



Aire and Calder Navigation Act 1992

1992 CHAPTER iv

PART IV

PROTECTIVE PROVISIONS

32 For protection of British Waterways Board

For the protection of the Board the following provisions shall, unless in any case it is otherwise agreed between the Corporation and the Board, have effect:—

(1) In this section—

“construction” includes execution, placing, altering and the maintenance and repair of the works and “construct” and “constructed” shall be construed accordingly;

“the engineer” means an engineer to be appointed by the Board;

“plans” includes sections, drawings and particulars (including descriptions of methods of construction):

(2) Notwithstanding anything in this Act or shown on the deposited plans, the Corporation shall not acquire compulsorily any land or other property of the Board or rights over such land or property:

(3) The Corporation if they commence the construction of any part of the works described in Part I of Schedule 1 to this Act shall complete the whole of the works so described together with the further works and facilities described in Part II of that Schedule:

(4) The Corporation shall, before commencing the construction of the works, including temporary works, furnish to the Board proper and sufficient plans thereof for the reasonable approval of the engineer, and shall not commence the construction of the works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that, if within 56 days after such plans have been furnished to the Board the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted:

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- (5) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the works to ensure the safety or stability of the navigation or to protect it from injury from the works (including works to ensure the safety or stability, or for the protection of, any part of the navigation which it is intended shall become a superseded length until such time as it is superseded) and such protective works as may be reasonably necessary for those purposes shall be constructed by the Corporation with all reasonable dispatch:
- (6) The Corporation shall pay to the Board a capitalised sum representing the increased or additional cost of maintaining and, when necessary, renewing any permanent protective works provided under paragraph (5) above, and of carrying out any additional dredging of the navigation necessitated by the exercise of any of the powers of this Act but if the cost of maintaining or dredging, or of works of renewal on, the navigation is reduced in consequence of the authorised works and any such protective works, a capitalised sum representing such saving shall be set off against any sum payable by the Corporation to the Board under this section:
- (7) The Corporation shall give to the engineer not less than 28 days' notice of their intention to commence the construction of the works or any protective works and also, except in emergency (when they shall give such notice as may be reasonably practicable) of their intention to carry out any works for the repair or maintenance of the works in so far as such works of repair or maintenance affect or interfere with the navigation so that, in particular, the Board may where appropriate arrange for the publication of notices bringing those works to the attention of users of their inland waterways:
- (8) The Corporation shall provide and maintain at their expense such temporary lighting of the navigation and signal lights in the vicinity of the works as the engineer may reasonably require during the construction of the works:
- (9) The construction of the works shall, when commenced, be carried out with all reasonable dispatch in accordance with the approved plans and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to the navigation and as little interference as may be with the passage of vessels using the navigation and if any damage to the navigation or any stoppage thereof or any interference with the passage of vessels using the navigation shall be caused by the construction of the works, or by the passage of vehicles, plant and machinery used in connection therewith, the Corporation shall, notwithstanding any such approval as aforesaid, make good such damage and on demand pay to the Board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, stoppage or interference:

Provided that nothing in this paragraph shall impose any liability on the Corporation with respect to any damage, expenses or loss which is attributable to the act, neglect or default of the Board or their servants, contractors or agents:

- (10) The Corporation shall at all times afford reasonable facilities to the engineer for access to the works during their construction and shall supply him with all such information as he may reasonably require with regard to the works or the method of construction thereof:

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- (11) Without prejudice to paragraph (10) above the Corporation following the completion of the initial construction of the works shall restore so much of the navigation (other than the superseded length) as is affected by the works to a condition no less satisfactory than its condition immediately prior to the commencement of the works:
- (12) Nothing in section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act shall authorise the Corporation to discharge any water directly or indirectly into the canalised section of the navigation or Work No. 2 without the agreement of the Board in writing but nothing in this paragraph shall apply to the superseded length as from the transfer date:
- (13) Nothing in section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act shall authorise the Corporation—
 - (a) to discharge any water directly or indirectly into the new navigation downstream of the junction of Work No. 2 and Work No. 1 except in accordance with such reasonable conditions as may be prescribed in writing by the Board; or
 - (b) to carry out any works to, or make any opening in, or otherwise interfere with the navigation (including the banks and bed thereof) save in accordance with plans approved by, and under the supervision (if given) of the engineer, such approval not to be unreasonably withheld and, if within 56 days after such plans have been furnished to the Board the engineer has not notified his disapproval and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted:
- (14) The conditions prescribed by the Board under paragraph (13) (a) above may include conditions—
 - (a) specifying the maximum volume of water which may be discharged in any period;
 - (b) authorising the Board to require the Corporation to suspend the discharge of water or to reduce the flow of water where this is necessary by reason of any operational requirement of the Board:
- (15) Nothing in section 18 (Discharges for works purposes) of this Act, and no approval of plans under paragraph (13) (b) above, shall confer on the Corporation any right to discharge water into the navigation after the completion of the works or, if any of the works are not completed, after the powers to carry out that part of the works have effectively been abandoned:
- (16) Nothing in section 19 (Discharges following completion of works) of this Act and no approval of plans under paragraph (13) (b) above shall confer on the Corporation any right to discharge water into the navigation after the dewatering of the opencast site has been completed:
- (17) The Corporation shall not in the course of constructing the works or exercising any of the powers of this Act or otherwise in connection therewith pollute or deposit any materials in the navigation (other than the superseded length) or do or permit anything which may result in such pollution and shall take such steps as the engineer may reasonably require to avoid or make good any breach of their obligations under this paragraph:
- (18) The Corporation shall repay to the Board all costs, charges and expenses reasonably incurred by the Board—

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- (a) in respect of the employment of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for the period of the construction of the works for inspecting, watching and lighting the navigation and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the works;
 - (b) in respect of the approval by the engineer of plans supplied by the Corporation under paragraphs (4) or (13) above and the supervision by him of the construction of the works or the exercise of the powers of section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act as those powers have effect in accordance with paragraphs (13), (14) and (15) above;
 - (c) in bringing the specified works to the notice of users of the waterways comprised in the undertaking of the Board:
- (19) The Corporation shall be responsible for and make good to the Board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, the Board by reason of any act or omission of the Corporation or of any persons in their employ, or of their contractors or others whilst engaged upon the construction of the works or in exercising any of the powers of this Act and the Corporation shall effectively indemnify the Board from and against all claims and demands arising out of, or in connection with, the construction of the works or the exercise of any of the powers of this Act or any such failure, act or omission as aforesaid:
- Provided that—
- (i) nothing in this paragraph shall impose any liability on the Corporation with respect to any damage or injury to the extent that such damage or injury may be attributable to the act, neglect or default of the Board or of any person in their employ, or of their contractors or agents;
 - (ii) the Board shall give to the Corporation reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Corporation:
- (20) The fact that any act or thing may have been done in accordance with plans approved by the engineer, or in accordance with any requirement of the engineer or under his supervision, shall not (if it was done without negligence on the part of the Board or of any person in their employ, or of their contractors or agents) excuse the Corporation from any liability under the provisions of this section:
- (21) Nothing in this Act shall authorise the Corporation to make or maintain any permanent works in or over the navigation so as to reduce the width thereof or as to impede or prevent the passage of any vessel of a kind (as to its dimensions) for which the Board are required by section 105 (1) (b) and (2) of the Transport Act 1968 to maintain the navigation:
- (22) (a) In this paragraph “the relevant works” means so much of the works comprised in Work No. 1 as are situated downstream of the junction between Work No. 1 and Work No. 2;
- (b) The Corporation following the completion of the relevant works shall maintain the same to the reasonable satisfaction of the Board so as to enable the Board to comply with the duties imposed on them by or under section 41 (New navigation to be commercial waterway, etc.) of this Act and section 105 of the Transport Act 1968:

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- (23) Any difference arising between the Corporation and the Board under this section shall be determined by arbitration.