

Pier and Harbour Order (King's Lynn) Confirmation Act, 1952

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CHAPTER xxviii

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

[1st August 1952.]

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

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

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

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

2. This Act may be cited as the Pier and Harbour Order (King's Short title. Lynn) Confirmation Act 1952.

SCHEDULE

KING'S LYNN CONSERVANCY

Provisional Order to authorise the King's Lynn Conservancy Board to levy and take additional rates on goods to provide for the revision of tolls dues rates and charges to authorise additional borrowing powers and for other purposes.

Short and
collective titles.

1.—(1) This Order may be cited as the King's Lynn Conservancy Order 1952.

(2) The King's Lynn Conservancy Act 1897 and this Order may be cited together as the King's Lynn Conservancy Act and Order 1897 and 1952.

Commencement
of Order.

2. This Order shall come into operation upon the day when the Act confirming this Order is passed and that day is in this Order referred to as the commencement of this Order.

Interpretation.

3.—(1) In this Order unless the context otherwise requires—

“the Board” means the King's Lynn Conservancy Board;

“the undertaking” means the undertaking of the Board as authorised from time to time;

“the port” and “the harbour” mean respectively the port and harbour of King's Lynn whereof the limits are defined by section 45 (Limits of port defined) and the Second Schedule and section 46 (Limits of harbour defined) respectively of the Act of 1897;

“the Act of 1897” means the King's Lynn Conservancy Act 1897;

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

“the Minister” means the Minister of Transport;

“the existing rates” means the tolls dues rates and charges which the Board immediately before the commencement of this Order are empowered to levy and take in or in respect of the port and harbour under a Royal Charter dated the 19th day of November 1604 the Act 4 & 5 Vict. c. xlvii the Norfolk Estuary Act 1857 the Norfolk Estuary Act 1877 the King's Lynn Docks and Railway (Further Powers) Act 1889 the King's Lynn Corporation Act 1894 the Act of 1897 and Orders in Council dated the 16th March 1892 and the 12th August 1907;

“master” where used with reference to a vessel includes the owner of and agent or broker for the vessel and any charterer to whom the vessel is demised;

“owner” where used with reference to goods includes the consignor consignee importer shipper exporter receiver broker or agent for sale or custody of the goods.

(2) (a) In the Act of 1897 and this Order unless there be something in the context repugnant to such construction—

“ vessel ” includes any vessel ship lighter keel barge boat raft pontoon and craft of any kind howsoever navigated propelled or moved and any seaplane on the surface of the water ;

“ seaplane ” includes a flying boat or any other aircraft designed to float or manœuvre on water.

(b) Nothing in the Harbours Clauses Act 1847 shall in any circumstances require or authorise the harbour-master or other officer to require the dismantling of a seaplane or any part thereof or the making of any alteration whatever in the structure or equipment of a seaplane.

4.—(1) Sections 75 to 83 and 85 to 88 of the Commissioners Clauses Act 1847 so far as they are not inconsistent with the provisions of this Order are hereby incorporated with this Order. Incorporation of Commissioners Clauses Act.

(2) For the purposes of the incorporation of the said sections the expression “ the Commissioners ” where used in those sections shall mean the Board.

5.—(1) Sections 6 to 24 27 29 32 and 51 to 96 of the Harbours Clauses Act 1847 shall not be incorporated with this Order. Application of Harbours Clauses Act 1847.

(2) In the application to the Act of 1897 and this Order of the Harbours Clauses Act 1847 the expression “ the special Act ” shall mean the Act of 1897 and this Order respectively and the expressions “ vessel ” “ master ” and “ owner ” shall have the meanings assigned to them by subsection (2) of section 3 (Interpretation) of this Order.

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

7. In addition to the existing rates the Board may levy and take the following rates:— Additional rates on goods.

(i) on all goods shipped transhipped or unshipped within the port a port rate not exceeding threepence per ton ;

(ii) on all goods shipped transhipped or unshipped at the South Quay a special works rate not exceeding sixpence per ton.

8.—(1) The rates authorised by section 7 (Additional rates on goods) of this Order and all other rates which the Board are authorised from time to time to levy and take in respect of goods shall be payable by the owner of the goods in respect of which the rate is levied. Liability for payment of rates.

(2) All rates which the Board are authorised from time to time to levy and take in respect of vessels shall be payable by the master of the vessel in respect of which the rate is levied.

9.—(1) Subject to the provisions of the Civil Aviation Act 1949 the Board may levy and take on and in respect of seaplanes entering using or leaving the port such reasonable rates as may from time to time be approved by the Minister. Rates on seaplanes.

(2) The rates authorised by this section shall be payable by the owner or other person in charge of the seaplane in respect of which the rate is levied as the Board may determine.

Power to vary exemptions and compound for rates.

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

Revision of rates.

11.—(1) In this section “authorised rates” means the existing rates and the rates which the Board are for the time being authorised to levy and take in pursuance of this Order or any order made under this section.

(2) If it is represented by application in writing to the Minister—

(a) by any chamber of commerce or shipping or any representative body of traders or shipowners ; or

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

(c) by the Board ;

that under the circumstances then existing the authorised rates should be revised in whole or in part the Minister if he thinks fit may make an order revising all or any of the authorised rates referred to in the application and may fix the date as from which such order shall take effect and thenceforth such order shall remain in force until the same expires or is revoked or modified by a further order of the Minister made in pursuance of this subsection.

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

(4) Where upon an application under subsection (2) of this section for an increase or decrease of the authorised rates or any of them an order has been made or the Minister has decided not to make an order no further application for an increase or a decrease (as the case may be) of any of the rates to which the application related shall be made within twelve months from the date of such order or decision as the case may be.

(5) Before making an order under subsection (2) of this section the Minister shall consult with such bodies or persons as aforesaid as appear to him to be appropriate including the Board where they are not the applicants and for the purpose of ascertaining such bodies or persons may require public notice of the application to be given and where an objection to an application is made by the Board or by any such body or person as aforesaid and is not withdrawn the Minister unless it appears to him that the objection is of a trivial nature shall cause an inquiry to be held in reference to the application.

(6) Subject to the proviso to this subsection the Minister shall not by an order under subsection (2) of this section make any such revision of the authorised rates as in his opinion would so far as can be estimated be likely to result in the annual revenue of the Board being insufficient or more than sufficient to enable the Board with efficient management of the undertaking to make adequate provision for paying all proper expenses of and connected with the working management and maintenance of the undertaking including interest on loan capital (regard being had by him to any capital which the Board may reasonably be expected to expend) making good depreciation providing for any contributions which the Board may reasonably and properly carry to any reserve fund contingency fund or sinking fund and meeting all other costs charges and expenses if any properly chargeable to revenue :

Provided that in any case where the Minister is satisfied that there are special circumstances affecting the undertaking taking into account its financial condition during such period preceding the date on which an application is made under subsection (2) of this section as the Minister considers to be appropriate the Minister may revise the authorised rates in such manner as he thinks just and reasonable with due allowance for such special circumstances notwithstanding that such revision is likely to result in the revenue of the Board being insufficient to enable the Board to make adequate provision for all of the matters referred to in the foregoing provisions of this subsection.

(7) The authorised rates as revised by an order under subsection (2) of this section shall not in any case be less than the maximum of the existing rates.

(8) The provisions of section 290 of the Local Government Act 1933 shall apply to inquiries which the Minister may cause to be held under this section as if the Board were a local authority.

(9) The power of the Minister to make an order under subsection (2) of this section shall be exercisable by statutory instrument.

12.—(1) In addition to the existing borrowing powers of the Board the Board may from time to time borrow at interest not exceeding six pounds per centum per annum on the security of the revenues of the Board a sum or sums not exceeding in the aggregate one hundred thousand pounds. Additional borrowing powers.

(2) All moneys borrowed under this section shall be applied in carrying on the general purposes of the undertaking to which capital is properly applicable.

(3) Any money borrowed under this section shall be repaid within such period not exceeding sixty years from the date of the borrowing as the Board with the consent of the Minister may having regard to the circumstances of each case determine which periods shall be the prescribed periods for the purposes of this Order.

Reborrowing.

13.—(1) Any moneys borrowed under this Order and discharged otherwise than by means of a sinking fund or by instalments may be reborrowed if required for the purposes of the undertaking and so from time to time.

(2) Any moneys reborrowed under this section shall be repaid within the period prescribed for the repayment of the moneys in lieu of which such reborrowing is made.

Mode of
payment off of
money
borrowed.

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

Protection of
lender from
inquiry.

15. A person lending money to the Board under the borrowing powers contained in this Order shall not be bound to inquire as to the observance by the Board of any provisions of this Order or be bound to see to the application or be answerable for any loss misapplication or non-application of the money lent by him or of any part thereof.

Saving for
powers of
Treasury.

16. It shall not be lawful to exercise the powers of borrowing conferred upon the Board by this Order (other than the power of borrowing to pay the costs charges and expenses referred to in section 22 (Costs of Order) of this Order) otherwise than in compliance with the provisions of any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946.

Sinking fund.

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

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

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

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

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

Provided that in the case of an accumulating sinking fund the Board 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 or part thereof so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

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

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

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

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

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

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

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

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

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

Appointment of
a receiver.

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

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

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

Return to
Minister.

20.—(1) The general manager and clerk to the Board shall if and when he is requested by the Minister so to do send to the Minister a return showing the provision made by the Board for the repayment of moneys borrowed by them under the authority of this Order.

(2) The return shall—

- (a) show such particulars be made up to such date and be in such form as the Minister may require ;
- (b) be certified by the treasurer or other person whose duty it is to keep the accounts of the Board and if so required by the Minister be certified by statutory declaration made by that person ;
- (c) be sent within one month after the making of the request therefor.

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

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

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

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

(5) If a return required to be made under this section is not made within the time specified in subsection (2) of this section the person in default shall be liable to a penalty not exceeding twenty pounds and notwithstanding the recovery of any such penalty the making of the return may be enforced at the instance of the Minister by mandamus.

21. This Order shall be deemed to be an enactment passed before the passing of the Sea Fish Industry Act 1951 for the purposes of section 21 (Fishery harbours) of that Act. Saving for Sea Fish Industry Act 1951.

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

Table of Statutes referred to in this Act

Short title	Session and chapter
Commissioners Clauses Act 1847... ..	10 & 11 Vict. c. 16.
Harbours Docks and Piers Clauses Act 1847	10 & 11 Vict. c. 27.
Norfolk Estuary Act 1857... ..	20 & 21 Vict. c. xlvi.
General Pier and Harbour Act 1861	24 & 25 Vict. c. 45.
Norfolk Estuary Act 1877... ..	40 & 41 Vict. c. cciii.
King's Lynn Docks and Railway (Further Powers) Act 1889	52 & 53 Vict. c. lxxx.
King's Lynn Corporation Act 1894	57 & 58 Vict. c. cxxxviii.
King's Lynn Conservancy Act 1897	60 & 61 Vict. c. cxcvi.
Local Government Act 1933	23 & 24 Geo. 5. c. 51.
Borrowing (Control and Guarantees) Act 1946... ..	9 & 10 Geo. 6. c. 58.
Civil Aviation Act 1949	12 13 & 14 Geo. 6. c. 67.
Sea Fish Industry Act 1951	14 & 15 Geo. 6. c. 30.

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