

ELIZABETH II



1974 CHAPTER xxx

An Act to authorise the county council of the county of Orkney to exercise harbour jurisdiction and powers in respect of development, including powers to license the construction of works and dredging, in certain areas of and adjacent to the county, and in connection therewith to acquire lands compulsorily; and for other purposes.

[31st July 1974]

WHEREAS—

(1) The county council of the county of Orkney (hereinafter respectively referred to as “the Council” and “the county”) are the local authority for that county entrusted under the Local Government (Scotland) Act 1947 with the management of the administrative and financial business of the county: 1947 c. 43.

(2) As a result of its physical characteristics and location the county enjoys a stable agricultural economy with little or no unemployment, and has a low rate income, but is now threatened for the first time with potential industrial development on an extensive scale:

(3) In view of growing indications of such development it is necessary that steps be taken to avoid any such development

producing a harmful imbalance in the economy of the county and affecting adversely the utilisation of labour, and to ensure—

- (a) the best use of land and natural resources;
- (b) that adequate services can be provided within the limits of the county's available finances; and
- (c) that the community as a whole benefits from such development as aforesaid:

(4) The types of development anticipated will for the most part be dependent upon proper communications, mainly by way of marine facilities:

(5) The foregoing and other anticipated effects render it expedient that powers be conferred upon the Council for the improvement, conservancy and development of certain areas of and adjacent to the county, for the exercise of harbour jurisdiction in respect of those areas, and for the acquisition of lands for and in connection with such development:

1865 c. 125.

(6) The said areas of and adjacent to the county include Scapa Flow which is, to the extent defined in an Order in Council dated 27th May, 1971, and made pursuant to the Dockyard Ports Regulation Act 1865, under the superintendence and protection of the Queen's Harbour Master of the dockyard port of Scapa Flow:

(7) A plan showing the lines and situations of the aforesaid lands, and a book of reference to the plan showing the names of the owners or reputed owners, and of the occupiers, of the lands which may be acquired compulsorily for the purposes of or under the powers of this Bill, were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the sheriff-clerk of the county, which plan and book of reference are in this Act referred to respectively as the deposited plan and the deposited book of reference:

(8) The objects of this Act cannot be effected without the authority of Parliament:

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

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Orkney County Council Act 1974.

2. This Act shall be divided into Parts as follows:—

Part I.—Preliminary.

Part II.—General duties and powers.

Part III.—Lands.

Part IV.—Regulation of harbour areas.

Part V.—Financial.

Part VI.—Miscellaneous.

PART I
—cont.

Division of
Act into
Parts.

3.—(1) In this Act, except so far as the context otherwise Interpretation.
requires—

“ the appropriate authority ” means—

(a) in relation to works of the Council, the Council;

(b) in relation to works of a licensee, the licensee;

“ charges ” includes charges, rates, tolls and dues of every description for the time being payable under any enactment to the Council in relation to the harbour undertaking;

“ the Council ” means the county council of the county;

“ the county ” means the county of Orkney;

“ daily fine ” means a fine for each day on which an offence is continued after conviction;

“ dangerous goods ” means any goods declared by the rules made under section 23 of the Merchant Shipping (Safety Convention) Act 1949 to be dangerous in their 1949 c. 43.
nature;

“ dredging licence ” means a licence granted under section 12 (Licence to dredge) of this Act;

“ enactment ” means any Act, whether general, local or personal (including this Act), and any order or other instrument made thereunder and any provision in such Act, order or instrument;

“ the gas undertakers ” means the British Gas Corporation;

“ gas work ” means any main, pipe, apparatus, building, structure or other work required for or in connection with the supply or transmission of gas and wholly owned or operated by the gas undertakers, for the execution of their statutory duties, in respect of which the gas undertakers have given to the Council in writing particulars of its location and such further information as the Council may reasonably require;

“ general direction ” means a direction given under section 40 (General directions to vessels) of this Act;

“ goods ” includes corporeal movables of any kind whatsoever;

PART I
—cont.

1968 c. 59.

- “harbour area” means the Scapa Flow area or the Wide Firth, Shapinsay Sound area, the respective limits of which are described in the Schedule to this Act, and includes port premises adjacent to either of those areas;
- “harbour master” means a person appointed by the Council to be a harbour master and includes the deputies and assistants of a person so appointed;
- “harbour undertaking” means the harbour undertaking for the time being of the Council authorised by this Act;
- “hovercraft” has the meaning assigned to that expression by the Hovercraft Act 1968;
- “hydrofoil vessel” means a vessel, however propelled, designed to be supported on foils;
- “land” includes land covered by water, and includes any rights in or over land;
- “landing places” means wharves and other waterside landing places, piers, jetties and similar installations and includes approaches from land to such installations;
- “the level of high water” means the level of mean high-water springs;
- “licensee” means a person in whose favour a works licence has been granted and is in operation;
- “master” in relation to a vessel means any person for the time being having or taking the command, charge or management of a vessel;
- “mooring” includes anchoring;
- “owner” in relation to a vessel includes a charterer;
- “port premises” means landing places and all other works and land for the time being belonging to or administered by the Council for the purpose of the harbour undertaking;
- “special direction” means a direction given under section 41 (Special directions to vessels) of this Act;
- “tidal work” means so much of any work constructed under the powers of this Act as is on, under or over tidal waters or tidal lands below the level of high water;
- “the tribunal” means the Lands Tribunal for Scotland;
- “the undertaking” means the undertaking for the time being carried on by the Council in exercise of their functions under this Act;
- “vessel” means every description of vessel however propelled or moved and includes any thing constructed or used to carry persons or goods by water, and includes a seaplane on or in the water, a hovercraft and a hydrofoil vessel;

“ works ” means works of every description;

“ works licence ” means a licence granted under section 11 (Licensing of works) of this Act.

PART I
—cont.

(2) Reference in this Act to any enactment shall be construed as reference to that enactment as re-enacted, extended or amended by or by virtue of any other enactment.

4. The following enactments, so far as they are applicable for Incorporation the purposes and are not inconsistent with the provisions of this of enactments. Act, are hereby incorporated with and form part of this Act:—

(a) the Lands Clauses Acts, except sections 120 to 124 and 127 of the Lands Clauses Consolidation (Scotland) Act 1845; 1845 c. 19.

(b) the Harbours, Docks and Piers Clauses Act 1847 (except 1847 c. 27. sections 6 to 13, 16 to 19, 22, 25, 26, 28, 41, 43, 48 to 53, 77 and 83 to 101):

Provided that in construing the provisions so incorporated the expression “ the special Act ” shall mean this Act:

Provided further that in construing the provisions of the Harbours, Docks and Piers Clauses Act 1847 so incorporated—

(i) the expressions “ the promoters of the undertaking ” and “ the undertakers ” shall mean the Council and the expression “ the harbour, dock or pier ” shall mean a harbour area;

(ii) the meaning of the word “ vessel ” as defined in section 3 (Interpretation) of this Act shall be substituted for the meaning assigned to that word by section 3 of that Act;

(iii) section 15 shall be read and have effect as if for the words from “ shall forfeit ” to the end of the section there were substituted the words “ shall be liable to a fine not exceeding one hundred pounds ”;

(iv) section 23 shall be read and have effect as if the words “ provided that no such lease be granted for a longer term than three years ” were omitted;

(v) section 63 shall be read and have effect as if for the words from “ penalty ” to the end of the section there were substituted the words “ penalty not exceeding one hundred pounds ”;

(vi) section 69 shall be read and have effect as if for the words from “ sum ” to the end of the section there were substituted the words “ sum not exceeding fifty pounds ”.

PART II

GENERAL DUTIES AND POWERS

5.—(1) It shall be the duty of the Council, subject to the General provisions of this Act, to take all such action as they consider duties and powers.

PART II
—*cont.*

necessary or desirable for or in connection with their functions under this Act, including—

- (a) the promotion of development, and the provision, maintenance, operation and improvement of port and harbour services and facilities, in, and in the vicinity of, a harbour area;
- (b) turning the resources of the undertaking to account so far as not required for the purposes of that undertaking.

(2) The Council shall have power either themselves or by arrangement between themselves and other persons to take such action as the Council consider necessary or desirable whether or not in, or in the vicinity of, a harbour area—

- (a) for the purposes of discharging or facilitating the discharge of any of their duties under this Act, including the proper development or operation of the harbour undertaking;
- (b) for the provision, maintenance and operation in connection with the undertaking of—
 - (i) warehousing services and facilities;
 - (ii) services and facilities for the consignment of goods on routes which include port premises.

(3) Particular powers conferred upon the Council by this Act shall not be construed as derogating from each other or from the generality of subsections (1) and (2) of this section.

Harbour jurisdiction.

6. The Council shall exercise jurisdiction as a harbour authority and the powers of the harbour master shall be exercised within the harbour areas.

Works in harbour areas.

7. The Council may construct, place, maintain and operate in and over a harbour area such works as are required for or in connection with the exercise by them of any of their functions under this Act and may alter, renew or extend any works so constructed or placed.

Power to sell works.

8. At any time after any works have been constructed or placed by the Council under the powers of section 7 (Works in harbour areas) of this Act the Council may, with the previous consent in writing of and upon such terms, conditions and restrictions as may be approved by the Secretary of State, sell the works, and the purchaser, to the extent authorised by his conveyance, shall have and may exercise in relation to the works all or any of the powers conferred upon the Council by this Act, or which the Council have or might exercise under this Act, and shall be subject to all the restrictions, liabilities and obligations to which the Council are subject, and shall perform all the duties of the Council under this Act in respect of the works.

9.—(1) The Council may, with the previous consent in writing of and upon such terms, conditions and restrictions and for such a period as may be approved by the Secretary of State, lease to any person any works constructed or placed by the Council under the powers of section 7 (Works in harbour areas) of this Act.

PART II
—cont.
Power to
lease works.

(2) As from the commencement of any lease made under subsection (1) of this section the lessee, during the continuance of and to the extent provided in his lease, shall have and may exercise in relation to the works all or any of the powers conferred upon the Council by this Act, or which the Council have or might exercise under this Act, and shall in respect of the works be subject to all the liabilities and obligations to which the Council are subject, and shall perform all the duties of the Council under this Act in respect of the works.

(3) No lease made under subsection (1) of this section shall be assignable without the previous consent in writing of the Secretary of State, and the provisions of this Act with respect to such lease or to the lessee shall apply to any such assignation or to the assignee respectively.

10.—(1) The Council may deepen, widen, dredge, scour, cut and improve the bed and banks of a harbour area and the seaward approaches thereto, and for such purpose may blast any rock within such area or approaches.

Power
dredge.

(2) Any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected in the exercise of the powers of this section (in so far as they are not the property of the Council before being taken up or collected) shall become the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council think fit:

1894 c. 60.

Provided that no such materials shall be deposited below the level of high water except in such position as the Secretary of State may approve and subject to such conditions or restrictions as he may impose.

(3) As early as possible, and in any event not less than twenty-eight days before exercising any of the powers of subsection (1) of this section or of a licence granted under section 12 (Licence to dredge) of this Act within 50 metres or, in the case of blasting operations, 150 metres of any subaqueous cable belonging to or used by the Post Office, the Council or, as the case may be, the person to whom such licence was granted shall give notice in writing to the Post Office of his intention to exercise those powers.

(4) No materials shall be deposited in exercise of the powers of subsection (2) of this section or of a licence granted under

PART II
—cont.

section 12 (Licence to dredge) of this Act so as to cover any subaqueous cable belonging to or used by the Post Office or to impede the inspection, maintenance, removal or renewal thereof.

(5) (a) In the exercise of the powers conferred by this section the Council shall not interfere with, damage or injuriously affect any gas work without the consent of the gas undertakers.

(b) The Council shall not exercise the powers of subsection (1) of this section—

(i) to blast any rock within 150 metres of a gas work; or

(ii) in any other respect within 50 metres of a gas work;

except after giving to the gas undertakers not less than twenty-eight days' written notice of their intention so to do.

(c) No materials taken up or collected shall be laid down or deposited in such a place or manner as to cover any gas work or in any way obstruct or impede any work of or connected with the inspection, maintenance, removal, renewal or repair of any gas work without the consent of the gas undertakers.

Licensing of
works.

11.—(1) The Council may upon such terms and conditions as they think fit grant to any person a licence to construct, place, maintain, alter, renew or extend any works on, under or over tidal waters or tidal lands below the level of high water in a harbour area notwithstanding any interference with public rights of navigation or other public rights by such works as constructed, placed, maintained, altered, renewed or extended.

(2) Application for a works licence shall be made in writing to the Council and shall—

(a) be accompanied by plans, sections and particulars of the works to which the application relates;

(b) specify whether the applicant holds such rights in, under or over land as are necessary to enable him to enjoy the benefits of the licence and, if not, the action taken to enable him to obtain such rights if the licence is granted; and

(c) be accompanied by a copy of a notice published in the Orcadian newspaper or some other newspaper circulating in the county, stating that application is being made to the Council for the grant of a licence, containing a general description of the nature of the works for which application is being made and of the land upon which the works are proposed to be constructed, placed, altered, renewed or extended, naming a place where a copy of the plans, sections and particulars of the proposed works may be seen at any reasonable hours and stating that any person who desires to object to the Council to the granting of the application should

do so in writing stating the grounds of his objection before the expiration of a period of twenty-eight days from the date of the newspaper advertisement.

PART II
cont.

(3) In deciding whether or not to grant a licence or as to the terms and conditions to be included in the licence the Council shall take into consideration any objection in writing made to them by any person within the time specified in the newspaper notice (hereinafter in this section and in section 13 (Appeals in respect of works or dredging licence) referred to as a valid objection) and in granting a licence the Council may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) If the Council decide to grant a works licence they shall, in addition to the applicant, give notice of their decision to any person who has made a valid objection and has not withdrawn it.

(5) If within three months from the date of the making of an application under subsection (2) of this section the Council do not grant a works licence in accordance with the application, they shall be deemed to have refused the application.

(6) In the exercise of the powers of a works licence the licensee shall not damage or injuriously affect any submarine cable maintained by the North of Scotland Hydro-Electric Board or any gas work or, without the consent of that board, or (as the case may require) the gas undertakers, interfere with or adversely affect the operation of any such cable or work.

(7) For the purposes of section 7 of the Telegraph Act 1878 1878 c. 76. work proposed to be done under the authority of a works licence shall be deemed to be work proposed to be done in the execution of an undertaking authorised by an Act of Parliament.

12.—(1) The Council may upon such terms and conditions as they think fit grant to any person a licence to dredge in any part of a harbour area. Licence to dredge.

(2) Application for a dredging licence shall be made in writing to the Council and shall be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations to be carried out in the exercise of the powers granted by the licence and in granting any such licence the Council may require modifications in the plans, sections and particulars so submitted.

(3) If within three months from the date of making an application under subsection (2) of this section the Council do not grant a dredging licence in accordance with the application, they shall be deemed to have refused the application.

(4) The issue of a licence under this section shall not confer statutory authority for the carrying out of the work covered by the licence.

PART II
—*cont.*
1894 c. 60.

(5) Unless otherwise agreed between the Council and the holder of the licence any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected by means of dredging in pursuance of a dredging licence shall (in so far as they are not the property of the Council before being taken up or collected) become the property of the Council and the provisions of subsection (2) of section 10 (Power to dredge) of this Act shall apply to such materials which are or become the property of the Council.

(6) In the exercise of the powers conferred by a dredging licence the holder of the licence shall not damage or injuriously affect any submarine cable maintained by the North of Scotland Hydro-Electric Board or any gas work or without the consent of that board or (as the case may require) the gas undertakers interfere with or adversely affect the operation of any such cable or work.

Appeals in
respect of
works or
dredging
licence.

13.—(1) (a) A person who has made a valid objection and has not withdrawn his objection and who is aggrieved by the decision of the Council to grant a works licence and an applicant for a works licence or for a dredging licence who is aggrieved by—

- (i) the refusal of the Council to grant the licence;
- (ii) any terms or conditions subject to which the licence is granted; or
- (iii) any modifications required by the Council in the plans, sections and particulars submitted by the applicant;

may within twenty-eight days from the date on which the Council give notice of their decision or the date on which the Council are under subsection (5) of section 11 (Licensing of works) or subsection (3) of section 12 (Licence to dredge) of this Act deemed to have refused the application, as the case may be, appeal to the Secretary of State.

(b) An appeal shall be made by notice in writing stating the grounds of the appeal.

(2) A person who appeals to the Secretary of State under this section shall at the same time send a copy of his statement of appeal to the Council and the Council shall as soon as practicable thereafter furnish the Secretary of State with all relevant documents including a copy of any valid objection made to the original application which has not been withdrawn.

(3) The Council may within twenty-eight days from the receipt of the statement of appeal furnish the Secretary of State with their observations on the appeal.

(4) On an appeal under this section the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including

amendment of the terms and conditions or modification of the plans, sections and particulars.

PART II
—cont.

(5) The Council shall give effect to any requirement made by the Secretary of State under subsection (4) of this section.

14.—(1) No person other than the Council shall—

Restriction of
works and
dredging.

(a) construct, place, alter, renew or extend any works on, under or over tidal waters or tidal lands below the level of high water in a harbour area unless he is licensed so to do by a works licence and except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of section 11 (Licensing of works) of this Act;

(b) dredge in a harbour area unless he is licensed so to do by a dredging licence and except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of section 12 (Licence to dredge) of this Act:

Provided that this subsection shall not apply to the construction, placing, alteration, renewal or extension of any such works or to the carrying out of dredging in a harbour area specifically authorised under any enactment.

(2) Any person who offends against the provisions of this section or who contravenes or fails to comply with any term or condition of a works licence or dredging licence granted to him shall be guilty of an offence and liable to a fine not exceeding one thousand pounds and to a daily fine not exceeding one hundred pounds.

(3) Nothing in this section shall derogate from the powers of the Post Office under the Telegraph Acts 1863 to 1916.

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

Permanent
lights on
tidal works.

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

16.—(1) The appropriate authority shall at or near a tidal work during the whole time of the construction, placing, alteration, renewal or extension thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

Lights on
tidal works
during
construction.

PART II
—cont.

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

Survey of
tidal works.

17. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which the Council or a licensee propose to construct a tidal work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be a debt due from the Council or, as the case may be, the licensee, to the Crown and shall be recoverable accordingly.

Provision
against
danger to
navigation.

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

(2) If the Council fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section they shall be guilty of an offence and liable to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

Abatement
of works
abandoned or
decayed.

19.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper, and the Council shall comply with any such requirement.

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

(3) If, on the expiration of thirty days from the date when a notice under this section is served upon the Council, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be a debt due from the Council to the Secretary of State and recoverable accordingly.

(4) In relation to a tidal work of a licensee or a work of a licensee consisting partly of a tidal work and partly of works on

or over land above the level of high water, the Council shall have the like powers to give notice to a licensee and to execute works specified in a notice as those given to the Secretary of State by subsections (1), (2) and (3) of this section in relation to any such work, and in addition the Council may exercise the powers of subsection (1) of this section, if it appears to the Council that a work of a licensee to which this subsection applies is by reason of its ruinous or dilapidated state seriously detrimental to the amenities of the neighbourhood.

PART II
—cont.

(5) Any expense incurred by the Council under this section in respect of a work owned by any other person, or for the maintenance of which any other person is responsible, shall be recoverable from such person as a debt due to the Council.

20. The Council may construct, purchase, contract for or hire, and may maintain and use, vessels required by them for carrying out their functions under this Act, including towage, and may sell or dispose of any such vessels belonging to them.

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

(a) subject to the provisions of the next following section; and

(b) in relation to a vessel sunk, stranded or abandoned before, as well as after, the passing of this Act.

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

(3) Except in a case which is in the opinion of the Council a case of emergency subsection (2) of this section shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by the said section 530 other than the power of lighting and buoying the Council have given to the owner of the vessel not less than forty-eight hours' notice of their intention to do so; and if before the notice expires they receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, and no direction is served in respect of the vessel under paragraph (b) of subsection (2) of the next following section, he shall be at liberty

Powers with respect to disposal of wrecks.
1894 c. 60.

PART II
—cont.

to do so, and the Council shall not exercise the powers aforesaid in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to him by the Council.

(4) Notice under the last foregoing subsection to the owner of any vessel may be served by the Council either by delivering it to him or by sending it to him by the recorded delivery service addressed to him at his last known place of business or abode in the United Kingdom, or, if the owner or any such place of business or abode is not known to the Council, by displaying the notice at the offices of the Council for the period of its duration.

(5) Except in a case which is in the opinion of the Council a case of emergency the Council shall, before raising, removing or destroying under the powers of the said section 530 any vessel sunk, stranded or abandoned in the harbour or in or near any approach thereto and within 200 metres of any subaqueous cable belonging to or used by the Post Office, give to the Post Office as soon as practicable notice in writing of their intention so to do.

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

Protection of
Crown
interests in
wrecks.
1894 c. 60.
1906 c. 48.

22.—(1) Without prejudice to section 741 of the Merchant Shipping Act 1894 (which relates to the exemption from the provisions of that Act of vessels belonging to Her Majesty), as modified by any Order in Council made under section 80 of the Merchant Shipping Act 1906, the powers conferred on the Council by sections 530 and 532 of the said Act of 1894 shall not be exercisable—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;
- (b) except with the consent of the Secretary of State for Defence, which may be given with or without such a direction as is referred to in paragraph (b) of subsection (2) of this section in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty but which, at the time when the vessel was sunk, stranded or abandoned—

(i) had been required to be placed at the disposal of Her Majesty or of a government department; and

(ii) was appropriated to the service, under the direction and control of the Secretary of State for Defence, of Her Majesty's ships of war.

PART II
—cont.

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

(a) except with the consent of the Secretary of State for Defence and the Secretary of State for Trade before the expiration of a period of fourteen days from the giving of the notice; or

(b) if before the expiration of the said period there is served on the Council a direction by the Secretary of State for Defence or the Secretary of State for Trade that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where in any such case as aforesaid the Council proceed to exercise those powers without the consent and before the expiration of the period mentioned in paragraph (a) of this subsection, or after a direction has been served on them as aforesaid, they shall not in the exercise of those powers use any explosives and, if before the expiration of the period aforesaid such a direction as aforesaid is served on them, shall not be entitled to exercise the power of sale conferred by the said section 530 or the power conferred by subsection (2) of the last foregoing section:

Provided that—

(i) the Council shall not be required to give notice under this subsection in respect of any vessel in respect of which they have received a consent under paragraph (b) of the foregoing subsection, but any direction such as is referred to in paragraph (b) of this subsection accompanying that consent shall be deemed for the purposes of this subsection and of subsection (3) of the last foregoing section to have been duly served under paragraph (b) of this subsection;

(ii) the prohibition on the use of explosives imposed by this subsection shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may for the time being be approved by the Secretary of State for Trade for the purposes of this proviso.

(3) Without prejudice to the power of sale conferred on the Council by the said section 530, the Council shall hold and dispose of any wreck within the meaning of Part IX of the said Act of 1894 raised, removed or recovered under that section, and any surplus proceeds of sale within the meaning of that section, in accordance

PART II
—cont.

with such directions, if any, as may be given to them by the receiver of wreck; and on exercising the said power of sale in the case of any property the Council shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by the Council under that section.

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

Removal of
obstructions
other than
vessels.

1894 c. 60.

23.—(1) The Council may remove—

- (a) anything which is neither a vessel nor (within the meaning of Part IX of the Merchant Shipping Act 1894) wreck, causing or likely to become an obstruction or impediment in any part of a harbour area;
- (b) anything, other than a vehicle, causing or likely to become an obstruction or impediment to the proper use of any port premises.

(2) (a) If anything removed by the Council under subsection (1) of this section is so marked as to be readily identifiable as the property of any person, the Council shall within one month of its coming into their custody give notice, as required by subsection (5) of this section, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in the Council.

(b) If anything removed by the Council under subsection (1) of this section which is not so marked is not within three months of its coming into the custody of the Council proved to their reasonable satisfaction to belong to any person it shall thereupon vest in the Council.

(3) The Council may at such time and in such manner as they think fit dispose of anything referred to in paragraph (b) of subsection (2) of this section which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Council under this section, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by them under this section in relation to the thing, and any balance—

- (a) shall be paid to any person who within three months from the time when the thing came into the custody of the Council proves to their reasonable satisfaction that he was the owner thereof at that time; or
- (b) if within the said period no person proves ownership at the said time, shall vest in the Council.

(4) If anything removed under this section—

(a) is sold by the Council and the proceeds of sale are insufficient to reimburse them for the amount of the expenses incurred in the exercise of their powers of removal; or

(b) is unsaleable;

the Council may recover as a debt due to them the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

(5) A notice given under paragraph (a) of subsection (2) of this section shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Council possession may be retaken at a place named in the notice within the time specified therein, being not less than fourteen days after the date when the notice is served.

(6) The Council shall not under the powers of this section move anything placed or constructed by a local authority or statutory undertakers under the provisions of any enactment or of a consent or licence given or issued by the Council thereunder.

(7) In subsection (6) of this section—

“local authority” has the meaning assigned to that expression by section 379 of the Local Government (Scotland) Act 1947;

1947 c. 43.

“statutory undertakers” means a person authorised by statute to carry on any undertaking for the supply of electricity or gas, and includes the Post Office.

24.—(1) The Council may by notice require the owner or occupier of a landing place or embankment which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

Repair of landing places and embankments.

(a) dangerous to persons or vessels using a harbour area;

(b) injurious to the condition of a harbour area as a navigable waterway; or

(c) a hindrance to the navigation of a harbour area;

to remedy its condition to the satisfaction of the Council's chief engineer within a reasonable time specified in the notice.

(2) If a person to whom notice is given under this section fails to comply with it within the time stated in the notice, or, if he appeals and the appeal is not allowed, within the time stated in the notice or such other time as the court may substitute therefor—

(a) he shall be guilty of an offence and liable to a fine not exceeding one hundred pounds and to a daily fine not exceeding ten pounds; and

PART II
—cont.

(b) the Council may carry out the works they consider necessary to remedy the condition of the landing place or embankment in question and may recover the expenses of so doing from the person on whom the notice was served as a debt due to them.

(3) A notice under subsection (1) of this section shall have annexed to it a copy of this section.

(4) A person aggrieved by a notice served by the Council under subsection (1) of this section may appeal to the sheriff.

Power to appropriate lands and works for particular trades, etc.

25.—(1) Notwithstanding anything in this or any other statutory provision of local application, the Council may from time to time set apart or appropriate any lands, works, buildings, machinery, equipment or other property of the Council in a harbour area for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels or goods, subject to the payment of such charges and to such terms and conditions as the Council think fit.

(2) No person or vessel shall make use of any lands, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council, and the harbour master or, as the case may be, such officer may order any person or vessel making use thereof without such consent to leave or be removed.

Power to hire out plant.

26. The Council may let upon hire (with or without the services of their employees) on such terms and conditions as they think fit any vessel, plant, equipment or other property belonging to them and forming part of the harbour undertaking:

Provided that in so doing the Council shall act as if they were a company engaged in a commercial enterprise.

Council may contract for police.

27. The Council may contract and agree from time to time with the police authority for the county for the execution by constables of the police force maintained for that area of police duty within a harbour area on such terms and conditions and upon such payment or consideration as the Council shall think proper and as shall be agreed between them and the police authority.

Power to invest in securities of bodies corporate.

28.—(1) In order to provide or facilitate the provision of funds for—

(a) the establishment, carrying on or extension by any body corporate of warehouses, factories or works at or near a harbour area;

(b) the establishment or carrying on by any body corporate of an undertaking or business (including an undertaking

or business concerned with the transport or handling of goods) connected with or ancillary to the carrying on of the harbour undertaking;

PART II
—cont.

(c) the carrying on by any body corporate of any other undertaking or business which appears to the Council to be advantageous or convenient for, or in connection with, the functions of the Council under this Act;

(d) the carrying out of an arrangement made under subsection (2) of section 5 (General duties and powers) of this Act;

and, to the extent requisite therefor, the Council may subscribe for, purchase, take up and hold or dispose of any shares, stock, mortgages, debentures or debenture stock of such body corporate and may in respect of any such shares, stock, mortgages, debentures or debenture stock for the time being held by them exercise either by themselves or through some person nominated by them for the purpose all or any of the rights exercisable by an individual holder of such shares, stock, mortgages, debentures or debenture stock.

(2) The Council may apply for the purposes of this section any moneys for the time being standing to the credit of a reserve fund established under section 69 (Reserve fund) or moneys borrowed under section 66 (Power to borrow) of this Act.

PART III

LANDS

29. Subject to the provisions of this Act the Council may enter upon, take and use all or any of the lands delineated on the deposited plan and described in the deposited book of reference (other than the lands numbered on the deposited plan 1 in the burgh of Stromness and 10, 11, 16 to 18, 23 to 28 and 32 to 101 in the district of Mainland) which they may require for the purposes of their functions under this Act and in respect of which planning permission for the carrying out of development which constitutes a material change in the use of that land within the meaning of the Town and Country Planning (Scotland) Act 1972 shall have been given subsequently to 27th November 1973.

Power to
acquire lands.

1972 c. 52.

30. The powers of the Council for the compulsory purchase of lands under section 29 (Power to acquire lands) of this Act shall cease on 31st December, 1983.

Period for
compulsory
purchase.

31.—(1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, the Council, after giving ten days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof.

Correction of
errors in
deposited
plan and
book of
reference.

PART III
—cont.

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

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, and with the sheriff-clerk of Orkney, and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Council to take the land and execute the works in accordance with the certificate.

(4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

Private rights
of way over
lands taken
compulsorily.

32. All private rights of way over any lands which under the powers of this Act are acquired compulsorily shall as from the date of such acquisition be extinguished:

1963 c. 51.

Provided that the Council shall make compensation to all parties interested in respect of any such rights and such compensation shall be settled, failing agreement, in the manner provided by the Land Compensation (Scotland) Act 1963 for settling disputed compensation for lands authorised to be acquired compulsorily.

Power to
enter, survey,
etc., lands.

33.—(1) An authorised officer of the Council may enter, examine and lay open the lands authorised by this Act to be taken and used or any of them for the purpose of surveying, measuring, taking levels, examining works and valuing the said lands or any other purpose ancillary to the powers conferred by this Act:

Provided that such power shall not be exercised with respect to any lands unless notice of the intention to enter such lands and the nature of the operations to be carried out has been given to the occupier not less than seven days before the first entry and in any case further notice shall not be required in respect of any subsequent entry on the lands for the purpose of carrying out the operations specified in the notice.

(2) An authorised officer acting in the exercise of the powers conferred by the preceding subsection shall cause as little detriment or inconvenience to any person as circumstances allow, and the Council shall, subject to the provisions of this Act, make compensation to the owners and occupiers of any lands injuriously affected by the exercise of such powers.

34. At any time after notice to treat has been served for any land which the Council are authorised by this Act to purchase compulsorily the Council may, after giving to the owner and occupier of the land not less than twenty-eight days' notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act 1845 but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

PART III
—cont.

Further powers of entry.

1845 c. 19.

35.—(1) In lieu of acquiring any land that may be acquired compulsorily under this Act the Council may acquire compulsorily such servitudes and rights in that land as they may require for the purposes of this Act.

Power to acquire servitudes only.

(2) Accordingly the Council may give notice to treat in respect of any such servitude or right describing the nature thereof and the provisions of the Lands Clauses Acts shall apply in relation to the acquisition of such servitudes and rights as if they were lands within the meaning of those Acts.

(3) Where the Council have acquired a servitude or right only in any land under this section—

- (a) they shall not be required or (except by agreement) entitled to fence off or sever that land from the adjoining land; and
- (b) the owner or occupier of the land for the time being shall, subject to the servitude or right, have the same right to use and cultivate the land as if this Act had not been passed.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for a servitude or right is given under this section requires the Council to acquire the land, the Council shall not be entitled to acquire the servitude or right unless the tribunal determines that the servitude or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house:

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

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

PART IV

REGULATION OF HARBOUR AREAS

Declaration
of draught
of vessel.

36.—(1) The master of a vessel entering or leaving or intending to enter or leave a harbour area shall if required to do so by the harbour master state the draught of his vessel.

(2) The master of a vessel who in response to a requirement under subsection (1) of this section gives incorrect information shall, without prejudice to any right of the Council to compensation for loss or damage occasioned thereby, be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(3) For the purposes of this section “ draught ” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or foils or by any other means and in relation to a seaplane means its draught when afloat.

Boarding
vessels.

37. Any duly authorised officer of the Council may, on producing if so required his authority, enter and inspect a vessel in a harbour area—

- (a) for the purposes of any enactment relating to the Council or of any byelaw of the Council, including the enforcement thereof; or
- (b) to prevent or extinguish fire.

Notice before
entry of
dangerous
goods.

38.—(1) Except in case of emergency, the owner or master of a vessel—

- (a) which it is intended to bring into a harbour area carrying dangerous goods; or
- (b) which is within a harbour area and on which it is intended to place dangerous goods;

shall, not less than twenty-four hours before that vessel enters the harbour area or before the dangerous goods are placed on board, as the case may be, give notice to the harbour master of the nature and quantity of the dangerous goods in question and, if such notice is not given, the owner or master of the vessel shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(2) Where the owner or master of the vessel is charged with an offence under subsection (1) of this section it shall be a defence to prove that he did not know and could not with reasonable diligence have ascertained the nature of the goods in respect of which the proceedings are taken.

(3) This section does not apply to dangerous goods to which byelaws made by the Council under the Explosives Act 1875 or the Petroleum (Consolidation) Act 1928 for the time being apply. PART IV
—cont.
1875 c. 17.
1928 c. 32.

39.—(1) The Council may—

(a) refuse entry into a harbour area of any goods which in their opinion would endanger or be liable to endanger persons or property; or Exclusion,
etc., of
scheduled
goods.

(b) permit the entry of any such goods subject to such terms and conditions (including specification of the part or parts of the port premises where such entry is permitted) as they think fit.

(2) The Council shall publish a schedule of such goods—

(a) entry of which is forbidden by them; and

(b) entry of which is permitted by them only upon terms and conditions specified in the schedule.

(3) A person who after publication of the schedule referred to in subsection (2) of this section—

(a) brings or causes or permits to be brought into a harbour area any goods the entry of which is forbidden; or

(b) fails in relation to any goods brought into port premises to comply with any terms or conditions imposed by the Council under subsection (1) of this section;

shall—

(i) be guilty of an offence and liable to a fine not exceeding one hundred pounds, and on conviction on indictment to a fine; and

(ii) indemnify the Council against all claims, demands, proceedings, costs, damages and expenses which may be made against or recovered from or incurred by the Council in consequence of the commission of the offence;

and the Council may remove the goods in question and may recover from the owner or offender the costs of such removal and of placing or storing the goods elsewhere.

40.—(1) The Council may, after consultation in each case with the Chamber of Shipping of the United Kingdom and the General
directions
to vessels.

PART IV
—cont.

local pilotage authority, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in a harbour area, and, without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) for designating areas, routes or channels within a harbour area which vessels are to use or refrain from using for movement or mooring;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master in order to effect the objects of this subsection.

(2) Directions given under subsection (1) of this section may apply—

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
- (b) to the whole of a harbour area or to a part designated, or the designation of which is provided for, in the direction; and
- (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction made under this section shall specify the extent of its application in relation to the matters referred to in paragraphs (a), (b) and (c) of this subsection.

(3) The Council may, after such consultation as aforesaid, revoke or amend directions given under this section.

Special
directions
to vessels.

41.—(1) The harbour master may give a direction under this section to a vessel anywhere in a harbour area for any of the following purposes:—

- (a) requiring a vessel to comply with a requirement made in or under a general direction pursuant to section 40 (General directions to vessels) of this Act;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of a vessel;
- (c) regulating the manner in which a vessel takes in or discharges cargo, fuel, water or ship's stores and the dispatch of its business at port premises;

- (d) the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) the use of its motive power;
- (f) prohibiting or restricting the use of fires or lights;
- (g) the loading, discharging and methods of storing and safeguarding of cargo, fuel, water or ship's stores;
- (h) the use of ballast;
- (i) requiring the removal from port premises or from a harbour area of a vessel if—
 - (i) it is on fire;
 - (ii) it is in a condition where it is liable to become immobilised or waterlogged, or to sink;
 - (iii) it is making an unlawful or improper use of port premises;
 - (iv) it is interfering with the use of port premises by other vessels, or is otherwise interfering with the proper use of port premises or the dispatch of business therein ; or
 - (v) its removal is necessary to enable maintenance or repair work to be carried out to port premises or to premises adjacent thereto.

(2) A direction under this section may be given in any manner considered by the harbour master to be appropriate.

42.—(1) Except in an emergency, notice of a general direction and of the amendment or revocation of a general direction shall, so soon as practicable after it is made, be published by the Council once in Lloyd's List or some other newspaper specialising in shipping news, and, if the notice relates to the making of a designation or the making or amendment of a general direction, it shall state a place at which copies of the designation or direction may be inspected and bought and the price thereof.

Publication of designations and general directions.

(2) In an emergency notice of a general direction or of the amendment or revocation of a general direction may be given in any manner the Council consider appropriate.

43.—(1) The master of a vessel who fails to comply with a general direction or a special direction shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

Failure to comply with directions.

(2) It shall be a defence to the master of a vessel charged with an offence under subsection (1) of this section to prove that he had reasonable ground for supposing that compliance with the

PART IV
—cont.

direction in question would be likely to imperil his vessel or any persons or property therein or thereon or that in the circumstances compliance was impracticable.

Enforcement
of directions.

44.—(1) Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the harbour master may, where practicable, put persons aboard the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board a vessel to attend to a special direction, the harbour master may proceed as if the direction had been given and not complied with:

Provided that the powers of this subsection shall not be exercised—

- (a) in relation to a vessel other than a lighter, unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing the access to or exit from port premises or otherwise interfering with navigation in a harbour area.

(3) Expenses incurred by the Council in the exercise of the powers conferred by subsection (1) of this section shall be recoverable by them as if they were a charge of the Council in respect of the vessel.

Master's
responsibility
in relation
to directions.

45. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property.

General
byelaws.

46.—(1) The Council may from time to time by byelaws make provision for any matter falling within their duties under section 5 (General duties and powers) of this Act and in particular, but without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) for securing the conservation and improvement of any harbour area as a navigable waterway and for promoting the ease and convenience of navigation;
- (b) for the regulation of vessels in a harbour area and their entry into and departure from the area and, without prejudice to the generality of the foregoing, for prescribing rules for navigation and the lights and signals to be exhibited or made by or for the benefit of vessels navigating in a harbour area;

- (c) for regulating the use and for preventing the misuse of services and facilities provided by the Council at port premises;
- (d) for promoting the safety of persons and vessels at port premises;
- (e) for regulating the conduct of persons using a harbour area or its banks or shores whether for business, recreation, training or any other purpose;
- (f) for the prevention of nuisances in or beside a harbour area.

(2) Different byelaws may be made under this section in relation to different classes of vessels.

(3) Byelaws made under this section may provide for imposing upon persons offending against them fines not exceeding two hundred pounds and a daily fine of fifty pounds.

47.—(1) The Council may make byelaws as to the loading and discharging by vessels within a harbour area of dangerous goods and generally as to the precautions to be observed with respect to vessels carrying dangerous goods while in a harbour area and such byelaws may in particular provide—

- (a) for regulating places at which vessels are to load and discharge dangerous goods and the time and mode of, and the precautions to be taken on, such loading and discharging;
- (b) for regulating the places at which vessels carrying dangerous goods are to be moored.

(2) If a person is charged with an offence against a byelaw in force under this section it shall be a defence for him to prove that the offence was not caused or facilitated by any act or neglect on his part, or on the part of any person engaged or employed by him and, if the person so charged is the owner or master of a vessel, that all reasonable steps were taken by the master to prevent the commission of the offence.

(3) Byelaws made under subsection (1) of this section may provide for imposing on persons offending against them fines not exceeding one hundred pounds.

(4) This section does not apply to dangerous goods to which byelaws made by the Council under the Explosives Act 1875 or the Petroleum (Consolidation) Act 1928 for the time being apply.

1875 c. 17.
1928 c. 32.

48. For byelaws made by the Council under this Part of this Act, the confirming authority for the purposes of section 301 of the Local Government (Scotland) Act 1947 shall be the Secretary of State.

Confirming authority for byelaws.
1947 c. 43.

PART IV

—cont.

Council to be
local lighthouse
authority.

1894 c. 60.

49. The Council shall within a harbour area be a local lighthouse authority for the purposes of sections 652 to 654 of the Merchant Shipping Act 1894.

PART V

FINANCIAL

Charges for
floating
plant, etc.

1964 c. 40.

50. The Council may demand, take and recover in respect of a dracone or floating dock or crane, rig, drilling rig or any floating plant which is not a ship as defined by section 57 of the Harbours Act 1964, entering or leaving a harbour area such charge as they think fit, and the provisions of sections 30, 31, 32 and 34 of that Act shall, with any necessary modifications, apply to the charges authorised by this section as they apply to ship, passenger and goods dues:

Provided that nothing in this section shall extend to authorise the Council to demand, take or recover charges in respect of vessels forced by stress of weather to seek shelter in a harbour area which do not break bulk while making use of that area.

Charges for
services and
facilities.

51. The Council may demand, take and recover for services and facilities provided by them in a harbour area such reasonable charges as they may from time to time determine.

Conditions as
to payment
of charges.

52.—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in their published list of charges.

(2) Without prejudice to the generality of subsection (1) of this section the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

Liability for
charges.

53.—(1) Charges on or in respect of—

- (a) a vessel, shall be payable by the owner or master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

(2) Where a charge payable to the Council may be recovered from more than one person the said persons shall be jointly and severally liable.

Compounding,
etc., of
charges.

54. Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues to be kept under subsection (1) of that section charges subject to compounding arrangements in respect of, or reduced by a rebate allowed on, any due included in that list.

55. The Council may require a person who incurs or intends to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or to guarantee the sum of money required the Council may detain a vessel in the harbour area, or goods on port premises, in respect of which a charge has been or will be incurred, until the requirement has been complied with or charge paid.

PART V
—cont.

Security for
charges.

56. Where a person who has paid, or by agreement with the Council given security for, a charge on or in respect of a vessel or goods, requests a certificate of his having done so for production to a customs officer in order to prevent refusal to receive a report inwards or to grant a clearance outwards or refusal to pass an entry under section 59 (Refusal of customs clearance) of this Act, the Council shall give him such a certificate in such form as they shall determine.

Certificate of
payment.

57.—(1) A duly authorised officer of the Council may, on producing if so required his authority, board a vessel in a harbour area to ascertain the charges payable on or in respect of the vessel, or on or in respect of goods carried therein, and to obtain any other information required for or in connection with the assessment and collection of charges.

Entry on
vessels.

(2) A master of a vessel who refuses to comply with a reasonable request for information or for the production of a document made by an officer of the Council who has boarded his vessel pursuant to subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

58. Any person claiming the return of the whole or part of any charges paid to the Council shall make such claim and produce all documents and give all information required by the Council in proof of such claim within twelve months from the time of payment and, in default thereof, the claim shall no longer be enforceable.

Claims for
repayment of
charges.

59. A customs officer may refuse—

Refusal of
customs
clearance.

(a) to receive a report inwards or to grant a clearance outwards to a vessel; and

(b) to pass an entry for imported goods liable to charges;

unless he is satisfied that all charges payable to the Council on or in respect of that vessel, or on those goods, as the case may be, have been paid or that a sum of money or guarantee in respect thereof has been deposited with, or given to, the Council under section 55 (Security for charges) of this Act.

PART V
—cont.

Recovery of
charges.

Liens for
charges.

60. In addition to the remedy given by any enactment, the Council may recover charges as a debt due to them.

61.—(1) A person who by agreement with the Council collects charges on their behalf, and who pays or gives security for the payment of charges on goods in his possession, shall have a lien on the said goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in his custody and, in that event, he shall have a like lien on the said goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.

Weighing, etc.,
of goods for
purposes of
charges.

62.—(1) A person in possession of goods in respect of which information relating to the assessment or collection of charges has been given to the Council shall give to a duly authorised officer of the Council, on production of his authority, reasonable facilities for weighing, measuring and examining the goods and shall, if so requested, give to such an officer any information he may reasonably require for the purpose of checking or amplifying the information already given to the Council in respect of the goods.

(2) A person who fails to comply with subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

Refusal to pay
charges for
landing place.

63. An officer of the Council may prevent a vessel from using a landing place provided by the Council if the master of the vessel refuses to pay the charges for such use.

Exemption
from charges
for Crown,
etc.

64.—(1) Except in so far as may be agreed between the Council and the government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to make charges shall extend to authorise them to make a charge on—

(a) a vessel—

(i) belonging to or in the service of Her Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(c) troops landed at port premises or a person employed by the Secretary of State for Defence while in the execution of his duties;

(d) goods or stores belonging to the Secretary of State for Defence.

PART V
—cont.

(2) Officers of the Department of Trade in the execution of their duty shall at all times have free ingress, passage and egress on, into, from, over, along, through and out of a harbour area and any works of the Council by land, and with their vessels or otherwise.

65. This Act shall not extend to confer jurisdiction on the Council or the harbour master in respect of vessels which merely pass through the limits of a harbour area without making use of any facilities provided by the Council or by a licensee unless such vessels shall obstruct the approaches to any works, or to subject any person to liability for charges in respect of any such vessel.

Exemption
for certain
vessels.

66.—(1) The Council may with the sanction of the Secretary of State borrow such sums as may be necessary for any of the purposes of this Act, and any sum borrowed under the powers of this section shall be repaid within such period, not exceeding twenty-five years from the date of borrowing, as the Council with the consent of the Secretary of State may determine.

Power to
borrow.

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

1946 c. 58.

67.—(1) The Council shall keep separate accounts in respect of the harbour undertaking so as to distinguish capital from revenue and as regards revenue to show under a separate heading or division on the one side all income in respect of the harbour undertaking and on the other side all expenditure in respect of the harbour undertaking, such expenditure being divided so as also to show the amounts representing—

Accounts of
harbour
undertaking.

(a) the working and establishment expenses and cost of maintenance of the harbour undertaking;

(b) the interest on moneys borrowed by the Council for the purposes of or connected with the harbour undertaking;

(c) the requisite appropriations, instalments or sinking fund payments in respect of moneys borrowed; and

(d) all other expenses, if any, of the harbour undertaking properly chargeable to revenue.

(2) The Council shall show in their accounts relating to the harbour undertaking all items (including receipts and payments in respect of loans applicable thereto) which ought to be entered therein in order to show the financial position of the harbour undertaking.

PART V
—*cont.*

(3) In all cases in which the Council keep separate accounts in relation to the harbour undertaking for separate purposes they shall so far as is reasonably practicable apportion between those accounts or carry to any of them any income and expenditure which from time to time ought to be so apportioned or carried.

**Income and
expenditure.**

68.—(1) All moneys received by the Council in connection with the harbour undertaking whether on capital or revenue account shall be carried to and form part of the county fund as receipts for general county purposes and all payments and expenses made and incurred by the Council in respect of the harbour undertaking or in carrying into execution the powers and provisions of this Act (including interest on moneys borrowed by the Council) shall be paid or transferred out of the county fund:

Provided that an amount equivalent to the interest and other annual proceeds as aforesaid shall (subject in the case of any of the said funds to any prescribed limit on the amount thereof) be credited in the accounts to the fund on the investments of which the same is received.

(2) Nothing in this section shall authorise the Council to apply capital money to any purpose other than a purpose to which capital money is properly applicable.

Reserve fund.

69.—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the undertaking exceed the moneys expended or applied by the Council in respect thereof, the Council may in respect of that year apply out of the county fund and carry to the credit of a reserve fund in respect of the undertaking such a sum as they consider reasonable not exceeding the amount of such excess.

(2) Any moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which trustees are for the time being authorised to invest trust moneys including any debenture stock or other security created by the Council.

(3) Any reserve fund provided under this section may be applied—

- (a) in making good to the county fund any deficiency at any time arising in the income of the Council from the undertaking; or
- (b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the undertaking; or
- (c) for defraying any expenditure in connection with the undertaking for which capital is properly applicable, or

in providing money for repayment of loans (but not in making any annual payment required to be made in respect of loans); or

- (d) for defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing any buildings, works, plant, vessel, equipment or article forming part of the undertaking; or
- (e) for any other purpose which in the opinion of the Council is solely in the interests of the county or its inhabitants.

PART V
—cont.

PART VI

MISCELLANEOUS

70.—(1) A person who—

- (a) in response or in purported response to a requirement made on him under this Act gives any information or makes a statement which he knows to be false in a material particular; or
- (b) with intent to evade or to enable another person to evade a charge fails within the time prescribed by the Council in their published list of charges to give information in response to a requirement to do so made on him thereby;

False
information
and evasion
of charges.

shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(2) A person who eludes or evades or attempts to elude or evade payment of, or refuses to pay, a charge due from him to the Council shall—

- (a) be liable to pay to the Council, in addition to the charge, a sum equal to the amount thereof, which sum shall be a debt due to the Council and shall be recoverable by them in any court of competent jurisdiction; and
- (b) be guilty of an offence and liable to a fine not exceeding one hundred pounds;

notwithstanding the fact that subsequent to the commission of the offence he has tendered or paid to the Council the charge in question.

71. Proceedings against any person offending against or committing any breach or contravention of any of the provisions of this Act shall, unless otherwise provided, be instituted and conducted under and in conformity with the Summary Jurisdiction (Scotland) Acts.

Mode of
prosecution.

72. So much of any works constructed pursuant to this Act as is not included in a parish shall be deemed for all purposes to be in the parish immediately adjacent.

Works to be
deemed to be
in adjacent
parish.

PART VI
—cont.

Preservation
of scenery
and
amenities.

73. In the exercise of their functions under this Act the Council shall have regard—

- (a) to the preservation for the public of the natural beauty of any area in which those functions are exercised, and to the enjoyment thereof by the public; and
- (b) to the conservation of flora and fauna, and of geological or archaeological features of special scientific interest therein.

Inquiries by
Secretary of
State.

1947 c. 43.

74. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval or the making of any order or the confirmation of any byelaw under this Act and section 355 of the Local Government (Scotland) Act 1947 shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section.

For
protection of
North of
Scotland
Hydro-
Electric
Board.

1882 c. 56.

75. For the protection of the board the provisions of this section shall, except as may be otherwise agreed in writing between the Council and the board, apply and have effect:—

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

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

“apparatus” means electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the board;

“the board” means the North of Scotland Hydro-Electric Board;

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

“plan” includes section and description;

“position” includes depth;

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

1950 c. 39.

- (2) Notwithstanding anything in this Act or shown on the deposited plans, the Council shall not, under the powers of this Act, acquire any apparatus otherwise than by agreement:

- (3) The powers conferred on the Council by Part II (General duties and powers) of this Act in relation to apparatus shall not be exercised otherwise than in accordance with the provisions of this section:
- (4) If the Council in the exercise of the powers conferred upon them by this Act acquire an interest in land in which any apparatus is placed, that apparatus shall not be removed nor shall any right of the board to use, maintain, repair, renew, extend or inspect apparatus in that land be extinguished until adequate alternative apparatus has been laid or constructed and is in operation:
- (5) (a) If the Council, for the purpose of the execution of any specified work, require the alteration, protection or removal of any apparatus, they shall give to the board written notice of the requirement with a plan of the proposed work and, if it is agreed between the Council and the board, or in default of agreement determined by arbitration, that the removal of the apparatus is reasonably required and that it should be removed, the following provisions of this paragraph shall have effect;
- (b) If it is so agreed or determined that any apparatus should be removed, or if in consequence of the execution of any specified work the board shall reasonably require to remove any apparatus, the Council shall, to the reasonable satisfaction of the board, afford to the board the necessary facilities and rights for the laying or construction of adequate alternative apparatus in other lands of the Council and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

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

- (6) (a) Any alternative apparatus to be laid or constructed in lands of the Council in pursuance of paragraph (5) of this section shall be laid or constructed in such manner and in such line or situation as may be agreed between the board and the Council or, in default of agreement, settled by arbitration;
- (b) The board shall, after the manner of laying or construction and the line and situation of any alternative apparatus has been agreed or settled by arbitration as aforesaid,

PART VI
—cont.

and after the grant to the board of any such facilities and rights as are referred to in paragraph (5) of this section, proceed with all reasonable dispatch to lay or construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required to be removed under the provisions of this section:

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

Provided that—

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

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

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

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

- (8) (a) Not less than twenty-eight days before commencing to execute any specified work which is near to, or is likely to affect, any apparatus the alteration, protection or removal of which has not been required by the Council under paragraph (5) of this section or the maintenance of any such apparatus, the Council shall submit to the board a plan of the work to be executed;
- (b) Such work shall be executed only in accordance with the plan submitted as aforesaid and in accordance with such reasonable requirements as may be made by the board for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the board shall be entitled by their officer to watch and inspect the execution of such work:
- Provided that—
- (i) if the board within fourteen days after the submission to them of any such plan shall, in consequence of the work proposed by the Council, reasonably require the alteration, protection or removal of any apparatus and give written notice to the Council of such requirement, the foregoing provisions of this section shall apply and have effect as if the alteration, protection and removal of such apparatus had been required under paragraph (5) thereof; and
- (ii) nothing in this sub-paragraph shall preclude the Council from submitting at any time, or from time to time, but in no case less than twenty-eight days before commencing the execution of any such work, a new plan in lieu of the plan previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan;
- (c) The Council shall not be required to comply with sub-paragraph (a) of this paragraph in a case of emergency, but in such a case they shall give to the board notice as soon as reasonably practicable and a plan of the work as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) of this paragraph so far as reasonably practicable in the circumstances:
- (9) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed, the Council shall provide an alternative means of access to such apparatus:
- (10) The Council shall repay to the board the reasonable costs, charges and expenses incurred by the board in or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and

PART VI
—cont.

laying or construction of any new apparatus under any of the provisions of this section;

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

(c) any other work or thing reasonably necessary in consequence of any such operations as are referred to in this paragraph:

Provided that where other apparatus is provided and laid or placed in lieu of any existing apparatus in accordance with the provisions of paragraphs (4) and (5) of this section the Council shall not be required to make any payment to the board for any such existing apparatus which has been rendered derelict, useless or unnecessary and such last-mentioned apparatus shall, so soon as the new apparatus has been laid, become the property of the Council:

- (11) (a) Section 14 (Restriction of works and dredging) and section 12 (Licence to dredge) of this Act shall not apply to the construction, alteration, maintenance, renewal or extension by the board of any apparatus or make unlawful the carrying out by the board in an emergency of any works not authorised by section 11 (Licensing of works) of this Act or the said section 12;
- (b) If the board carry out any such works or any such dredging they shall inform the Council as soon as practicable of the works or dredging being carried out:
- (12) (a) Before granting to any person a works licence or a dredging licence to carry out works or dredging at, over, under or near to any apparatus, the Council shall submit to the board particulars of the proposed works or dredging, as the case may be, and furnish them with such further particulars with respect thereto as the board may reasonably require and, if so required by the board, the Council shall include in such licence conditions requiring the licensee to comply with such of the provisions of this section as the board thinks fit as if for the references therein to the Council there were substituted references to the licensee;
- (b) Upon the grant of a licence in respect of which notice of the application is required to be given under paragraph (a) of this subsection, the Council shall supply to the board a copy of the licence and of any conditions subject to which it is granted:
- (13) (a) Any difference which may arise between the Council and the board under this section shall be referred to and determined by an arbiter to be mutually agreed upon

between the Council and the board or failing agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers;

PART VI
—cont.

- (b) In settling any difference under this section the arbiter shall have regard to any duties or obligations of the board in respect of any apparatus and may if he thinks fit require the Council to execute any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

76.—(1) (a) Nothing in section 14 (Restriction of works and dredging) of this Act shall apply to the construction, alteration, renewal, extension or maintenance by the gas undertakers of any gas work from time to time authorised under or by virtue of any enactment or any consent, wayleave, servitude or other instrument given or made under any enactment or make it unlawful for the gas undertakers to carry out in an emergency any work not so authorised or any dredging necessary for the protection of, or to ensure the efficient operation of, any gas work, subject to any directions necessary for the protection of navigation from time to time given by the Council to the gas undertakers. For protection of gas undertakers.

(b) If in an emergency the gas undertakers carry out any work or any dredging they shall inform the Council as soon as practicable of the works or dredging being carried out.

(2) (a) Before granting a licence to any person for the construction, placing, maintenance, alteration, renewal or extension of any works under section 11 (Licensing of works) or for dredging under section 12 (Licence to dredge) of this Act, the Council shall, in any case where the proposed works or dredging would be at, over, under or near to any gas work situated on or under tidal waters or tidal land below the level of high water in a harbour area or in such a position as to be likely to affect or endanger any such work or in any case where reasonably so requested by the gas undertakers, submit to the gas undertakers detailed particulars of the proposed works or dredging, as the case may be, and furnish them with such further particulars with respect thereto as the gas undertakers may reasonably require; and such licence shall only be granted subject to such conditions as may be reasonably necessary to safeguard the gas work including, without prejudice to the generality of the foregoing, conditions empowering the gas undertakers from time to time to inspect the works or dredging to which the licence relates and to take any steps necessary to prevent damage to the gas work or to ensure that the gas work can operate efficiently and to recover from the holder of the licence the reasonable cost of any works carried out by the gas undertakers for those purposes.

PART VI
—cont.

(b) If in any case any difference arises between the Council and the gas undertakers with respect to the particulars required to be furnished to the gas undertakers by the Council or with respect to the conditions which the gas undertakers require to be attached to any licence granted under either of the said sections 11 and 12 such difference shall be determined by a single arbiter to be agreed between the Council and the gas undertakers or in default of agreement to be appointed on the application of either party after notice in writing to the other party by the President of the Institution of Civil Engineers.

(c) If within three weeks of the receipt by the gas undertakers from the Council of the particulars of any proposed works or dredging the gas undertakers do not require any further particulars to be furnished or in any case where further particulars are required, within two weeks of the receipt thereof by the gas undertakers, the gas undertakers do not intimate that they require conditions to be attached to the licence for such works or dredging, the gas undertakers shall be deemed to have acquiesced in the granting thereof.

(d) Upon the grant of any licence to which this subsection applies the Council shall supply to the gas undertakers a copy of the licence and of any conditions subject to which it is granted.

(3) Except in a case which is, in the opinion of the Council, a case of emergency, the Council shall before raising, removing or destroying any vessel sunk, stranded or abandoned in a harbour area and within a distance of 150 metres of any gas work give to the gas undertakers, as soon as is reasonably practicable, notice of their intention to do so.

Saving for
town and
country
planning.
1972 c. 52.

77. The provisions of the Town and Country Planning (Scotland) Act 1972 and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be regulated by or under this Act.

Saving for
Harbours
Act.
1964 c. 40.

78. Nothing in this Act shall exempt the Council or any other person from the provisions of sections 9 and 10 of the Harbours Act 1964.

Saving for
Coast
Protection
Act.
1949 c. 74.

79. Nothing in this Act shall exempt the Council or any other person from the provisions of Part I of the Coast Protection Act 1949 nor affect the application to any operation of sections 34 to 36 of that Act, which require the consent of the Board of Trade or the Secretary of State for Trade to certain operations and contain other provisions for the safety of navigation.

80. Without prejudice to any restriction imposed by any other provision of this Act, the Council shall not exercise any of their powers—

PART VI
—cont.

(a) within the limits for the time being established by or under any enactment of any harbour, pier or dock undertaking carried on wholly or partly within a harbour area by any person other than the Council without the prior agreement of the undertakers except so far as may be necessary or expedient for the purpose of maintaining, improving, protecting or regulating the navigation within the harbour area outside or between points outside those limits; or

Saving for existing harbour undertakings.

(b) in relation to a marine work as defined in the Harbours Act 1964 except with the consent of the Secretary of State;

1964 c. 40.

and any dispute arising under this section shall be referred to and determined by the Secretary of State whose decision shall be binding on all parties.

81. Nothing in this Act shall prejudice the authority or powers of the Secretary of State for Defence under the Dockyard Ports Regulation Act 1865 or derogate from any Order in Council, regulations or rules made under that Act for the protection of Her Majesty's vessels, dockyards or property or for meeting the requirements of Her Majesty's Naval Service.

Saving for Secretary of State.

1865 c. 125.

82. Nothing in this Act shall affect the operation of the Harbours, Piers and Ferries (Scotland) Act 1937.

Saving for marine works.

1937 c. 28.

83. Nothing in this Act shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Act shall authorise the Council or any licensee of the Council to take, use or interfere with any land or rights—

Crown rights.

(i) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners on behalf of Her Majesty; or

(ii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

without the consent in writing of the Crown Estate Commissioners or, as the case may be, that department.

84. The costs, charges and expenses of and incidental to the preparing for, obtaining and passing of this Act, and otherwise in relation thereto, shall be paid by the Council.

Costs of Act.

Section 3.

SCHEDULE

SCAPA FLOW

The area bounded as follows:—

Commencing at the Out Taings point on Hoy;

Thence in a straight line to Breckness on Mainland;

Thence in a generally eastern direction following the line of low water on the southern boundaries of Mainland to the northern end of the northernmost Churchill Barrier;

Thence in a generally southerly direction following the western sides of the four Churchill Barriers and the lines of low water on the western boundaries of the islands of South Ronaldsay (other than Swona) to Brough Ness;

Thence in a generally westerly direction by a straight line to the southernmost part of Swona and a straight line from that point to Brims Ness on South Walls on the island of Hoy;

Thence following the line of low water on the western and northern sides of Aith Hope and the seaward boundaries of South Walls and of Hoy to the point of commencement.

WIDE FIRTH/SHAPINSAY SOUND

The area bounded as follows:—

Commencing at Harpy Taing on Mainland;

Thence in a straight line to Strombery on Shapinsay;

Thence following the line of low water on the southern boundary of Shapinsay to Hacksness;

Thence in a straight line to Rerwick Point on Mainland;

Thence in a generally westerly and north-easterly direction following the line of low water on part of the northern boundary of Mainland to the point of commencement.

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