



Middle Level Act 2018

2018 CHAPTER ii

PART 2

REGULATION OF NAVIGATION

3 Navigation Advisory Committee

- (1) The Commissioners must establish a body, to be known as the Navigation Advisory Committee (in this section referred to as “the Committee”), to advise the Commissioners on the exercise of their functions in respect of navigation under the navigation Acts.
- (2) Subject to subsection (3), the Committee is to consist of persons appointed by the Commissioners who appear to the Commissioners to be (taken together) representative of—
 - (a) recreational motor-boating interests in the waterways;
 - (b) the interests of individuals who use vessels on the waterways as their sole residence (including individuals who do not own or have access to a permanent mooring);
 - (c) other navigation interests in the waterways;
 - (d) other recreational users of the waterways and their banks;
 - (e) riparian owners in the Middle Level; and
 - (f) other local interests in the Middle Level.
- (3) When appointing a person to the Committee, the Commissioners must make a statement of their reasons for appointing that person.
- (4) No person appointed to the Committee may take part in the proceedings of the Committee unless that person has disclosed to the clerk of the Commissioners details of every financial or other direct or indirect interest in any matter with which the Commissioners are concerned.
- (5) A person who fails to make that disclosure within three months of being appointed ceases to be a member of the Committee.

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- (6) The Commissioners must, except in a case of urgency where it is not reasonably practicable to do so, consult the Committee on—
- (a) proposals to provide facilities or services in respect of the waterways and their banks;
 - (b) proposals to impose or vary charges or fees relating to the waterways or their banks;
 - (c) proposals to make navigation byelaws; and
 - (d) proposals for a protocol for the removal of vessels under section 16.
- (7) In consulting the Committee pursuant to subsection (6) the Commissioners must allow a reasonable time (not being less than 28 days) for the Committee to meet and report back to them.
- (8) If the Committee reports back to the Commissioners within the time allowed in response to consultation under subsection (6), the Commissioners must—
- (a) adjust the proposals in accordance with the report; or
 - (b) give the Committee reasons in writing for their refusal to do so.
- (9) If the Committee's report relates to proposals under subsection (6)(a), (b) or (d) and the Committee reasonably considers that the Commissioners' reasons do not justify their refusal to amend the proposals, the Committee may refer the matter—
- (a) to mediation, or
 - (b) with the agreement of the Commissioners, to determination by a person acting as an expert.
- (10) If the matter is referred to mediation—
- (a) the mediator is to be appointed by the agreement of the Commissioners and the Committee or, failing agreement, by the President of the Institute of Civil Engineers;
 - (b) the mediator is to decide the procedure for the mediation; and
 - (c) within seven days of the conclusion of the mediation, the mediator is to provide to the Commissioners and the Committee a report describing the outcome of the mediation.
- (11) If the matter is referred to determination by a person acting as an expert—
- (a) the person is to be appointed by the agreement of the Commissioners and the Committee or, failing agreement, by the President of the Institute of Civil Engineers;
 - (b) the person is to determine the matter acting as an expert, having regard to the Commissioners' duties under the navigation Acts and such other matters as may be agreed by the Commissioners and the Committee;
 - (c) the person is to decide the procedure for determining the matter;
 - (d) the person is to determine the matter and notify the Commissioners and Committee of the determination as soon as reasonably practicable after hearing the representations of the Commissioners and the Committee on the matter; and
 - (e) if the person determines that the Commissioners' proposals should be adjusted, the proposals are deemed to have been adjusted in accordance with the determination.

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- (12) The Committee may at any time make representations or recommendations in relation to, or refer to the Commissioners, any matter affecting the navigation or use of the waterways and their banks.
- (13) The Commissioners must take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by the Committee.

4 Continuity of navigation functions

- (1) The Commissioners are to continue to exercise the functions in relation to navigation conferred by the navigation Acts.
- (2) The Commissioners are to exercise their functions in relation to navigation in accordance with the provisions of this Act.

5 Charges

- (1) The Commissioners may fix and recover reasonable charges for—
 - (a) the use of any waterway by any vessel;
 - (b) the provision of services and facilities in respect of the waterways and their banks; and
 - (c) the registration of any vessel under navigation byelaws.
- (2) In exercising the power under subsection (1) the Commissioners must aim to secure that, taking one financial year with another, the income from charges under that subsection does not exceed the annualised costs incurred by the Commissioners in exercising their functions in respect of navigation under the navigation Acts.
- (3) Subsection (2) does not require the Commissioners to aim to secure that the income from charges under subsection (1) meets those costs.
- (4) The Commissioners may revise, waive or remove any charge fixed under subsection (1), and different charges may be fixed for different cases or classes of case.
- (5) The Commissioners may make the use of the services and facilities referred in subsection (1)(b) subject to such terms and conditions as the Commissioners may specify in writing.
- (6) Within 28 days of fixing or revising charges under this section, the Commissioners must publish notice of—
 - (a) the amounts of the charges;
 - (b) the date on which they were fixed or revised; and
 - (c) the period in respect of which they are in force (which may not commence before the date of publication).
- (7) The notice required by subsection (6) must be—
 - (a) displayed at one or more convenient places on or adjacent to the waterway;
 - (b) made available by the Commissioners free of charge on request; and
 - (c) published in some other way.

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- (8) No charge shall be payable in respect of the use of a waterway by a vessel belonging to or employed in the service of any public authority or body for the purpose of the exercise of any functions conferred upon that authority or body by statute.
- (9) No charge is to be payable for the use of a waterway by a small unpowered pleasure vessel except with the agreement of the Navigation Advisory Committee, or in accordance with the determination of a person appointed to act as an expert under section 3(11).

6 Arrangements with other authorities

- (1) The Commissioners may enter into arrangements with any other authority which is authorised to require registration of vessels navigating any waterway under the jurisdiction of that authority for the purpose of co-ordinating—
 - (a) the exercise of the functions conferred under this Act and under any navigation byelaws regarding the registration of vessels or the collection of charges; and
 - (b) the exercise by that authority of any functions conferred on them regarding the registration of vessels or the collection of charges in respect of vessels of the same or a similar class or description.
- (2) Without prejudice to the generality of the foregoing any such arrangements may provide—
 - (a) for treating registration certificates issued by one of the parties to the arrangements as registration certificates issued by the other and a vessel registered by one of the parties to the arrangements as registered by the other;
 - (b) for treating distinguishing marks or numbers assigned to a vessel registered by one party to the arrangements as having been assigned to that vessel by the other; and
 - (c) for apportioning any charges between the parties to the arrangements.

7 Temporary closure of waterways

- (1) Without prejudice to the provisions of section 8 the Commissioners may temporarily prohibit, restrict or regulate the use of a waterway for any of the following purposes—
 - (a) the construction, improvement, maintenance or alteration of any waterway or water control structure or other work in, on, under, over or adjoining the waterway;
 - (b) subject to subsection (2), to facilitate the holding of functions in connection with the use of the waterway as a place of recreation and for leisure pursuits;
 - (c) subject to subsection (3), in the case of the waterway known as Well Creek, for the purposes of allowing ice to form and remain for the purposes of facilitating ice skating on any part of that waterway.
- (2) The Commissioners may not prohibit, restrict or regulate the use of a waterway under subsection (1)(b) for more than one half-hour in any period of one hour or for more than eight periods each of one half-hour in any period of twenty-four hours.
- (3) The Commissioners may only prohibit the use of Well Creek under subsection (1)(c) in the periods—
 - (a) starting on 1 December and finishing on 24 December;

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- (b) starting on 25 December and finishing on 1 January, but only if ice which, in the Commissioners' opinion, is of sufficient thickness to allow ice skating to take place, has already formed on the waterway; and
 - (c) starting on 2 January and finishing on 1 March.
- (4) Before exercising their powers under subsection (1) the Commissioners must, except in an emergency, publish a notice in one or more local newspapers circulating in the Middle Level.
- (5) The notice must—
- (a) be published not less than 28 days (or, in the case of subsection (1)(c), 7 days) before the powers are to be exercised; and
 - (b) state the extent to which, the period during which, and the purpose for which, the use of the waterway is to be prohibited, restricted or regulated.
- (6) A copy of the notice must be conspicuously displayed—
- (a) in one or more places on or adjacent to the waterway to which it relates; and
 - (b) in such other place or places as the Commissioners consider appropriate for bringing its contents to the notice of persons using the waterway.

8 Closure of locks

- (1) Notwithstanding the provisions of section 7 the Commissioners may direct that Stanground Lock, Salters Lode Lock, or both of them may be closed to navigation—
- (a) on Christmas Day;
 - (b) between sunset and sunrise; or
 - (c) on any one day each week (not being a Saturday or a Sunday and not including Maundy Thursday, Good Friday and Easter Monday) between 1 October in one year and 31 March in the following year, as the Commissioners may determine.
- (2) Without prejudice to the effect of section 67 of the Middle Level Act 1874 (penalty for unlawful passing through a sluice), a person who uses, interferes with, opens or closes any lock or its mechanism when the lock is closed to navigation under subsection (1) commits an offence, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9 Repairs to buildings

- (1) This section applies where any building or structure in, on, under or over a waterway or its banks is, because of its state of disrepair, causing or in imminent danger of causing an obstruction to the passage of vessels on that waterway.
- (2) Where this section applies, the Commissioners may serve notice on the owner of the building or structure requiring the owner to carry out such reasonable and practicable works as are specified in the notice for the purpose of remedying or preventing the obstruction within such reasonable time as is specified in the notice.
- (3) Subject to subsection (4), if the owner does not carry out the works specified in the notice, the Commissioners may proceed to carry out those works and recover the expenses reasonably incurred in so doing from the owner as a civil debt.

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- (4) Any person on whom notice is served under subsection (2) may within 14 days serve on the Commissioners a counter notice objecting to the necessity for such works.
- (5) Where a counter-notice is served under subsection (4)—
 - (a) the operation of the notice is suspended until—
 - (i) agreement has been reached as to the necessity of the works; or
 - (ii) the dispute has been determined in accordance with paragraph (b);
 and
 - (b) if that person and the Commissioners cannot reach agreement the dispute is to be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party.

10 Stranded, grounded and sunken vessels and vehicles

- (1) Whenever any vessel or vehicle is sunk in any waterway—
 - (a) the owner of the vessel or vehicle must as soon as may be—
 - (i) raise and remove it; and
 - (ii) remove any obstructions caused by the sinking and raising of the vessel or vehicle; and
 - (b) if the owner of the vessel or vehicle fails to comply with paragraph (a), the Commissioners may raise and remove the vessel or vehicle, and any such obstructions.
- (2) Whenever any vessel is stranded or abandoned in any waterway the Commissioners may after serving not less than 14 days' notice on the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise and remove the vessel.
- (3) Whenever any vessel is, without lawful authority, left or moored in any waterway the Commissioners may after serving not less than 28 days' notice on the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise and remove the vessel.
- (4) Subsections (2) and (3) do not require notice to be served in the case of emergency.
- (5) The Commissioners may recover from the owner of any vessel or vehicle to which subsection (1), (2) or (3) applies all expenses reasonably incurred by the Commissioners in respect of the raising, removal and storage of the vessel or vehicle or in raising, removing or storing any furniture, tackle and apparel from such vessel or vehicle or any goods, chattels and effects raised or removed from the vessel or vehicle, or in removing any obstructions.
- (6) If any vessel or vehicle to which subsection (1), (2) or (3) applies is not within six weeks of its removal by the Commissioners proved to the reasonable satisfaction of the Commissioners to belong to any claimant, the vessel or vehicle (together with any furniture, tackle, apparel, goods, chattels and effects) shall vest in the Commissioners.
- (7) If within six months of its removal, a claim is made to the vessel or vehicle by a person who subsequently proves to the reasonable satisfaction of the Commissioners that he is the owner of such vessel or vehicle, then the Commissioners must—
 - (a) if the vessel or vehicle is unsold, permit the owner to retake it together with any furniture, tackle, apparel, goods, chattels and effects belonging to such

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- vessel or vehicle upon payment of the expenses referred to in subsection (5);
or
- (b) if the vessel or vehicle and such furniture, tackle, apparel, goods, chattels and effects have been sold, pay to such owner the amount of the proceeds of such sale after deducting those expenses, and where the proceeds are insufficient to reimburse the Commissioners those expenses, the deficiency may be recovered by the Commissioners from that person.
- (8) For the purposes of this section—
“owner” means—
- (a) in relation to any vessel or vehicle aground, sunk, stranded, abandoned, left or moored as described in subsection (1), (2) or (3), the owner of the vessel or vehicle at the time of its grounding, sinking, stranding, abandonment, leaving or mooring; and
- (b) in relation to a vessel any person registered or deemed to be registered with the Commissioners as the owner of the vessel under the provisions of section 6 or of any navigation byelaws is to be conclusively deemed to be the owner of such vessel;
- “vehicle” includes any part of a vehicle; and
“vessel” includes any part of a vessel.
- (9) For the purposes of this section, a vessel is left or moored without lawful authority if—
- (a) navigation byelaws are in force requiring the vessel to be registered, and it is unregistered;
- (b) the position or mooring of the vessel constitutes a trespass; or
- (c) the vessel obstructs navigation in the waterways.
- (10) This section does not limit the Commissioners’ ability at any time to move without notice a vessel if it is causing obstruction or is a source of danger, pursuant to any byelaws made under section 11 or under section 51 of the Middle Level Act 1874.

11 Byelaws

- (1) Without prejudice to section 51 of the Middle Level Act 1874 (power to make byelaws for navigation), but subject to the provisions of this section, the Commissioners may make byelaws in relation to the waterways and their banks for maintaining and improving those waterways and banks, for the purposes of recreation and leisure pursuits, for controlling the navigation of those waterways and regulating the conduct and activities of persons using those waterways or banks.
- (2) In particular, but without prejudice to the generality of subsection (1), the Commissioners may make byelaws for the purposes of—
- (a) regulating the use of the waterways by vessels, and the use of the banks of the waterways and any works, water control structures, facilities or services in or adjoining the waterways, including rules prescribing which class of vessels may enter which waterways;
- (b) prescribing rules for navigation on the waterways, including rules regulating the speed of vessels and rules prescribing a minimum age for persons to be in control of or navigating a power-driven vessel;
- (c) regulating the placing, maintenance and use of moorings in the waterways;
- (d) prescribing standards for the construction, equipment and condition of vessels or categories of vessels using the waterways, including in particular

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- standards for any engines, appliances (including sanitary appliances), fittings or equipment in such vessels, and authorising the Commissioners to inspect vessels to confirm compliance with those standards;
- (e) prescribing additional standards to be met by commercial vessels or categories of commercial vessels;
 - (f) requiring vessels or categories of vessels not to be used on the waterways unless there is in force in relation to the vessel a policy of insurance complying with the requirements of Schedule 2;
 - (g) requiring notification to be given to the Commissioners of serious incidents involving vessels on a waterway, and—
 - (i) that any vessel involved in such an incident be made open for inspection by the Commissioners; and
 - (ii) where an incident involves a vessel slipping, parting from or losing any anchor, cable, propeller or other object, requiring the master to recover that anchor, cable, propeller or object, or providing for the Commissioners to do so, and to recover their expenses of so doing from the owner of the vessel as a civil debt;
 - (h) requiring vessels navigating the waterways at night or in restricted visibility to show lights;
 - (i) regulating the loading or unloading of vessels on the waterways;
 - (j) prohibiting or regulating the discharge from vessels into the waterways of any poisonous, noxious or polluting substances;
 - (k) prescribing the person to be deemed to be in charge of a vessel on a waterway, and providing for that person to be responsible for ensuring that the conduct of all other persons on board the vessel complies with the byelaws;
 - (l) regulating the erection of structures or the installation of works, apparatus, plant or equipment in, on, over, through, under or across a waterway or its banks;
 - (m) preventing obstructions to navigation in a waterway, requiring the cutting, pruning, lopping or topping of any tree, bush, shrub or other projection that obstructs navigation in a waterway, and providing for the Commissioners to cut, prune, lop or top any such tree, bush, shrub or other projection and recover the costs of doing so from the owner of the tree, bush, shrub or projection concerned; and
 - (n) preventing unauthorised entry onto water control structures.
- (3) Different byelaws may be made under this section in relation to different waterways and to different classes of vessels using any such waterway and any byelaws made under this section may come into force on such different dates as the Commissioners may determine.
- (4) A byelaw made by the Commissioners in exercise of the power conferred upon them by this section shall be made under the common seal of the Commissioners and may revoke or vary a byelaw made by them either pursuant to section 51 of the Middle Level Act 1874 or in the exercise of that power.
- (5) No byelaw made under the provisions of this section shall render unlawful the doing on private land outside a waterway or its banks of any act by, or with the lawful authority of, the owner or occupier of that land which does not obstruct the use of a waterway, or injure or endanger any person lawfully using a waterway or its banks or enjoying its amenities.

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- (6) Byelaws made under this section may make it an offence for any person to contravene, or fail to comply with, the provisions of the byelaws, and for such person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) In any proceedings for such an offence it shall be a defence for the person charged to prove—
 - (a) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
 - (b) that the person had a reasonable excuse for the action or failure to act.
- (8) In this section “private land” means any land other than land to which the public has access (whether as of right or by express or implied permission).
- (9) Byelaws made by the Commissioners under this section, section 12, or under section 51 of the Middle Level Act 1874, do not have effect until they are confirmed by the Secretary of State, and section 236 of the Local Government Act 1972 (procedure for byelaws) applies to their confirmation, as if the Commissioners were a local authority.