



Harbours, Piers and Ferries (Scotland) Act 1937

1937 CHAPTER 28

PART III

MAINTENANCE OF MARINE WORKS

8 Maintenance of marine works

- (1) This Part of this Act shall apply—
 - (a) to any marine work transferred to, or acquired by, a local authority under Part I of this Act;
 - (b) to any marine work vested in a local authority at the commencement of this Act which was constructed under the Western Highlands and Islands (Scotland) Works Act, 1891, or in respect of which such local authority has passed a resolution adopting this Part of this Act;
 - (c) to any marine work vested at the commencement of this Act in a harbour authority if, on an application by the authority, the Secretary of State certifies that in his opinion this Part of this Act ought to apply to the marine work;
 - (d) to any marine work constructed under or in pursuance of the provisions of Part II of this Act, or in connection with which any new works are constructed under those provisions.
- (2) Notice of any meeting of a local authority at which a resolution to adopt this Part of this Act is to be moved shall be given in a newspaper circulating in the area of the local authority at least three weeks prior to the meeting.
- (3) A local authority which has passed a resolution adopting this Part of this Act shall, as soon as may be after such passing, cause a copy of the resolution to be sent to the Secretary of State.

9 Powers of authority in relation to marine work

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

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

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

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

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

- (1) The Harbours, Docks, and Piers Clauses Act, 1847, with the exception of sections six to thirteen, sixteen to nineteen, thirty, forty-seven, forty-nine, fifty, eighty-four, and eighty-five, shall, except in so far as the Secretary of State may direct, apply to any marine work to which this Part of this Act applies in like manner as if the marine work had been constructed in pursuance of an Act incorporating those provisions, and for the purposes of the said provisions this Part of this Act shall be deemed to be the special Act and the authority in whom the marine work is vested shall be deemed to be the undertakers.
- (2) Any reference to a vessel in the provisions of the Harbours, Docks, and Piers Clauses Act, 1847, as applied by the foregoing subsection, shall be deemed to include a reference to a seaplane when on the surface of the water, and in section twenty-eight

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of the said Act any reference to a vessel shall also include a floating dock and a vessel of exceptional construction or method of propulsion :

Provided that—

- (i) nothing in any of the aforesaid provisions shall, except in the case of a seaplane disabled by an accident, authorise a harbour master to require the dismantling of a seaplane or any part thereof or the making of any alterations whatever of the structure or equipment of a seaplane; and
 - (ii) nothing in any of the aforesaid provisions or in any byelaw made in pursuance thereof shall prejudice any regulations for the investigation of accidents made under section twelve of the Air Navigation Act, 1920, as amended by any subsequent enactment.
- (3) Where the proceeds of the sale of any wreck in pursuance of section fifty-six of the Harbours, Docks, and Piers Clauses Act, 1847, as applied by subsection (1) of this section shall not be sufficient to meet the expenses reasonably incurred in removing such wreck, the deficiency shall be recoverable from the person who was the registered owner of the vessel at the time it was wrecked.
 - (4) A harbour authority in whom any marine work to which this Part of this Act applies is vested shall every year within six months after the first day of January cause accounts to be prepared, in such form as may be prescribed by the appropriate Department, of the total revenue and expenditure in respect of the work for the year ending the preceding thirty-first day of December and such accounts shall be duly audited by such person as may be appointed for the purpose by the Secretary of State and certified by the clerk or secretary of the authority, and a copy thereof shall be transmitted forthwith to the sheriff clerk of the county within which the marine work or the largest part thereof is situate, to the Minister of Transport and, if so required by the appropriate Department, to that Department. In the case of any harbour authority whose financial year begins on a day other than the first day of January, the foregoing provisions of this subsection shall have effect with the substitution of that other day for the first day of January, and of the day immediately preceding that other day for the thirty-first day of December.
 - (5) A local authority in whom a marine work to which this Part of this Act applies is vested shall, as soon as may be after receiving from the auditor, in pursuance of the Third Schedule to the Local Government (Scotland) Act, 1929, the certified duplicate abstract of accounts, cause a copy thereof, so far as relating to the marine work, to be sent to the Minister of Transport, and, if so required by the appropriate Department, to that Department.

11 Byelaws

- (1) The purposes for which byelaws may be made under section eighty-three of the Harbours, Docks, and Piers Clauses Act, 1847, as applied to a marine work by section ten of this Act, shall extend to the prevention of obstruction or injury to the marine work, so however that no estate, interest or right of a profitable or beneficial nature in, over, or affecting the marine work shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any such byelaw without compensation being made or provided for the same by the authority making the byelaw, and such compensation shall in case of difference be determined by an arbiter appointed, in default of agreement between the parties, by the Secretary of State.

- (2) The byelaws which may from time to time be made in the exercise of the power conferred by section eighty-three of the Harbours, Docks, and Piers Clauses Act, 1847, as applied by section ten of this Act, may provide for imposing a penalty not exceeding five pounds for any breach or failure to observe any such byelaw.
- (3) No byelaws made under the aforesaid section as so applied shall come into operation until they have been confirmed by the Secretary of State :

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

12 Power to fix and to revise dues

- (1) Notwithstanding anything in any Act with regard to tolls, dues or charges, the Secretary of State may, on the application of the authority in whom a marine work to which this Part of this Act applies is vested or of any person appearing to the Secretary of State to have an interest, after consultation with the Board of Trade and the Minister of Transport, fix a schedule of dues in respect of the use of the marine work and the authority in whom such work is vested shall levy and collect such dues as they think fit, not exceeding those specified in such schedule and except in any case where the approval of the Secretary of State has been obtained not being less than seventy-five per centum thereof, provided that the dues so levied and collected be at all times charged equally to all persons in respect of the same description of vessel and the same description of goods. Before fixing any such schedule, the Secretary of State may direct a local inquiry to be held by such person as he may appoint for the purpose.
- (2) Where an application for revision of any of the dues specified in any such schedule as aforesaid is made to the Secretary of State by the authority in whom the marine work is vested or by any person appearing to the Secretary of State to have an interest, or where the Secretary of State is otherwise satisfied that any of such dues should be revised, he may, after consultation with the Minister of Transport, make an order revising all or any of such dues, and such order shall take effect as from such date as may therein be specified. Before making any such order, the Secretary of State shall, except where the authority in whom the marine work is vested is the applicant, afford that authority an opportunity of making representations, and may direct a local inquiry to be held by such person as he may appoint for the purpose.
- (3) The Secretary of State may require any person making an application under this section to publish in such manner as the Secretary of State may think fit a notice stating that the application has been made and specifying a time within which representations may be made with regard thereto to the Secretary of State.
- (4) Where, on an application under this section, an order has been made by the Secretary of State revising any such due or dues as aforesaid, or the Secretary of State has decided not to make an order, no further application for a revision of the due or dues to which the application related shall be made within twelve months from the date of such order or decision.
- (5) An application under this section shall be accompanied by such information and particulars certified in such manner as the Secretary of State may require, and any person appointed to hold an inquiry may call for such documents and accounts as he

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shall think fit and may hear such witnesses as he shall think fit and shall have power to take evidence on oath and for that purpose to administer oaths;

- (6) The expenses incurred in relation to any inquiry held under this section, including the remuneration of any person appointed to hold the inquiry, shall be paid by the authority and other parties to the inquiry, or by such of them and in such proportions as the Secretary of State may direct, and the Secretary of State may certify the amount of the expenses incurred, and any sum so certified and directed to be paid by any authority or party shall be a debt due to the Crown from such authority or party.
- (7) In any case where the person appointed to hold an inquiry under this section is an officer of any Government department it shall be lawful to include, in the expenses incurred in relation to the inquiry, a fee not exceeding five guineas a day in respect of the services of such officer.
- (8) The authority in whom any marine work to which this Part of this Act applies is vested shall keep open for public inspection at such marine work a list specifying the dues for the time being exigible.

13 Power to lease dues

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

14 Application of revenue

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

- (1) In paying the expense properly chargeable to revenue of the maintenance, repair and management of the marine work:
- (2) In paying the interest charges in respect of money borrowed for the purposes of the marine work:
- (3) In paying the appropriations, instalments, or sinking fund charges in respect of money borrowed for the purpose of the marine work:
- (4) In paying sums into any such reserve fund, and subject to such conditions, as may be approved by the Secretary of State:

Provided that in the case of a marine work constructed in pursuance of a provisional order made on an application under section four of this Act or authorised by or under section seven of this Act, the expenses incurred in obtaining such provisional order or authorisation shall be paid in priority to any other expenses, so far as the expenses so incurred are not paid out of moneys borrowed in pursuance of this Act.

15 Duty of maintenance by authority receiving assistance from public funds

- (1) Where any assistance by way of grant or loan shall, after the commencement of this Act, have been sanctioned and given out of moneys provided by Parliament to a

local or harbour authority for the purpose of constructing, improving or repairing any marine work to which this Part of this Act applies, and where the appropriate Department is, at any time, satisfied that any particular operation is necessary in order to maintain the marine work in an efficient condition and proper state of repair, such Department may by notice served on the authority require it to carry out such operation within such period, not being less than one month, as may be specified in the notice, and it shall be the duty of the authority, unless, on an application to the sheriff under the next succeeding subsection, the requirement contained in the notice shall have been cancelled or modified, to comply with such requirement.

- (2) Where a notice has been served on an authority in pursuance of the foregoing subsection, that authority, if they are of opinion that the requirement contained in the notice is in the circumstances unnecessary or unreasonable, may within one month after such service present an application to the sheriff for the cancellation or modification of the requirement, and on any such application the sheriff may cancel or modify the requirement in such manner as he shall think fit, having regard to all the circumstances of the case including the cost involved, and it shall be the duty of the authority to comply with any requirement so modified.
- (3) Where an authority whose duty it is under this section to comply with a requirement to carry out an operation fails to do so within the period specified in the notice served under subsection (1) of this section, or, in the case where there has been an application under subsection (2) of this section to the sheriff, within such period as may be specified in the sheriff's deliverance, the appropriate Department may themselves carry out the operation and may recover from the authority the expense thereby incurred.

16 Deficiency in revenue to be met out of rates

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

17 Special districts

- (1) Where a county council liable in pursuance of this Act in payment of any sum in respect of the maintenance of a marine work to which this Part of this Act applies shall be of opinion, having regard to the area which derives benefit from the marine work, that a special district should be formed for the purposes of the maintenance thereof, they shall publish in one or more newspapers circulating in the county a notice specifying the part of the county proposed to be so formed into a special district, and intimating that objections to the formation of the proposed special district may be lodged with the council by any person interested within twenty-one days after the publication of the notice.
- (2) The county council shall take into consideration any objections to the proposed special district lodged in accordance with the intimation contained in the notice referred to in the foregoing subsection, and thereafter may, by resolution, form into a special district for the purposes of the maintenance of the marine work the part of the county specified

in the notice, with such addition or limitation, if any, as the council may think fit, or may abandon the proposal to form a special district.

- (3) A resolution under this section may be revoked or altered by a subsequent resolution.

18 Levy of rates required to meet deficiency

- (1) Any deficiency which is required to be met out of rates in pursuance of section sixteen of this Act shall be met in the following manner :—

- (a) in the case of a marine work vested in the council of a burgh the deficiency shall be met by that council: Provided that it shall be lawful for the council of the county within which the burgh is situated to agree to contribute towards the deficiency such sum as they may think fit;
- (b) in the case of a marine work vested in the council of a county the deficiency shall be met by that council: Provided that it shall be lawful for the council of any burgh situated within the county to agree to contribute towards the deficiency such sum as they may think fit;
- (c) in the case of a marine work vested jointly in two or more councils in combination, the deficiency shall be met by those councils in such proportions as may be fixed by the combination agreement.

- (2) Any sum payable by a county or a town council in pursuance of the last foregoing subsection may be defrayed out of any rate leviable by the council and payable by owners and occupiers in equal proportions or out of a rate to be levied by the council for the purposes of this Act on owners and occupiers in equal proportions :

Provided that any sum so payable by the council of a county in which one or more special districts have been formed in pursuance of section seventeen of this Act shall be defrayed out of a rate to be levied by the council for the purposes of this Act on owners and occupiers in equal proportions and such rate shall be levied—

- (a) in the "case where a special district has been so formed for the purposes of the maintenance of the marine work in respect of which the sum is payable, in that special district; and
- (b) in the case where no special district has been so formed for the purposes of the said marine work, throughout the whole area of the county exclusive of any special district so formed for the purposes of the maintenance of any other marine work.

- (3) Notwithstanding anything in the last foregoing subsection, subsection (1) of section thirty-three of the Local Government (Scotland) Act, 1929 (which empowers a county council to contribute towards the expenses of a special district) shall apply as regards any special district formed in pursuance of section seventeen of this Act.

- (4) The assessor of a county in making up the valuation roll of the county shall distinguish therein the lands and heritages situated within the boundaries of each special district in the county formed in pursuance of section seventeen of this Act.

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

Where any Act relating to a marine work to which this Part of this Act applies contains provisions with regard to any of the matters dealt with in this Part of this Act, the provisions of this Part of this Act regarding such matters shall, except in so far as the

Secretary of State otherwise directs, have effect in lieu of the said provisions of the first mentioned Act, and those provisions shall cease to have effect.

20 Discontinuance of marine work

- (1) If it appears to the authority in whom any marine work to which this Part of this Act applies is vested that the marine work is no longer required or cannot be adequately maintained except by such expenditure as could not be justified in view of any benefit to be derived from the continued existence of the work, the authority may resolve to discontinue the maintenance of such marine work :

Provided that no such resolution shall take effect unless and until it has been approved by the Secretary of State given after consultation with the Board of Trade and any other Government Department appearing to the Secretary of State to be interested, and, in the case of a marine work in respect of which any assistance by way of grant or loan has, whether before or after the commencement of this Act, been given out of moneys provided by Parliament, with the consent of the Treasury.

- (2) On the application of the authority by whom any such resolution as aforesaid has been passed, the Secretary of State may by order make such provision as seems to him necessary with regard to any outstanding liabilities of the authority in respect of the marine work, including any liabilities in respect of loans granted to the authority out of moneys provided by Parliament:

Provided always that no such order affecting liabilities in respect of loans granted out of moneys provided by Parliament shall be made except with the consent of the Department or body by whom the loan was granted.

- (3) When any resolution under this section takes effect, the provisions of this Part of this Act and of any other enactment applying to the marine work to which the resolution relates shall cease to have effect as regards that marine work, except in so far as the Secretary of State may otherwise direct, and except in so far as such provisions authorise the levying and recovery of rates necessary to meet outstanding loan charges or the recovery of any rates levied but not recovered prior to the date when the resolution takes effect.