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## SCHEDULES

### SCHEDULE 17

#### PROTECTIVE PROVISIONS

##### PART 5

###### PROTECTION OF BRITISH WATERWAYS BOARD

- 1 (1) The following provisions of this Part shall, unless otherwise agreed in writing between the nominated undertaker, or the Secretary of State as the case may be, and the Board, have effect.
- (2) In this Part—
  - “the Board” means the British Waterways Board;
  - “the canal” means any canal or waterway owned or managed by the Board, and includes any works connected therewith for the maintenance of which the Board is responsible and any lands held or used by the Board for the purposes of the canal;
  - “construction” includes execution, placing, altering, replacing and relaying and includes removal;
  - “plans” includes sections, drawings, specifications and method statements;
  - “specified work” means so much of any permanent or temporary work authorised by this Act as is in, across, under, or within 15 metres of, or may in any way affect, the canal.
- 2 The Secretary of State shall not under the powers of section 6 acquire compulsorily any land of the Board or any easement or other right over such land other than such land, or easements or other rights thereover, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of works authorised by this Act.
- 3 (1) Before beginning to construct any specified work, the nominated undertaker shall submit to the Board plans of the work and such further particulars available to it as the Board may within 14 days of the submission of the plans reasonably require.
- (2) Any specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 11.
- (3) Any approval of the Board required under this paragraph shall not be unreasonably withheld and—
  - (a) shall be deemed to have been given if it is neither given nor refused (with an indication of the grounds for refusal) within 28 days of the submission of the plans for approval or where further particulars are submitted under paragraph 3(1), within 28 days of the submission of those particulars; and

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- (b) may be given subject to such reasonable requirements as the Board may make for the purpose of ensuring the safety or stability of the canal, including requirements as to the construction of protective works.
- 4 (1) Any specified work, and any protective works required by the Board under paragraph 3(3)(b), shall be constructed with all reasonable despatch to the reasonable satisfaction of the Board, and in such manner as to cause as little damage to the canal as may be reasonably practicable and as little interference as may be reasonably practicable with the passage of vessels using the canal, and the Board shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect the construction of such work or works.
- (2) The nominated undertaker shall give to the Board not less than 28 days' notice in writing of its intention to commence construction of any specified work or any protective works and also, except in emergency (when the nominated undertaker shall give such notice as may be reasonably practicable), of its intention to carry out any works for the repair or maintenance of any specified work insofar as such works of repair or maintenance affect or interfere with the canal.
- 5 (1) The nominated undertaker shall not deposit any polluting material on, in or over the canal and shall not without the consent of the Board—
- (a) deposit any other materials on, in or over the canal (other than materials comprised in a specified work); or
- (b) notwithstanding anything in this Act, discharge any water directly or indirectly into the canal.
- (2) Any consent of the Board required under this paragraph shall not be unreasonably withheld and—
- (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the request for it; and
- (b) may be given subject to such reasonable requirements as the Board may make—
- (i) in the case of a deposit, so as to ensure that the use of the canal is not obstructed or rendered less safe, and
- (ii) in the case of a discharge, concerning the reimbursement by the nominated undertaker of expenses incurred by the Board in disposing of the water so discharged, being expenses which the Board would not have incurred but for the discharge.
- 6 In its application to the discharge of water into the canal, paragraph 8(5) of Schedule 2 shall have effect subject to the terms of any conditions attached to the consent under paragraph 5(2) above and, where such discharge includes a deposit to which consent has been given under paragraph 5(1) above, to any conditions attached to that consent.
- 7 (1) If as a result of the construction of any specified work any part of the towing path or access way beside the canal, or any public right of way giving access thereto, is temporarily closed to pedestrians or cyclists and there is no way which provides a reasonable alternative, the nominated undertaker shall, so far as reasonably practicable and to the extent that it is consistent with safety, provide a substitute path or paths for such time as the closure continues.
- (2) This paragraph is without prejudice to the requirements of paragraph 5(2) or (5) of Schedule 3.

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- 8 (1) If any canal work is abandoned, the Board may by notice in writing require the nominated undertaker to take such reasonable steps as may be specified in the notice to remove the work and (to such extent as the Board reasonably requires) to restore the site to its former condition.
- (2) If any canal work is in such condition that it is, or is likely to become, a danger to or to interfere with navigation, the Board may by notice in writing require the nominated undertaker to take such reasonable steps as may be specified in the notice—
- (a) to repair and restore the work or part of it, or
  - (b) if the nominated undertaker so elects, to remove the work and (to such extent as the Board reasonably requires) to restore the site to its former condition.
- (3) If—
- (a) a work which consists of a canal work and a non-canal work is abandoned or falls into decay; and
  - (b) the non-canal work is in such a condition as to interfere with the right of navigation in the relevant canal or as to interfere with the rights of access or use of land adjacent to the relevant canal;
- the Board may include the non-canal work, or any part of it, in any notice under this paragraph.
- (4) If after such reasonable period as may be specified in a notice under this paragraph the nominated undertaker has failed to begin taking steps to comply with the requirements of the notice or after beginning has failed to make reasonably expeditious progress towards their implementation, the Board may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the nominated undertaker.
- (5) In this paragraph “canal work” means so much of any specified work or any other work of which the nominated undertaker is in possession under the powers of this Act as is in or over a canal owned or managed by the Board and “non-canal work” means so much of any such work as is not in or over a canal.
- 9 (1) The nominated undertaker shall indemnify the Board from all claims, demands, proceedings or damages, which may be made or given against, or recovered from the Board by reason of any damage to the canal which is caused by the construction of any specified work or protective work or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon the work and from any costs reasonably incurred in making good such damage.
- (2) The Board shall give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand shall be made without the consent of the nominated undertaker which, if it notifies the Board that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- 10 Nothing in paragraph 9 shall impose any liability on the nominated undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the Board, its officers, servants, contractors or agents but the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with a determination under paragraph 11, shall not (in the absence of negligence on the part of the Board, its officers, servants, contractors or agents) relieve the nominated undertaker from any liability under the provisions of this Part.

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- 11 (1) Any dispute arising between the nominated undertaker and the Board under this Part of this Schedule shall be determined by arbitration if—
- (a) the parties agree, or
  - (b) the dispute relates to the amount of any sum payable under this Part,
- but shall otherwise be determined by a person appointed by the appropriate Ministers.
- (2) Any person appointed by the appropriate Ministers under sub-paragraph (1) shall, in determining any dispute arising under this Part, have regard to such matters as may be specified by the appropriate Ministers on making the appointment.
- (3) In this paragraph, the reference to the appropriate Ministers is to the Secretary of State for Transport and the Secretary of State for Environment, Food and Rural Affairs acting jointly.

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