



# Transport Act 1968

## 1968 CHAPTER 73

### PART VII

#### INLAND WATERWAYS

##### *The Board's waterways*

#### **104 Classification of the Board's waterways**

- (1) For the purposes of sections 105 to 111 of this Act the inland waterways comprised in the undertaking of the Waterways Board shall be divided into—
  - (a) the waterways for the time being specified in Part I of Schedule 12 to this Act, being waterways (in this Part of this Act referred to as " the commercial waterways ") to be principally available for the commercial carriage of freight;
  - (b) the waterways for the time being specified in Part II of that Schedule, being waterways (in this Part of this Act referred to as " the cruising waterways ") to be principally available for cruising, fishing and other recreational purposes; and
  - (c) the remainder.
- (2) The description contained in the said Schedule 12 of any waterway shall be read subject to any order made by the Minister for giving greater precision to that description by reference to a map.
- (3) The Minister may by order transfer any waterway from one Part of the said Schedule 12 to the other Part, remove any waterway from either of those Parts or add to either of those Parts any inland waterway for the time being comprised in the undertaking of the Board which is not for the time being a commercial waterway or a cruising waterway.
- (4) Schedule 13 to this Act shall have effect in relation to the making of any order under subsection (3) of this section, and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (5) In subsection (3) of this section references to any waterway include references to any part of that waterway.

### **105 Maintenance of the Board's waterways**

- (1) With a view to securing the general availability of the commercial and cruising waterways for public use, it shall be the duty of the Waterways Board, subject to the provisions of this section—
- (a) to maintain the commercial waterways in a suitable condition for use by commercial freight-carrying vessels; and
  - (b) to maintain the erasing waterways in a suitable condition for use by cruising craft, that is to say, vessels constructed or adapted for the carriage of passengers and driven by mechanical power.
- (2) Neither paragraph (a) nor paragraph (b) of subsection (1) of this section shall impose on the Board any duty to maintain a waterway, or any part of a waterway, in a suitable condition for use by any vessel of the kind mentioned in that paragraph unless the dimensions of the vessel (that is to say, its length, width, height of superstructure and draught)—
- (a) correspond to, or are less than, those of a vessel of that kind which customarily used that waterway or part during the period of nine months ending with 8th December 1967; or
  - (b) if the waterway or part has been restored or improved since that date, are such as to make it suitable for use on that waterway or part;
- but, save as aforesaid, the duty imposed by that paragraph shall extend to any vessel of the kind therein mentioned as respects the dimensions of which paragraph (a) or (b) of this subsection is satisfied.
- (3) If it appears to the Minister that, having regard to any change in the size, design or type of vessel customarily using any commercial waterway or cruising waterway, or any part thereof, it is desirable to exercise his powers under this subsection, he may (after consultation with the Board) by order substitute for the duty imposed on the Board by the foregoing provisions of this section in respect of that waterway or part such duty in respect of the maintenance thereof as he considers appropriate having regard to that change, and may by that order make such incidental or transitional provision as he thinks necessary or expedient in connection therewith.
- (4) Schedule 13 to this Act shall have effect in relation to the making of any order under subsection (3) of this section, and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Section 17 of the Regulation of Railways Act 1873 (which requires the Board to maintain certain inland waterways) shall cease to apply to any inland waterway which on the date on which this section comes into force is comprised in the undertaking of the Board ; and any local enactment passed with respect to any such inland waterway, so far as that enactment—
- (a) confers any public or private right of navigation over the waterway; or
  - (b) imposes any duty to maintain that waterway for the purpose of navigation (including any duty to supply, or maintain a supply of, water for the waterway for that purpose),
- shall cease to have effect.

- (6) If the Board acquire any inland waterway after the date on which this section comes into force any local enactment passed with respect thereto shall, so far as it confers or imposes any such right or duty as is mentioned in paragraph (a) or (b) of subsection (5) of this section, cease to have effect on the date on which the waterway is so acquired.
- (7) Any person who suffers loss by reason of the extinguishment by virtue of subsection (5) or (6) of this section of any private right shall be entitled to be paid by the Board compensation to be determined, in case of dispute, by the appropriate tribunal; and the tribunal shall, in determining the compensation, take into account any contractual right offered by the Board in substitution for the right which is extinguished.
- (8) Where by virtue of subsection (5) of this section a statutory right of navigation ceases to be exercisable as respects a waterway of which the Waterways Board are not the owner, the Board shall have power to authorise any use of the waterway which would have been authorised by that statutory right.

## **106 Enforcement of maintenance duty**

- (1) If, on an application by any person under this section to the High Court or, in Scotland, the Court of Session, the court determines that there has been, in respect of any waterway, a serious and persistent failure by the Waterways Board to discharge the duty imposed on them by—
  - (a) subsection (1) of section 105 of this Act; or
  - (b) any order made under subsection (3) of that section,the court may, subject to the provisions of this section, require the Board to remedy that failure; but, save as aforesaid, neither the said subsection (1) nor any order under the said subsection (3) shall be construed as imposing any duty or liability enforceable by proceedings before any court to which the Board would not otherwise be subject.
- (2) The fact that proceedings on an application under subsection (1) of this section (hereafter in this section referred to as "enforcement proceedings") are in progress in respect of any waterway or any part of a waterway, or that the court has in any such proceedings imposed any requirement on the Board, shall not prevent the Minister from making an order in respect of that waterway or part under section 104(3) or 105(3) of this Act; but—
  - (a) except as provided in subsection (3) of this section, where such an order is made while enforcement proceedings are in progress, the court shall nevertheless determine those proceedings on the basis of the duty of the Board as it stood when the proceedings were instituted; and
  - (b) the making of such an order shall in no case absolve the Board from complying with any requirement which is imposed by the court in any enforcement proceedings.
- (3) If a relevant order is pending at the time when enforcement proceedings are instituted, or if, at any time after enforcement proceedings have been instituted and before the court has imposed any requirement on the Board in the proceedings, the Minister notifies the Board that he is considering the making of a relevant order and gives the court such a certificate as is mentioned in subsection (4) of this section—
  - (a) the court shall, so long as the order is pending, impose any requirement on the Board in those proceedings; and

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- (b) if the order is made, the court shall, in determining in those proceedings whether there has been a failure by the Board to discharge their duty, have regard only to the duty (if any) to which the Board are subject in consequence of the making of the order.
- (4) The said certificate is a certificate in writing to the effect that it appears to the Minister that the imposition of any requirement on the Board on the basis of their existing duty would result in their incurring substantial expense and that, having regard to their financial position and their duty under section 18 of the Act of 1962 and section 41 of this Act, it would be unreasonable for them to bear that expense without a grant or further grant under section 43 of this Act.
- (5) In subsection (3) of this section "relevant order" means, in relation to any enforcement proceedings, an order under section 104(3) or 105(3) of this Act in relation to the waterway or part of a waterway which is the subject of the proceedings; and for the purposes of that subsection an order is pending during the period of three months beginning with the day on which the Minister notifies the Board that he is considering the making of the order and, if before the expiration of that period notice of the proposed order is published under Schedule 13 to this Act, during any further period until the order is made or the Minister notifies the Board that it will not be made.
- (6) As soon as may be after giving the Board any such notification as is mentioned in the last foregoing subsection, the Minister shall give notice thereof in the London Gazette or, if the waterway or the part of the waterway in question is situated in Scotland, the Edinburgh Gazette.
- (7) For the purposes of this section enforcement proceedings shall be treated as instituted at the time when the writ or summons beginning the proceedings is served on the Board.

## **107 Amendments as to general duties of Board**

- (1) The duty of the Waterways Board under subsection (1) of section 10 of the Act of 1962 to provide services and facilities on the inland waterways owned or managed by them shall extend only to the commercial waterways and cruising waterways.
- (2) It shall be the duty of the Board—
  - (a) to secure that each of the inland waterways comprised in their undertaking which is not a commercial waterway or cruising waterway is dealt with in the most economical manner possible (consistent, in the case of a waterway which is retained, with the requirements of public health and the preservation of amenity and safety), whether by retaining and managing the waterway, by developing or eliminating it, or by disposing of it; and
  - (b) to secure that the best possible financial return is obtained from any asset of the Board which is not an inland waterway or harbour and is not required in connection with the provision of services and facilities by the Board, whether by exploiting it, by developing it, or by disposing of it.
- (3) Subsection (4) of the said section 10 (which provides that the duties of the Board under that section are not to be legally enforceable) shall apply also to the duty imposed on the Board by subsection (2) of this section.
- (4) Subsection (2) of the said section 10 (which requires the Board to carry out a review of the manner in which the best use can be made of those of their inland waterways

which are not required for discharging their duties under subsection (1) of that section) shall cease to have effect.

### **108 Prevention of nuisance as respects certain waterways**

(1) Subject to subsection (3) of this section, any inland waterway in England or Wales comprised in the undertaking of the Waterways Board which is not a commercial waterway or cruising waterway shall be deemed to be—

- (a) a watercourse for the purposes of section 259 of the Public Health Act 1936; and
- (b) a vacant site for the purposes of section 36 of the Town and Country Planning Act 1962 ;

and the provisions of Part III of the said Act of 1936, as they apply by virtue of this subsection, may be enforced by a county council as well as by a local authority as defined in that Act, and any local authority within the meaning of the said Act of 1962 (and not only the local planning authority) shall be entitled to enforce the provisions of the said section 36 as it applies by virtue of this subsection.

(2) Subject to subsection (3) of this section, any inland waterway in Scotland comprised in the undertaking of the Board which is not a commercial waterway or cruising waterway shall be deemed to be—

- (a) a watercourse for the purposes of section 16 of the Public Health (Scotland) Act 1897; and
- (b) derelict land for the purposes of section 31 of the Town and Country Planning (Scotland) Act 1947;

and any local authority within the meaning of the said Act of 1947 (and not only the local planning authority) shall be entitled to enforce the provisions of the said section 31 as it applies by virtue of this subsection.

(3) This section shall not apply to any waterway which has been closed to navigation under any local enactment before the date on which this section comes into force if the use of the waterway has been changed between the passing of that enactment and that date in pursuance of planning permission granted under Part III of the said Act of 1962 or Part II of the said Act of 1947; and this section shall cease to apply to any waterway if the use thereof is changed after that date in pursuance of such permission as aforesaid.

(4) This section shall have effect to the exclusion of any provision for similar purposes in any local enactment passed before the date on which this section comes into force in relation to any waterway to which this section applies.

### **109 Power of certain bodies to maintain or take over waterways and connected works**

(1) Without prejudice to their powers apart from this section, but subject to subsection (3) of this section, the Waterways Board shall have power—

- (a) to enter into an agreement with any body to which this section applies for the maintenance by that body of any inland waterway comprised in the undertaking of the Board which is not a commercial waterway or cruising waterway, or of any part of, or of any works connected with, any such waterway;

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- (b) by agreement with any such body, to transfer to it any such waterway, part of a waterway or works as aforesaid belonging to the Board, together with any powers or obligations (whether statutory or otherwise) of the Board in respect thereof;

and any body to which this section applies shall have all such powers as are required to enable it to enter into and carry out any such agreement as aforesaid or as are required to be exercised by it in consequence of any such transfer as is mentioned in this subsection.

- (2) The bodies to which this section applies are as follows—

- (a) a local authority;
- (b) a river authority;
- (c) a highway authority, not being a local authority ;
- (d) an Area Gas Board ;
- (e) an Area Electricity Board ;
- (f) the North of Scotland Hydro-Electric Board ;
- (g) the South of Scotland Electricity Board ;
- (h) any statutory water undertakers as defined in section 59(1) of the Water Act 1945 otherwise than for the purposes of Part II of that Act only ;
- (j) a regional water board ;
- (k) a water development board,

and, as respects any particular agreement or transfer, any other body having public or charitable objects which is certified by the Minister as a body appearing to him to be capable of discharging the responsibilities falling on the body in consequence of that agreement or transfer.

- (3) Subject to subsection (5) of this section, no such agreement or transfer as is mentioned in subsection (1) of this section shall be made with or to—

- (a) any local authority unless what is to be maintained or transferred—
  - (i) is situated in the area of the authority; or
  - (ii) though not situated in that area, is so situated that persons residing in that area have convenient access to it;
- (b) any river authority unless—
  - (i) what is to be maintained or transferred is situated in the area of the authority; and
  - (ii) the Ministers (as defined in section 82(9) of the Water Resources Act 1963) have consented to the agreement or transfer;

and the powers under this section of any statutory water undertakers or of any regional water board or water development board shall be exercisable only for the purposes of their water undertaking and with the consent of the Minister of Housing and Local Government or, as respects anything to be done in Scotland or in Wales, the Secretary of State.

- (4) Any agreement under this section whereby a waterway or part of a waterway is to be maintained by, or transferred to, a body to which this section applies may include provision for securing that the body in question makes the waterway or part available for public use.
- (5) The Board may make an agreement for maintenance or transfer under this section with two or more bodies jointly on such terms as to the sharing of expenses between those bodies and otherwise as those bodies may agree; and, notwithstanding subsection (3)

(a)(i) or (b)(i) of this section (but without prejudice, in the case of a local authority, to subsection (3)(a)(ii) of this section), a local authority or river authority may be a party to such an agreement if part of what is to be maintained or transferred is situated in their area and the remainder in the area or areas of one or more other authorities (whether local authorities or river authorities) who are also parties to the agreement.

## **110 The Inland Waterways Amenity Advisory Council**

- (1) There shall be a body to be known as the Inland Waterways Amenity Advisory Council consisting of a chairman and not less than twelve members appointed by the Minister after consultation with the chairman of the Waterways Board; and the members so appointed—
  - (a) shall include persons who appear to the Minister to have wide knowledge of, and interest in, the use of inland waterways for amenity or recreational purposes, including fishing; and
  - (b) may include not more than four persons who are members of the Waterways Board.
- (2) In addition to their functions under Schedule 13 to this Act, it shall be the function of the Council—
  - (a) to advise the Waterways Board and the Minister on any proposal to add to or reduce the cruising waterways ;
  - (b) to consider, and, where it appears to them to be desirable, to make recommendations to the Waterways Board or the Minister with respect to, any other matter—
    - (i) affecting the use or development for amenity or recreational purposes, including fishing, of the cruising waterways;
    - (ii) with respect to the provision for those purposes of services or facilities in connection with those waterways or the commercial waterways, being a matter which has been referred to the Council by the Board or the Minister, which has been the subject of representations to the Council by any other person or which appears to the Council to be a matter to which consideration ought to be given.
- (3) The Council shall not make recommendations to the Minister with respect to any matter under this section without first consulting with the Board about that matter.
- (4) The persons appointed to be members of the Council shall hold and vacate office in accordance with their terms of appointment and shall, on ceasing to hold office, be eligible for reappointment; but any such person may at any time by notice in writing to the Minister resign his office.
- (5) The Council may, with the approval of the Minister, appoint such regional committees, and may appoint such other committees, as they think fit; and the procedure of the Council and of any such committee, including the quorum at meetings, shall be such as may be determined by the Council.
- (6) The Waterways Board shall provide the Council with such officers and servants and such accommodation as appear to the Board to be requisite for the proper discharge of the Council's functions or as may be directed by the Minister; and the said Board may pay to the members of the Council allowances in respect of loss of remunerative time in accordance with a scale approved by the Minister with the consent of the Treasury

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and such travelling allowances and allowances in respect of out-of-pocket expenses as the Board may determine.

**111 Access agreements and orders as respects canals other than commercial waterways and cruising waterways**

Subsections (2) and (3) of section 16 of the Countryside Act 1968 (which enable access agreements and access orders to be made under Part V of the National Parks and Access to the Countryside Act 1949 in respect of canals and of certain land held therewith) shall apply as respects, and as respects land held with, any canal or part of a canal owned or managed by the Waterways Board which is not for the time being a commercial waterway or a cruising waterway ; and accordingly in subsection (6)(c) of that section (which prevents the said subsections (2) and (3) from applying where the canal or part of a canal is owned or managed by the Board) there shall be added at the end the words " which is for the time being a commercial waterway or a cruising waterway within the meaning of section 104 of the Transport Act 1968 ".

*Other inland waterway provisions*

**112 Power to extinguish statutory rights and obligations in respect of canals not comprised in undertaking of Board**

- (1) In the case of any canal which is not comprised in the undertaking of the Waterways Board, the Minister may by order direct all or any of the following, that is to say—
  - (a) that any local enactment passed with respect to that canal shall cease to have effect so far as it confers any public or private right of navigation over that canal;
  - (b) that any such enactment shall cease to have effect so far as it imposes any duty to maintain that canal for the purpose of navigation (including any duty to supply, or maintain a supply of, water for the canal for that purpose);
  - (c) that section 17 of the Regulation of Railways Act 1873 if applicable to that canal, shall cease to apply to it.
- (2) An order under this section in respect of any canal may be made on the application of the person who owns or manages the canal, on the application of any local authority or river authority in whose area the canal is situated, or without any application being made.
- (3) An order under this section in respect of any canal—
  - (a) shall specify the person, whether the person who owns or manages the canal, a local authority, a river authority or the Minister, by whom any such compensation as is mentioned in subsection (4) of this section is to be paid ;
  - (b) may confer on a person specified in the order power to authorise any use of the canal which would have been authorised by a statutory right of navigation which by virtue of the order ceases to be exercisable as respects the canal;
  - (c) may make provision, in relation to the canal or any works connected therewith, for purposes corresponding to those of section 109 of this Act; and
  - (d) may include such incidental or supplementary provisions as the Minister thinks fit, including provisions for applying section 259 of the Public Health Act 1936 and section 36 of the Town and Country Planning Act 1962, or, as the case may be, section 16 of the Public Health (Scotland) Act 1897 and



section 31 of the Town and Country Planning (Scotland) Act 1947, to the canal.

- (4) Any person who suffers loss by reason of the extinguishment by virtue of an order under this section of any private right shall be entitled to be paid by the person specified in that behalf in the order compensation to be determined, in case of dispute, by the appropriate tribunal; and the tribunal shall, in determining the compensation, take into account any contractual right offered by the person who owns or manages the canal in substitution for the right which is extinguished.
- (5) Schedule 13 to this Act shall have effect in relation to the making of any order under this section, and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section " canal" includes any navigation which has been made under, or in respect of which tolls may be levied by virtue of, any enactment, and references to a canal include references to part of a canal.
- (7) Section 45 of the Railway and Canal Traffic Act 1888 (which is superseded by this section) shall cease to have effect.

### **113 Byelaws in respect of waterways owned or managed by certain bodies**

- (1) The Minister may, on the application of any qualified body which owns or manages an inland waterway and after consultation with the relevant authority, by order confer on that body power to make byelaws in relation to that waterway for such purposes as may be specified in the order.
- (2) Byelaws made by virtue of an order under this section shall not have effect until confirmed by the Minister, and before applying to the Minister for the confirmation of any byelaws the body concerned shall take such steps as may be specified in the order for securing that persons affected by the byelaws have an opportunity of making representations thereon to the Minister.
- (3) If any person contravenes, or fails to comply with, any byelaws made by virtue of an order under this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20, and if the contravention or failure to comply is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £5 for each day on which it is so continued.
- (4) An order under this section may contain such supplementary provisions as the Minister thinks necessary or expedient.
- (5) In this section—
  - " qualified body " means any navigation authority as defined in section 135(1) of the Water Resources Act 1963, a body mentioned in any of the paragraphs of section 109(2) of this Act (except paragraph (c) thereof) and any other body having public or charitable objects ;
  - " relevant authority ", in relation to any order, means any local authority or river authority (except any such authority which is itself the applicant for the order) in whose area the waterway in question is wholly or partly situated.
- (6) Section 40 of the Railway and Canal Traffic Act 1888 (which makes provision as to the byelaws of canal companies) shall not apply to byelaws made by virtue of an order under this section.

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#### **114 Power of local authorities to assist in maintaining waterways for amenity purposes**

Without prejudice to section 109 of this Act, a local authority may assist any other person (whether financially, by the provision of services or facilities, or otherwise) in maintaining or improving for amenity or recreational purposes, including fishing—

- (a) any inland waterway situated wholly or partly in the area of the authority; and
- (b) any other inland waterway which is so situated that it can conveniently be used for those purposes by persons residing in the area of the authority.

#### *Supplementary*

#### **115 Interpretation of Part VII**

(1) In sections 105 and 112 of this Act—

- (a) references to any right of navigation over a waterway or canal include references to any right to use or keep any vessel or craft on the waterway or canal;
- (b) " the appropriate tribunal" means, as respects England and Wales, the Lands Tribunal and, as respects Scotland, the Lands Tribunal for Scotland or, until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland, an official arbiter appointed under Part I of the Land Compensation (Scotland) Act 1963;

and sections 3 and 5 of the said Act of 1963 shall apply, subject to any necessary modifications, in relation to the determination of any question under either of those sections by an arbiter so appointed.

(2) Nothing in section 105 or in any order under section 112 of this Act shall be construed as abrogating any rights of navigation which subsist otherwise than by virtue of the enactments referred to in subsections (5) and (6) of the said section 105 or subsection (1) of the said section 112; and in those subsections references to rights conferred by an enactment do not include references to rights which are merely confirmed by it and which, if that enactment had not been passed, would subsist otherwise than by virtue of any such enactments as aforesaid.

(3) In sections 109, 112, 113 and 114 of this Act, "local " authority " means—

- (a) as respects England and Wales, the council of a county, county borough, county district or London borough, the Greater London Council and the Common Council of the City of London ;
- (b) as respects Scotland, a county council and a town council.

(4) In sections 109, 112 and 113 of this Act, " river authority " includes any body on which functions corresponding to the functions of river authorities are conferred under section 125 of the Water Resources Act 1963 (provisions as to Thames, Lee and London areas) and any reference to the area of any such body shall be construed as a reference to the area in relation to which any such functions are conferred on that body as aforesaid.