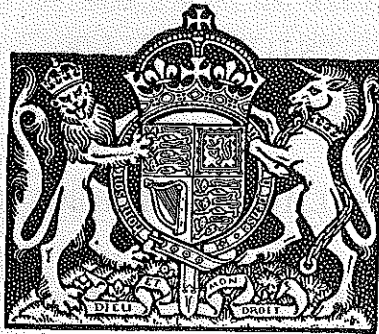


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[1 EDW. 8. & *Pier and Harbour Order* [Ch. lxx.]
1 GEO. 6.] (*Falmouth*) Confirmation Act, 1937.



CHAPTER lxx.

An Act to confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act 1861 relating to Falmouth. A.D. 1937.
[13th July 1937.]

WHEREAS a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act 1861 is not of any validity or force whatever until confirmation thereof by Act of Parliament: 24 & 25 Vict. c. 45.

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

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

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

2. This Act may be cited as the *Pier and Harbour Order (Falmouth) Confirmation Act 1937.* Short title.

A.D. 1937.

SCHEDULE.

FALMOUTH HARBOUR.

Order to vary the constitution of the Falmouth Harbour Commissioners to make further provision for the maintenance and regulation of Falmouth Harbour and for other purposes.

- Short title. 33 & 34 Vict. c. clviii. 1937 and the Falmouth Harbour Order 1870 and this Order may together be cited as the Falmouth Harbour Orders 1870 to 1937.
- Commencement. 2. This Order shall come into force upon the day when the Act confirming this Order is passed and that day is in this Order referred to as "the commencement of this Order."
- Interpretation. 3. In this Order unless the context otherwise requires—
"The Commissioners" means the Falmouth Harbour Commissioners ~~as constituted by the Falmouth Harbour Order 1870 as amended by this Order~~;
- 10 & 11 Vict. c. 27. "The Harbours Clauses Act 1847" means the Harbours Docks and Piers Clauses Act 1847;
"The harbour" has the meaning assigned to it by the Order of 1870;
"Authorised rates" and "authorised rate" mean respectively the rates or rate which the Commissioners are for the time being authorised to levy demand and recover in pursuance of this Order;
"The rating limits" means so much of the limits of the Order of 1870 as lies within an imaginary line from Zoze Point to the Block House at Pendennis Castle and is not within the limits of the jurisdiction of the Falmouth Docks and Engineering Company as defined in section 25 of the Falmouth Docks Act 1919;
- 9 & 10 Geo. 5. c. xxxvii. "The Minister" means the Minister of Transport;
"Vessel" includes any ship lighter vessel barge keel barque raft craft hulk rowing motor or other boat pleasure craft and any other kind of craft or vessel whether propelled by oars steam or otherwise or not capable of propulsion and any seaplane on the surface of the water;

[1 EDW. 8. & *Pier and Harbour Order* [Ch. lxx.]
1 GEO. 6.] (*Falmouth*) *Confirmation Act, 1937.*

“Seaplane” includes a flying boat and any other aircraft designed to manoeuvre on the water; A.D. 1937.

“The Order of 1870” means the Falmouth Harbour Order 1870.

4. The Commissioners shall be the Undertakers for carrying this Order into execution. Undertakers.

5. The Lands Clauses Acts (except so much thereof as relates to the purchase and taking of lands otherwise than by agreement) are incorporated with this Order except as expressly varied thereby and for the purposes of that incorporation the expression “special Act” in those Acts shall mean this Order. Lands Clauses Acts incorporated.

6.—(1) In the application to this Order of the Harbours Clauses Act 1847 the word “vessel” shall include a seaplane on the surface of the water: Application of Harbours Clauses Act 1847.

Provided that nothing in the Harbours Clauses Act 1847 or this Order shall authorise a harbour master or other officer to require the dismantlement of a seaplane or any part thereof or the making of any alteration whatever of the structure or equipment of a seaplane.

(2) Sections 6 to 13 inclusive 16 to 19 inclusive and 25 and 26 of the Harbours Clauses Act 1847 shall not be incorporated with this Order.

7.—(1) The purchase by the Commissioners of the lands described in subsection (2) of this section and the expenditure of money on or in connection with the purchase thereof are hereby sanctioned and confirmed and the Commissioners may by agreement purchase the outstanding interests (if any) in such lands not belonging to them at the commencement of this Order and may hold and use the said lands for the purposes of the Order of 1870 and this Order. Confirmation of purchase of lands.

(2) The lands hereinbefore referred to are situate in the borough of Falmouth contain two thousand and seventy acres or thereabouts and comprise—

(a) the fundus or soil below low-water mark of the harbour except so much as lies to the north-west of an imaginary straight line drawn from Greenbank Quay to Flushing Quay; and

(b) the premises known as No. 44 Arwenack Street Falmouth.

8. The Commissioners in addition to the land referred to in the immediately preceding section may by agreement purchase and hold for the purposes of the Order of 1870 and of this Order any additional lands not exceeding in the whole ten acres but with respect to such additional lands nothing in this Order or in the Acts incorporated therewith shall exempt the Commissioners from any indictment action or other proceedings for nuisance in Power to take additional lands by agreement.

[Ch. lxx.] *Pier and Harbour Order* [1 EDW. 8. &
(*Falmouth*) *Confirmation Act, 1937.* 1 GEO. 6.]

A.D. 1937. the event of any nuisance being caused by or permitted by them
— thereon.

Power to
retain sell
&c. lands.

9.—(1) Notwithstanding anything in the Lands Clauses Acts to the contrary the Commissioners may retain hold and use for such time as they may think fit or may sell let lease exchange or otherwise dispose of in such manner and for such consideration and on such terms and conditions as they may think fit and in case of sale either in consideration of the execution of works or of the payment of a gross sum or of an annual rent or of any payment in any other form any lands and premises or any interest therein vested in them as part of the undertaking or acquired by them under this Order which may not be required for the purposes thereof and may sell exchange or dispose of any rents reserved on the sale exchange lease or other disposition of such lands and premises and may make do and execute any deed act or thing proper for effectuating any such sale lease exchange or other disposition and on any exchange may give or take any money for equality of exchange :

Provided that the Commissioners shall not (unless the Minister otherwise directs) sell lease exchange or otherwise dispose of any such lands or any interests therein except at the best price or on the best terms which can be obtained for the same but a purchaser or lessee shall not be concerned to inquire whether the direction of the Minister be necessary or has been obtained.

(2) Nothing in this section contained shall release the Commissioners or any person purchasing or acquiring any lands from them under this section from any rents covenants restrictions reservations terms or conditions made payable by or contained in any conveyance lease or other deed or instrument by which any such lands were or may hereafter be conveyed or leased to or otherwise acquired by the Commissioners or any person from or through whom the Commissioners may (have derived or may hereafter derive title to the same but all such rents covenants restrictions reservations terms and conditions shall remain and be of as full force and effect and may be recovered exercised enjoyed and enforced in like manner and to the same extent as if this Order had not been passed.

Constitution
of Commis-
sioners.

10. ~~The Order of 1870 shall be read and construed as if in section 1 (Incorporation of Commissioners) the word "twelve" were substituted for the word "sixteen" and as if in section 2 (Appointment of the several Commissioners) paragraph 6 were omitted.~~

Annual
meetings.

11. Section 4 (Provisions as to the election of Commissioners by shipowners) of the Order of 1870 shall be read and construed as if in subsection (2) the words "board room of the Commissioners" were substituted for the words "Town hall aforesaid."

[1 EDW. 8. & *Pier and Harbour Order* [Ch. lxx.]
1 GEO. 6.] (*Falmouth*) *Confirmation Act, 1937.*

12.—(1) ~~The Commissioners may within the rating limits~~ A.D. 1937,
subject and according to the provisions of this Order demand ~~and~~ Power to
receive and recover for the use of the harbour and in respect of ~~vessels~~ levy rates.
described in the schedule to this Order any rates not
exceeding those specified in that schedule:

Provided that—

- (a) all vessels forced by stress of weather to seek shelter in the harbour and not breaking bulk while making use thereof shall be exempt from the rates leviable under this Order;
- (b) no rates shall be demanded or received in respect of any vessel anchoring in the harbour of Falmouth on her voyage to or from Penryn St. Mawes or the Port of Truro.

(2) Section 13 (Power to levy tolls) of the Order of 1870 is hereby repealed.

13. Subject to the provisions of the Air Navigation Acts 1920 and 1936 and any Act amending or extending those Acts or of any Order made in pursuance thereof and to the provisions of this Order the Commissioners may demand levy collect and receive in respect of seaplanes entering or using the harbour such reasonable rates as may from time to time be approved by the Minister which rates shall be in lieu of the rates leviable by the Commissioners under this Order on and in respect of vessels. Rates on seaplanes &c. 10 & 11 Geo. 5. c. 80. 26 Geo. 5. & 1 Edw. 8. c. 44.

14. The Commissioners may (so far as the rates specified in this Order do not extend) demand and recover such reasonable rates and other consideration as they may determine for the use of any warehouses sheds buildings yards weighing machines mooring posts cranes buoys works and conveniences belonging to or provided by the Commissioners or in respect of any services rendered by them in connection with the harbour. Rates for services and accommodation not otherwise provided for.

15. Officers of the Board of Trade and Ministry of Transport and police officers and the fishery officer and other servants or agents of the local fisheries committee of the Cornwall Sea Fisheries District acting in the execution of their duty shall at all times have free ingress passage and egress to along and from the harbour without payment. Officers exempt from rates.

16.—(1) If it is represented by application in writing to the Minister— Revision of rates.

- (a) by any chamber of commerce or shipping or any representative body of traders or any person who in the opinion of the Minister is a proper person for the purpose; or
- (b) by the Commissioners;

that under the circumstances then existing the authorised rates or any of them should be revised the Minister if he thinks fit may

[Ch. lxx.] *Pier and Harbour Order* [1 EDW. 8. & (Falmouth) Confirmation Act, 1937. 1 GEO. 6.]

A.D. 1937. — make an order revising the authorised rates referred to in the application or any of them and may fix the date as from which such order shall take effect and thenceforth such order shall remain in force until the same expires or is revoked or modified by a further order of the Minister made in pursuance of this section.

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

(3) Where upon an application for revision of authorised rates or an authorised rate an order has been made or the Minister has decided not to make an order no further application for a revision of the rates or rate to which the application related shall be made within twelve months from the date of such order or decision as the case may be.

(4) Before making an order under subsection (1) of this section the Minister shall cause an inquiry to be held in reference thereto and the provisions of section 19 (Inquiries by Minister) of this Order shall apply to such inquiry as if it were an inquiry held in pursuance of that section :

9 & 10
Geo. 5. c. 50.
10 & 11
Geo. 5. c. 21. Provided that the person appointed to hold the inquiry shall be the rates advisory committee constituted under the Ministry of Transport Act 1919 or any sub-committee thereof to which the said advisory committee may under section 2 of the Harbours Docks and Piers (Temporary Increase of Charges) Act 1920 have delegated their powers or if the said advisory committee cease to exist some persons with similar qualifications to be appointed for the purpose by the Minister.

Removal
of sunk
stranded or
abandoned
vessels.

17.—(1) ~~Whenever any vessel is sunk stranded or abandoned~~ in the harbour or in or near any approach thereto the Commissioners may cause that vessel to be raised or removed or to be blown up or otherwise destroyed so as to clear the harbour and its approaches therefrom.

57 & 58 Vict.
c. 60.

(2) The Commissioners may cause any such vessel and the furniture and tackle and apparel thereof or any part thereof respectively which shall be raised or salvaged and also all or any part of the cargo goods chattels and effects which may be raised or salvaged from any such vessel to be sold in such manner as they think fit (subject to such notice being given of the intended sale as is prescribed by the first proviso to section 530 of the Merchant Shipping Act 1894) and out of the proceeds of sale may reimburse themselves for the expenses incurred by them under this section and also for any expenses incurred by them in marking buoys watching lighting or otherwise controlling the vessel and shall hold the surplus (if any) of the proceeds of the sale in trust ~~for the persons entitled thereto :~~

[1 EDW. 8. & *Pier and Harbour Order* [Ch. lxx.]
1 GEO. 6.] (*Falmouth*) *Confirmation Act, 1937.*

Provided that the Commissioners shall before selling any such cargo goods chattels or effects as aforesaid pay all duties which may be payable to His Majesty in respect of the cargo goods chattels or effects to be sold and they may retain the amount of the duties so paid out of the proceeds arising from the sale of such cargo goods chattels or effects. A.D. 1937.

(3) If the proceeds of the sale are insufficient to reimburse the Commissioners for the aforesaid expenses and duties the Commissioners may recover the deficiency or in case of an appeal under subsection (4) of this section such sum as is awarded by the arbitrator to be payable in respect of the deficiency from the person who at the time of the sinking stranding or abandonment of the vessel was the registered owner thereof or from the executors or administrators of such owner as a debt either summarily as a civil debt or in any court of competent jurisdiction.

(4) If on demand being made under this section for payment of any deficiency the person on whom the demand is made is dissatisfied with the amount demanded he may within fourteen days after the receipt of the demand appeal to the Board of Trade who shall appoint an arbitrator to determine and award whether any and (if so) what sum is payable in respect of the deficiency and the award of the arbitrator appointed by the Board of Trade that no sum is payable or as to the sum payable (as the case may be) shall be conclusive and binding on both parties. The costs of the appeal and the award shall be in the absolute discretion of the arbitrator and he shall award and order how those costs are to be borne and paid and any costs so awarded and ordered to be paid by either party may be recovered by the other party in the same manner as the sum payable in respect of the deficiency is recoverable under subsection (3) of this section.

(5) The powers given to the Commissioners under subsection (1) of this section shall not be exercised in respect of a vessel if the registered owner thereof within twenty-four hours after the sinking stranding or abandonment of the vessel takes such steps as may in the opinion of the harbour-master be necessary for the raising or removal thereof and does all things necessary to raise and remove the vessel as speedily as possible.

(6) The powers conferred by this section on the Commissioners shall be in addition to and not in derogation of any other powers exercisable by them for or with respect to the removal of wrecks.

(7) Except for the purpose of removing any obstruction to the harbour nothing in this section shall entitle the Commissioners to remove any wreck (as defined by section 510 of the Merchant Shipping Act 1894) to the prejudice or in derogation of the rights with respect to such wreck of the receiver of wrecks under the provisions of Part IX of the Merchant Shipping Act

[Ch. lxx.] *Pier and Harbour Order* [1 EDW. 8. & (Falmouth) Confirmation Act, 1937. 1 GEO. 6.]

A.D. 1937. 1904 and if the Commissioners shall for any such purpose as aforesaid remove any such wreck they shall (without prejudice to the rights of sale conferred upon them by the foregoing provisions of this section) hold and dispose of the same or any such surplus of the proceeds of sale thereof as is referred to in subsection (2) of this section in accordance with such directions (if any) as may be given to them by the said receiver.

Annual account to be sent to Minister.
25 & 26 Vict. c. 19.

18.—(1) The Commissioners shall within two months after the date to which their annual accounts and balance sheet are made up send a copy of the same to the Minister and the sixteenth section of the General Pier and Harbour Act 1861 Amendment Act shall apply to and include any and every such accounts.

(2) The Commissioners shall as from the expiration of that period be liable to a penalty not exceeding twenty pounds for every week or part of a week during which they refuse or neglect to comply with the foregoing provisions.

(3) The accounts of the Commissioners referred to in this section and in section 50 of the Harbours Clauses Act 1847 respectively shall be made up to the end of the thirty-first day of March in each year.

Inquiries by Minister.

23 & 24 Geo. 5. c. 51.

19. The Minister 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 under this Order and subsections (2) to (5) of section 290 of the Local Government Act 1933 shall apply to such inquiries as if they were an inquiry held in pursuance of subsection (1) of that section and the Commissioners were a local authority.

Saving rights of and for protection of Crown interests.

20.—(1) The expression "vessel" in section 28 of the Harbours Clauses Act 1847 as incorporated in this Order and the expressions "ships" and "vessels of the Royal Navy" in section 19 (Provision for anchorage for vessels of Royal Navy) of the Order of 1870 shall respectively include any floating dock seaplane or vessel of exceptional construction or method of propulsion belonging to or employed in the service of His Majesty.

(2) Section 26 (Reservation of Admiralty authority under 25 and 26 Vict. c. 69 s. 9) and section 27 (Saving rights of Crown) of the Order of 1870 shall be incorporated in this Order.

Costs of Order.

21. All the costs charges and expenses of or incidental to the obtaining of this Order or otherwise incurred in relation thereto as taxed by the proper officer shall be paid by the Commissioners.

[1 EDW. 8. & Pier and Harbour Order [Ch. lxx.]
1 GEO. 6.] (*Falmouth*) Confirmation Act, 1937.

SCHEDULE.

A.D. 1937.

PART I.

TONNAGE RATES.

~~For every vessel anchoring or mooring within the rating limits or lying alongside any quay within the rating limits for every ton register - - - - -~~ $\frac{1}{2}d.$

Any vessel remaining within the rating limits longer than four weeks to pay a further sum of one half-penny per registered ton for the remainder of twelve months or any part thereof after the first four weeks.

PART II.

RESERVATION OF BERTHS.

RATES FOR THE RESERVATION OF BERTH FOR MOORINGS IN A SELECTED POSITION.

	£	s.	d.
Vessels not exceeding 14 feet in length per annum -	0	5	0
Exceeding 14 feet but not exceeding 20 feet per annum	0	10	0
Exceeding 20 feet but not exceeding 30 feet per annum	1	0	0
Exceeding 30 feet per annum - - - - -	2	0	0

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