county of the Stewartry of Kirkcudbright to a point on highwater mark of ordinary spring tides distant six hundred yards measured in a straight line and in a westerly direction from the said lighthouse (the second) from the point last mentioned to another point also in the said last mentioned parish and Stewartry due south east of and distant six hundred yards from the said lighthouse (the third) from the point last mentioned directly towards the farm house of West Howcreek in the parish of Cummertrees and county of Dumfries to the point at which it intersects the following (i.e. the fourth) line and

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(the fourth) from the farm house of Eastpark in the parish of Caerlaverock in the said county of Dumfries due south to the point at which such line intersects the immediately preceding (*i.e.* the third) line and (*b*) the beds and foreshores up to high-water marks of ordinary spring tides of all the tributaries and streams which discharge or flow into the river Nith and the estuary of that river between or within the limits thereof before in this subsection described;

- (12) "Harbour dock or pier" when used in the Harbours Docks and Piers Clauses Act 1847 means the river and includes harbours docks piers quays jetties and landing-places vested in acquired constructed or erected by the Commissioners in terms of this Order;
- (13) "Vessel" means and includes any ship lighter dredger sloop barge launch motor boat or other craft whether propelled by steam or otherwise and seaplanes hydroplanes and similar craft;
- (14) "Passengers" means persons conveyed for hire in vessels upon the river and embarked or disembarked upon or from any harbour dock or pier or upon or from any vessel in the river;
- (15) "Goods" means all animals minerals substances materials wares merchandise manufactured and other articles and everything else of whatever kind or nature conveyed in vessels upon the river and shipped unshipped or transhipped in the river;
- (16) "The undertaking of the existing commissioners" means the undertaking of the existing commissioners and all powers rights property and assets of every description of the existing commissioners as the same shall stand immediately before the appointed day;
- (17) "The undertaking of the Commissioners" means
(*a*) the undertaking of the existing commissioners as the same shall stand and be vested in the Commissioners on the appointed day (*b*)

all lands which after the appointed day may be acquired by the Commissioners and all docks piers quays jetties landing-places warehouses stores sheds buildings sea-walls walls embankments works erections vessels plant and apparatus and all other property of whatever nature or kind which may be acquired constructed or erected by the Commissioners after the appointed day and (c) the whole powers rights property and assets of every description of the Commissioners which in each such case shall for the time be vested in the Commissioners; and

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- (18) "The appointed day" means the day on which in accordance with the provisions of this Order the first meeting of the Commissioners is to be held and the undertaking of the existing commissioners is to be vested in the Commissioners.

4. A plan of the river as hereinbefore defined having been signed in quadruplicate by Philip Francis Wood counsel to the Secretary of State under the Private Legislation Procedure (Scotland) Act 1899 one copy thereof shall within one month after the appointed day be deposited in the Scottish Office Whitehall one copy with the Minister one with the Board and one with the Commissioners and if it be found at any time that there is some discrepancy between the said plan and the river as defined in the immediately preceding section of this Order the plan shall prevail.

Plan of
river.

5. The Commissioners appointed and elected as in this Order provided shall be a body corporate under the name of the Nith Navigation Commissioners with perpetual succession and a common seal and may under that name sue and be sued take purchase hold and dispose of lands and other property in accordance with the provisions and for the purposes of this Order and shall have all the powers and privileges of a body corporate All deeds executed by the Commissioners shall in addition to being sealed be signed by two commissioners and the clerk but no deed shall be executed except in pursuance of a resolution of the Commissioners.

Incorporation of
Commissioners.

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Reconsti-
tution of
Commis-
sioners.

6. On and after the appointed day the Commissioners shall subject to the provisions of this Order consist of the following persons :—

- (1) Four appointed by Dumfries County Council;
 - (2) Four appointed by Kirkcudbright County Council;
 - (3) Four appointed by Dumfries Town Council;
 - (4) Two appointed by Maxwelltown Town Council;
- and
- (5) Three elected by the traders.

Such commissioners shall be appointed and elected as hereafter in this Order provided.

Term of
office of
Commis-
sioners.

7. Subject to the provisions of this Order the normal term of office of a commissioner without reappointment or re-election shall be three years but the commissioners first appointed or elected under this Order shall continue in office until the thirty first day of December one thousand nine hundred and thirty two and subject as aforesaid commissioners appointed or elected subsequently to such first appointment or election shall enter upon office on the day on which their predecessors cease to hold office and shall continue in office until the thirty first day of December in the third year following their appointment or election.

Triennial
appoint-
ment of
appointed
commis-
sioners.

8. Subject to the provisions of this Order the appointments by the councils subsequent to the first appointment of commissioners under this Order shall be made by the councils at meetings in the month of December in the year one thousand nine hundred and thirty two and at meetings in the same month in each third year thereafter.

Triennial
election of
elected
commis-
sioners.

9. Subject to the provisions of this Order the regulations contained in the First Schedule to this Order shall determine the qualifications of the traders entitled to vote and act in the election of commissioners in terms and for the purposes of this Order regulate the making of the register of traders so qualified and have effect with respect to and govern the election of commissioners by the traders in the year one thousand nine hundred and thirty two and in each third year thereafter.

10. Immediately this Order shall have been confirmed by Parliament the clerk of the existing commissioners shall send a copy of the confirming Act to the clerk of each of the councils. Each of the councils shall at any ordinary or special meeting held within forty two days after the date of such confirming Act make the first appointment of Commissioners which they are by this Order empowered to make.

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First appointment of appointed commissioners.

11. The following three persons who are amongst those paying the largest amount of dues rates and charges to the existing commissioners in respect of goods conveyed upon the river shall be deemed to have been elected as commissioners by the traders at the first election of commissioners under and for the purposes of this Order (namely):—

First election of elected commissioners.

Robert Austin grain merchant Dumfries;

James C. Milvain merchant and contractor Dumfries;
 and

James Wyllie grain merchant Dumfries.

Subject to the provisions of this Order the said three persons shall hold office as elected commissioners under and for the purposes of this Order until the thirty first day of December one thousand nine hundred and thirty two.

12. A person who has been appointed or elected as a commissioner shall not so long as he continues a commissioner by virtue of such appointment or election be qualified to be appointed by any other council or to be elected by the traders as a commissioner and any such subsequent appointment or election shall be void and any person who shall in the course of any triennial appointment and election of the commissioners be appointed by two or more councils or be appointed by one or more councils and be elected by the traders for the same period of office shall forthwith choose and intimate in writing to the clerk under which appointment or election he will act as a commissioner and the other appointment or election as the case may be shall be deemed void and any vacancy so caused in the Commissioners shall be deemed to be a casual vacancy and be filled accordingly.

Commissioners to represent only one interest.

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Appointed
commis-
sioners
must be
members of
appointing
councils.

13. Each appointed commissioner shall be a member of the council appointing him and any commissioner who—

- (1) ceases to be a member of the council by which he was appointed; or
- (2) becomes disqualified from continuing a member of the council by which he was appointed; or
- (3) during a continuous period of twelve months is absent from meetings of the Commissioners and meetings of any committee or committees of the Commissioners of which he is a member

shall cease to be a commissioner but notwithstanding the foregoing provision commissioners who shall between the thirty first day of October and the fifteenth day of December in the year of each triennial appointment and election of the commissioners cease to be members of the councils by which they were appointed commissioners shall continue in office as commissioners until the thirty first day of the said month of December in such year. On any appointed commissioner ceasing to be a member of the council by which he was appointed a commissioner or becoming disqualified from continuing a member of that council the clerk of that council shall immediately give written intimation thereof to the clerk.

Disqualifi-
cation of
elected
commis-
sioners.

14. At the general meeting of the Commissioners in the month of January in the second and third years of each triennial period of office of the Commissioners the clerk shall report whether each commissioner elected by the traders continued during the year ended on the thirty first day of October immediately preceding to be qualified for election by the traders as a commissioner and if it shall appear to the Commissioners at such meeting or some adjournment thereof that any such commissioner had not continued to be so qualified during such preceding year they shall declare his office as commissioner vacant and any vacancy so caused shall be deemed to be a casual vacancy and be filled accordingly.

Failure to
appoint
commis-
sioners.

15. If any council (a) either at the first appointment of commissioners or at any subsequent triennial appointment of commissioners under this Order fails to appoint commissioners within the time prescribed by this Order for such appointment or (b) during a period of two

months after the occurrence of a casual vacancy among the Commissioners which such council is entitled to fill fails to appoint a commissioner to fill such casual vacancy the clerk shall give intimation of such failure in the notice calling the first subsequent meeting of the Commissioners and at that meeting or some adjournment thereof the Commissioners shall fill the vacancy or vacancies caused by such council's failure to appoint a commissioner or commissioners.

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16. A commissioner may resign his office by giving written intimation to that effect to the clerk who shall if the commissioner is an appointed one give immediate intimation of such resignation to the clerk of the council by which such commissioner was appointed and the clerk shall notify in the circular calling the first subsequent meeting of the Commissioners every resignation of a commissioner received by him.

Resignation
of commis-
sioners.

17. A person shall be disqualified from being appointed or elected or continuing a commissioner under this Order if he—

Disqualifi-
cation from
being a com-
missioner.

- (1) holds or has at any time during the six months immediately preceding held any office or place of profit under the Commissioners; or
- (2) has or has had at any time within the six months immediately preceding directly or indirectly by himself or his partner any share or interest in any contract or employment with by or on behalf of the Commissioners;
- (3) has been adjudged bankrupt and has not obtained his discharge or has granted a trust deed for behoof of his creditors and the trustee under such trust deed has not been discharged of his intromissions with the trust estate.

But a person shall not be so disqualified or be deemed to have or to have had any share or interest in such a contract or employment by reason only of his being interested—

- (1) in any sale or lease of any land or buildings or the loan of any money to the Commissioners;
- (2) in any newspaper in which any advertisement relating to the affairs of the Commissioners is inserted;

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(3) in any company which contracts with the Commissioners for lighting or supplying with water or insuring against fire any property of the Commissioners; or

(4) as a shareholder in any company incorporated by or under an Act of Parliament which contracts with the Commissioners.

Filling of casual vacancies in Commissioners.

18. If any casual vacancy in the Commissioners occurs as hereinbefore provided or is caused by the death resignation or disqualification of any commissioner or by any commissioner ceasing from any other cause to hold office as such the vacancy so caused shall be filled as soon as conveniently may be—

(1) in the case of an appointed commissioner by a person appointed by the council by whom the vacating commissioner was appointed; and

(2) in the case of an elected commissioner by a person co-opted by the Commissioners but in filling such vacancy the Commissioners shall appoint a person who during the immediately preceding year was qualified for election as an elected commissioner;

and the person so appointed or co-opted shall hold office for the remainder of the term of office of the commissioner in whose stead he was appointed or co-opted and then go out of office.

Retiring commissioners eligible for re-appointment or re-election.

19. A commissioner going out of office shall if otherwise duly qualified be eligible for reappointment or re-election and every person so reappointed or re-elected shall be deemed a new commissioner.

Intimation of appointment of commissioners.

20. On each occasion on which a commissioner is appointed by any one of the councils the clerk of such council shall immediately intimate such appointment in writing (a) in the case of the first appointment to the clerk to the existing commissioners and (b) in any other case to the clerk.

First meeting of Commissioners Appointed day.

21. The first meeting of the Commissioners under this Order shall be held in the County Buildings Dumfries at noon on the second Wednesday after the expiry of forty two days from the date of the passing of the Act

confirming this Order Such first meeting of the Commissioners shall be called by the clerk of the existing commissioners. A.D. 1929.

22. Meetings of the Commissioners shall be held in the month of January and as the Commissioners may from time to time determine either in the month of June or the month of July in each year on such days and at such places and times as may be determined by the Commissioners and the Commissioners may appoint meetings to be held at other times. Meetings of Commissioners.

23. The quorum of the Commissioners shall be seven The Commissioners shall be entitled to act notwithstanding any vacancy or vacancies on the Commissioners provided a quorum exists. Quorum of Commissioners.

24.—(1) At their first meeting after the first appointment and election under this Order and at their first meeting after each subsequent triennial appointment and election of commissioners the Commissioners shall appoint one of their number to be chairman of the Commissioners during his term of office as a commissioner and at each of these meetings the Commissioners may if they think fit appoint one of their number to be vice-chairman of the Commissioners to hold office during the term of office of the chairman In the event of a vacancy occurring in the office of chairman or vice-chairman such vacancy shall be filled in the case of the chairman and may be filled in the case of the vice-chairman by the Commissioners at their first meeting thereafter If at the election of a chairman an equal number of votes is given for two or more persons the meeting shall determine by lot which of these persons shall be chairman. Chairman and vice-chairman of Commissioners.

(2) The chairman and failing him the vice-chairman (if appointed) and failing either of these such one of the Commissioners as shall be chosen by the meeting (in the event of an equality of votes in choosing such commissioner the decision shall be by lot) shall preside at all meetings of the Commissioners The preses of the meeting shall have both a deliberative and in case of equality a casting vote in all matters which come before it At the first meeting of the Commissioners under this Order the clerk of the existing commissioners shall preside and at the first meeting after each subsequent

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A.D. 1929. — triennial appointment and election of commissioners the clerk of the Commissioners shall preside until the chairman is elected but in neither case shall such clerk have either a deliberative or a casting vote.

Special meetings of Commissioners. 25. In addition to the ordinary meetings appointed by this Order or by the Commissioners to be held the clerk shall call a special meeting of the Commissioners at any time in terms of a resolution of the Commissioners or on the order of the chairman or on the requisition of any five commissioners.

Calling of meetings. 26. Every meeting of the Commissioners shall be called by circular specifying the business to be transacted addressed by the clerk to each commissioner The notice of each ordinary meeting shall be issued at least five clear days before the day of the meeting Except in cases of emergency similar notice shall be given of special meetings In cases of emergency special meetings may be called on shorter notice.

Standing orders. 27. Subject to the provisions of this Order the Commissioners may from time to time make alter and revoke standing orders for regulating their proceedings and business and the proceedings and business of committees of the Commissioners.

Acts of Commissioners not to be invalidated by reason of certain irregularities. 28. No act of the Commissioners or of any commissioner shall be invalidated or be illegal by reason of any irregularity in the appointment or election of any commissioner or by reason of any person not qualified or who has ceased to be qualified acting as a commissioner or by reason of any failure or omission on the part of any of the councils to appoint or of the traders to elect a commissioner or by reason of any other irregularity error failure or omission in or about any appointment or election of a commissioner or in or about any matter preliminary or incidental thereto.

Vesting of undertaking in Commissioners. 29. On and from the appointed day the undertaking of the existing commissioners and all lands buildings property funds effects and claims which are vested in or belong to or are held in trust for the existing commissioners or would but for this Order be vested in belong or pass to or be held in trust for the existing commissioners shall be vested in and belong to the Commissioners and on the appointed day all debts

obligations and liabilities of the existing commissioners shall become debts obligations and liabilities of the Commissioners. A.D. 1929.
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30. On the appointed day the clerk treasurer and collector and all other officers and servants of the existing commissioners shall become the clerk treasurer and collector and the officers and servants of the Commissioners and shall thenceforward hold their appointments and employments during the pleasure of the Commissioners but while performing the same duties shall receive not less salaries or remuneration and be entitled to not less pensions (if any) than they would have received or been entitled to under the existing commissioners at the appointed day. Existing
officers.

31. Subject to the provisions of this Order the Commissioners may from time to time do all or any of the things following (namely) :— Powers of
Commis-
sioners.

- (1) Maintain enlarge alter improve reconstruct remove or lease all or any harbours docks piers quays jetties landing-places warehouses stores sheds buildings sea-walls walls embankments and all other erections and works in or adjoining or near to the river which were constructed or erected or have been maintained by the existing commissioners and for any of such purposes enter into agreements with the owners of lands in or adjoining or near to the river for the purchase or lease or use of lands or otherwise to enable them to effect such purposes ;
- (2) Dredge cleanse and scour the river ;
- (3) Alter deepen restrict enlarge widen diminish lengthen shorten straighten and improve the bed and channel of the river ;
- (4) Reduce or remove any shoals shelves banks or other accumulations in the river ;
- (5) Shorten any bend or remove any angle in the course of the river and for such purpose enter into agreements with the owners of land adjoining or in or near to the river for the purchase of land or otherwise to enable them to effect such shortening or removal ;

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- (6) Abate or remove or cause to be abated or removed all impediments or obstructions in the river;
- (7) Dredge and raise from the river gravel sand and other substances for the purpose of making altering repairing and maintaining the banks and straightening and improving the course of parts of the river and constructing altering repairing and maintaining walls erections and works executed or to be executed by or for them or belonging to them;
- (8) Carry away or deposit on the banks of the river or on lands adjoining the same by agreement with the owner thereof any materials obtained in dredging or otherwise deepening and improving the bed and channel of the river or sell or dispose of the same as they think fit;
- (9) Erect or provide and maintain at any of the quays piers jetties and landing-places maintained by them such stores sheds or other accommodation as they may consider necessary for the storage of goods intended to be shipped from such quays piers jetties and landing-places or landed from vessels thereat;
- (10) If they think fit construct form acquire or provide and maintain roads or accesses to any of the piers quays jetties or landing-places maintained by them or to any warehouses stores sheds or other buildings or other accommodation erected acquired or provided and maintained by them;
- (11) On any lands acquired by them by agreement under powers conferred by this Order make and maintain—
 - (a) such sea-walls and embankments and such landing-places workshops cranes power stations and other like works as they may deem necessary for enabling them more fully to exercise the powers conferred on them by this Order; and
 - (b) such works for the reclamation of land or foreshore adjoining the river as they may deem necessary;

(12) Enter into and carry into effect agreements with any Government department company body or person for the transference to and maintenance by the Commissioners of any works for the reclamation of land or foreshore adjoining the river and of any land reclaimed by or adjoining such works; A.D. 1929.

(13) On or as regards any lands reclaimed by the works of the Commissioners or transferred to the Commissioners in terms of any such agreement as is referred to in the immediately preceding subsection—

(a) make construct erect provide maintain use sell lease or hire such landing-places workshops cranes power stations and other like works thereon as they may deem necessary for enabling the powers conferred by this Order to be more fully exercised;

(b) lay out farms small-holdings or allotments erect houses or buildings in connection therewith or for the purposes thereof sell or lease such lands or any part thereof or any such farms small-holdings allotments houses or buildings to suitable persons and do such other things for development or the business of agriculture on or in connection with such lands as may seem to them desirable and expedient;

(c) feu or lease such lands or any part or parts thereof to a suitable person or persons conditional on such person or persons (i) erecting constructing or providing on the land feued or leased to him or them such buildings works equipment and apparatus as may be necessary or desirable for carrying on on such lands such branch or branches of industry as may be specified in the feu charter or lease and (ii) carrying on on such land during the currency of the feu charter or lease thereof the branch or branches of industry so specified and also such other branch or branches of industry in addition to or in lieu of those so specified as may from time to time be approved by the Commissioners; and

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(d) make such other arrangements and do such other things consistent with the objects of this subsection as may seem to them necessary or desirable for securing the advantageous development and use of such lands;

but nothing in this subsection shall be interpreted as authorising the Commissioners themselves to carry on the business of agriculture or any other branch or branches of industry on such lands;

- (14) Enter into agreements with any or some of the police authorities of the areas adjoining the river for the provision of additional police constables for duty on or in connection with the river or otherwise for the purpose of securing the efficient policing of the river;
- (15) Make and maintain such provisions and appliances as may be necessary for furnishing to vessels resorting to the river a supply of water suitable for dietetic purposes or contract with any authority or person to furnish such supply and charge the master or owners of vessels so supplied by them any sum not exceeding one penny halfpenny for every twenty five gallons or any less quantity;
- (16) For the purpose of any works which they are by this Order authorised to construct or maintain and as part of the lands which they are by this Order authorised to acquire by agreement for the purposes of their undertaking purchase or take on lease and hold and work any quarries of stone limestone or other materials suitable for the purposes of such works;
- (17) Promote or oppose any Bill or any Provisional Order under the Private Legislation Procedure (Scotland) Act 1899 or the General Pier and Harbour Acts 1861 to 1915 or any other Provisional or Special Order made by a Government department in pursuance of a resolution of a special meeting of the Commissioners called and held on ten days' notice provided

the resolution was supported and passed by an absolute majority of the whole of the Commissioners; A.D. 1929.
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- (18) If they think fit purchase hire or otherwise employ vessels machinery or apparatus at their discretion for the purpose of dredging scouring cleansing or deepening the bed shore and channels of the river for pumping or otherwise conveying to or depositing on the banks or shores of the river materials dredged raised or removed from the bed shore or channels of the river or for similar and all other necessary purposes within the river;
- (19) If they think fit purchase hire or otherwise employ and maintain vessels steam or other tugs and lighters at their discretion for use in the river and for the towing of vessels in and out of the river and charge the owners or representatives of the owners of vessels or of goods for the use services or assistance of such vessels steam or other tugs or lighters and from time to time make such byelaws and regulations in relation to the use of such vessels steam or other tugs and lighters in the river as the Commissioners think proper;
- (20) If they think fit provide work and maintain steam or other ferry boats for the conveyance of persons and goods from one side of the river to the other or from one place on the river to another and charge for the use thereof such rates as may from time to time be approved by the Minister;
- (21) Lease any ferry and ferry boats provided by them and the ferry rates chargeable in connection therewith for such period and on such terms and conditions as they may consider expedient;
- (22) For the purposes of and subject to the provisions of this Order from time to time as they think fit purchase by agreement or lease and hold any lands; and

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- (23) Sell feu lease exchange or otherwise dispose of in such manner for such consideration and on such terms and conditions as they think fit any lands or any interest in any lands vested in them by this Order or which have been acquired by them by agreement under the powers of this Order and which in their judgment are not required or are not immediately required for the purposes of their undertaking including any lands reclaimed by the works of the Commissioners or by the works of any Government department authority company body or person or adjoining such last mentioned works and transferred to the Commissioners under the powers of this Order Moneys received from the sale of land under this subsection shall be applied to purposes in connection with the undertaking of the Commissioners to which capital is properly applicable :

Provided that any electrical works of the Commissioners shall be so made constructed erected provided maintained and used as to prevent any interference with any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General or with telegraphic communication by means of such line :

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

32. If the Commissioners as authorised by the section of this Order of which the marginal note is "Powers of Commissioners" at any time lease any ferry or ferry boats provided by them or the ferry rates chargeable in connection therewith the following provisions shall have effect during the subsistence of such lease viz. :—

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Power to
lease ferry
boats.

- (1) As from the date of and during the continuance of the lease and to the extent provided therein the lessee shall have and may exercise all or any of the powers conferred upon the Commissioners by this Order 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 perform all the duties of the Commissioners under this Order so far as these are applicable to the subjects leased;
- (2) No such lease shall be assignable without the previous consent in writing of the Commissioners;
- (3) The Commissioners shall within one month after the date of any such lease deposit a certified copy thereof with the Ministry of Transport;
- (4) No such lease shall be entered into in consideration or part consideration of any fine premium or other capital sum;
- (5) All rents received under or in respect of any lease shall be deemed to be annual revenue of the Commissioners and shall be treated as if such rents were dues rates or charges leviable by the Commissioners in terms of this Order.

33. Without prejudice to any existing right of His Majesty and save as provided by the Army Act and the Air Force Act nothing in this Order shall extend to authorise any tolls to be demanded or received from any person when on duty in the service of the Crown or for any animal vehicle or goods the property of or when being used in the service of the Crown or returning after being so used or from any police officer acting in the execution of his duty or for any mail bag as defined by

Exemption
from tolls in
case of
persons in
service of
Crown &c.

[Ch. xxix.] *Nith Navigation* [19 & 20 GEO. 5.]
Order Confirmation Act, 1929.

A.D. 1929. the Post Office Act 1908 If any person wilfully and with intent to defraud claims or takes the benefit of any such exemption as aforesaid without being entitled thereto he shall for every such offence be liable on summary conviction to a fine not exceeding ten pounds.

Ballast &c.
not to be
thrown in
river.

34. No authority or person without the consent of the Commissioners shall throw or deposit any ballast dust ashes rubbish shingle gravel or stones or any other thing into or in the river nor shall any person by any act or deed directly or indirectly injure or impede the navigation or endanger the shipping thereon and any person acting contrary to any of the provisions of this section shall be guilty of an offence against this Order and on conviction shall be liable in respect of every such offence to a penalty not exceeding five pounds.

Prohibition
of dredging
&c. without
licence of
Commis-
sioners.

35. Subject to the provisions of this Order and without prejudice to the section of this Order the marginal note of which is "Crown rights" no authority or person shall at any time dredge dig raise or remove any sand gravel ballast shingle rock soil or other material from the foreshore or bed of the river without first having obtained the licence in writing of the Commissioners which shall not be unreasonably withheld Any authority or person who obtains such a licence shall be subject to and shall comply with all the provisions of this Order which apply to or affect the dredging digging raising or removal of any sand gravel ballast shingle rock soil or other material by the Commissioners from any part of the foreshore or bed of the river and to such further provisions and conditions as the Commissioners may insert in the licence Any authority or person who without first having obtained such a licence dredges digs raises or removes any sand gravel ballast shingle rock soil or other material from the foreshore or bed of the river or who having obtained such a licence dredges raises or removes any sand gravel ballast shingle rock soil or other material from any part of the foreshore or bed of the river contrary to the said provisions of this Order or contrary to the provisions or conditions of the licence shall be guilty of an offence against this Order and for every such offence shall be liable to a penalty not exceeding twenty pounds.

36. Whenever any vessel has been stranded or sunk in the river— A.D. 1929.

Removal of
wrecks.

- (1) the Commissioners may cause such vessel to be raised or removed or to be blown up or otherwise destroyed so as to clear the river therefrom but they shall not exercise this power if the registered owner of such vessel shall within twenty four hours after the vessel shall have been stranded or sunk take such steps as may in the opinion of the Commissioners be necessary for the raising or removal thereof and shall thenceforth continuously and diligently and to the satisfaction of the Commissioners prosecute and do all such works and things as may in the opinion of the Commissioners be necessary and proper for the raising and removing of the vessel as speedily as possible;
- (2) the Commissioners may cause any such vessel and the furniture tackle and apparel thereof or any part thereof respectively which shall be raised or saved and also all or any part of the cargo goods chattels and effects which may be raised or saved from any such vessel to be sold in such manner as they think fit (subject to such notice being given of the intended sale as is prescribed by the Merchant Shipping Act 1894) 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 watching lighting or otherwise controlling the vessel and shall hold the surplus (if any) of the proceeds of sale in trust for the persons entitled thereto;
- (3) before selling any such cargo goods chattels or effects as aforesaid the Commissioners shall pay all duties or levies which may be exigible by His Majesty in respect of the cargo goods chattels or effects to be sold and they may retain the amount of the duties or levies so paid out of the proceeds arising from the sale of such cargo goods chattels or effects; and

A.D. 1929.

- (4) the Commissioners may recover the said expenses incurred by them under this section or the portion of the said expenses which the proceeds of the sale under this section are insufficient to meet (hereinafter referred to as "the deficiency") or in the case of an appeal as hereafter in subsection (5) of this section provided such sum as is awarded by the arbiter to be payable in respect of the said expenses or the deficiency from the person who at the time of the stranding or sinking of the vessel was the registered owner thereof or from the executors or administrators of such owner as a debt in any court of competent jurisdiction; but
- (5) if on demand being made under the immediately preceding subsection for payment of any expenses or the deficiency the person on whom the demand is made is dissatisfied with the amount demanded he may within fourteen days after receipt of the demand appeal to the Board who shall appoint an arbiter to determine and award whether any and what sum is payable in respect of the said expenses or the deficiency and the award of the arbiter shall be conclusive and binding on both parties and the costs of the appeal and the award shall be in the absolute discretion of the arbiter and he shall award and order how these 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 said expenses or the deficiency is recoverable under the said immediately preceding subsection of this section.

Purposes for which bye-laws may be made.

37. The Commissioners may subject to the provisions of this Order from time to time make byelaws to take and have effect within the river and upon the lands property and premises of the Commissioners for all or any of the following purposes (namely):—

- (1) For regulating the use of the harbour docks piers quays jetties and landing-places of the Commissioners;

- (2) For regulating the exercise of the several powers vested in the harbour master; A.D. 1929.
- (3) For regulating the admission of vessels into or near to the harbour docks piers quays jetties and landing-places of the Commissioners and the removal thereof out of or from the same and for the good order and government of such vessels whilst within the river and at or near to the harbour docks piers quays jetties and landing-places of the Commissioners;
- (4) For regulating (with the consent of the Commissioners of Customs and Excise when such consent is necessary) the shipping and unshipping landing warehousing stowing depositing and removing of all goods within the limits of the harbour docks piers quays jetties landing-places and premises of the Commissioners;
- (5) For regulating (with the consent of the Commissioners of Customs and Excise) the hours during which the entrances and outlets to the harbour docks piers quays jetties and landing-places of the Commissioners shall be open;
- (6) For regulating the duties and conduct of all persons as well the servants of the Commissioners as others (not being officers of customs and excise) who shall be employed in or at the harbour docks piers quays jetties landing-places and premises of the Commissioners;
- (7) For regulating the use of fires and lights within and at the harbour docks piers quays jetties landing-places and premises of the Commissioners and within any vessel being within the river and at or near to any harbour dock pier quay jetty landing-place or premises of the Commissioners;
- (8) For preventing damage or injury to any vessel or goods within the river and at or near to the harbour docks piers quays jetties landing-places or premises of the Commissioners;
- (9) For regulating the use of workshops cranes weighing machines weights measures and apparatus belonging to the Commissioners and

A.D. 1929.

the duties and conduct of weighers and meters employed by them;

- (10) For regulating the duties and conduct of the porters and carriers employed on at or about the harbour docks piers quays jetties landing-places and premises of the Commissioners and fixing the rates to be paid to them for carrying any goods articles or things from or to the same;
- (11) For preventing and removing obstructions or impediments in the river;
- (12) For mooring berthing or removing vessels in any part of the river;
- (13) For regulating the management and superintendence of the river and of the works constructed or to be constructed for the improvement thereof and of the beacons and light-houses buoys and mooring posts and for preventing injury to the works under the jurisdiction of the Commissioners;
- (14) For regulating the conduct of the owners masters pilots and crews of vessels on the river with regard to times of sailing the mode of navigation the displaying of lights the taking on board and landing or putting out passengers and the towing of vessels;
- (15) For regulating and licensing vessels plying for hire in the river;
- (16) For regulating the conduct of boatmen ferry-men and others plying on the river;
- (17) For regulating the conveyance of rafts of timber on the river;
- (18) For regulating the removal and disposal of all ballast brought by vessels entering the river and for regulating the supply of ballast to vessels leaving in ballast so as to prevent ballast being thrown or allowed to fall into the river or obstructing the navigation; or
- (19) For controlling the making maintaining and using of any quays wharves landing stages or other works in the river.

38. The following provisions shall have effect with reference to and shall govern the making confirmation publication and inspection of byelaws made under and for the purposes of this Order the amounts of penalties which may be imposed in respect of offences against such byelaws and proof of such byelaws (namely) :—

A.D. 1929.

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Making con-
firmation
&c. of bye-
laws.

- (1) Any byelaws may be made altered or revoked at any meeting of the Commissioners provided a full copy of the draft of any byelaw or alteration of a byelaw intended to be made and of any byelaw intended to be revoked is sent to each commissioner along with or prior to the issue of the notice of the meeting;
- (2) Any byelaw may provide for penalties of different amounts (but in no case exceeding five pounds) being imposed in respect of the breach or non-observance of any of the byelaws but notwithstanding any provision of any byelaw it shall be competent for the Court to modify the amount of the penalty in respect of any breach or non-observance of any byelaw;
- (3) No byelaw or alteration of a byelaw shall have any force or effect unless and until it has been confirmed by the Minister who may allow modify or disallow the same and has been published by the Commissioners as may be directed by the Minister;

Provided that in the case of any byelaws which the said Minister in consultation with the Board of Trade shall deem primarily to concern the interests of navigation the provisions of this section shall apply as if the said Board were substituted for the said Minister and the allowance and confirmation of any such byelaws by the said Minister or the Board of Trade respectively shall be sufficient evidence of compliance with the provisions of this section;

- (4) Public notice of each application to the Minister for confirmation of any byelaw or alteration of a byelaw shall be given by the Commissioners in such manner as may be directed by the Minister and any person desiring to object

A.D. 1929.

to such proposed byelaw or alteration of a byelaw on giving written notice of the nature of his objection to the clerk and to the Minister within ten days after such public notice is given may by himself his counsel or agent be heard thereon but not so as to allow more than one objecting party to be heard on the same matter of objection without leave of the Minister;

- (5) Such alterations shall be made by the Commissioners on any byelaw or alteration of a byelaw as may be required by the Minister after considering any representations made to him;
- (6) Upon confirmation by the Minister of any byelaw or alteration of a byelaw such byelaw shall be published by the Commissioners in such manner as may be directed by the Minister;
- (7) Copies of all byelaws confirmed by the Minister and of any proposed byelaw or proposed alteration of any byelaw shall be kept at the office of the Commissioners and any person having any interest shall be entitled during ordinary office hours to inspect and to take copies of the same without fee or charge; and
- (8) The production of a written or printed copy of any byelaw with a certificate thereon by the clerk that such byelaw was duly made by the Commissioners and has been duly confirmed and published (if confirmation and publication be necessary) shall be sufficient proof of the byelaw in any Court or in any proceedings.

For protection of
riparian proprietors.

39. The following provisions shall have effect for the protection of proprietors of lands bordering on the river (hereafter in this section referred to as "landowners") (namely):—

- (1) Subject to the provisions of this Order a landowner shall be entitled to erect walls construct embankments and execute other works for the protection of his lands from encroachment by the river;

- (2) No landowner shall be entitled to erect any such wall construct any such embankment or execute any such other work which in the opinion of the Commissioners will prejudicially affect the carrying into effect by the Commissioners of any of the purposes of this Order or their exercise of any of the powers conferred on them by this Order; A.D. 1929.
- (3) No such walls embankments or other works shall be erected constructed or executed by any landowner below high-water mark of ordinary spring tides except with the prior consent in writing of the Commissioners and every such wall embankment or other work shall be completed by the landowner and after completion shall be maintained by him to the satisfaction of the Commissioners;
- (4) If either (a) any such wall embankment or other work is erected constructed or executed below high-water mark of ordinary spring tides without the prior consent of the Commissioners or (b) any such wall embankment or other work below high-water mark of ordinary spring tides to the erection construction or execution of which the Commissioners have given their consent in terms of the immediately preceding subsection of this section is not completed or maintained by the landowner to the satisfaction of the Commissioners and it shall appear to the Commissioners in either such case that such wall embankment or work is dangerous or is likely to become dangerous to the navigation of the river they shall be entitled to call upon the landowner to remove such wall embankment or other work or any part or parts thereof and failing his doing so within such time as may be fixed by the Commissioners they shall be entitled to remove the whole of the wall embankment or other work or such part or parts thereof as they shall consider necessary at the expense of the landowner;
- (5) If any question or difference shall arise between any landowner and the Commissioners either

A.D. 1929.

- (a) as to the anticipated effect of any wall embankment or other work proposed to be erected constructed or executed by such landowner or (b) as to the completion or maintenance of any such wall embankment or other work or (c) as to whether such wall embankment or other work is dangerous or is likely to become dangerous to the navigation of the river and the whole or part thereof should be removed such question or difference shall be referred to the Board whose determination shall be final and binding on the parties; and
- (6) The Commissioners shall compensate such landowner for damage caused to his property or the property of his tenants by reason or in consequence of (a) the exercise by the Commissioners of any of their powers under this Order or (b) the refusal of the Commissioners to consent to the proposed erection of any wall construction of any embankment or execution of any other work by the landowner for the protection of his lands from encroachment by the river and in the event of any question or difference arising between the Commissioners and the landowner either as to whether damage has been caused as aforesaid or as to the amount of compensation to be paid to him in respect of any damage so caused such question or difference shall be referred to the determination of a single arbiter mutually chosen or (failing such choice) appointed by the Board on the application of either party and the determination of such arbiter shall be final and binding on the parties.

For protection of proprietors of salmon fishings.

40. The following provisions shall have effect for the protection of proprietors of salmon fishings in the river (namely) :—

- (1) No provision of this Order shall be construed as limiting the rights of any owner of salmon fishings in the river; and
- (2) If either (a) any such owner or his tenant is prevented from exercising his right of salmon fishing in the river as fully as is done by him

or is practicable to him as at the fifteenth day of May nineteen hundred and twenty-five or (b) the salmon fishing belonging to any such owner is ascertained to have been injuriously affected in either case by works executed by the Commissioners in the exercise of their powers under this Order the Commissioners shall be bound to compensate such owner and his tenant or either of them as the case may be for the damage thereby caused to them or him but in ascertaining the amount of compensation so due to such owner regard shall be had to the extent to which he shall have exercised his right of salmon fishing in the river and the average annual rent or nett revenue which he shall have received in respect thereof during the seven years immediately preceding the date of his claim for compensation in terms of this section and if the Commissioners and such owner of salmon fishings or his tenant fail to agree either that damage has been so caused to him or as to the amount of compensation to be paid to him in terms of this section in respect of damage so caused to him the question shall be referred to the determination of a single arbiter mutually chosen or (failing such choice) appointed by the Board on the application of either party and the determination of such arbiter shall be final and binding on the parties.

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41. Subject to the provisions of this Order the Commissioners may demand receive and recover dues rates and charges not exceeding in amount those specified in the Second Schedule to this Order in respect of (a) vessels proceeding to or departing from any harbour dock pier quay jetty or landing-place in the river or on or from which passengers are embarked or disembarked in the river or on or from which passengers' luggage or goods are shipped unshipped or transhipped in the river (b) passengers embarked or disembarked on or from vessels in the river and (c) passengers' luggage and goods shipped unshipped or transhipped on or from vessels in the river.

Rates on
vessels
passengers
passengers'
luggage and
goods.

A.D. 1929.

Levy of
other rates
for conveni-
ences and
services.

42. The Commissioners may demand receive and recover such reasonable rates or charges as they shall think fit for the use of any landing-places warehouses sheds stores workshops cranes power stations and other like buildings and works and for mooring posts buoys weighing machines machinery and apparatus and conveniences provided or maintained by them or in respect of any services rendered by them in connection with the river where no rates or charges are specially fixed for such use or service.

Power to
vary exemp-
tions and
compound
for rates.

43. The Commissioners may confer vary or extinguish exemptions from and compound with any person with respect to the payment of the dues rates and charges authorised by or which may from time to time be authorised in accordance with the provisions of this Order but so that no preference be in any case given to any person over any other person under the like circumstances and that anything done under this section shall not prejudice the other provisions of this Order.

Contribu-
tions by the
councils to
meet the
expenses of
this Order.

44. For the purpose of enabling the Commissioners to make payment of the costs charges and expenses of and incidental to the preparing for obtaining and confirming this Order the councils shall and they are hereby authorised within two years after the coming into force of this Order to contribute to the Commissioners sums equal in all to the amount of such costs charges and expenses and the portions or shares in which the amount of such costs charges and expenses shall be contributed or paid by the several councils to the Commissioners shall be as follows (namely):—

- (1) One-fourth by Dumfries County Council;
- (2) One-fourth by Kirkcudbright County Council;
- (3) Three-eighths by Dumfries Town Council; and
- (4) One-eighth by Maxwelltown Town Council.

Councils em-
powered to
contribute
towards re-
payment of
the existing
capital debt
of the Com-
missioners.

45. At any time and from time to time any one or more of the councils may if they think fit resolve to contribute to the Commissioners such sum or sums as the council or councils so resolving shall think fit for the purpose of enabling the Commissioners to accelerate repayment of the whole or part of such balance as may then remain unpaid by the Commissioners of the sum

of two thousand nine hundred and fifty five pounds and sixteen shillings paid at Whitsunday 1923 by the present holders to the representatives of the original holders of certain Bonds granted in 1861 and 1863 by the existing commissioners for sums then borrowed by them and applied to the execution of capital works for improving the navigation of the river and any council so resolving is hereby authorised to pay such sums as they may from time to time resolve upon to the Commissioners and to raise such sum or sums by rates as hereafter in this Order provided Any sum or sums paid by any one or more of the councils to the Commissioners as authorised by this section shall be applied by the Commissioners towards repayment of the then outstanding balance of the said sum of two thousand nine hundred and fifty five pounds and sixteen shillings and to no other purpose.

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46. From time to time the Commissioners may with the consent of the Minister borrow at interest upon the security of all or any of the dues rates and charges leviable and other income receivable by them under this Order and of the other assets belonging to them (and that either with or without the guarantees by the councils provided for in the section of this Order of which the marginal note is "Councils empowered to guarantee loans raised by Commissioners") such sums of money as are in their opinion necessary for the general purposes of the undertaking of the Commissioners to which capital is properly applicable and except as expressly otherwise authorised by this Order the following conditions and provisions shall apply and have effect as regards all money borrowed as authorised by this section (namely) :—

Power of
 Commis-
 sioners to
 borrow for
 capital ex-
 penditure

- (1) Money borrowed shall be applied only to the purposes for which it is authorised to be borrowed;
- (2) Any moneys borrowed shall be repaid (a) as regards money borrowed for the purchase of lands and servitudes within sixty years and (b) as regards money borrowed for any other purpose within such period after the borrowing of the same as the Minister may determine which period is hereinafter referred to as "the prescribed period";
- (3) Repayment of money borrowed shall be made either (a) by equal annual instalments of

A.D. 1929.

principal (b) by equal annual instalments of principal and interest combined (c) by means of a sinking fund appropriated for that purpose and with the accumulations thereof (if any) from time to time applied for that purpose (d) partly in one of these ways and partly in any of the others or (e) by a single payment of the balance outstanding at the time as shall be determined by the Commissioners;

- (4) In the case of moneys borrowed for the purpose of new works from which revenue may be reasonably expected on completion the Commissioners shall not be bound to pay any instalment or make any payment to any sinking fund in respect of moneys so borrowed until the expiration of three years from the date of borrowing the same or until such works have been substantially completed whichever shall be the earlier date;
- (5) If having borrowed any money under the provisions of this Order the Commissioners pay off the outstanding balance thereof by a single payment and otherwise than by instalments or by means of a sinking fund or out of the sale of lands or other moneys received on capital account (not being borrowed money) they may re-borrow the amount of such outstanding balance so repaid and so on from time to time but all moneys so re-borrowed shall for the purposes of repayment be deemed part of the original loan and shall be repaid within the period prescribed for the repayment of the moneys in lieu of which such re-borrowing has been made; and
- (6) In relation to any consent to be given by the Minister to the borrowing of money by the Commissioners under this Order the Minister shall have and may exercise the same powers as are conferred upon the Secretary of State by section 93 of the Local Government (Scotland) Act 1889.

Provisions in regard to any sinking fund formed.

47. If the Commissioners determine that any moneys or any part of any moneys borrowed under the immediately preceding section shall be repaid by means of a

sinking fund as in that section provided such sinking fund shall be formed operated and maintained in accordance with the provisions and regulations following :— A.D. 1929
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(1) It shall be formed and maintained either—

(a) by payment to the fund throughout the prescribed period subject as in the last preceding section provided of such equal annual sums as will together amount to 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 prescribed period subject as in the last preceding section provided of such equal annual sums as with accumulations at a rate not exceeding three and one half per centum per annum or such other rate as the Minister may sanction will be sufficient to pay off within the prescribed period the moneys for the repayment of which such 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 loan in respect of which the sinking fund is formed be immediately invested in securities in which trustees are by law for the time being authorised to invest or in mortgages bonds debentures debenture stock or other securities (not being annuity certificates or securities payable to bearer) duly issued by any local authority the Commissioners being at liberty from time to time to vary and transpose such 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 ;

A.D. 1929.
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- (4) The Commissioners may at any time apply the whole or any part of any sinking fund in or towards the discharge of the money for the repayment of which the fund is 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 prescribed period a sum equal to the interest which would have been produced by such sinking fund so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based ;
- (5) If and so often as the income of an accumulating sinking fund—
- (a) 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 annual payments to the fund are based any deficiency shall be made good by the Commissioners ; or
- (b) 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 annual payments to the fund are based any such excess may be applied towards such annual payments ;
- (6) Any expenses connected with the formation maintenance investment application management or otherwise of any sinking fund under this Order shall be paid by the Commissioners in addition to the payments provided for by this Order ;
- (7) If it appear to the Minister or to the Commissioners at any time that the amount in the sinking fund with the future payments thereto in accordance with the provisions of this Order together with the accumulations thereon (in the case of an accumulating sinking fund) will probably not be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed it shall be the duty of the Commissioners to make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose ;

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- (8) If the Commissioners desire to accelerate the repayment of any loan they may increase the amounts payable to any sinking fund;
- (9) If the amount in any sinking fund with the future payments thereto in accordance with the provisions of this Order together with the accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Commissioners be more than sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed the Commissioners with the consent of the Minister may reduce the payments to be made to the sinking fund either temporarily or permanently to such amounts as will be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed;
- (10) If the amount in any sinking fund at any time together with the probable accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Commissioners be sufficient to repay the loan in respect of which it is formed within the prescribed period the Commissioners may with the consent of the Minister discontinue the annual payments to such sinking fund;
- (11) Any surplus of any 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 purpose or purposes of the Commissioners as the Commissioners may determine;
- (12) Within two months after the end of each financial year during which any annual instalment requires to be paid to a sinking fund in terms of this section the treasurer shall transmit to the Minister a return in such form as the Minister may prescribe and verified by statutory declaration if so required by the Minister showing (a) the amount of the annual instalment so paid to the sinking fund in respect of that year (b) the securities upon which any investment of any portion of the sinking fund has

A.D. 1929.

been made (c) the purposes to which any portion of the sinking fund and the interest or income thereof have been applied during such year and (d) the total amount of the sinking fund remaining invested at the end of the year and in the event of any default in making such return the treasurer shall be liable in respect of such default to a penalty not exceeding twenty pounds which shall be recoverable by the Minister as a debt to the Crown is recoverable or summarily;

- (13) If it shall appear to the Minister from any return made in terms of the immediately preceding subsection or otherwise that the Commissioners have failed to pay to any sinking fund any annual instalment required by this section to be paid to such fund or have applied any portion of the moneys paid to or set apart for such fund or any interest or income of such fund to any purpose or purposes other than is authorised by this Order the Minister may by order direct that a sum not exceeding double the amount in respect of which there has been default by the Commissioners shall be paid to and invested as part of the sinking fund and such order shall be enforceable by decree of either division of the Inner House of the Court of Session in Scotland pronounced in a summary application presented by the Minister for that purpose.

Councils empowered to guarantee loans raised by Commissioners.

48. When the Commissioners propose to purchase any land or execute any works to which capital moneys may be properly applied and to borrow money in terms of the section of this Order of which the marginal note is "Power of Commissioners to borrow for capital expenditure" to meet the cost of such land or works and desire that the councils should guarantee payment of the annual instalments of the principal of the moneys borrowed and payment of the interest on the balances for the time being outstanding of the principal of the moneys borrowed in the event of the funds of the Commissioners proving insufficient to enable the Commissioners to make payment of such annual instalments of principal and interest they shall make application to each of the

councils to give such guarantee and shall submit to the councils all such plans reports particulars estimates accounts and information as any of the councils shall consider necessary to enable them to judge of (a) the necessity for or desirability of purchasing the lands or executing the works proposed by the Commissioners (b) the effect on the funds of the Commissioners of their proposed expenditure in respect of such land or works and (c) whether it is expedient in the circumstances that repayment of the moneys proposed to be borrowed to meet the expenditure and payment of the interest on the sums to be borrowed should be guaranteed by the councils or any of them in the event of the funds of the Commissioners being insufficient to permit of such repayments or payments being made therefrom and if the councils or any of them are satisfied of the expediency of their giving such a guarantee the councils so satisfied may by resolution guarantee that during the period fixed for repayment of the loan they will pay in each year to the Commissioners a sum equal to such parts of the instalment of principal and interest as the Commissioners shall in the immediately preceding year have been unable to pay from their funds and if any question shall arise between the councils or any of them and the Commissioners as to the ability of the latter to have paid the whole of the instalment and interest from their funds in any year or as to the amount payable to the Commissioners by the councils or council under their guarantee such question shall be determined by the Secretary of State.

A.D. 1929.

49. Such payments or contributions as may be made or given to the Commissioners by the councils or any of them under or in pursuance of the provisions of this Order shall (a) in the case of a county council either be made out of such county or district rate leviable equally on the owners and occupiers of lands and heritages as the county council may determine or be produced by and made from a special rate or an addition to any existing rate levied by the county council in either such case equally on the owners and occupiers of lands and heritages within their area or such part or parts of their area as the county council may from time to time declare to be rateable for this purpose and (b) in the case of a town council be made out of such

Rates from which contributions by councils to be met.

A.D. 1929. — general burgh rate leviable equally on the owners and occupiers of lands and heritages as the town council may determine.

Money to be borrowed on mortgage. 50. Except as expressly otherwise provided by this Order as regards (i) moneys borrowed by the Commissioners in terms of the section of this Order of which the marginal note is "Bank account and borrowing and other operations thereon" and (ii) the capital debt of the existing commissioners transferred to the Commissioners all moneys borrowed by the Commissioners shall be borrowed on mortgage and mortgages for moneys borrowed by the Commissioners shall be granted transferred and dealt with in accordance with the provisions conditions and regulations following:—

- (1) Every mortgage may be in the form contained in the Third Schedule to this Order or to the like effect and be partly in writing and partly in print and shall in addition to being sealed be signed on behalf of the Commissioners either by two commissioners and the clerk and the treasurer or by two commissioners and the clerk and treasurer. No mortgage shall be executed except in pursuance of a resolution of the Commissioners;
- (2) All mortgages issued shall be numbered consecutively and be issued from a book in which a full copy (as a counterfoil) shall be retained. The issue of each mortgage shall be reported to the first succeeding meeting of the Commissioners and the number date and amount of such mortgage shall be recorded in the minutes of that meeting;
- (3) No person who signs a mortgage on behalf of the Commissioners shall by his subscription thereof be or be held to have rendered himself individually or personally liable for the payment of any money so borrowed or any interest thereon or of any sums whatsoever in respect thereof;
- (4) Any person entitled to any mortgage may transfer his interest therein to any other person and every such transfer shall be by endorsement on the mortgage and may be in the form contained in the Fourth Schedule to this Order or to the like effect;

- (5) Every person to whom a mortgage is transferred shall as soon after the date of the transfer as is reasonably practicable produce the mortgage with the transfer endorsation thereon to the clerk and if it appears to the clerk that the transfer has been properly executed he shall immediately record the transfer in the register of mortgages and docket the mortgage that the transfer has been so recorded. After being so recorded every such transfer shall entitle the transferee and his executors administrators and assignees to the principal sum for which the mortgage was issued and such interest as may be due thereon; A.D. 1929.
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- (6) If any mortgage be transmitted by reason of bankruptcy of the person entitled thereto there shall be produced to the clerk official evidence of such bankruptcy and of the vesting of the bankrupt estate in the trustee or other person to whom such estate shall have been transferred. On being satisfied of such transmission the clerk shall record the transfer and docket on the mortgage a certificate that it has been so transmitted;
- (7) The Commissioners shall not be bound to see to the execution of any trust whether express implied or constructive to which any mortgage or other security to be granted by the Commissioners or the money principal or interest thereby secured may be subject and the receipt of the person in whose name any such mortgage or other security stands in the books of the Commissioners shall be sufficient discharge to the Commissioners for any money payable in respect of such mortgage or other security notwithstanding any trust to which the same or the money thereby secured may then be subject and the Commissioners shall not be bound to see to the application of the money paid on any such receipt;
- (8) The interest on the principal sum for which each mortgage is granted and issued shall be paid half yearly at the terms of Whitsunday and Martinmas;

A.D. 1929.
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- (9) All mortgages granted by the Commissioners under the authority of this Order and all money advanced or lent on the security of the revenue or other property of the undertaking of the Commissioners shall be movable or personal estate and transmissible as such;
- (10) Any person entitled to any mortgage granted by the Commissioners under the authority of this Order may discharge the same and his right and interest therein in favour of the Commissioners and every such discharge may be written or partly written and partly printed on the mortgage and may be according to the form contained in the Fifth Schedule to this Order or to the like effect and such discharge when signed by the granter thereof and duly stamped shall be valid and effectual to all intents and purposes;
- (11) All mortgages at any time and from time to time granted or issued by the Commissioners under this Order shall rank together without any priority one over another on account of the date of the mortgage or on any other account;
- (12) If at the date fixed for repayment of the principal sum for which a mortgage is granted or at the date of expiration of such further term as may be specified in any minute or minutes endorsed on the mortgage the mortgage having a valid discharge endorsed thereon is not presented to the treasurer interest shall cease to be payable on the principal sum for which the mortgage was granted and issued as from the date so fixed for repayment of the principal sum.

Lenders
 exempted
 from
 inquiry.

51. No person lending money to the Commissioners shall be bound to inquire as to the observance by the Commissioners of any of the provisions of this Order or be bound to see to the application or be answerable for any loss misapplication or non-application of such money or any part thereof.

Appoint-
 ment of
 judicial
 factor.

52. In the event of (1) any of the principal of the capital debt transferred from the existing commissioners to the Commissioners or (2) any principal money borrowed

by the Commissioners on mortgage as aforesaid or any interest thereon not being paid within three months after such payment shall have become due and after demand thereof in writing it shall be lawful for any holder of the bonds for the capital debt so transferred or any mortgagee holding by himself or in conjunction with any other mortgagee or mortgagees joining in the application not less than one-tenth of the total capital debt of the Commissioners outstanding at the time to render his or their security effectual by the appointment of a judicial factor and the application for such appointment shall be made by summary petition to the Court of Session or in time of vacation to the Lord Ordinary on the Bills who are hereby respectively authorised and required on such application being made by any such bondholder or any mortgagee or mortgagees holding the proportion of the total debt before specified to appoint some person as judicial factor to the effect and with the powers hereinafter mentioned unless previously to such application being advised the amount of such principal money or interest thereon and expenses shall have been paid to the petitioner or petitioners or unless the said court or Lord Ordinary as the case may be shall be satisfied that consignation thereof should under the circumstances be accepted in lieu of payment and such consignation be made accordingly and the interlocutor making such appointment shall not be subject to review or appeal.

A.D. 1929.

53. The judicial factor so appointed on finding security in common form shall exercise all the powers conferred by this Order upon the Commissioners in relation to managing and maintaining the undertaking of the Commissioners and ascertaining fixing collecting and recovering the revenue thereof and the Commissioners shall hand over to him all books and documents necessary for that purpose and after defraying all expenses incurred in the exercise of such powers or otherwise for and in relation to the undertaking the judicial factor shall from time to time apply and pay over the balance of the sums received by him to the several parties entitled to the same and such judicial factor shall continue not only until all arrears due at the date of his appointment and any interest which shall have become due during his continuance in office with interest and expenses including the expenses of the application for

Judicial factor's powers and duties.

A.D. 1929. — such appointment and of carrying the purposes thereof into execution shall have been paid but also until any half year's interest which although not due may become current during his continuance in office and a sufficient sum to meet expenses shall have been paid into or consigned in one of the chartered or other banks in Scotland and upon payment and consignment as aforesaid of the said principal money interest and expenses it shall be lawful for the Commissioners to apply to the Court of Session or the Lord Ordinary as aforesaid for the recall of the appointment of the judicial factor.

Finance
committee
and autho-
rising of
payments.

54. The Commissioners shall annually appoint a finance committee for regulating and controlling their finances and all payments out of the funds of the Commissioners unless (1) made in pursuance of the specific requirement of an Act of Parliament or of a decree of a competent court (2) for the periodical payment of salaries or wages or (3) of an approved fixed amount falling to be made periodically in terms of contracts or resolutions of the Commissioners shall be made in pursuance of either (a) an order of the Commissioners passed on a report by the finance committee or (b) a resolution of the finance committee in accordance with the provisions of any standing orders or regulations from time to time made by the Commissioners.

Bank ac-
count and
borrowing
and other
operations
thereon.

55. The Commissioners shall open and keep an account with the branch in Dumfries of such incorporated or joint stock bank as they may from time to time select and such account shall be opened kept and operated upon in accordance with the provisions conditions and regulations following (namely) :—

- (1) The account shall be opened and kept in name of the Commissioners;
- (2) All moneys from time to time received by the Commissioners shall be paid immediately to the credit of the account;
- (3) Each payment from the funds of the Commissioners which exceeds one pound sterling in amount shall be made by cheque on the account;
- (4) Each cheque on the account shall be signed by two members of the Commissioners' finance committee and be countersigned by the clerk;

A.D. 1929.

- (5) So far as may be necessary for defraying their current annual expenditure in anticipation of their revenue in any financial year the Commissioners may from time to time during the currency of such financial year on the security of the dues rates and charges leviable by them under this Order and their other assets borrow by way of overdraft on the account at cash account rates or on such other terms as may be agreed such sum or sums not exceeding in all one half of the estimated amount of the Commissioners' revenue for such financial year but all sums so borrowed shall be paid off and extinguished at or before the end of the financial year in which they were borrowed out of moneys received by the Commissioners on account of revenue in or in respect of such financial year;
- (6) So far as may be necessary for defraying in anticipation of their borrowing on mortgage the amount of expenditure by them to which capital is properly applicable and for which they have previously been authorised under this Order to borrow the Commissioners may from time to time on the security of the dues rates and charges leviable by them under this Order and their other assets borrow by way of overdraft on the account at cash account rates or on such other terms as may be agreed such sum or sums not exceeding in all and when added to the amount already borrowed by the Commissioners on mortgage and not repaid the total amount of the expenditure by the Commissioners to which capital is properly applicable and for which the Commissioners have previously been authorised under this Order to borrow; and
- (7) So far as may be necessary for defraying the costs charges and expenses of and incidental to the preparing for obtaining and confirming this Order in anticipation of the contributions to be received by them from the councils in terms of the section of this Order of which the marginal note is "Contributions by the councils to meet the expenses of this Order" the Commissioners may on the security of the dues

A.D 1929.

rates and charges leviable by them in terms of this Order and their other assets borrow by way of overdraft on the account at cash account rates or on such other terms as may be agreed such sum or sums not exceeding in all the amount of such costs charges and expenses.

Reserve
fund.

56. The Commissioners may if they think fit set aside in each year in which they have sufficient revenue available for the purpose any sum not exceeding two pounds ten shillings per centum of their revenue as a reserve fund and may invest and accumulate the same at interest in any securities in which they are authorised to invest sums paid into any sinking fund in terms of this Order which reserve fund shall be applicable from time to time to meet any extraordinary claim demand or charge arising against the Commissioners but the said reserve fund shall never be allowed to accumulate so as to exceed at any time the sum of two thousand pounds.

Application
of revenue.

57. All moneys received by the Commissioners in terms of this Order (other than moneys received by the Commissioners from the councils under the sections of this Order of which the marginal notes are respectively "Contributions by the councils to meet the expenses of "this Order" and "Councils empowered to contribute "towards repayment of the existing capital debt of the "Commissioners") and being of the nature of revenue shall be applied by them for the purposes and in the order following (namely):—

First In payment of the expenses properly chargeable to revenue of the maintenance repair and management of the undertaking of the Commissioners;

Secondly In payment of the interest on such balances of principal as may from time to time remain unpaid by the Commissioners of the balance outstanding unpaid at the appointed day of the sums of (1) two hundred and fifty pounds borrowed on debenture by the existing commissioners on the twenty-seventh day of August nineteen hundred and four and applied by them to the erection of a store at Kingholm Quay and (2) two thousand nine hundred and fifty five pounds and sixteen shillings paid at

Whitsunday 1923 by the present holders to the representatives of the original holders of certain bonds which were granted in 1861 and 1863 by the existing commissioners for sums then borrowed by them and applied to the execution of works for improving the navigation of the river; A.D. 1929
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Thirdly In repayment on or before the fifteenth day of May nineteen hundred and thirty of such balance of principal as may remain unpaid on that date of the debenture for two hundred and fifty pounds mentioned in subhead secondly of this section;

Fourthly In payment (1) in each year prior to the fifteenth day of May nineteen hundred and thirty of the sum of fifty pounds and (2) in each year after the said fifteenth day of May nineteen hundred and thirty and until the debt has been wholly repaid of the sum of not less than one hundred pounds in each case towards repayment of such balance of principal as may then remain unpaid of the capital debt or sum of two thousand nine hundred and fifty five pounds and sixteen shillings mentioned in subhead secondly of this section;

Fifthly In payment of the interest on such moneys as may from time to time be borrowed by the Commissioners in terms of this Order either with or without guarantees by the councils in terms of the section of this Order of which the marginal note is "Councils empowered to guarantee loans raised by Commissioners.";

Sixthly In payment of the prescribed instalments of the principal of such moneys as may from time to time be borrowed by the Commissioners in terms of this Order either with or without guarantees by the councils in terms of the last mentioned section of this Order or in providing for sinking fund payments in respect of moneys so borrowed;

Seventhly In establishing and maintaining the reserve fund which the Commissioners are by

A.D. 1929.
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the section of this Order of which the marginal note is "Reserve fund" authorised to establish and maintain;

And the balance (if any) remaining after making such payments as aforesaid may be applied to such of the purposes of this Order and in such order and manner as the Commissioners may determine.

On payment in terms of subheads thirdly and fourthly of this section of the balance of principal of each of the capital debts therein referred to the debenture and bonds mentioned in subhead secondly of this section shall be discharged and delivered to the Commissioners.

Record of
dues rates
and charges
collected.

58. The Commissioners shall cause to be collected the whole dues rates and charges receivable and recoverable by them in terms of this Order and shall keep books of account in which there shall be fully and regularly entered—

(1) on each occasion on which dues rates and charges are leviable in respect of a vessel (a) the name and register tonnage of the vessel (b) the name of the Master thereof (c) the port at which the vessel is registered (d) the place from which the vessel arrived (e) the place to which the vessel is bound and (f) the amounts of the dues rates and charges payable and recovered in respect of such vessel;

(2) on each occasion on which dues rates and charges are leviable in respect of passengers passengers' luggage and goods (a) the names of the vessel and of the master thereof (b) the names of the owners of the goods and the class or classes and the weights or quantities of such goods belonging to each owner (c) the name of the person or the names of the persons by whom the dues rates and charges were paid and (d) the amounts of the dues rates and charges payable and recovered in respect of such passengers passengers' luggage and goods; and

(3) on each occasion on which dues rates and charges are leviable under other heads (a) the nature and amount of the charge under the several heads (b) the name of the person or names of the persons by whom the charges are payable and (c) the amounts payable and recovered.

59. The Commissioners shall keep books of account of all property heritable and moveable vested in them showing the nature of such property and of all moneys received and expended by or on account of the Commissioners.

Accounts of Commissioners' whole property and funds.

60. The Commissioners shall annually cause to be made up for the year ended on the fifteenth day of May immediately preceding complete accounts showing—

Annual accounts of receipts and expenditure and statements of assets and liabilities.

(1) the whole moneys received by them under the several heads or sources of revenue and the whole moneys expended by them from such revenue upon the purposes and in the order of such purposes specified in this Order and showing such further details or information as may from time to time be specified in any directions issued by the Minister; and

(2) the whole moneys received on loan from sale of lands or otherwise on account of capital and the moneys expended by them from the moneys so received.

And there shall be appended to such annual accounts complete and accurate statements of the assets and liabilities of the Commissioners at the end of such immediately preceding financial year.

61. The Minister shall annually or from time to time as he shall consider proper appoint a duly qualified person to audit the books of account and the annual accounts and statements of the Commissioners and shall fix the amounts to be paid annually by the Commissioners to such auditor in respect of his remuneration and expenses.

Appointment of auditor.

62. The Commissioners shall annually before such date as the Minister may appoint submit to the auditor their whole books accounts vouchers minutes and deeds and such other papers and information as the auditor may require and except in so far as otherwise expressly provided by this Order the provisions of the Local Government (Scotland) Acts 1889 to 1908 and any enactment amending the same regulating the making up audit and publication of the accounts of a county council in Scotland shall apply to regulate and govern the making up audit and publication of the accounts of the Commissioners but subject to the proviso

Annual audit.

A.D. 1929. that the words and expressions hereinafter in this
 -- section quoted shall respectively be substituted for
 the corresponding words and expressions in the said
 Local Government (Scotland) Acts also hereinafter in
 this section quoted (namely) of "Minister" for "Secre-
 tary for Scotland" and "Secretary of State" of
 "Commissioners" for "County Council" of "clerk"
 for "county clerk" of "treasurer" for "such person"
 "or officer as the Secretary for Scotland shall
 "from time to time prescribe" of "auditor" for
 "county auditor" and of "any person who during
 "the year to which the accounts under audit are appli-
 "cable paid either (a) any rate levied by a council
 "under the section of this Order of which the marginal
 "note is 'Rates from which contributions by councils
 "to be met' or (b) any dues rates or charges leviable
 "under this Order" for "any ratepayer."

Publication
 of audited
 accounts.

63. When the audit has been completed in each
 year the audited books accounts and statements shall
 be submitted to the first succeeding meeting of the
 Commissioners and copies of the audited annual accounts
 and statements shall be transmitted forthwith to the
 Minister the Board the Secretary of State each of the
 Commissioners the clerks of the councils and the clerk
 of the sheriff court at Dumfries.

Appoint-
 ment of
 officers.

64. Subject to the provisions of this Order the
 Commissioners may from time to time appoint (if they
 think fit) a clerk treasurer collector harbour-master
 engineer and such other officers and servants as they
 shall consider necessary for the due transaction of the
 business of the Commissioners the clerk treasurer collector
 harbour-master engineer and other officers and servants
 so appointed shall hold their respective offices and em-
 ployments during the pleasure of the Commissioners
 and the Commissioners shall pay to each such clerk
 treasurer collector harbour-master officer and servant
 so appointed by them such salary wage or remuneration
 as shall appear to them proper Notwithstanding any
 provision in any of the Acts partially incorporated with
 this Order it shall be competent for the Commissioners
 to appoint the same person to the offices of clerk treasurer
 and collector or to any two of these offices.

Disqualifi-
 cation from
 appoint-

65. It shall not be competent for the Commissioners
 to appoint to the office of clerk treasurer or collector or

to any other office or place of profit under the Commissioners any person who or whose partner is a commissioner or who or whose partner has at any time during the six months immediately preceding been a commissioner. A.D. 1929.
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 ment as officers.

66. Notwithstanding other provisions of this Order it shall not be competent for the Commissioners to sell or feu or lease for a longer period than three years any lands or any interest in any lands or buildings erections or works belonging to them except by public roup or by sealed tender in each case after advertisement in at least two issues of one or more newspapers published or circulating in Dumfries and with an interval of not less than ten days between the earliest and the latest dates of such advertisements. Limitation upon selling feuing or leasing of lands &c. belonging to Commissioners.

67. Notwithstanding other provisions of this Order it shall not be competent for the Commissioners to deepen or alter the channel of the river or remove or carry away any gravel sand or other substances from any part of the bed of the river between the weir or caul at Dumfries and an imaginary line drawn from the north-west corner of Saint Michael's Manse in the royal burgh of Dumfries to the north-east corner of Troqueer Manse in the police burgh of Maxwelltown without the consent in writing of the town councils. No provision of this Order nor any of the Acts partially incorporated with this Order shall be construed as imposing or implying any obligation upon the Commissioners to repair maintain or renew any portion of the river embankments or other similar works between the said weir or caul and the said imaginary line across the river. Protection of part of river within burghs of Dumfries and Maxwelltown.

68. Any notice which the Commissioners may be required or authorised to give to any person may be served on such person or on his known agent either personally or by sending the same through the post in a prepaid letter addressed to him or to his known agent by name at his or his known agent's last known place of abode or business or by delivering the same to some inmate at his or his known agent's last known or usual place of abode or business or in case the place of abode or business of the person to be served is unknown it shall be sufficient to affix the notice or a copy thereof on some conspicuous part of the premises (if any) to which the notice may relate. Service of notices.

[Ch. xxix.] *Nith Navigation* [19 & 20 GEO. 5.]
Order Confirmation Act, 1929.

A.D. 1929.

—
 Prosecution
 of offences
 and applica-
 tion of
 penalties.

69. All offences against this Order or against any of the Acts partially incorporated with this Order or against any byelaw or regulation made by the Commissioners either in terms of this Order or in terms of any of the Acts partially incorporated with this Order and which byelaw or regulation has been duly confirmed (if confirmation be necessary) may be prosecuted before the sheriff in terms of the Summary Jurisdiction (Scotland) Act 1908 And all penalties imposed and recovered in respect of all such offences (except penalties imposed on the Commissioners) shall be paid to the Commissioners and be by them carried to their revenue account.

Works
 below high-
 water mark
 not to be
 constructed
 without
 consent of
 Board of
 Trade.

70. The Commissioners shall not nor shall any other body or person under the powers of this Order construct on over or under the shore or bed of the sea or of any creek bay arm of the sea or navigable river communicating therewith below high-water mark of ordinary spring tides any work without the previous consent of the Board to be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board and then only according to such plan and under such restrictions and regulations as the Board may approve of in writing under hand as last aforesaid and where any such work may have been constructed the Commissioners or any other body or person shall not at any time alter or extend the same without obtaining previously to making any alteration or extension the like consent or approval If any work be commenced altered extended or completed contrary to the provisions of this section the Board may abate and remove the same and restore the site thereof to its former condition at the cost and charge of the owner of such work and the amount of such costs and charges shall be a debt due from the owner of such work to the Crown and shall be recoverable as a Crown debt or summarily.

Abatement
 of work
 abandoned
 or decayed.

71.—(1) Where any work constructed by the Commissioners or by any other body or person under the powers of this Order and situate wholly or partially on under or over the shore or bed of the sea or of any creek bay arm of the sea or navigable river communicating therewith below high-water mark of ordinary spring tides is abandoned or suffered to fall into decay the Board may by notice in writing either require the Commissioners or such other body or person at their own

expense to repair and restore such part of such work as is situate below high-water mark of ordinary spring tides or any portion thereof or require them to abate or remove the same and restore the site thereof to its former condition to such an extent and within such limits as the Board may think proper. A.D. 1929.

(2) Where any part of any such work which has been abandoned or suffered to fall into decay is situate above the high-water mark of ordinary spring tides and is in such condition as to interfere or to cause reasonable apprehension that the same may interfere with the right of navigation or other public rights over the foreshore the Board may include any such part of such work or any portion thereof in any notice under this section.

(3) If during the period of thirty days from the date when the notice is served upon the Commissioners or such other body or person they have failed to comply with such notice the Board may execute the works required to be done by the notice at the expense of the Commissioners or such other body or person and the amount of such expense shall be a debt due from the Commissioners or such other body or person to the Crown and shall be recoverable either as a debt due to the Crown or summarily as a civil debt.

72.—(1) The Commissioners or any other body or person constructing works under the powers of this Order shall at or near such part of any such works as shall be below high-water mark of ordinary spring tides during the whole time of the construction alteration or extension of the same exhibit and keep burning 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 shall from time to time require or approve. Lights on works during construction.

(2) If the Commissioners or such other body or person fail to comply in any respect with the provisions of this section they shall be liable on summary conviction 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.

73.—(1) After the completion of any works constructed under the powers of this Order the Commissioners or any other body or person constructing such works Permanent lights on works.

A.D. 1929. — 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 such lights (if any) and take such other steps for the prevention of danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.

(2) If the Commissioners or such other body or person fail to comply in any respect with the provisions of this section they shall be liable on summary conviction 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.

Provision
against
danger to
navigation.

74.—(1) In case of injury to or destruction or decay of any works constructed under the powers of this Order or any part of such works 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 or any other body or person constructing such works 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 Commissioners of Northern Lighthouses and shall apply to those Commissioners for directions as to the means to be taken.

(2) If the Commissioners or such other body or person fail to comply in any respect with the provisions of this section they shall be liable on summary conviction 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.

Reclaimed
land to
become
Crown pro-
perty in
certain cir-
cumstances.

75. If in the course or by means of the execution of any of the works authorised by this Order any part of the shores or bed of the river belonging to His Majesty shall be inned gained or reclaimed from the water neither the Commissioners nor any other person shall have or exercise any right upon the same or in respect thereof and shall not enter upon take use or interfere with the land so inned gained or reclaimed for any purpose whatsoever without the consent in writing of the Board on

behalf of His Majesty but such innings gaining or reclamation shall enure absolutely for the benefit of His Majesty and his heirs and successors. A.D. 1929. —

76. Notwithstanding anything in this Order any cables pipes or wires laid or placed under the powers of this Order by the Commissioners or by any other body or person 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 Board may require. Cables pipes or wires on under or over tidal waters or tidal lands.

77. Nothing in this Order shall affect prejudicially any estate right power privilege or exemption of the Crown and in particular nothing herein contained shall authorise the Commissioners or any other body or person 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 heritages subjects or rights of whatsoever description belonging to His Majesty in right of His Crown and under the management of the Commissioners of Crown Lands or of the Board respectively without the consent in writing of the Commissioners of Crown Lands or the Board as the case may be on behalf of His Majesty first had and obtained for that purpose. Crown rights.

78. Nothing in this Order shall have effect so as to prejudice any powers or duties of the Receiver of Wreck under Part IX. of the Merchant Shipping Act 1894. Saving for Receiver of Wreck.

79. The costs charges and expenses of and incidental to the preparing for obtaining and confirming this Order and otherwise in relation thereto shall be paid by the Commissioners out of the contributions to be received by them from the Councils in terms of the section of this Order of which the marginal note is "Contributions by the councils to meet the expenses of this Order." Payment of expenses of Order.

80. The Commissioners shall keep a copy of this Order in their office available for perusal by any person having interest and the clerk shall be bound without any fee or other payment to allow any such person to peruse the Order and to make copies thereof or extracts therefrom at suitable times. Inspection of Order.

[Ch. xxix.] *Nith Navigation* [19 & 20 GEO. 5.]
Order Confirmation Act, 1929.

A.D. 1929.

—
Repeal of
51 Geo. III.
cap. 147.

81. Except as otherwise expressly provided by this Order this Order shall commence and have effect on and after the appointed day and on and from the appointed day the Act 51 George III. cap. cxlvii. intituled "An Act for improving the harbour of Dumfries and the navigation of the river Nith" shall be and is hereby repealed.

SCHEDULES referred to in the foregoing Order.

THE FIRST SCHEDULE.

REGULATIONS DETERMINING THE QUALIFICATIONS AND GOVERNING THE REGISTRATION OF THE TRADERS FOR THE PURPOSE OF ELECTION OF COMMISSIONERS UNDER THIS ORDER AND GOVERNING THE ELECTION OF COMMISSIONERS BY THE TRADERS AT THE ELECTION IN THE YEAR ONE THOUSAND NINE HUNDRED AND THIRTY TWO AND IN EACH THIRD YEAR THEREAFTER.

Qualification
and regis-
tration of
traders.

(1) Subject to the provisions of these regulations the traders entitled to elect commissioners in terms of the Order at the election in the year one thousand nine hundred and thirty two and in each third year thereafter shall consist of—

- (a) each owner and each part owner to an extent of not less than four sixty-fourths of each vessel of not less than one hundred tons burden which entered and departed from the river or conveyed goods or passengers upon the river and shipped or unshipped such goods or passengers in the river and paid dues or rates in respect thereof to the Commissioners in terms of this Order on not less than four separate occasions during the year ended on the fifteenth day of October immediately preceding the making up of the register of traders; and
- (b) each person who during the year ended on the said fifteenth day of October immediately preceding the making up of such register paid to the Commissioners not less than five pounds as dues rates or charges leviable

under this Order in respect of goods belonging to him and conveyed upon and shipped or unshipped in the river on his account; A.D. 1929.
 —

whose name address and qualification are entered upon the register of traders made up for the purpose of the election of commissioners as hereafter in these regulations provided.

(2) No more than three persons shall be qualified or entitled to be registered as traders in respect of being part owners of the same vessel Where a company society or firm is the owner or part owner of a vessel one representative only of such company society or firm shall be qualified or entitled to be registered as a trader. Limitations upon registration of traders.

(3) Where a company society or firm has during the foresaid year paid to the Commissioners not less than five pounds and not more than twenty five pounds as dues rates or charges one representative only of such company society or firm shall be qualified or entitled to be registered as a trader Where a company society or firm has so paid more than twenty five pounds as dues rates or charges two representatives and no more of such company society or firm shall be qualified and entitled to be registered as traders. Representation of companies &c.

(4) On the first day of November in the year one thousand nine hundred and thirty two and on the same date in every third year thereafter the clerk shall make up a draft register of the persons qualified and entitled to be registered as traders in terms of these regulations. Draft register of traders.

(5) Preliminary to making up such draft register of traders the clerk shall—

(a) in any case of more than three persons being qualified for registration as part owners of the same vessel by written communications addressed to them afford such persons an opportunity of determining among themselves and furnishing to him the names and addresses of the three of their number who are to be registered as traders and in the event of their failing to do so he shall determine such three by lot; and

(b) afford each company society or firm qualified by payment of dues rates or charges to have either one or two representatives registered as a trader or as traders an opportunity of furnishing to him the name and address of the person or the names and addresses of the persons whom they wish to be registered as their representative or representatives and in the event of their failing to do so he shall enter on the register the person or persons appearing to him the most suitable to represent such company society or firm.

[Ch. xxix.] *Nith Navigation* [19 & 20 GEO. 5.]
Order Confirmation Act, 1929.

A.D. 1929.

Intimation
of draft
register
being open
to inspec-
tion.

(6) As soon as conveniently may be and not later than the eighth day of November the clerk shall intimate by advertisement in one or more newspapers published or circulating in Dumfries that the draft register so made up by him may be seen at his office or on application to him and that (a) any claim by any person that he has been improperly omitted from such draft register and (b) any objection by any person having interest that any other person has been improperly included in such draft register must be lodged with him on or before the fifteenth day of November.

Commis-
sioners to
revise draft
register.

(7) A meeting of the Commissioners shall be held on or before the thirtieth day of November and the clerk shall (a) by six days' notice in writing request each claimant and objector to attend such meeting with a view to being heard by the meeting in support of his claim or objection and (b) shall submit to such meeting the draft register made up by him and all claims and objections which have been lodged with him in relation thereto. After hearing such claimants and objectors as attend and considering each claim and objection which has been lodged with the clerk the meeting shall determine the questions raised by such claims and objections and make such alterations on the draft register as appear to them necessary. The register as so revised shall be signed by the chairman of the meeting and shall form the register of the traders qualified and entitled to take part in the triennial election of commissioners in terms of the Order then about to be held. It shall not be competent to appeal to any court or other tribunal against any decision of the Commissioners in determining any claim or objection or in revising the register or to question in any court or before any tribunal the register of traders as so revised and authenticated by the Commissioners in terms of this regulation.

Commis-
sioners to
fix place and
time of
meeting of
traders to
elect com-
missioners.
Intimation
of meeting
to elect com-
missioners.

(8) At their meeting held in terms of the immediately preceding regulation the Commissioners shall also fix the place date and time of the meeting of traders at which such traders are to elect three commissioners. The date of such meeting shall be not earlier than the twelfth nor later than the twenty-third days of December.

(9) Intimation of the place date and time of the meeting of traders for the election of commissioners shall be given by the clerk at least eight days prior to the date of such meeting by (a) advertisement in one or more newspapers published or circulating in Dumfries and (b) circular addressed to each of the registered traders. Any trader who may be unable to attend the meeting for election of commissioners shall be entitled to grant a proxy in favour of another trader and to be represented by such other trader at such meeting but no such proxy shall be valid or effectual unless lodged with the clerk at least forty eight hours prior to the time of the meeting. Along with each of the circulars

to the traders intimating the place date and time of the meeting for election of commissioners the clerk shall transmit a form of proxy and point out that if a proxy is granted it must be in favour of another trader and must be lodged with him (the clerk) within the prescribed time. A.D. 1929. —

(10) The clerk shall preside at the meeting of traders and shall regulate the proceedings and determine all questions thereat incidental to the conduct of the meeting and the election of commissioners. Chairman of meeting.

(11) Each trader proposed for election as a commissioner must hold the qualification of a trader under this schedule and shall at the meeting be nominated by one trader and seconded by another both personally present at the meeting. If only the prescribed number or less than the prescribed number of traders are duly nominated for election as commissioners the clerk shall declare the traders so nominated to be duly elected. If less than the prescribed number of commissioners are so elected at the meeting the vacancies shall be deemed to be casual vacancies and as such shall be filled as provided by the Order. Procedure at meeting of traders for election of commissioners.

(12) If at the meeting more traders are duly nominated for election as commissioners than the prescribed number of commissioners to be elected the prescribed number who receive the greatest number of votes of the traders present personally or by proxy at the meeting shall be declared by the chairman to be duly elected as commissioners. In the event of two or more candidates receiving an equality of votes a second vote shall be taken as between the candidates having such equality and in the event of the prescribed number of commissioners not being elected as a result of the two votes the chairman shall determine by lot which of the candidates still after both votes having an equality of votes is or are to be elected as commissioners. Equality of votes &c.

(13) The clerk shall make and as chairman shall subscribe a minute of the proceedings at the meeting and shall submit such minute to the first succeeding meeting of the newly appointed and elected commissioners and such minute shall be included among the minutes of the Commissioners. Return of election.

A.D. 1929.

THE SECOND SCHEDULE.

MAXIMUM DUES RATES AND CHARGES WHICH THE COMMISSIONERS MAY DEMAND RECEIVE AND RECOVER IN RESPECT OF VESSELS PASSENGERS PASSENGERS' LUGGAGE AND GOODS IN TERMS OF THE SECTION OF THIS ORDER OF WHICH THE MARGINAL NOTE IS "RATES ON VESSELS PASSENGERS PASSENGERS' LUGGAGE AND GOODS."

1. Rates on vessels proceeding to or departing from any harbour dock pier quay jetty or landing-place in the river or on or from which passengers are embarked or disembarked in the river or on or from which passengers' luggage or goods are shipped unshipped or transhipped in the river:—

	Pence.
(1) On vessels plying on the river - per register ton	4
(2) On vessels arriving from or departing to any port or place in Great Britain Ireland Isle of Man or the Channel Islands - - per register ton	6
(3) On vessels arriving from or departing to any port or place situate beyond the coasts of Great Britain Ireland Isle of Man and the Channel Islands - - - - per register ton	8

Vessels entering the river on account of stress of weather and not embarking or disembarking passengers or shipping unshipping or transshipping passengers' luggage or goods while in the river shall be exempt from above rates.

2. Rates on passengers embarked or disembarked on or from any vessel in the river and on passengers' luggage shipped unshipped or transhipped on or from any vessel in the river:—

	Pence.
(1) On every such passenger - - - -	2
(2) On each article or package of luggage belonging to every such passenger which is not carried by the passenger personally - - - -	2

The master and every member of the crew of every vessel in the river shall be exempt from above rates in respect of his embarking or disembarking on or from his vessel while in the river and in respect of his personal luggage shipped unshipped or transhipped on or from his vessel while in the river.

[Ch. xxix.] *Nith Navigation* [19 & 20 GEO. 5.]
Order Confirmation Act, 1929.

A.D. 1929. hereby stipulated that the said principal sum shall be repayable
on the _____ day of _____
one thousand nine hundred and _____ years
or shall thereafter in virtue hereof remain as a loan to the Com-
missioners until the expiration of such further term of years as
shall be specified in a minute or minutes to be indorsed hereon
and signed by the said mortgagee or his foresaids and by two of
our number and by our clerk and treasurer which minute or
minutes are hereby declared and shall be held to be valid and
binding though they may be neither holograph of the said
parties nor tested and the Commissioners shall pay interest on the
said principal sum from the _____ day of _____
one thousand nine hundred and _____
years to the date of repay-
ment at the rate of _____ per centum per annum
declaring that the said mortgagee and his foresaids shall not be
entitled to make and that the Commissioners shall not be bound
to recognise or register any partial assignation of these presents
or of the sums of money principal or interest hereby secured and
that the Commissioners shall not be liable for any expenses that
may be incurred by the said mortgagee or his foresaids for or in
relation to the preparation revision adjustment or execution of
this mortgage or of any discharge renunciation assignation or
minute of postponement or renewal thereof In witness whereof
(testing clause according to the law of Scotland).

(To be sealed and signed by (1) two Commissioners and by
the clerk and the treasurer or (2) two Commissioners
and by the clerk and treasurer.)

L.S.

A.D. 1929.

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of the sum of
to the said
executors administrators and assignees (or as the case may be) a
certain mortgage number
made in favour of
by the Nith Navigation Commis-
sioners by virtue of the Nith Navigation Order 1929 in connexion
with their undertaking for securing the sum of
(or if the transfer be by endorsement the within mort-
gage) together with the interest thereon from and after the
and all my right and interest
in and to the principal money thereby secured and interest
thereon as aforesaid and in and to the revenues thereby assigned
In witness whereof (testing clause according to the law of
Scotland).

FORM OF DISCHARGE OF MORTGAGE.

Dated this day of
one thousand nine hundred and years.

To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:
 Adastral House Kingsway, London, W.C.2; 120, George Street, Edinburgh;
 York Street, Manchester; 1, St. Andrew's Crescent, Cardiff;
 15, Donegall Square West, Belfast;
 or through any Bookseller.