



Transport Act 1968

1968 CHAPTER 73

PART VII

INLAND WATERWAYS

The Board's waterways

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.

Status: Point in time view as at 11/02/1991. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Transport Act 1968, Section 106. (See end of Document for details)

- (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 not, so long as the order is pending, impose any requirement on the Board in those proceedings; and
 - (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.

Modifications etc. (not altering text)

C1 S. 106(2) applied (with modifications) (S.) (4.1.1995) by 1994 c. 39, s. 40(7) (with s. 7(2)); S.I. 1994/2850, art. 3(a), Sch. 2

Status:

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Changes to legislation:

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