



Avon Weir Act 1992

1992 CHAPTER v

PART VI

PROTECTIVE PROVISIONS

51 For protection of National Rivers Authority

For the protection of the rivers authority, the following provisions shall, unless otherwise agreed in writing between the Corporation and the rivers authority, apply:—

(1) In this section—

“construction” includes execution, placing and altering, and, in relation to temporary works, includes removal; and “construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse as defined in the Land Drainage Act 1991, and includes any land used for providing flood storage capacity for any such watercourse and any structure or appliance constructed or used for defence against water;

“plans” includes sections, drawings, specifications, method statements and other such particulars including in relation to the weir the operational criteria;

“the prescribed minimum flow” means a flow of not less than that for which the fish pass forming part of the weir is designed or adapted;

“the protected fishery” means the river and fish in, or migratory fish proceeding to or from, the impounded river and the spawn or food of such fish;

“specified work or operation” means so much of any work or operation authorised by Part II of this Act as is likely to—

- (a) affect any drainage work or the volumetric flow rate of water in, or flowing to or from, any drainage work;
- (b) affect the flow, purity or water quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse; or
- (d) affect the conservation, distribution or use of water resources; and

“specified work” and “specified operation” shall be construed accordingly:

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- (2) The Corporation shall not under the powers of this Act acquire any apparatus belonging to or maintained by the rivers authority otherwise than by agreement:
- (3) In the event that the Corporation commences to construct Work No. 1 or any other specified work or specified operation, the rivers authority may require the Corporation—
- (a) to construct and complete the whole of that work or operation; and
 - (b) before any impoundment of the river by means of the weir, to construct and complete any other work or operation required by the rivers authority in connection with its approval of Work No. 1 under paragraph (4) below.
- (4) (a) The Corporation shall submit to the rivers authority for its approval plans of any specified work or operation and such further particulars available to it as the rivers authority may reasonably require;
- (b)
 - (i) Any such specified work or operation shall not be constructed except in accordance with plans approved in writing by the rivers authority, or settled pursuant to paragraph (17) (a) below, and in accordance with any reasonable requirements made by the rivers authority for the protection of any drainage work or of the protected fishery or water resources and for the prevention of flooding or pollution;
 - (ii) Requirements under this sub-paragraph may include, in relation to the weir, requirements as to levels, an alignment within the limits of deviation for the weir and as to the fish pass facilities and sluices which form part of the weir;
 - (c) Without prejudice to the generality of the foregoing the requirements which the rivers authority may make under sub-paragraph (b) above include conditions requiring the Corporation at its own expense—
 - (i) to provide or maintain means of access for the rivers authority;
 - (ii) to undertake landscaping; and
 - (iii) to construct such protective works whether temporary or permanent during the construction of the specified work or operation (including the provision of flood embankments or walls and other new works and the strengthening, repair or renewal of existing banks, embankments or walls) as are reasonably necessary to safeguard the weir or any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired or the risk of flooding is not otherwise increased by reason of any specified work;
 - (d) Protective works required by the rivers authority under sub-paragraphs (b) and (c) above may include the construction of such works on any land whether or not the Corporation has a sufficient interest therein and may be in addition to such works as are authorised by section 7 (Further works and powers) of this Act;
 - (e) Approval of plans submitted under this paragraph shall not be unreasonably withheld and if within a period of two months after the submission of any plans under sub-paragraph (a) above the rivers authority does not inform the Corporation in writing that it disapproves of those plans, stating the grounds of its disapproval, it shall be treated for the purposes of this section as having approved them:
- (5) (a) Any specified work or operation, and all protective works required by the rivers authority under paragraph (4) above, shall be constructed to the

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- reasonable satisfaction of the rivers authority and the rivers authority shall be entitled by its officer to watch and inspect the construction of such works and operations;
- (b) If any of the works is constructed other than in accordance with the requirements of this section, the rivers authority may by notice in writing require the Corporation at the Corporation's own expense to comply with the requirements of this section or to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition;
- (c) Subject to sub-paragraph (d) below, if, on the expiration of 30 days from the date when a notice under sub-paragraph (b) above is served upon the Corporation, it has failed to comply with the requirements of the notice, the rivers authority may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Corporation;
- (d) In the event of any dispute as to whether sub-paragraph (b) above is properly applicable to any work in respect of which notice has been served under that sub-paragraph, the rivers authority shall not except in emergency exercise the powers of sub-paragraph (c) above until the dispute has been finally determined:
- (6) (a) Any work constructed under this Act which provides a defence against flooding shall be maintained by and at the expense of the Corporation to the reasonable satisfaction of the rivers authority;
- (b) If any such work is not maintained to the reasonable satisfaction of the rivers authority it may by notice in writing require the Corporation at the Corporation's own expense to carry out such works of maintenance, repair or replacement as may be specified in the notice and if, on the expiration of 30 days from the date when the notice is served upon the Corporation, it has failed to comply with the requirements of the notice, the provisions of sub-paragraph (5) (c) above shall apply:
- (7) The Corporation shall not commence impounding of the river by means of the weir until—
- (a) such protective works as the rivers authority may require under paragraph (4) above have been constructed; and
- (b) there have been secured to the reasonable satisfaction of the rivers authority the removal, relocation, improvement or effective operation of such outfalls as the rivers authority may reasonably require having regard to the likely effect of the construction or operation of the weir upon the operation of such outfalls and the environmental effect of their operation:
- (8) (a) Without prejudice to the other provisions of this section, the Corporation shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish during the construction of the weir and shall not exercise the powers of section 11 (Dredging and other operations in river) of this Act in such a manner as is likely to affect prejudicially the operation of any fish pass facilities or other work provided to help secure or monitor the passage of fish;
- (b) The Corporation shall be responsible for and make good to the rivers authority all costs, charges, expenses and losses which may be occasioned to, suffered by, or reasonably incurred by the rivers authority in taking action—

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- (i) after notice in writing to the Corporation to protect the protected fishery against anticipated damage; or
 - (ii) to remedy any damage to that fishery;
- being damage anticipated or suffered by reason or in consequence of the execution of the works or operations authorised by this Act, of the failure or want of repair of the works, or in consequence of any act or omission of the Corporation or its contractors, agents, workmen or servants in connection with those works or operations:
- (9) (a) The Corporation shall when requested so to do in writing by the rivers authority remove any accumulation in the river caused or created in consequence of the construction of any specified work or operation where such removal is reasonably required by the rivers authority so as to secure that the efficiency of either—
 - (i) the fish pass comprised in the weir; or
 - (ii) the impounded river as a drainage work;
 is not materially impaired;
 - (b) If by reason of the construction of any specified work or operation the efficiency of any drainage work is otherwise impaired or that work is otherwise damaged, such damage shall be made good by the Corporation to the reasonable satisfaction of the rivers authority;
 - (c) If the Corporation fails to remove any accumulation or make good any damage in accordance with the requirements of this paragraph, the rivers authority may do so and recover from the Corporation the expense reasonably incurred by it in so doing;
- (10) (a) Plans of any specified work shall not be submitted by the Corporation to the Minister for his approval pursuant to section 9 of the Salmon and Freshwater Fisheries Act 1975 or to the Secretary of State under section 19 (Tidal works not to be executed without approval of Secretary of State) of this Act until plans of that work have been approved by the rivers authority or submitted for settlement under paragraph (17) (a) below, and if, on the submission of plans to the Minister or to the Secretary of State, either of them requires any alteration of the plans so approved or settled under this section, or of any such requirement relating thereto, the Corporation shall, not less than 28 days before commencing the work, inform the rivers authority of any such alteration;
 - (b) Subject to compliance with sub-paragraph (a) above, if there is any inconsistency between any plans approved or deemed to be approved by the rivers authority or settled under paragraph (4) above or any requirement relating thereto, and the plans approved by the Minister or by the Secretary of State (as the case may be) or any conditions or restrictions imposed by the Secretary of State under the said section 19 the specified work or operation shall be constructed in accordance with the plans approved by the Minister or by the Secretary of State (as the case may be) and subject to the conditions or restrictions imposed by the Secretary of State;
 - (c) When submitting any plans to the Secretary of State under the said section 19, the Corporation shall send a copy of the plans to the rivers authority and the Corporation shall, on receipt of approval of plans or of any conditions or restrictions imposed under that section, send a copy to the rivers authority:

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- (11) The Corporation shall at its own expense and in consultation with the rivers authority—
- (a) formulate and give effect to a programme for monitoring siltation or scouring, which may impair the efficiency of any drainage work, arising in consequence of the construction or operation of the weir, or any extension, enlargement, alteration or replacement of the weir; and
 - (b) formulate a programme for monitoring the effect on the protected fishery of the construction and operation of the weir or of any extension, enlargement, alteration or replacement of the weir:
- (12) The Corporation shall carry out such technical surveys and modelling as are reasonably required by the rivers authority by reason of the intended construction and operation of the weir for the purpose of securing the maintenance of water quality standards:
- (13) The Corporation shall indemnify the rivers authority in respect of the following costs, charges and expenses which the rivers authority reasonably imposes, incurs or has to pay or sustain:—
- (a) any charge made for a consent under any enactment, being a charge of the amount usually made by the rivers authority for such consents;
 - (b) the actual cost to the rivers authority of supervision by it of the construction of any specified work or the carrying out of any specified operation where such supervision is reasonably required for the purposes of any function of the rivers authority in so far as such costs are not recovered under subparagraph (a) above;
- or such lump sum in respect of such costs, charges and expenses as may be agreed between the Corporation and the rivers authority:
- (14) (a) Without prejudice to the other provisions of this section, the Corporation shall indemnify the rivers authority from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against or recovered from or incurred by, the rivers authority by reason or in consequence of—
- (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
 - (ii) any damage to the protected fishery; or
 - (iii) any raising of the water table in land adjoining the authorised works or any sewers, drains and watercourses; or
 - (iv) any flooding of land which prior to the construction of the works was not subject to flooding or any increased flooding of any land which prior to the construction of the works was subject to flooding; or
 - (v) deterioration of water quality in the river or other surface waters or in groundwater affected by the raising of the water table in any land adjoining the river;
- which may be caused by or result from the construction of any specified work or operation, or the failure or want of repair thereof, or any act or omission of the Corporation or its contractors, agents, workmen or servants whilst engaged upon the work or operation;
- (b) The rivers authority shall give to the Corporation reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Corporation:

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- (15) 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 rivers authority or to its satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the Corporation from any liability under the provisions of this section:

Provided that this sub-paragraph shall not apply to the extent that such liability arises from a failure by the rivers authority, or by the Minister or the Secretary of State (whether or not acting as an arbitrator), properly to perform their functions:

- (16) Except as otherwise provided by this Act, nothing in this Act shall prejudice or affect in their application to the rivers authority the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991, the Water Resources Act 1991, the Salmon and Freshwater Fisheries Act 1975 or any other enactment, byelaw or regulation relating to the rivers authority:
- (17) (a) Any difference arising between the Corporation and the rivers authority under paragraph (4) or (8) above shall be settled by the Minister and the Secretary of State acting jointly on a reference to them by the Corporation or the rivers authority after notice by one to the other;
- (b) Subject to sub-paragraph (a) above any difference arising between the rivers authority and the Corporation under this section (other than a difference as to the construction thereof) shall be settled by arbitration.