British Waterways Act 1995

1995 CHAPTER i

PART I

PRELIMINARY

1 Short and collective titles

(1) This Act may be cited as the British Waterways Act 1995.

(2) The British Waterways Acts 1963 to 1988 and this Act may be cited together as the British Waterways Acts 1963 to 1995.

2 Interpretation

(1) In this Act, unless the context otherwise requires—

"the Act of 1968" means the Transport Act 1968;

"the Act of 1971" means the British Waterways Act 1971;

"the Act of 1983" means the British Waterways Act 1983;

"authorised officer" means any person duly authorised in writing by or on behalf of the Board;

"the Board" means the British Waterways Board;

"commercial waterway" and "cruising waterway" have the meanings given by section 104 of the Act of 1968;

"daily fine" means a fine for each day or part of a day on which an offence is continued after conviction thereof;

"inland waterway" means any canal or inland navigation belonging to or under the control of the Board and includes any works, lands or premises belonging to or under the control of the Board and held or used by them in connection with such canal or inland navigation;

"remainder waterway" means an inland waterway of the Board which is not for the time being a commercial waterway or a cruising waterway;

"river purification authority", in relation to Scotland, means a river purification board established under section 135 of the Local Government (Scotland) Act 1973 or an islands council;

"the specified provisions" means sections 2 (2) to (5) and 4 of the Land Compensation Act 1961 or, in relation to Scotland, sections 9 (2) to (5) and 11 of the Land Compensation (Scotland) Act 1963;

"the tribunal" means the Lands Tribunal or, in Scotland, the Lands Tribunal for Scotland; and

"vessel" includes any ship, boat, barge, lighter or raft and any other description of craft, whether used in navigation or not.

(2) Any reference in this Act to a Part not otherwise identified is a reference to that Part of this Act.

PART II

ENTRY ON LAND

3 Interpretation of Part II

(1) In this Part—

"emergency operations" means relevant operations carried out pursuant to section 4 (Entry on to land in cases of emergency) of this Act;

"land", in relation to Scotland, includes an interest in land and references to entry on to land shall be construed accordingly; and any reference to land shall include a reference to salmon fishings;

"on", in relation to the carrying out of relevant operations on land, includes in, under or over;

"owner" means—

(a) in relation to any land in England or Wales, a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack-rent of the land or, where the land is not let at a rack-rent, would be entitled if it were so let; and

(b) in relation to any land in Scotland, the person (other than a heritable creditor not in possession) for the time being entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the land, and includes a trustee, factor, tutor or curator;

"relevant operations" means—

(a) the repair, maintenance, alteration, renewal, protection or demolition of any inland waterway;

(b) the repair, maintenance, alteration, renewal or protection of any works (not forming part of any inland waterway) for the drainage of, or supply of water to, any inland waterway;

(c) any inspection, survey or investigation of any inland waterway or adjoining land, or any works such as are referred to in paragraph (b) above, for the purpose of ascertaining whether any such repair, maintenance, alteration, renewal, protection or demolition is required;

"relevant undertaker" means any of the following—

(a) the National Rivers Authority or, in Scotland, the river purification authority in whose area the land on which relevant operations are carried out or proposed to be carried out is situated;

(b) the British Coal Corporation;

(c) any of the following undertakers, that is, any—

(i) water undertaker or water authority within the meaning of the Water (Scotland) Act 1980;

(ii) sewerage undertaker or local authority within the meaning of the Sewerage (Scotland) Act 1968;

(iii) internal drainage board; or

(iv) supplier of electricity within the meaning of Part I of the Electricity Act 1989;

which has apparatus in the area where the land upon which relevant operations are carried out or proposed to be carried out is situated;

(d) any of the following undertakers, that is, any—

(i) public gas supplier within the meaning of Part I of the Gas Act 1986; or

(ii) generator or transmitter of electricity within the meaning of Part I of the Electricity Act 1989;

which has apparatus on, under or over land upon or immediately adjacent to which relevant operations are carried out or proposed to be carried out;

(e) any undertakers authorised by any enactment to carry on any water transport, canal, inland navigation, dock, harbour or pier undertaking if in any case the land on which relevant operations are carried out or proposed to be carried out is in the ownership or occupation of any such undertakers, or is immediately adjacent to any land in the ownership or occupation of any such undertakers;

(f) any telecommunications operator within the meaning of the Telecommunications Act 1984 having any telecommunication apparatus (as defined in that Act) in the area where relevant operations are carried out or proposed to be carried out; and

"road", in relation to Scotland, means any public or private road within the meaning of the Roads (Scotland) Act 1984.

(2) For the purposes of subsection (1) above, "maintenance" includes the removal, felling, cutting back or treating of any tree or other vegetation.

4 Entry on to land in cases of emergency

(1) Where the Board have reasonable cause to believe that—

(a) the carrying out of relevant operations is necessary; and

(b) the relevant operations are required to be carried out without delay—

(i) in the case of any relevant operations consisting of any inspection, survey or investigation, for the purpose of confirming that there exists an immediate danger to persons or property and, if so, establishing the nature of the repair, maintenance, alteration, protection or demolition required to remove the danger;

(ii) in the case of any other relevant operations, for the purpose of removing or facilitating the removal of any immediate danger to persons or property; and

(c) it would not be reasonably practicable for the operations to be carried out without entry on to land (other than a highway or, in Scotland, a road) adjoining or in the vicinity of an inland waterway;

any person authorised in writing in that behalf by the Board may enter the land and carry out the operations on that land or on any adjoining land of the Board.

(2) The Board shall inform the owner and occupier of the land as soon as possible of the carrying out of emergency operations and, not more than 7 days after the entry on that land, they shall serve on such owner and occupier a notice—

(a) specifying the land upon which entry has been made and the nature of the emergency operations; and

(b) containing details of the right of the occupier to claim payment for such entry and the right of the owner and occupier to claim compensation under this Part.

5 Notice of entry, etc

(1) Where the Board have reasonable cause to believe that—

(a) the carrying out of relevant operations other than emergency operations is necessary; and

(b) it would not be reasonably practicable for the operations to be carried out without entry on to land (other than a highway or, in Scotland, a road) adjoining or in the vicinity of an inland waterway;

the Board may serve a notice (in this Part called "a notice of entry") in the terms prescribed in subsection (4) below.

(2) A notice of entry shall be served—

(a) on the owner of the land;

(b) on the occupier of the land, if not the owner; and

(c) on every relevant undertaker.

(3) A copy of every notice of entry shall be posted in some conspicuous place on or near the land specified in the notice not less than 28 days before entry is proposed to be made.

(4) A notice of entry—

(a) shall specify—

(i) the land on which entry is proposed to be made;

(ii) the nature of the relevant operations, the manner in which it is proposed they should be carried out and the nature of any apparatus to be placed and left on the land in connection with the relevant operations;

(iii) the date upon which it is intended that the relevant operations will commence (which shall not be earlier than the day after the last date upon which a counter-notice under subsection (5) below may be served in respect of the notice of entry) and their maximum duration; and

(iv) the hours during which the relevant operations are to be carried out;

(b) shall contain details of the rights to object to the notice (including a form of counter-notice for use by the recipient pursuant to the following provisions of this section) and to claim payment for such entry together with compensation under this Part; and

(c) shall state that it would not be reasonably practicable for the operations to be carried out without entry on the land specified in the notice.

(5) (a) A person served with a notice of entry may, within 28 days from the date on which the notice is served on him, serve on the Board a counter-notice (in this Part called "a counter-notice") stating that—

(i) he consents unconditionally to the entry by the Board on the land described in the notice and to the carrying out of the relevant operations specified in the notice, in the manner so specified ("the proposals of the notice of entry"); or

(ii) he objects to the proposals of the notice of entry on any one or more of the grounds mentioned in subsection (6) below, which shall be specified in the counter-notice.

(b) If the recipient of a notice of entry does not within 28 days serve a counter-notice on the Board, he shall be deemed to have granted his consent unconditionally to the proposals of the notice of entry.

(6) The grounds upon which objection may be made to a notice of entry are—

(a) that it would be reasonably practicable for the operations mentioned in the notice to be carried out in some other way not involving entry on to the land specified in the notice;

(b) that the carrying out of the relevant operations is unnecessary;

(c) that the maximum duration of the relevant operations, as stated in the notice of entry, is excessive, having regard to the nature of the relevant operations;

(d) that there has been some informality, defect or error in, or in connection with, the notice;

(e) that the notice should lawfully have been served on another person;

(f) that the proposals of the notice of entry will interfere unreasonably with the use and enjoyment of the land by the recipient of the notice of entry and that the Board should be required to comply with the conditions specified in the counter-notice with respect to those proposals, or that the proposals should be modified in the manner specified in the counter-notice for the purpose of reducing or preventing such interference;

(g) (where the recipient is a relevant undertaker) that the proposals of the notice of entry would be detrimental to the carrying on by the recipient of its undertaking and that—

(i) having regard to the detriment entry by the Board should not be permitted; or

(ii) the Board should be required to comply with the conditions specified in the counter-notice with respect to those proposals, or that the proposals should be modified in the manner specified in the counter-notice, for the purpose of reducing or preventing such detriment.

(7) Upon receipt of a counter-notice the Board shall within 28 days—

(a) inform the recipient of the notice of entry in writing that—

(i) the notice of entry has been withdrawn (without prejudice to the right of the Board to serve a further notice of entry on the recipient or on any other person); or

(ii) the Board will accept and comply with the conditions with respect to matters such as are mentioned in subsection (6) (f) or (g) above and

specified in the counter-notice or modify the proposals of the notice of entry; or

(b) where the person is a relevant undertaker, refer the counter-notice to arbitration; or

(c) in any other case, appeal against the counter-notice to a magistrates' court or, in Scotland, to the sheriff having jurisdiction over the area where the land to which the notice of entry relates is situated.

(8) On any reference to arbitration under subsection (7) (b) above the arbitrator or, in Scotland, the arbiter may have regard to any court order made on any appeal under subsection (7) (c) above relating to the proposals of the notice of entry which is the subject of the reference.

(9) On any appeal under subsection (7) (c) above, the court or the sheriff may have regard to any award of an arbitrator or, in Scotland, an arbiter made following a reference under subsection (7) (b) above relating to the proposals of the notice of entry which is the subject of the appeal.

(10) An appeal under this section shall be by way of complaint for an order or, in Scotland, by way of summary application.

(11) For the purposes of the time limit for bringing an appeal under this section, the making of the complaint or, in Scotland, the lodging of the initial writ shall be treated as the bringing of the appeal.

(12) In so far as a counter-notice is based on the ground of some informality, defect or error in or in connection with the notice of entry the court or, as the case may be, the sheriff, arbitrator or arbiter shall uphold the notice of entry if it or he is satisfied that the informality, defect or error was not a material one.

(13) On the hearing of the appeal the court or, in Scotland, the sheriff may make such order as it or he thinks fit.

(14) A person aggrieved by an order of a magistrates' court or the sheriff under this section may appeal to the Crown Court or to the sheriff principal, as the case may be.

6 Power to enter land and carry out relevant operations pursuant to notice of entry

On or after the date mentioned in the notice of entry, or, if a notice of entry is upheld on appeal (with or without modification) after service of a counter-notice, after the notice of entry has been upheld, any person authorised in writing in that behalf by the Board may enter on the land and carry out on that land or on any adjoining land of the Board the relevant operations of the nature specified in the notice during the hours and in the manner so specified.

7 Saving in cases of emergency

Nothing contained in or done under section 5 (Notice of entry, etc.) or section 6 (Power to enter land and carry out relevant operations pursuant to notice of entry) of this Act shall affect the powers of the Board under section 4 (Entry on to land in cases of emergency) of this Act to enter land and carry out emergency operations at any time.

8 Further provisions as to entry

(1) (a) The power to carry out relevant operations includes power—

(i) to place and leave on the land apparatus for use in connection with the relevant operations in question, and to remove such apparatus; and

(ii) to carry out excavations.

(b) The nature of any apparatus and of any proposed excavations such as are referred to in paragraph (a) above shall be specified in the notice of entry in the case of relevant operations which are not emergency operations.

(c) If the Board carry out any excavation under the powers of paragraph (a) (ii) above they shall make good the surface of the land as soon as reasonably practicable after the completion of the relevant operations.

(2) In carrying out any relevant operations in pursuance of section 4 (Entry on to land in cases of emergency) of this Act, the Board shall secure that as little damage as may be is done.

(3) A person authorised by the Board to enter on land in pursuance of section 4 (Entry on to land in cases of emergency) or section 6 (Power to enter land and carry out relevant operations pursuant to notice of entry) of this Act—

(a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;

(b) may take with him on to the land such other persons and such vehicles, materials and equipment as are necessary for the relevant operations;

(c) shall leave the land as effectually secured against trespassers as he found it unless the occupier of the land or his agent indicates that he does not wish the land to be so secured.

(4) As soon as reasonably practicable after the completion of any relevant operations and any making good carried out under subsection (1) (c) above the Board shall remove any apparatus, vehicles and equipment and any unused materials from the land.

(5) Nothing in this Part shall authorise the Board to—

(a) enter any building or any operational railway, tramroad or any part of a tramway laid otherwise than in a highway or, in Scotland, a road; or

(b) use or interfere with any apparatus of a relevant undertaker, unless the Board are entitled to do so otherwise than by virtue of this Part; or

(c) construct any permanent works on any land unless the Board have a sufficient right or interest in the land apart from this Part.

(6) The Board when they have entered any land pursuant to this Part shall commence the relevant operations for the purposes of which entry was made as soon as is reasonably practicable and shall complete them with all reasonable dispatch.

(7) Nothing in this Part shall authorise the Board to enter any land for the purposes of or in connection with the development of any land, being land not forming part of any inland waterway or of any works such as are mentioned in paragraph (b) of the definition of relevant operations in section 3 of this Act.

9 Payment for entry

(1) The Board shall pay to the occupier of any land upon which entry is made in accordance with this Part a sum in respect of such entry which shall be assessed in accordance with subsections (2) and (3) below.

(2) The sum payable under subsection (1) above shall be such sum as would have been paid if the occupier had entered into an agreement with the Board granting to them rights to enter the land for such period and for such purposes as entry has been made in accordance with this Part and (where entry is made pursuant to a notice of entry) on such conditions as are specified in any counter-notice and accepted by the Board or imposed—

(a) on any reference to arbitration of a counter-notice, by an arbitrator or arbiter;

(b) on any appeal against a counter-notice, by a court or the sheriff.

(3) Part II of the Land Compensation Act 1961 or, in Scotland, Part III of the Land Compensation (Scotland) Act 1963, so far as material, shall apply to the assessment of the sum payable under subsection (1) above as though the rights deemed by subsection (2) above to be granted to the Board had been acquired by them compulsorily and in assessing that sum regard shall be had to the degree of inconvenience caused to the occupier by the entry.

(4) Nothing in this section shall require the Board to defer or suspend entry on land or the carrying out of relevant operations while any dispute as to the sum payable under subsection (1) above is determined.

(5) The rights of any person to a payment under subsection (1) above shall be without prejudice to the rights of that or any other person to recover compensation under section 10 (Compensation) of this Act.

10 Compensation

If a person suffers loss or damage in consequence of—

(a) entry on to land in accordance with this Part; or

(b) the carrying out of relevant operations in accordance with this Part; or

(c) the failure by the Board to comply with any condition—

(i) specified in a counter-notice and accepted by the Board; or

(ii) imposed—

(A) on any reference to arbitration of a counter-notice, by an arbitrator or arbiter;

(B) on any appeal against a counter-notice, by a court or the sheriff;

he shall be entitled to recover compensation for the loss or damage from the Board.

11 Disputes as to payments, etc

Any dispute as to a person's entitlement to—

(a) a payment under section 9 (Payment for entry) of this Act; or

(b) compensation in pursuance of section 10 (Compensation) of this Act;

or as to the amount of the payment or compensation shall be determined—

(i) where the person is a relevant undertaker, and the dispute does not relate to the meaning or construction of either of the said sections of this Act, by arbitration;

(ii) in any other case, by the tribunal, and the specified provisions (which relate to the conduct of certain proceedings before the tribunal and costs) shall with necessary modifications apply in relation to the determination by the tribunal of such a dispute.

12 Offences under Part II

(1) If a person—

(a) intentionally obstructs another person in the exercise of any power of entry conferred on the other person by this Part; or

(b) while another person is on any land in pursuance of this Part intentionally obstructs him in carrying out any emergency operations or any relevant operations specified in a notice of entry (and not superseded by any conditions accepted or modifications made under subsection (7) (a) (ii) of section 5 (Notice of entry, etc.) of this Act, or by the order of any court or the sheriff or the award of an arbitrator or arbiter), as the case may be; or

(c) without reasonable excuse removes or otherwise interferes with apparatus left on or in land in pursuance of subsection (1) of section 8 (Further provisions as to entry) of this Act;

he shall be guilty of an offence and liable, on summary conviction, to a fine—

(i) in the case of an offence of obstructing another person in the exercise of a power conferred by section 4 (Entry on to land in cases of emergency) of this Act, not exceeding level 4 on the standard scale; and

(ii) in the case of any other offence, not exceeding level 2 on the standard scale.

(2) It shall be a defence in any prosecution for an offence under subsection (1) (a) or (b) above that the person obstructed could not reasonably be identified as a person entitled to exercise powers under this Part.

(3) If a person who has entered on any land in pursuance of this Part discloses to another person information obtained by him there about a manufacturing process or trade secret, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

13 For protection of relevant undertakers

(1) The Board shall as soon as possible inform all relevant undertakers of the carrying out of emergency operations likely to affect them and shall thereafter give notice as soon as possible to the relevant undertakers of any such operations.

(2) A person authorised by the Board to enter on land in pursuance of section 6 (Power to enter land and carry out relevant operations pursuant to notice of entry) of this Act shall not exercise any of the powers of that section unless notice of his intention to do so has been served by the Board, not less than 28 days before he does so, on any relevant undertakers.

(3) This section shall have effect subject to any agreement between the Board and any relevant undertakers.

Status: *This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

14 For protection of Port of London Authority

Nothing in this Part affects the obligation of the Board to obtain a works licence under section 66 of the Port of London Act 1968 (which relates to the licensing of works in the river Thames and adjoining waters) in respect of any operation constituting works to which that section relates.

15 Saving for Thames Conservancy Act 1932

Nothing in this Part affects the obligation of the Board to obtain a licence under Part III of the Thames Conservancy Act 1932 in respect of any operation requiring a licence under that Part.

PART III

REGULATION AND MANAGEMENT OF INLAND WATERWAYS

16 General terms of houseboat certificates

(1) A houseboat certificate issued or renewed after the passing of this Act under the Act of 1971 shall, unless the certificate or some other document referred to in the certificate provides otherwise, be subject to the general terms set out in Schedule 1 to this Act in addition to such conditions (if any) as the Board may determine under section 14 (Registration of houseboats) of the Act of 1971.

(2) The Board shall on demand provide a copy of the general terms for the time being in force under this section to any person requiring the same and to the holder on the issue or renewal of the certificate.

(3) A houseboat certificate shall contain or refer to some other document containing the general terms and any conditions to which it is subject.

(4) The following provisions of the Act of 1971 shall cease to have effect—

(a) in section 17 (Duration of boat certificates) (which applies to the undertaking of the Board in Scotland)—

(i) the words "and a houseboat certificate" in subsection (1); and

(ii) the words "or a houseboat certificate" in subsection (2);

(b) in section 19 (Registration of transfers of pleasure boats and houseboats)—

(i) the words "or a houseboat", "or a houseboat certificate, as the case may be" and "or houseboat certificate" in subsection (1);

(ii) the words "or houseboat certificate, as the case may be" and "or houseboat" in subsection (2); and

(iii) the words "or houseboat, as the case may be" in subsection (3).

17 Conditions as to certificates and licences

(1) In this section—

"houseboat certificate" means a houseboat certificate issued under the Act of 1971;

"insurance policy" means an insurance policy complying with Part I of Schedule 2 to this Act;

"licence" means a licence issued by the Board in respect of any vessel allowing the use of the vessel on any inland waterways;

"pleasure boat certificate" means a pleasure boat certificate issued under the Act of 1971;

"relevant consent" means a houseboat certificate, a licence or a pleasure boat certificate; and

"standards" means standards for the construction and equipment of vessels prescribed under this section and Part II of the said Schedule 2.

(2) Part I of Schedule 2 to this Act shall have effect with respect to insurance policies and Part II of that Schedule shall have effect with respect to standards.

(3) Notwithstanding anything in any enactment but subject to subsection (7) below, the Board may refuse a relevant consent in respect of any vessel unless—

(a) the applicant for the relevant consent satisfies the Board that the vessel complies with the standards applicable to that vessel;

(b) an insurance policy is in force in respect of the vessel and a copy of the policy, or evidence that it exists and is in force, has been produced to the Board; and

(c) either—

(i) the Board are satisfied that a mooring or other place where the vessel can reasonably be kept and may lawfully be left will be available for the vessel, whether on an inland waterway or elsewhere; or

(ii) the applicant for the relevant consent satisfies the Board that the vessel to which the application relates will be used bona fide for navigation throughout the period for which the consent is valid without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances.

(4) If—

(a) (subject to subsection (6) below) the vessel does not comply with the standards applicable to the vessel on the date when the consent was granted; or

(b) an insurance policy is not in force in respect of the vessel; or

(c) either—

(i) (in the case of a vessel in respect of which a relevant consent is issued pursuant to subsection (3) (c) (i) above) it appears to the Board that a mooring or other place such as is referred to in subsection (3) (c) (i) above is not available for the vessel; or

(ii) (in the case of a vessel in respect of which a relevant consent is issued pursuant to subsection (3) (c) (ii) above) the vessel has not in fact been used bona fide for navigation in accordance with the said subsection (3) (c) (ii);

the Board may give notice requiring the holder of the relevant consent to remedy the default within such time as may be reasonable (not being less than 28 days).

(5) If the holder of the relevant consent does not comply with any notice served pursuant to subsection (4) above then the relevant consent shall determine on the date the notice expires.

(6) Where prior to the grant of a relevant consent a certificate ("the boat safety certificate") has been issued by a person authorised by the Board so to do in respect of a vessel confirming that the vessel complies with the standards applicable to it at the date upon

which the boat safety certificate is issued, subsection (4) (a) above shall have effect throughout the period for which the boat safety certificate is expressed to be valid as if for reference to the date when the consent was granted there were substituted reference to the date when the boat safety certificate was issued.

(7) (a) In this subsection—

"designated vessel" means any vessel in respect of which a relevant consent has been in force at any time during the qualifying period other than—

(i) a houseboat registered under the Act of 1971 for the first time after 31st December 1979; or

(ii) any hire pleasure boat, that is, any pleasure boat which is let, lent, hired or engaged for gift, pay, hire or reward or promise of payment or carries or conveys passengers for a charge or payment; or

(iii) any pleasure boat (not being a hire pleasure boat) adapted or used for the carriage or conveyance of passengers, being a vessel in respect of which the Board are satisfied that a multi-user licence would be appropriate; and

"the qualifying period" means the period commencing twelve months before the date of the passing of this Act and ending six months before the date of the passing of this Act.

(b) The Board shall not—

(i) before the first anniversary of the passing of this Act, in the case of any designated vessel constructed after 31st December 1970; or

(ii) before the second anniversary of the passing of this Act, in the case of any designated vessel constructed before 1st January 1971;

refuse or withdraw a relevant consent in respect of the vessel on the grounds that the vessel does not or has ceased to comply with the standards applicable to it.

(8) The Board shall not within the period expiring at the end of the sixth month after the month current at the date of the passing of this Act refuse or withdraw a relevant consent in respect of any vessel on the grounds that a mooring or other place such as is referred to in subsections (3) (c) (i) and (4) (c) (i) above is not available for the vessel.

(9) Nothing in this section shall affect any power of the Board under any other enactment to refuse or withdraw a relevant consent.

(10) Section 3 (Construction and equipment of vessels) of the Act of 1983 shall cease to have effect.

(11) (a) The refusal or withdrawal by the Board of a relevant consent in respect of any vessel on the grounds that the vessel does not comply with the standards applicable to that vessel shall not preclude the movement or use of the vessel with the consent of the Board (which shall not be unreasonably withheld) and subject to such reasonable conditions (if any) as they may determine.

(b) Without prejudice to the generality of paragraph (a) above, the Board shall not withhold their consent under this subsection to the movement or use of a vessel for the purpose of taking it to a place where it may be repaired or modified so as to comply with the standards applicable to it, or for the purpose of taking the vessel to be destroyed, unless such movement or use would give rise to the risk of obstruction or danger to navigation or to persons or property.

(c) Nothing in this section shall affect the operation of section 7 (Control of unsafe vessels) of the Act of 1983.

18 Obstruction by vessels

(1) No person shall moor or otherwise leave a vessel on an inland waterway so as to cause obstruction or hindrance to navigation or to the free passage of persons or vehicles over and along the towing path beside the inland waterway.

(2) Any person who without reasonable excuse contravenes subsection (1) above in such a way as to cause, or give rise to the risk of, injury to any person or damage to property shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Any vessel moored or allowed to remoor in contravention of subsection (1) above shall be deemed to be a relevant craft for the purpose of section 8 (Removal of vessels) of the Act of 1983 or, in Scotland, a vessel for the purposes of section 19 (As to vessels sunk, stranded or abandoned) of the British Transport Commission Act 1958.

19 Removal of vessels to permit works, etc

(1) When any vessel is moored or lying in such a position as is likely to interfere with any dredging, repairs, maintenance works, or any other works or operations of the Board, or any works or operations proposed to be carried out by any other authority or body in pursuance of any statutory functions, the Board may serve on the owner of such vessel a notice requiring him within 28 days of the date upon which the notice is served to remove the vessel for such time as the Board or such other authority or body may reasonably require for the completion of such works or operations.

(2) Where any vessel is moored or allowed to remain in contravention of a notice served under subsection (1) above the Board may without further notice remove the vessel.

(3) Where any vessel is removed by the owner or the Board pursuant to this section, the Board shall if the vessel was lawfully moored at the time of the removal make available a suitable temporary mooring for the vessel until the completion of the works or operations which required its removal.

(4) If the Board remove a vessel pursuant to subsection (2) above they shall if it was lawfully moored provide a suitable temporary mooring for the vessel and replace the same as soon as practicable after the completion of the works or operations which required its removal.

(5) (a) If the Board in exercise of the powers of this section remove a vessel to a place not readily visible from the place from which it was removed they shall serve on the owner—

(i) as soon as practicable after the removal, a notice that they have exercised the powers of this section stating the place to which the vessel has been removed; and

(ii) as soon as practicable after the replacement of the vessel, a notice that the vessel has been replaced.

(b) This subsection shall not have effect if the Board after reasonable inquiry are unable to establish the name and address of the owner or for any other sufficient reason are unable to serve the notice; and subsection (2) (d) of

section 17 (Notices) of the Act of 1983 shall not apply to notices under this subsection.

(6) The removal or replacement by the Board under this section of any vessel which at the time of the removal was lawfully moored shall be at the cost and risk of the Board, and if any person suffers loss or damage in consequence of the exercise of the powers of this section in relation to any hire pleasure boat within the meaning of section 3 of the Act of 1971, he shall be entitled to recover compensation for the loss or damage from the Board.

(7) Any dispute as to a person's entitlement to compensation in pursuance of subsection (6) above or as to the amount of the compensation shall be determined by arbitration.

(8) For the purposes of this section a vessel shall not be deemed to be unlawfully moored solely by virtue of its being moored or allowed to remain in contravention of a notice served under subsection (1) above.

20 Provisions as to private moorings

(1) Conditions attached to a certificate granted under section 21 (Control of moorings, etc.) of this Act may regulate the exercise of private rights of mooring on any inland waterway but in exercising the said powers the Board shall have due regard to the desirability of refraining from interference with private rights and established mooring practices and shall not prevent the mooring of any vessel which could lawfully have been moored pursuant to any such private right but for the exercise of such powers.

(2) A notice under section 19 (Removal of vessels to permit works, etc.) of this Act shall have effect notwithstanding any private rights of mooring.

(3) In this section "private rights of mooring" include any rights conferred by the Board or (in England or Wales) enjoyed as an incident of an interest in land.

21 Control of moorings, etc

(1) As from such day as the Board may by resolution appoint, no person shall, in an inland waterway specified in that resolution, construct or maintain any structure being a mooring post, gangway, landing stage or other erection or installation for any vessel unless there is in force in relation to that structure a certificate granted by the Board under this section.

(2) An application for the grant or renewal of a certificate under this section shall be made in writing and shall—

(a) give the name and address of the person responsible for the structure;

(b) specify the type of structure and its precise location;

(c) contain such other particulars as the Board may reasonably require.

(3) Upon receipt of an application made in accordance with the requirements of this section the Board shall grant, or as the case may be, renew a certificate under this section for such period not being less than 5 years as they may determine.

(4) It shall be a condition of every certificate granted under this section that the structure shall be maintained in good repair and not allowed to become unsafe or an obstruction or danger to navigation.

(5) The Board may at any time, upon giving written notice in accordance with subsection (6) below, refuse to grant or renew a certificate or, as the case may be, revoke a certificate if they are satisfied that the structure which is the subject of the application or certificate, or any part of it, is not in good repair, or is or will become unsafe or an obstruction or danger to navigation.

(6) For the purposes of subsection (5) above, written notice shall be given to the applicant for the certificate as applied for or granted and, where different, the person named in the application or, as the case may be, certificate as the person responsible for the structure.

(7) Any dispute between the Board and any applicant for, or person named in, a certificate as responsible for the structure respecting a failure or refusal by the Board to grant or renew a certificate or respecting a decision by the Board to revoke a certificate shall be determined by arbitration.

(8) Pending the determination of any reference to arbitration under this section in relation to an existing structure, there shall be deemed to be a certificate in force in relation to that structure and any failure or refusal by the Board to grant or renew a certificate in relation to the structure or a revocation of the certificate in relation to a structure shall be ignored.

(9) Nothing in this section, or in any certificate under this section, shall relieve any person of the obligation to obtain consent under section 109 of the Water Resources Act 1991 (which requires the consent of the National Rivers Authority to the erection of any structure in, over or under a watercourse which is designated as a main river).

(10) Nothing in this section shall apply to—

(a) any item of equipment designed to secure or to afford access to or from a vessel which when not in use is normally carried on board the vessel;

(b) any mooring post, erection or installation no part of which is situated on, in, under or over the waters of any inland waterway;

(c) any structure or apparatus belonging to or required by the National Rivers Authority.

(11) Nothing in this section, or in any certificate under this section, shall—

(a) entitle a person to construct or maintain any mooring post, gangway, landing stage or other erection or installation for any vessel on land in respect of which he does not hold such rights as are necessary to enable him to exercise the powers of the certificate;

(b) require the Board to grant any right or interest in any land; or

(c) prejudice the right of the Board to require any payment for any right or interest granted by them in any land to enable the said powers to be exercised.

(12) The Board may by notice require a person who contravenes this section—

(a) to remove or abate within a reasonable time specified in the notice any works to which the contravention relates and to restore the site thereof to its former condition; or

(b) in the case of any contravention of subsection (4) above, to repair or alter the structure so as to avoid such contravention;

and, if the person to whom the notice is given fails to comply with the notice, the Board may carry out the work required by the notice and recover the cost of so doing from that person.

PART IV

MISCELLANEOUS AND GENERAL

22 General environmental and recreational duties

(1) It shall be the duty of the Board, in formulating or considering any proposals relating to their functions—

(a) so far as may be consistent with the purposes of any enactment relating to those functions, so to exercise any power conferred on them with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest; and

(c) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.

(2) Subject to subsection (1) above, it shall be the duty of the Board, in formulating or considering any proposals relating to their functions—

(a) to have regard to the desirability of preserving for the public any freedom of access to towing paths and open land and especially to places of natural beauty;

(b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest;

(c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility;

(d) to take into account the desirability of protecting for future use as cruising waterways, or as areas appropriate for other public recreational use, remainder waterways with potential for such use.

(3) It shall be the duty of the Board in determining what steps to take in performance of any duty imposed by virtue of subsection (1) or (2) above to take into account the needs of persons who are chronically sick or disabled.

(4) Nothing in this section shall require recreational facilities made available by the Board to be made available free of charge.

(5) In this section—

"building" includes a structure; and

"functions" includes powers and duties.

23 Amendment of section 49 of Transport Act 1968.

Subsection (4) of section 49 of the Act of 1968 (powers with respect to land) shall be amended as follows:—

(a) in place of paragraph (b) there shall be substituted the following:—

"(b) in the case of the Waterways Board adjoins or is situated in the vicinity of any inland waterway comprised in the undertaking of that Board,";

(b) in place of "that commercial or cruising waterway" there shall be substituted "that waterway";

(c) the words "or as the case may be, the waterway services of the Waterways Board" shall be omitted; and

(d) after "can be directly used" there shall be inserted "or, as the case may be, the waterway can be conveniently used".

24 As to power to establish undertakings on request

The power of the Board under section 50 (7) of the Act of 1968 to provide for any person technical advice and assistance, including research, shall include power, exercisable on the request of any such person, to establish for that person an undertaking carrying on any business in which the Board have skill or experience and, until such person is ready to manage such undertaking himself, to manage it on his behalf.

25 Power to appropriate parts of docks

(1) In this section, "the docks" means the Ardrishaig Dock, Gloucester Docks and Sharpness Docks of the Board, or any of them.

(2) Notwithstanding anything in any statutory provision of local application, the Board may from time to time set apart and appropriate any lands, works, buildings, machinery, equipment, facilities or any other property forming part of the docks for the exclusive, partial or preferential use and accommodation of any particular trade, activity, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Board think fit.

(3) Where any part of the docks is set apart and appropriated under this section no person or vessel shall make use of that part (except so far as may be authorised by the terms of the setting apart or appropriation) without the consent of a duly authorised officer of the Board and such officer may order any person or vessel making use thereof without such consent to leave or be removed and the provisions of section 58 of the Harbours, Docks and Piers Clauses Act 1847 (powers of harbour master to move vessels in harbour) shall apply with the necessary modifications to and in relation to any such vessels.

26 Weston Point Docks

As from the passing of this Act the provisions of section 33 of the Harbours, Docks and Piers Clauses Act 1847 shall cease to apply to the Board in relation to their Weston Point Docks at Runcorn in the county of Cheshire.

27 Provisions as to sections 25 and 26

Nothing in section 25 (Power to appropriate parts of docks) or section 26 (Weston Point Docks) of this Act shall authorise the Board to prevent or restrict the use by vessels of the docks (as defined in the said section 25) or the Weston Point Docks as

a means of access between any two or more areas of water adjoining or in the vicinity of the docks or the Weston Point Docks, as the case may be.

28 Limehouse Basin

(1) In this section—

"the basin" means the Limehouse Basin of the Board in the London Borough of Tower Hamlets (formerly known as Regents Canal Dock); and

"the lock" means the lock between the basin and the river Thames.

(2) For the avoidance of doubt it is hereby declared that for the purposes of any enactment the limits of jurisdiction of the Board over the basin extend to the lower gates of the lock and thence over all waters to the south of, and lying within 74 metres of an imaginary line drawn between the pivots of, the said gates.

29 Repeal of section 147 of Severn Navigation Act 1842

Section 147 (Locks to be open Night and Day) of the Act 5 & 6 Vict. (1842) intituled "An Act for improving the Navigation of the Severn from the Entrance Lock of the Gloucester and Berkeley Canal, and from the Entrance Lock of the Herefordshire and Gloucestershire Canal, in the County of Gloucester, to Gladder or Whitehouse Brook in the County of Worcester" shall cease to have effect.

30 River Weaver to be river waterway

Section 4 (Extent of Part II) of the Act of 1971 shall have effect as if there were included in Schedule 1 to that Act the following additional paragraph:—

"The river Weaver from Winsford Bridge to Shrew Bridge in the County of Cheshire.".

31 Notices

(1) Subject to subsection (5) of section 19 (Removal of vessels to permit works, etc.) of this Act, section 17 (Notices) of the Act of 1983 shall apply to all notices authorised or required to be served on any person by or under this Act.

(2) Subsection (2) (e) of the said section 17 shall apply to notices under subsection (2) of section 4 (Entry on to land in cases of emergency) of this Act, to notices of entry under section 5 (Notice of entry, etc.) of this Act and to notices under subsection (12) of section 21 (Control of moorings, etc.) of this Act as it applies to notices under section 12 (Power to obtain particulars of persons interested in land) of the Act of 1983, as though the said section 12 applied to Scotland as well as to England and Wales.

32 Arbitration

Where under any provision of this Act any difference (other than a difference as to the meaning or construction of that provision) is to be determined by arbitration, then such difference shall be referred to and settled by a single arbitrator or, in Scotland, by a single arbiter to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other), by the President of the Institution of Civil Engineers.

33 As to certain legal proceedings

Notwithstanding anything in any other enactment or rule of law, where but for this section any proceedings in respect of any provision of this Act could be instituted in the High Court, those proceedings may be instituted in the County Court.

34 Crown rights

(1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown including (without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall) the Duchy of Cornwall and, in particular and without prejudice to the generality of the foregoing, nothing in this Act authorises the Board to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or

(b) belonging to the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall without the consent in writing of the Duke of Cornwall testified in writing under the seal of the said Duchy or, as the case may be, the consent in writing of two or more of such of the regular officers of the said Duchy or of such other persons as may be duly authorised under section 39 of the Duchy of Cornwall Management Act 1863; or

(c) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

35 Saving for Trinity House

Nothing in this Act shall prejudice or derogate from the jurisdiction or authority or any of the rights or privileges of the Corporation of Trinity House of Deptford Strond.

36 Repeals

The enactments specified in columns (1) and (2) of Schedule 3 to this Act are hereby repealed to the extent mentioned in column (3) thereof.

37 Application to Scotland

(1) Subject to subsection (2) below, this Act extends to Scotland.

(2) Nothing in this Act shall apply to Loch Lochy, Loch Oich, Loch Ness or Loch Dochfour, the boundaries of which are shown edged in red on the plan marked "The Scottish Lochs", of which five copies have been signed on behalf of the Board by Richard Jeremy Duffy, the Solicitor and Secretary to the Board, and on behalf of the Highland Regional Council by Ronald Harley Stevenson, the Chief Executive of the said Council, and deposited respectively in—

(a) the office of the Clerk of the Parliaments, House of Lords;

(b) the Private Bill Office of the House of Commons;
(c) the Department of the Environment;
(d) the principal office of the Board; and
(e) the office of the Chief Executive of the Highland Regional Council.

(3) Nothing in this Act shall prejudice the power of a river purificationauthority to make byelaws under section 33 of the Control of Pollution Act 1974 (control of sanitary applicances on vessels) or under section 48 of that Act (power of river purification authorities to exclude unregistered vessels from rivers, etc.).

(4) It shall be the duty of the Board, when exercising functions in relation to Scotland under any enactment, to avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.