

SCHEDULES

SCHEDULE 13

Article 73

FOR PROTECTION OF BRITISH WATERWAYS BOARD

1. For the protection of the British Waterways Board the following provisions shall, unless otherwise agreed in writing between the promoter and the British Waterways Board, have effect.

Interpretation

2. In this Schedule—

“the Board” means the British Waterways Board;

“the Board’s network” means the Board’s network of waterways;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, alteration, renewal or maintenance of that work; and

“construct” and “constructed” have corresponding meanings;

“detriment” means any damage to a waterway or any other property of the Board and, in particular, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of a waterway;
- (b) the erosion of the bed or banks of a waterway, or the impairment of the stability of any works, lands or premises forming part of a waterway;
- (c) the siltation of a waterway or the deposit of materials in, so as to materially damage the waterway;
- (d) the pollution of a waterway;
- (e) any material alteration in the water level of a waterway, or material interference with the supply of water to a waterway, or drainage of water from a waterway;
- (f) any material harm to the ecology of a waterway (including any material adverse impact on any site of special scientific interest comprised in the Board’s network); and
- (g) any interference with the exercise by any person of rights over the Board’s network;

“the engineer” means an engineer appointed by the Board for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective work” means a work constructed under paragraph 8(3)(a);

“specified work” means so much of any of the authorised works (including any temporary closure or other operation carried out in connection with an authorised work) as is situated upon, across, under, over or within 15 metres of, or may in any way affect, a waterway;

“stoppage season” means the period between 1st November and 15th March; and

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“waterway” means the canal or the River Trent and includes any work, structure, land or premises belonging to the Board, or under its management or control, and held or used by the Board in connection with the canal or the River Trent.

Powers requiring the Board’s consent

3.—(1) The promoter shall not under the powers conferred by this Order acquire compulsorily any land of the Board relating to a waterway or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of the Board.

(2) The promoter shall not exercise the powers conferred by article 6(7)(a) (power to deviate) so as to deviate from the design of the bridge comprised in Work No.12 shown on the sections except with the consent of the Board.

(3) The promoter shall not in the exercise of the powers conferred by this Order, including article 12 (temporary stopping up of streets), obstruct or interfere with pedestrian or vehicular access to—

- (a) a waterway; or
- (b) any way over land comprised in a waterway,

unless such obstruction or interference with such access is with the consent of the Board.

(4) Nothing in article 21 (discharge of water) shall authorise the promoter—

- (a) to discharge any water directly or indirectly into a waterway; or
- (b) to carry out any works to, or make any opening in, or otherwise interfere with, a waterway (including its banks and bed),

except with the consent of the Board and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(5) The promoter shall not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from a waterway unless such exercise is with the consent of the Board.

(6) The promoter shall not exercise the powers conferred by article 22 (safeguarding works to buildings), article 25 (power to survey and investigate land, etc.), or the powers conferred by section 11(3) of the 1965 Act, in relation to a waterway unless such exercise is with the consent of the Board.

(7) The promoter shall not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 11 (provisions relating to statutory undertakers, etc.), so as to divert any right of access to a waterway, but such right of access may be diverted with the consent of the Board.

(8) The consent of the Board pursuant to sub-paragraphs (1) to (7) and the approval of plans under sub-paragraph (4) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which, in the case of article 21, may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period;
- (b) authorising the Board on giving reasonable notice to the promoter (except in an emergency, when the Board may require immediate suspension) to require the promoter to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational requirement of the Board; and
- (c) in the case of a discharge, concerning the reimbursement by the promoter of expenses reasonably incurred by the Board in disposing of the water so discharged, being expenses which the Board would not have incurred but for the discharge.

Vehicles, plant and machinery

4.—(1) The promoter shall not use any land or property of the Board forming part of a waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer, whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Board, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by the Board under paragraph 8.

Closure of towing paths, etc.

5. If in consequence of or in connection with the exercise of the powers conferred by this Order any part of a towing path or any public right of way giving access to it (“the closed section”) is temporarily closed to persons on foot, on cycles or in a wheelchair and there is no way which provides a reasonable alternative, the promoter shall, if reasonably practicable and to the reasonable satisfaction of the Board, provide in substitution a sufficient and convenient way for such persons between the points of commencement and termination of the closed section for such time as the closure continues.

Fencing

6. Where so required by the engineer the promoter shall to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from a waterway, whether on a temporary or permanent basis or both.

Survey of waterway

7.—(1) Before the commencement of the initial construction of any part of the specified works and again following completion of the specified works the promoter shall bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Board and the promoter, of surveys (“the surveys”) of so much of any waterway and of any land and existing works of the promoter as may provide support for the waterway as will or may be affected by the specified works.

- (2) For the purposes of the surveys the promoter shall—
 - (a) on being given reasonable notice (except in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the promoter which may provide support for the waterway as will or may be affected by the specified works; and
 - (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of the promoter and to the specified works or the method of their construction.

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(3) The reasonable costs of any survey under this paragraph shall include the costs of any dewatering or reduction of the water level of any part of the relevant waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey; and the provisions of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the surveys shall be provided to both the Board and the promoter.

Approval of plans, protective works, etc.

8.—(1) The promoter shall before commencing construction of any specified work, including any temporary work, supply to the Board proper and sufficient plans of that work and such further particulars available to it as the Board may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Board the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer shall be deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer is reasonably necessary to be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment, including reasonable requirements to minimise the impact of the specified work on the passage of vessels in the categories referred to in paragraph 14(2),

and such protective works shall be constructed (at the promoter's expense) by the promoter, or by the Board at the promoter's request, with all reasonable dispatch; and the promoter shall not commence the construction of a specified work until the engineer has notified the promoter that the protective works have been completed to the engineer's reasonable satisfaction.

(4) The promoter shall pay to the Board a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers conferred by this Order; but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving shall be set off against any sum payable by the promoter to the Board under this paragraph.

(5) In the event that the promoter fails to complete the construction of, or part of, a specified work the Board may, if it is reasonably required in order to avoid detriment, construct any work, or part of such work (together with any adjoining work) in order to complete the construction of, or part of, the specified work or make such work and the promoter shall reimburse the Board all costs, fees, charges and expenses it has reasonably incurred in carrying out such work.

Design of works

9. Without affecting its obligations under the foregoing provisions of this Schedule the promoter shall consult, collaborate with and respond constructively to any approach, suggestion, proposal or initiative made by the Board on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified works,

and shall have regard to such reasonable views as may be expressed by the Board pursuant (in particular) to the requirements imposed on the Board by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽¹⁾ and to the interest of the Board in preserving and enhancing the environment of its waterways.

Programming and notice of works

10. On or before 1st June in any year the promoter shall notify the Board as to whether any specified work is programmed to be carried out during the period of 12 months from 1st November in that year and shall provide the Board with as much detail concerning any such works, their nature, date and likely duration as is available to the promoter and reasonably necessary to indicate the impact of those works on the waterway.

11. The promoter shall give to the engineer not less than 56 days' notice of its intention to—

- (a) commence the construction of any specified or protective work, or
- (b) exercise the powers conferred by article 20 (temporary closure of, and works in, waterways), except in case of emergency, when the promoter shall give such notice as may be reasonably practicable so that, in particular, the Board may where appropriate arrange for the publication of notices bringing the work to the attention of users of the Board's network.

12. Except in case of emergency the promoter shall exercise the powers conferred by article 20 (temporary closure of, and works in, waterways) in relation to the relevant part of the canal only during the stoppage season.

Lighting

13. The promoter shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

14.—(1) Any specified or protective work shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as provided in paragraph 8(1) and with any requirement made under paragraph 8(3)(b);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable, and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Board, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Board.

(1) 1995 c. i.

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(2) Nothing in this Order shall authorise the promoter to make or maintain any permanent work in or over a waterway so as to impede or prevent (whether by reducing the width of a waterway or otherwise) the passage—

(a) in the case of any waterway to which the provisions of sections 105(1)(b) and 105(2) of the Transport Act 1968(2) apply, of any vessel which is of a kind (as to its dimensions) for which the Board is required by sections 105(1)(b) and 105(2) of the Transport Act 1968 to maintain the waterway; or

(b) in the case of any other waterway, of any vessel such as would have been capable of navigating the waterway on 17th April 2007.

(3) Following completion of the construction of any specified work the promoter shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of that work.

15.—(1) Any pile, stump or other obstruction which becomes exposed in consequence of a specified work shall be removed by the promoter or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of a waterway as the Board may direct.

(2) If the promoter fails to remove any such pile, stump or other obstruction within 28 days after receipt of written notice from the Board requiring the removal, the Board may carry out the removal and recover its costs from the promoter.

Prevention of pollution

16. The promoter shall not in the course of constructing a specified work or a protective work or otherwise in connection with such a work do or permit anything which may result in the pollution of a waterway or the deposit of materials in it and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work: provision of information

17.—(1) The promoter, on being given reasonable notice, shall—

(a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Board, on being given reasonable notice, shall—

(a) at all times afford reasonable facilities to the promoter and its agents for access to any works carried out by the Board under this Schedule during their construction; and

(b) supply the promoter with such information as it may reasonably require with regard to such works or the method of constructing them.

Costs of alterations, etc.

18. Any additional expenses which the Board may reasonably incur in altering, reconstructing or maintaining a waterway under any powers in existence on the date when this Order was made by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the promoter, be repaid by the promoter to the Board.

(2) 1968 c. 73.

Alterations to waterway

19.—(1) If during the construction of a specified work or a protective work, or during a period of 24 months after the completion of any such work any alterations or additions, either permanent or temporary, to a waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Board gives to the promoter reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the promoter shall pay to the Board the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Board in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the promoter to the Board under this paragraph.

Removal of temporary works and material

20.—(1) The promoter shall upon completion of any part of any permanent specified work remove as soon as practicable any temporary works and materials for temporary works constructed or placed in, on, over or under a waterway in connection with that part of the work.

(2) All temporary works shall be removed to the reasonable satisfaction of the engineer, and in the construction, maintenance and removal of such works the promoter shall not cause avoidable detriment.

Maintenance of works

21. If at any time after the completion of a specified work or a protective work, not being a work vested in the Board, the Board gives notice to the promoter informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the promoter shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of the Board's fees, etc.

22. The promoter shall repay to the Board all fees, costs, charges and expenses reasonably and properly incurred by the Board—

- (a) in constructing any protective works under the provisions of paragraph 8(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the promoter and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of the Board's network, including notice of the exercise of the powers conferred by article 20 (temporary closure of, and works in, waterways); and

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- (e) in carrying out any assessment or monitoring of the impact of the authorised works on any waterway.

Making good of detriment: compensation and indemnity, etc.

23.—(1) If any detriment shall be caused by the construction or failure of the specified works, or the protective works if carried out by the promoter, the promoter (if so required by the Board) shall make good such detriment and shall pay to the Board all reasonable expenses to which the Board may be put, and compensation for any loss which the Board may sustain, in making good or otherwise by reason of the detriment.

(2) The promoter shall be responsible for and make good to the Board all costs, charges, damages, expenses and losses arising by reason or in consequence of the exercise of the powers conferred by this Order and not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by the Board including any arising—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the promoter or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work,

and subject to sub-paragraph (4) the promoter shall effectively indemnify and hold harmless the Board from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by the Board on behalf of the promoter or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of the Board or of any person in its employ or of its contractors or agents) excuse the promoter from any liability under the provisions of this paragraph.

(4) The Board shall give the promoter reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the promoter.

Details of capitalised sums to be provided

24. Where under any provision of this Schedule the Board or the promoter (as the case may be) is entitled to a capitalised sum, it shall provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

Arbitration

25. Any difference arising between the promoter and the Board under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 82 (arbitration).