

SCHEDULES

SCHEDULE 13

PROTECTIVE PROVISIONS

PART V

PROTECTION FOR BRITISH WATERWAYS BOARD

41.—(1) For the protection of BW the following provisions shall, unless otherwise agreed in writing between Network Rail and BW, have effect.

Interpretation

(2) In this Part of this Schedule—

“BW” means the British Waterways Board;

“BW’s network” means BW’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 such replacing, relaying, removal, alteration, maintenance, repair or reconstruction of that work as may be carried out during the period of 12 months from the completion of that work,

and “construct” and “constructed” have corresponding meanings;

“detriment” means any permanent damage to a waterway or any other property of BW and, without prejudice to the generality of that meaning, includes—

- (a) 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;
- (b) the siltation of a waterway or the deposit of materials in it so as to permanently damage the waterway;
- (c) the pollution of a waterway;
- (d) any permanent alteration in the water level of a waterway, or permanent interference with the supply of water thereto, or drainage of water therefrom; and
- (e) any permanent harm to the ecology of a waterway (including any permanent adverse impact on any site of special scientific interest comprised in BW’s network);

“the engineer” means an engineer appointed by BW 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 46(3);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may directly and physically affect, the waterway;

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“towing path” means the towing path forming part of the waterway; and

“waterway” means any canal, or inland navigation belonging to or under the management or control of BW, and includes any works, land or premises belonging to BW, or under its management or control, and held or used by BW in connection with any such canal or inland navigation.

(3) Network Rail shall not under the powers conferred by this Order acquire compulsorily any land of BW, or any easement or other right over such land other than such land, or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of works authorised by this Order.

Powers requiring BW’s consent

42.—(1) Network Rail shall not in the exercise of the powers conferred by this Order permanently obstruct or interfere with pedestrian or vehicular access to a waterway unless such permanent obstruction or interference with such access is with the consent of BW.

(2) Nothing in article 19 of this Order shall authorise Network Rail—

- (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 the banks and bed thereof),

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

(3) Network Rail shall not exercise the powers conferred by article 21 of this Order, 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 BW.

(4) Network Rail shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 12 to this Order, so as permanently to divert any right of access to a waterway, but such right of access may be permanently diverted with the consent of BW.

(5) The consent of BW pursuant to any of sub-paragraphs (1) to (4) and the approval of plans under sub-paragraph (2) shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions which in the case of article 19 may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising BW on giving reasonable notice (except in an emergency when BW may require immediate suspension) to Network Rail to require Network Rail to suspend the discharge of water or reduce the flow thereof where this is necessary by reason of any operational requirement of BW and where a reasonable alternative is available to enable Network Rail to discharge the water in question during the period of the suspension.

Vehicles, plant and machinery

43. Network Rail shall not use any land or property of BW forming part of a waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified work 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 BW, its officers and agents and all other persons lawfully on such land or property.

Closure of towing paths etc.

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

Fencing

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

Approval of plans, protective works, etc.

46.—(1) Network Rail shall before commencing construction of any specified work including any temporary works supply to BW proper and sufficient plans of that work and such further particulars available to it as BW 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 any 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 BW the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

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

- (a) any protective work (whether temporary or permanent) which is reasonably necessary to be carried out before the commencement of any specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective work shall be constructed by Network Rail with all reasonable dispatch and Network Rail shall not commence the construction of any specified work until the engineer has notified Network Rail that the protective work has been completed to his reasonable satisfaction.

Notice of works

47. Network Rail shall give to the engineer 56 days' notice of its intention to commence the construction of any specified or protective work, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, BW may where appropriate arrange for the publication of notices bringing that work to the attention of users of BW's network.

Lighting

48. Network Rail shall provide and maintain at its own expense in the vicinity of any specified or protective work such temporary lighting and such signal lights for the control of navigation as

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the engineer may reasonably require during the construction or failure of the specified or protective work.

Construction of specified work

49.—(1) Any specified 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 aforesaid and with any requirements made under paragraph 46(3)(b);
- (b) under the supervision (if given) and, in the case of any specified work which directly and physically affects a waterway, 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 BW, its officers and agents and all other persons lawfully using the waterways.

(2) Nothing in this Order shall authorise Network Rail to make or maintain any permanent works in or over a waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which BW are required by section 105(1)(b) and (2) of the Transport Act 1968(1) to maintain the waterway.

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

Prevention of pollution

50. Network Rail shall not in the course of constructing any specified work or protective work or otherwise in connection therewith do or permit anything which may result in the pollution of a waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph; but this provision shall not prevent Network Rail from carrying out works to the abutment of bridges or other works within the waterway.

Access to work: provision of information

51.—(1) Network Rail shall at all times on being given reasonable notice allow reasonable facilities to the engineer for access to any specified work during its construction; but such facilities for access shall be subject to Network Rail's reasonable requirements for ensuring the safety of the railway and of the engineer and other persons working on the railway.

(2) Network Rail shall supply the engineer with all such information as he may reasonably require with regard to any specified work or the method of constructing it.

Repayment of BW's fees, etc.

52. Network Rail shall repay to BW all fees, costs, charges and expenses reasonably incurred by BW—

- (a) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by him of the construction or repair of any specified work and any protective work;

(1) 1968 c. 73.

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- (b) in respect of the employment during the period of the initial construction of any specified work or protective work 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 work or any protective work; and
- (c) in bringing the specified work or any protective work to the notice of users of BW's network.

Making good of detriment: compensation and indemnity, etc.

53.—(1) If any detriment shall be caused by the construction of the specified work or the protective works, Network Rail (if so required by BW) shall make good such detriment and shall pay to BW all reasonable expenses to which BW may be put, and compensation for any loss which BW may sustain, in making good or otherwise by reason of the detriment.

(2) Network Rail shall be responsible for and make good to BW all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by BW—

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

and subject to sub-paragraph (4), Network Rail shall effectively indemnify and hold harmless BW from and against all claims and demands arising out of any of the matters referred to in sub-paragraphs (a) and (b).

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

(4) BW shall give Network Rail reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of Network Rail.

Arbitration

54. Any difference arising between Network Rail and BW under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration under article 44 of this Order.