
STATUTORY INSTRUMENTS

1993 No. 1119

**TRANSPORT AND WORKS
CANALS AND INLAND WATERWAYS**

**The Transport and Works Applications (Inland
Waterways Procedure) Regulations 1993**

<i>Made</i>	- - - -	<i>21st April 1993</i>
<i>Laid before Parliament</i>		<i>29th April 1993</i>
<i>Coming into force</i>	- -	<i>1st June 1993</i>

The Secretary of State for Transport, in exercise of the powers conferred on him by section 15 of the Transport and Works Act 1992(1), and of all other enabling powers, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Transport and Works Applications (Inland Waterways Procedure) Regulations 1993 and shall come into force on 1st June 1993.

Interpretation

2. In these Regulations—

“the 1968 Act” means the Transport Act 1968(2);

“the 1992 Act” means the Transport and Works Act 1992.

Application of regulations

3.—(1) Regulations 4 and 5 below shall apply where an order under section 104(3), 105(3) or 112 of the 1968 Act (classification and maintenance of the British Waterways Board’s waterways and maintenance and use of other waterways) is required for the purposes of proposals included in an application made under section 6 of the 1992 Act (applications for orders under sections 1 and 3).

(2) Paragraph (2) of regulation 4 and regulation 5 below shall apply also where an order under any of the said sections of the 1968 Act is required for the purposes of a proposal by the Secretary

(1) 1992 c. 42.

(2) 1968 c. 73. Section 112 was amended for England and Wales by the Planning (Consequential Provisions) Act 1990 (c. 11), section 4 and Schedule 2, paragraph 22(3), and by the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 38(2).

of State to make an order by virtue of section 7 of the 1992 Act (orders under sections 1 and 3 made otherwise than on application).

Modification of procedures under the 1968 Act and the 1992 Act

4.—(1) Where this paragraph applies—

- (a) the 1968 Act shall have effect with the modifications set out in Schedule 1;
- (b) the Transport and Works (Applications and Objections Procedure) Rules 1992⁽³⁾ shall have effect as if in rule 5(1) thereof, after sub-paragraph (h), there was inserted—
 - “(ha) a copy of the draft of any proposed order under section 104(3), 105(3) or 112 of the Transport Act 1968;”.

(2) Where this paragraph applies, the 1992 Act shall have effect with the modifications set out in Schedule 2.

Concurrent inquiries

5.—(1) Where this regulation applies and the Secretary of State causes the following inquiries to be held, namely—

- (a) a public local inquiry under section 11 of the 1992 Act for the purposes of an application made under section 6, or a proposal made by virtue of section 7, of that Act; and
- (b) an inquiry pursuant to section 158(1) of the 1968 Act (as modified by these Regulations) for the purposes of his functions under section 104(3), 105(3) or 112 of that Act;

such inquiries shall be held concurrently unless the Secretary of State considers it inappropriate to do so and has given a direction to that effect.

(2) Where two or more inquiries are held concurrently pursuant to paragraph (1) above, any rules made under section 9 of the Tribunals and Inquiries Act 1992⁽⁴⁾ applying in relation to the inquiry which is held under section 11 of the 1992 Act shall apply also in relation to the other inquiry.

Signed by authority of the Secretary of State

Roger Freeman
Minister of State,
Department of Transport

21st April 1993

⁽³⁾ S.I.1992/2902.

⁽⁴⁾ 1992 c. 53.

SCHEDULE 1

Regulation 4(1)(a)

MODIFICATIONS OF THE 1968 ACT

1. In section 105(3) (maintenance of the British Waterways Board's waterways), the words "(after consultation with the Board)" shall be omitted.

2.—(1) Section 158 (inquiries) shall be modified as follows.

(2) In subsection (1), the words from "as if those purposes" to the end of the subsection shall be omitted.

(3) After subsection (1), there shall be inserted—

"1972 c. 70

(1A) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (attendance and evidence at, and costs of, inquiries) shall apply to an inquiry held for the purposes of the functions of the Secretary of State under sections 104(3), 105(3) and 112 of this Act; but—

(a) in its application by virtue of this subsection, section 250(4) shall have effect with the omission of the words "and any amount" onwards, and

(b) the power to make an order as to costs under section 250(5) as applied by this subsection shall be exercisable not only where the inquiry takes place but also where arrangements are made for it but it does not take place."

3.—(1) Schedule 13(5) (orders relating to inland waterways) shall be modified as follows.

(2) For paragraph 1 there shall be substituted—

"1. The Secretary of State shall not make an order under section 104(3), 105(3) or 112 of this Act unless he is satisfied that the provisions of paragraphs 1A to 5 below have been complied with in relation to that order and he may make the order as originally proposed or with such modifications as he thinks fit.

1A.—(1) Where an applicant proposes that such an order should be made by the Secretary of State for the purposes of proposals included in his application, he shall submit to the Secretary of State a draft of the proposed order and, not later than 14 days thereafter, evidence by affidavit of his compliance with paragraphs 2, 3, 4 and 5(1) below.

(2) Where compliance with any of the provisions of paragraphs 2 to 4 below may require the sending of any document to an organisation and is dependent upon it appearing to the Secretary of State that—

(a) the organisation is representative of persons using an inland waterway or canal, or

(b) the circumstances are such that the applicant is required to send a copy of the document to the organisation,

an applicant shall, before submitting a draft of the proposed order under paragraph (1) above, submit to the Secretary of State a written request for him to make a determination in respect of such matter and the Secretary of State shall make a determination within 28 days of receiving that request."

(3) In paragraph 2(1), for the words "the Minister shall consult with any organisation appearing to him to represent" there shall be substituted the words "the applicant shall, forthwith after submitting a draft of a proposed order to the Secretary of State, send a copy thereof, together with a

(5) Schedule 13, paragraph 5(2) was amended by the Water Act 1989, section 190(1) and Schedule 25, paragraph 38(4).

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notice containing the information specified in paragraph 4A of this Schedule, to every organisation appearing to the Secretary of State to represent”.

(4) In paragraph 2(2), for the words from “the Minister shall consult” to the end of the sub-paragraph there shall be substituted the words “the applicant shall, forthwith after submitting a draft of the proposed order to the Secretary of State, send a copy thereof, together with a notice containing the information specified in paragraph 4A of this Schedule, to the Inland Waterways Amenity Advisory Council.”.

(5) For paragraph 3 there shall be substituted—

“3. In the case of a proposed order under section 105(3)—

- (a) in respect of a commercial waterway or any part thereof, the applicant shall, forthwith after submitting a draft of the proposed order to the Secretary of State, send a copy thereof, together with a notice containing the information specified in paragraph 4A of this Schedule,—
 - (i) to every organisation appearing to the Secretary of State to represent persons operating commercial freight-carrying vessels on such waterway or part; and
 - (ii) if it appears to the Secretary of State that such waterway or part is used to a substantial extent by cruising craft, to the Inland Waterways Amenity Advisory Council;
- (b) in respect of a cruising waterway or any part thereof, the applicant shall, forthwith after submitting a draft of the proposed order to the Secretary of State, send a copy thereof to the said Council together with a notice containing the information specified in paragraph 4A of this Schedule.”.

(6) For paragraph 4, there shall be substituted—

“4. In the case of a proposed order under section 112 in respect of a canal or part of a canal (within the meaning of that section) which appears to the Secretary of State to be used to a significant extent for the purpose of navigation, the applicant shall, forthwith after submitting a draft of the proposed order to the Secretary of State, send a copy thereof, together with a notice containing the information specified in paragraph 4A of this Schedule, to every organisation appearing to the Secretary of State to represent persons using such canal or part as aforesaid and to the said Council.

4A. The notice referred to in paragraphs 2, 3 and 4 of this Schedule is a notice of the submission of a draft of the proposed order pursuant to paragraph 1A above which shall contain in particular—

- (a) the name of the applicant;
- (b) the names and addresses of the departments to whose Secretaries of State—
 - (i) a draft of the proposed order under section 104(3), 105(3) or 112; and
 - (ii) an application under section 6 of the Transport and Works Act 1992 for an order under section 1 or 3 of that Act (and for the purposes of which such proposed order as aforesaid is required),have, respectively, been submitted;
- (c) a concise summary of the proposals contained in the application referred to in sub-paragraph (b)(ii) above;
- (d) a statement that within a period specified in the notice, being a period of not less than 42 days from the date of the notice, any person may object to the making of the proposed order by notice in writing stating the grounds of objection and given to the Secretary of State at the address specified in sub-paragraph (b)(i) above.”.

(7) For paragraph 5(1), there shall be substituted—

“(1) In the case of a proposed order under section 104(3), 105(3) or 112 in respect of any waterway, the applicant shall—

- (a) publish, forthwith after the draft of the proposed order has been submitted to the Secretary of State, in the London Gazette and in a national newspaper;
- (b) publish on 2 separate occasions (the first of which shall be not more than 14 days before, and not later than, the date of submission of the draft of the proposed order to the Secretary of State and the second not more than 7 days after such date) in one or more local newspapers circulating in the area in which the waterway is situated; and
- (c) cause to be displayed in one or more places adjacent to the waterway,

a notice of the submission of a draft of the proposed order containing in particular—

- (i) the name and address of the applicant;
- (ii) the name and address of the department to whose Secretary of State it has been submitted;
- (iii) a concise summary of the provisions contained in the draft of the proposed order;
- (iv) a statement that the proposed order is required for the purposes of an application made under section 6 of the Transport and Works Act 1992;
- (v) the names of all places, within the area in which the waterway is situated (or as close as reasonably possible to such area), where a copy of the draft of the proposed order may be inspected free of charge at all reasonable hours during a period specified in the notice, being a period of not less than 42 days from the date of submission of the draft of the proposed order; and
- (vi) a statement that, within the said period, any person may object to the making of the order by notice in writing stating the grounds of objection and given to the Secretary of State at the address specified in paragraph (ii) above;

and there shall be appended to the notice published in a national newspaper a copy of such notice of the application referred to in paragraph (iv) above as the applicant is obliged, by rules made under section 6 of the Transport and Works Act 1992, to publish in the London Gazette.

(1A) The Secretary of State shall consider every objection which is duly made to the proposed order (and is not withdrawn) and, if he has caused an inquiry to be held in connection with the proposed order, the report of the person holding the inquiry.”

(8) In paragraph 5(2)(b), for the words “the time when notice of the proposed order was published”, there shall be substituted the words “the date of submission of the draft of the proposed order to the Secretary of State”.

(9) For paragraph 6, there shall be substituted—

“6. In this Schedule

“applicant” means a person making an application for an order under section 6 of the Transport and Works Act 1992 for the purposes of which the making of an order under section 104(3), 105(3) or 112 is required;

“cruising craft” has the meaning assigned by section 105(1)(b) of this Act; and

“local authority” means, as respects England and Wales, and without prejudice to and notwithstanding the provisions of section 115(3)(a) of this Act, a county council,

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a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly and a Passenger Transport Executive.”.

SCHEDULE 2

Regulation 4(2)

MODIFICATIONS OF THE 1992 ACT

1. Section 11(4) (inquiries and hearings) shall be modified as follows.
- 2.—(1) In paragraph (a), the word “and” shall be omitted.
(2) There shall be inserted after paragraph (b)—
 - “(c) where the proposals require the making of an order under section 104(3), 105(3) or 112 of the Transport Act 1968 (classification and maintenance of the British Waterways Board’s waterways and maintenance and use of other waterways) and the holding of an inquiry in connection with that order is itself obligatory by virtue of paragraph 5(2)(a) of Schedule 13 to that Act, a local authority (not being such an authority as is mentioned in paragraph (a) above) which has made an objection in accordance with that paragraph and the National Rivers Authority; and
 - (d) where the proposals require the making of such an order as is mentioned in paragraph (c) above and the holding of an inquiry in connection with that order is itself obligatory by virtue of paragraph 5(2)(b) of Schedule 13 of the said Act, any organisation appearing to the Secretary of State to represent a substantial number of persons using the waterway in question for the purpose of navigation at the date when the application under section 6 is made;”.
- (3) For the words “purposes of paragraph (a) above”, there shall be substituted “purposes of paragraphs (a) and (c) above”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the assimilation of the procedures for—

- (a) the making of applications for orders under section 6, and proposals for orders under section 7, of the Transport and Works Act 1992, and
- (b) the making of orders under section 104(3), 105(3) or 112 of the Transport Act 1968, and the holding of inquiries in respect thereof, when an order under the 1968 Act is required in consequence of proposals contained in an application under, or made by virtue of, the 1992 Act.

The principal modifications made to the procedures are—

- (i) a person making an application for an order under section 6 of the 1992 Act must submit with his application a draft of the proposed order under the 1968 Act;
- (ii) in such a case, the procedures laid down by the 1968 Act for publicity and for the notification of and consultation with interested bodies are altered;

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- (iii) the rules applying to inquiries held under the 1992 Act into applications for, or proposals by the Secretary of State to make, orders under that Act are applied to concurrent inquiries held under the 1968 Act.