



# Harbours, Piers and Ferries (Scotland) Act 1937

1937 CHAPTER 28 1 Edw 8 and 1 Geo 6

## PART III

### MAINTENANCE OF MARINE WORKS

#### Modifications etc. (not altering text)

C1 Power to extend Part III conferred by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 154\(4\)](#)

#### 8 Maintenance of marine works.

(1) This part of this Act shall apply—

- (a) to any marine work transferred to, or acquired by, a local authority under Part I of this Act;
- (b) to any marine work vested in a local authority at the commencement of this Act which was constructed under the <sup>M1</sup>Western Highlands and Islands (Scotland) Works Act 1891, or in respect of which such local authority has passed a resolution adopting this Part of this Act;
- (c) to any marine work vested at the commencement of this Act in a harbour authority if, on an application by the authority, the [<sup>F1</sup>Secretary of State for Scotland] certifies that in his opinion this Part of this Act ought to apply to the marine work;
- (d) to any marine work constructed under or in pursuance of the provisions of Part II of this Act, or in connection with which any new works are constructed under those provisions.

(2) Notice of any meeting of a local authority at which a resolution to adopt this Part of this Act is to be moved shall be given in a newspaper circulating in the area of the local authority at least three weeks prior to the meeting.

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- (3) A local authority which has passed a resolution adopting this Part of this Act shall, as soon as may be after such passing, cause a copy of the resolution to be sent to the [<sup>F1</sup>Secretary of State for Scotland].

**Textual Amendments**

**F1** Words substituted by virtue of S.I. 1970/1537, art. 6 Sch. 2 para. 2

**Marginal Citations**

**M1** 1891 c. 58.

**9 Powers of authority in relation to marine work.**

The following provisions shall have effect as regards any marine work to which this Part of this Act applies:—

- (a) The [<sup>F2</sup>Secretary of State for Scotland] may, on the application of the local authority or harbour authority in whom the marine work is vested and after consultation with the [<sup>F3</sup>Secretary of State for Transport], fix the limits within which the powers of the authority and their officers may be exercised and the limits within which any dues for the time being leviable may be exacted;
- (b) The authority may dredge, scour, deepen and maintain the said work and the entrances and channels thereof:

Provided that no rock, stone, shingle, sand, mud or other material shall be laid down or deposited in any place below high-water mark otherwise than in such position and under such restrictions as may be fixed by the Board of Trade;

- (c) The authority may provide, construct or take on lease, and maintain, such warehouses, offices, sheds, weighing-machines, cranes, and other buildings and conveniences as may be found necessary in connection with the marine work for the accommodation of vessels thereat, and of traffic landed at or embarked at the same, and may make such reasonable charges as they may think fit for the use of any such warehouses, offices, sheds, weighing-machines, cranes, buildings or conveniences;
- (d) Any person authorised by the [<sup>F2</sup>Secretary of State for Scotland], and any officer of Customs and Excise, or of the Coastguard, or of the Board of Trade, or of the [<sup>F3</sup>Secretary of State for Transport] . . . <sup>F4</sup> being in the execution of his duty, and any person going to or returning from any lifeboat, or using any lifeboat or apparatus for saving life, and any person brought ashore from any vessel in distress, shall at all times have free ingress to and passage and egress on, along, through, and out of the marine work by land, and with their vessels and otherwise, without payment;
- (e) Fishing vessels belonging to countries with which for the time being treaties exist exempting from dues and port charges such vessels when forced by stress of weather to seek shelter in the ports or on the coasts of the United Kingdom shall, when forced by stress of weather to make use of the marine work, and not breaking bulk while making such use, be exempt from any dues leviable in respect of the use of the marine work.

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#### Textual Amendments

- F2** Words substituted by virtue of S.I. 1970/1537, art. 6 Sch. 2 para. 2
- F3** Words substituted by virtue of S.I. 1970/1681, art. 2(1), Sch. 1(a); 1976/1775, art. 2(1), Sch. 1; 1979/571, arts. 2(1), 3(5) and 1981/238, arts. 2(1)(a), 3(4)
- F4** Words repealed by Reorganisation of Offices (Scotland) Act 1939 (c. 20), Sch.

### 10 Application of 10 & 11 Vict. c. 27, &c.

- (1) The <sup>M2</sup>Harbours, Docks, and Piers Clauses Act 1847, with the exception of sections six to thirteen, sixteen to nineteen, thirty, forty-seven, forty-nine, fifty, eighty-four, and eighty-five, shall, except in so far as the [<sup>F5</sup>Secretary of State for Scotland] may direct, apply to any marine work to which this Part of this Act applies in like manner as if the marine work had been constructed in pursuance of an Act incorporating those provisions, and for the purposes of the said provisions this Part of this Act shall be deemed to be the special Act and the authority in whom the marine work is vested shall be deemed to be the undertakers.
- (2) Any reference to a vessel in the provisions of the <sup>M3</sup>Harbours, Docks, and Piers Clauses Act 1847, as applied by the foregoing subsection, shall be deemed to include a reference to a seaplane when on the surface of the water, and in section twenty-eight of the said Act any reference to a vessel shall also include a floating dock and a vessel of exceptional construction or method of propulsion:  
Provided that—
  - (i) nothing in any of the aforesaid provisions shall, except in the case of a seaplane disabled by an accident, authorise a harbour master to require the dismantling of a seaplane or any part thereof or the making of any alterations whatever of the structure or equipment of a seaplane; and
  - (ii) nothing in any of the aforesaid provisions or in any bye-law made in pursuance thereof shall prejudice any regulations for the investigation of accidents made under [<sup>F6</sup>section ten of the <sup>M4</sup>Civil Aviation Act 1949], as amended by any subsequent enactment.
- (3) Where the proceeds of the sale of any wreck in pursuance of section fifty-six of the <sup>M5</sup>Harbours, Docks, and Piers Clauses Act 1847, as applied by subsection (1) of this section shall not be sufficient to meet the expenses reasonably incurred in removing such wreck, the deficiency shall be recoverable from the person who was the registered owner of the vessel at the time it was wrecked.
- (4) A harbour authority in whom any marine work to which this Part of this Act applies is vested shall every year within six months after the first day of January cause accounts to be prepared, in such form as may be prescribed by the [<sup>F5</sup>Secretary of State for Scotland], of the total revenue and expenditure in respect of the work for the year ending the preceding thirty-first day of December and such accounts shall be duly audited by such person as may be appointed for the purpose by the [<sup>F5</sup>Secretary of State for Scotland] and certified by the clerk or secretary of the authority, and a copy thereof shall be transmitted forthwith to the sheriff clerk of the county within which the marine work of the largest part thereof is situate, to the [<sup>F7</sup>Secretary of State for Transport] and, if so required by the [<sup>F5</sup>Secretary of State for Scotland] to [<sup>F5</sup>him]. In the case of any harbour authority whose financial year begins on a day other than the first day of January, the foregoing provisions of this subsection shall have effect with

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the substitution of that other day for the first day of January, and of the day immediately preceding that other day for the thirty-first day of December.

- (5) A local authority in whom a marine work to which this Part of this Act applies is vested shall, as soon as may be after receiving from the auditor, in pursuance of the [F8 section 101 of the M6 Local Government (Scotland) Act 1973], the certified duplicate abstract of accounts, cause a copy thereof, so far as relating to the marine work, to be sent to the [F7 Secretary of State for Transport] . . . F9

#### Textual Amendments

- F5** Words substituted by virtue of S.I. 1970/1537, art. 6 Sch. 2 para. 2
- F6** Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 17(2)(a)
- F7** Words substituted by virtue of S.I. 1970/1681, art. 2(1), Sch. 1(a); 1976/1775, art. 2(1), Sch. 1; 1979/571, arts. 2(1), 3(5) and 1981/238, arts. 2(1)(a), 3(4)
- F8** Words substituted by virtue of Local Government (Scotland) Act 1973 (c. 65), s. 237(2)
- F9** Words repealed by Local Government (Scotland) Act 1973 (c. 65), Sch. 29

#### Modifications etc. (not altering text)

- C2** S. 10 excluded by Highland Regional Council (Harbours) Order Confirmation Act 1991 (c. xii), s. 1, Sch., s.58  
 S. 10 excluded (1.12.1993) by S.I. 1993/2908, art.34
- C3** S. 10 excluded (4.3.2021) by The Eyemouth Harbour Revision Order 2021 (S.S.I. 2021/118), arts. 1(1), 3(2) (with arts. 36, 37)

#### Marginal Citations

- M2** 1847 c. 27.
- M3** 1847 c. 27.
- M4** 1949 c. 67.
- M5** 1847 c. 27,
- M6** 1973 c. 65.

## 11 Byelaws

- (1) The purposes for which byelaws may be made under section eighty-three of the M7 Harbours, Docks, and Piers Clauses Act 1847, as applied to a marine work by section ten of this Act, shall extend to the prevention of obstruction or injury to the marine work, so however that no estate, interest or right of a profitable or beneficial nature in, over, or affecting the marine work shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any such byelaw without compensation being made or provided for the same by the authority making the byelaw, and such compensation shall in case of difference be determined by an arbiter appointed, in default of agreement between the parties, by the [F10 Secretary of State for Scotland].
- (2) The byelaws which may from time to time be made in the exercise of the power conferred by section eighty-three of the M8 Harbours, Docks, and Piers Clauses Act 1847, as applied by section ten of this Act, may provide for imposing a penalty not exceeding [F11 £50] for any breach of failure to observe any such byelaw.
- (3) No byelaws made under the aforesaid section as so applied shall come into operation until they have been confirmed by the [F10 Secretary of State for Scotland]:

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Provided that, in the case of any such byelaws which the [<sup>F10</sup>Secretary of State for Scotland] in consultation with the Board of Trade shall deem to concern primarily the interests of navigation, the Board of Trade shall be substituted for the [<sup>F10</sup>Secretary of State for Scotland], and the confirmation of any such byelaws by the [<sup>F10</sup>Secretary of State for Scotland] or the Board of Trade shall be sufficient evidence of compliance with the provisions of this subsection.

**Textual Amendments**

- F10** Words substituted by virtue of S.I. 1970/1537, **art. 6 Sch. 2 para. 2**
- F11** Words substituted by [Criminal Justice Act 1967 \(c. 80\)](#), s. 92, **Sch. 3 Pt. II**

**Modifications etc. (not altering text)**

- C4** [S. 11](#) restricted (21.9.2019) by [The Caledonian Maritime Assets \(East Loch Tarbert\) Harbour Revision Order 2019 \(S.S.I. 2019/296\)](#), arts. 1(1), **25(4)(b)** (with arts. 48, 49)
- C5** [S. 11\(1\)\(2\)\(3\)](#) modified (1.8.1995) by [S.I. 1995/2007](#) arts. 4(1)(a)-(c), 5

**Marginal Citations**

- M7** [1847 c. 27.](#)
- M8** [1847 c. 27.](#)

**12** ..... <sup>F12</sup>

**Textual Amendments**

- F12** [S. 12](#) repealed by [Harbours Act 1964 \(c. 40\)](#), **Sch. 6**

**13 Power to lease dues.**

A local authority, in whom any marine work to which this Part of this Act applies is vested, may, on such terms and conditions as they may think fit, grant a lease for any period not exceeding five years of the dues exigible in respect of the marine work, and the lessee under any such lease shall have the like right to levy and collect the dues as the local authority would have had if such lease had not been granted.

**14 Application of revenue.**

The revenue received from dues or otherwise in respect of a marine work to which this Part of this Act applies shall in the first instance be applied for the purposes and in the order following:—

- (1) In paying the expense properly chargeable to revenue of the maintenance, repair and management of the marine work:
- (2) In paying the interest charges in respect of money borrowed for the purposes of the marine work:
- (3) In paying the appropriations, instalments, or sinking fund charges in respect of money borrowed for the purpose of the marine work:

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- (4) In paying sums into any such reserve fund, and subject to such conditions as may be approved by the <sup>F13</sup>Secretary of State for Scotland]:  
 Provided that in the case of a marine work constructed in pursuance of a provisional order made on an application under section four of this Act or authorised by or under section seven of this Act, the expenses incurred in obtaining such provisional order or authorisation shall be paid in priority to any other expenses, so far as the expenses so incurred are not paid out of moneys borrowed in pursuance of this Act.

#### Textual Amendments

**F13** Words substituted by virtue of S.I. 1970/1537, [art. 6 Sch. 2 para. 2](#)

#### Modifications etc. (not altering text)

**C6** S. 14 excluded by [Highland Regional Council \(Harbours\) Order Confirmation Act 1991 \(c. xii\), s. 1, Sch. s. 58](#)

## 15 Duty of maintenance by authority receiving assistance from public funds.

- (1) Where any assistance by way of grant or loan shall, after the commencement of this Act, have been sanctioned and given out of moneys provided by Parliament to a local or harbour authority for the purpose of constructing, improving or repairing any marine work to which this Part of this Act applies, and where the <sup>F14</sup>Secretary of State for Scotland] is, at any time, satisfied that any particular operation is necessary in order to maintain the marine work in an efficient condition and proper state of repair, <sup>F14</sup>Secretary of State for Scotland] may by notice served on the authority require it to carry out such operation within such period, not being less than one month, as may be specified in the notice, and it shall be the duty of the authority, unless, on an application to the sheriff under the next succeeding subsection, the requirement contained in the notice shall have been cancelled or modified, to comply with such requirement.
- (2) Where a notice has been served on an authority in pursuance of the foregoing subsection, that authority, if they are of opinion that the requirement contained in the notice is in the circumstances unnecessary or unreasonable, may within one month after such service present an application to the sheriff for the cancellation or modification of the requirement, and on any such application the sheriff may cancel or modify the requirement in such manner as he shall think fit, having regard to all the circumstances of the case including the cost involved, and it shall be the duty of the authority to comply with any requirement so modified.
- (3) Where an authority whose duty it is under this section to comply with a requirement to carry out an operation fails to do so within the period specified in the notice served under subsection (1) of this section, or, in the case where there has been an application under subsection (2) of this section to the sheriff, within such period as may be specified in the sheriff's deliverance, the <sup>F14</sup>Secretary of State for Scotland] may <sup>F14</sup>himself] carry out the operation and may recover from the authority the expense thereby incurred.

#### Textual Amendments

**F14** Words substituted by virtue of S.I. 1970/1537, [art. 6 Sch. 2 para. 2](#)

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## 16 Deficiency in revenue to be met out of rates.

If in any year the revenue received by a local authority in respect of any marine work to which this Part of this Act applies shall be insufficient to defray the expenditure incurred in managing, maintaining in an efficient state and keeping in repair any such work and any sums required to meet interest, sinking fund or other loan charges, the deficiency shall be met out of rates in accordance with the provisions hereinafter contained.

## 17 .....<sup>F15</sup>

### Textual Amendments

**F15** Ss. 17, 23 repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

## [<sup>F16</sup>18 Responsibility for deficiency.

Any deficiency which is required to be met out of rates in pursuance of section 16 of this Act shall be met by the regional or islands council in whom the marine work is vested, or in the case of a marine work vested in two or more such councils in combination, by those councils in such proportions as may be fixed by the combination agreement.]

### Textual Amendments

**F16** S. 18 substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 19 para. 10](#)

## 19 Provisions of this Part of this Act to have effect in lieu of provisions in other Acts.

Where any Act relating to a marine work to which this Part of this Act applies contains provisions with regard to any of the matters dealt with in this Part of this Act, the provisions of this Part of this Act regarding such matters shall, except in so far as the [<sup>F17</sup>Secretary of State for Scotland] otherwise directs, have effect in lieu of the said provisions of the first mentioned Act, and those provisions shall cease to have effect.

### Textual Amendments

**F17** Words substituted by virtue of [S.I. 1970/1537](#), [art. 6 Sch. 2 para. 2](#)

## 20 Discontinuance of marine work.

- (1) If it appears to the authority in whom any marine work to which this Part of this Act applies is vested that the marine work is no longer required or cannot be adequately maintained except by such expenditure as could not be justified in view of any benefit to be derived from the continued existence of the work, the authority may resolve to discontinue the maintenance of such marine work:  
Provided that no such resolution shall take effect unless and until it has been approved by the [<sup>F18</sup>Secretary of State for Scotland]. . .

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- (2) On the application of the authority by whom any such resolution as aforesaid has been passed, the [<sup>F18</sup>Secretary of State for Scotland] may by order make such provision as seems to him necessary with regard to any outstanding liabilities of the authority in respect of the marine work, including any liabilities in respect of loans granted to the authority out of moneys provided by Parliament:  
<sup>F19</sup> . . .
- (3) When any resolution under this section takes effect, the provisions of this Part of this Act and of any other enactment applying to the marine work to which the resolution relates shall cease to have effect as regards that marine work, except in so far as the [<sup>F18</sup>Secretary of State for Scotland] may otherwise direct, and except in so far as such provisions authorise the levying and recovery of rates necessary to meet outstanding loan charges or the recovery of any rates levied but not recovered prior to the date when the resolution takes effect.

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#### **Textual Amendments**

**F18** Words substituted by virtue of S.I. 1970/1537, art. 6 Sch. 2 para. 2

**F19** Proviso in s. 20(2) omitted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 16, Pt. IV



**Changes to legislation:**

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