



Transport Act 1968

1968 CHAPTER 73

PART VII

INLAND WATERWAYS

The Board's waterways

104 Classification of ^{F1}... waterways.

- (1) For the purposes of sections 105 to 111 of this Act the inland waterways comprised in the [^{F2}undertakings] of the Waterways Board [^{F3}and Canal & River Trust] shall be divided into—
 - (a) the waterways for the time being specified in Part I of Schedule 12 to this Act, being waterways (in this Part of this Act referred to as “the commercial waterways”) to be principally available for the commercial carriage of freight;
 - (b) the waterways for the time being specified in Part II of that Schedule, being waterways (in this Part of this Act referred to as “the cruising waterways”) to be principally available for cruising, fishing and other recreational purposes; and
 - (c) the remainder.
- (2) The description contained in the said Schedule 12 of any waterway shall be read subject to any order made by the Minister [^{F4}or, in the case of a waterway in Scotland, the Scottish Ministers] for giving greater precision to that description by reference to a map.
- (3) The Minister [^{F5}or, in the case of a waterway in Scotland, the Scottish Ministers] may by order transfer any waterway from one Part of the said Schedule 12 to the other Part, remove any waterway from either of those Parts or add to either of those Parts any inland waterway for the time being comprised in the undertaking of the Board [^{F6}or Canal & River Trust] which is not for the time being a commercial waterway or a cruising waterway.

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- [^{F7}(3A) Canal & River Trust may apply to the Minister for the making of an order under subsection (3).
- (3B) In deciding whether to make an order under subsection (3), the Minister must have regard to the financial position of Canal & River Trust.]
- (4) Schedule 13 to this Act shall have effect in relation to the making of any order under subsection (3) of this section, and any such order shall be subject to annulment [^{F8}in the case of an order made by the Minister,] in pursuance of a resolution of either House of Parliament [^{F9}in the case of an order made by the Scottish Ministers, in pursuance of a resolution of the Scottish Parliament.].
- (5) In subsection (3) of this section references to any waterway include references to any part of that waterway.

Textual Amendments

- F1** Words in s. 104 heading omitted (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 38(2)** (with arts. 4-6)
- F2** Word in s. 104(1) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 38(3)(a)** (with arts. 4-6)
- F3** Words in s. 104(1) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 38(3)(b)** (with arts. 4-6)
- F4** Words in s. 104(2) inserted (1.4.2001) by [S.I. 2000/3251](#), arts. 1(2)(b), 2, **Sch. 2 Pt. II para. 3(17)** (with art. 4)
- F5** Words in s. 104(3) inserted (1.4.2001) by [S.I. 2000/3251](#), arts. 1(2)(b), 2, **Sch. 2 Pt. II para. 3(18)** (with art. 4)
- F6** Words in s. 104(3) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 38(4)** (with arts. 4-6)
- F7** S. 104(3A)(3B) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 38(5)** (with arts. 4-6)
- F8** Words in s. 104(4) inserted (1.4.2001) by [S.I. 2000/3251](#), arts. 1(2)(b), 2, **Sch. 2 Pt. II para. 3(19)(a)** (with art. 4)
- F9** Words in s. 104(4) inserted (1.4.2001) by [S.I. 2000/3251](#), arts. 1(2)(b), 2, **Sch. 2 Pt. II para. 3(19)(b)** (with art. 4)

Modifications etc. (not altering text)

- C1** S. 104 applied (with modifications) (S.) (4.1.1995) by [1994 c. 39, s. 40\(7\)](#) (with s. 7(2)); [S.I. 1994/2850, art. 3\(a\)](#), **Sch. 2**

105 Maintenance of ^{F10}... waterways.

- (1) With a view to securing the general availability of the commercial and cruising waterways for public use, it shall be the duty of the Waterways Board [^{F11}and of Canal & River Trust, in relation to the waterways comprised in their respective undertakings], subject to the provisions of this section—
- (a) to maintain the commercial waterways in a suitable condition for use by commercial freight-carrying vessels; and
 - (b) to maintain the cruising waterways in a suitable condition for use by cruising craft, that is to say, vessels constructed or adapted for the carriage of passengers and driven by mechanical power.

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- (2) Neither paragraph (a) nor paragraph (b) of subsection (1) of this section shall impose on the Board [^{F12}or Canal & River Trust] any duty to maintain a waterway, or any part of a waterway, in a suitable condition for use by any vessel of the kind mentioned in that paragraph unless the dimensions of the vessel (that is to say, its length, width, height of superstructure and draught)—
- (a) correspond to, or are less than, those of a vessel of that kind which customarily used that waterway or part during the period of nine months ending with 8th December 1967; or
 - (b) if the waterway or part has been restored or improved since that date, are such as to make it suitable for use on that waterway or part;
- but, save as aforesaid, the duty imposed by that paragraph shall extend to any vessel of the kind therein mentioned as respects the dimensions of which paragraph (a) or (b) of this subsection is satisfied.
- (3) If it appears to the Minister that, having regard to any change in the size, design or type of vessel customarily using any commercial waterway or cruising waterway, or any part thereof, [^{F13}or to any other reason the Minister considers relevant to the duty under subsection (1),] it is desirable to exercise his powers under this subsection, he may (after consultation with [^{F14}Canal & River Trust]) by order substitute for the duty imposed on [^{F14}Canal & River Trust] by the foregoing provisions of this section in respect of that waterway or part such duty in respect of the maintenance thereof as he considers appropriate having regard to that change, and may by that order make such incidental or transitional provision as he thinks necessary or expedient in connection therewith.
- [^{F15}(3ZA) Canal & River Trust may apply to the Minister for the making of an order under subsection (3).
- (3ZB) In deciding whether to make any order under subsection (3), the Minister must have regard to the financial position of Canal & River Trust.]
- [^{F16}(3A) If it appears to the Scottish Ministers that, having regard to any change in the size, design or type of vessel customarily using any commercial waterway or cruising waterway, or any part of such waterway, it is desirable to exercise their powers under this subsection, they may (after consultation with the Board) by order substitute for the duty imposed on the Board by subsection (1) in respect of that waterway (or part) such duty in respect of the maintenance of such waterway (or part) as they consider appropriate having regard to that change, and may by that order make such incidental or transitional provision as they think necessary or expedient in connection therewith.]
- (4) Schedule 13 to this Act shall have effect in relation to the making of any order under subsection (3) [^{F17}or (3A)] of this section, and any such order [^{F18}made by the Minister under subsection (3)] shall be subject to annulment in pursuance of a resolution of either House of Parliament [^{F19}, and an order made by the Scottish Ministers under subsection (3A) is subject to the negative procedure].
- (5) Section 17 of the ^{M1}Regulation of Railways Act 1873 (which requires the Board to maintain certain inland waterways) shall cease to apply to any inland waterway which on the date on which this section comes into force is comprised in the undertaking of the Board; and any local enactment passed with respect to any such inland waterway, so far as that enactment—
- (a) confers any public or private right of navigation over the waterway; or

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- (b) imposes any duty to maintain that waterway for the purpose of navigation (including any duty to supply, or maintain a supply of, water for the waterway for that purpose),
shall cease to have effect.
- (6) If the Board [^{F20}or Canal & River Trust] acquire any inland waterway after the date on which this section comes into force any local enactment passed with respect thereto shall, so far as it confers or imposes any such right or duty as is mentioned in paragraph (a) or (b) of subsection (5) of this section, cease to have effect on the date on which the waterway is so acquired.
- (7) Any person who suffers loss by reason of the extinguishment by virtue of subsection (5) or (6) of this section of any private right shall be entitled to be paid by the Board [^{F21}or, as the case may be, Canal & River Trust] compensation to be determined, in case of dispute, by the appropriate tribunal; and the tribunal shall, in determining the compensation, take into account any contractual right offered by the Board [^{F21}or, as the case may be, Canal & River Trust] in substitution for the right which is extinguished.
- (8) Where by virtue of subsection (5) of this section a statutory right of navigation ceases to be exercisable as respects a waterway of which the Waterways Board [^{F22}or, as the case may be, Canal & River Trust] are not the owner, the Board [^{F22}or, as the case may be, Canal & River Trust] shall have power to authorise any use of the waterway which would have been authorised by that statutory right.

Textual Amendments

- F10** Words in s. 105 heading omitted (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(2\)](#) (with arts. 4-6)
- F11** Words in s. 105(1) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(3\)](#) (with arts. 4-6)
- F12** Words in s. 105(2) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(4\)](#) (with arts. 4-6)
- F13** Words in s. 105(3) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(5\)\(a\)](#) (with arts. 4-6)
- F14** Words in s. 105(3) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(5\)\(b\)](#) (with arts. 4-6)
- F15** S. 105(3ZA)(3ZB) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(6\)](#) (with arts. 4-6)
- F16** S. 105(3A) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(7\)](#) (with arts. 4-6)
- F17** Words in s. 105(4) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(8\)\(a\)](#) (with arts. 4-6)
- F18** Words in s. 105(4) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(8\)\(b\)](#) (with arts. 4-6)
- F19** Words in s. 105(4) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(8\)\(c\)](#) (with arts. 4-6)
- F20** Words in s. 105(6) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(9\)](#) (with arts. 4-6)
- F21** Words in s. 105(7) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(10\)](#) (with arts. 4-6)
- F22** Words in s. 105(8) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 39\(10\)](#) (with arts. 4-6)

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Modifications etc. (not altering text)

- C2** S. 105 applied (with modifications) (S.) (4.1.1995) by 1994 c. 39, s. 40(7) (with s. 7(2)); S.I. 1994/2850, art. 3(a), Sch. 2
- C3** S. 105(3) modified (1.6.1993) by S.I. 1993/1119, reg. 4(1)(a), Sch. 1 para. 1

Marginal Citations

- M1** 1873 c. 48.

[^{F23}106. Enforcement of maintenance duty – the Waterways Board

- (1) If, on an application by any person under this section to the Court of Session, the court determines that there has been, in respect of any waterway, a serious and persistent failure by the Waterways Board to discharge the duty imposed on them by—
- section 105(1), or
 - an order made under section 105(3A),
- the court may, subject to the provisions of this section, require the Board to remedy that failure; but, save as aforesaid, neither subsection (1) of section 105 nor any order under subsection (3A) of that section shall be construed as imposing any duty or liability enforceable by proceedings before any court to which the Board would not otherwise be subject.
- (2) The fact that proceedings on an application under subsection (1) (referred to in this section as “enforcement proceedings”) are in progress in respect of any waterway or any part of a waterway, or that the court has in any such proceedings imposed any requirement on the Board, shall not prevent the Scottish Ministers from making an order in respect of that waterway or part under section 104(3) or 105(3A); but—
- except as provided in subsection (3) of this section, where such an order is made while enforcement proceedings are in progress, the court shall nevertheless determine those proceedings on the basis of the duty of the Board as it stood when the proceedings were instituted; and
 - the making of such an order shall in no case absolve the Board from complying with any requirement which is imposed by the court in any enforcement proceedings.
- (3) If a relevant order is pending at the time when enforcement proceedings are instituted, or if, at any time after enforcement proceedings have been instituted and before the court has imposed any requirement on the Board in the proceedings, the Scottish Ministers notify the Board that they are considering the making of a relevant order and give the court such a certificate as is mentioned in subsection (4)—
- the court shall not, so long as the order is pending, impose any requirement on the Board in those proceedings; and
 - if the order is made, the court shall, in determining in those proceedings whether there has been a failure by the Board to discharge their duty, have regard only to the duty (if any) to which the Board are subject in consequence of the making of the order.
- (4) The certificate referred to in subsection (3) is a certificate in writing to the effect that it appears to the Scottish Ministers that the imposition of any requirement on the Board on the basis of their existing duty would result in their incurring substantial expense and that, having regard to their financial position and their duty under section 18 of

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the Act of 1962 and section 41 of this Act, it would be unreasonable for them to bear that expense without a grant or further grant under section 43 of this Act.

- (5) In subsection (3) “relevant order” means, in relation to any enforcement proceedings, an order under section 104(3) or 105(3A) of this Act in relation to the waterway or part of a waterway which is the subject of the proceedings; and for the purposes of that subsection an order is pending during the period of three months beginning with the day on which the Scottish Ministers notify the Board that they are considering the making of the order and, if before the expiration of that period notice of the proposed order is published under Schedule 13 to this Act, during any further period until the order is made or the Scottish Ministers notify the Board that it will not be made.
- (6) As soon as may be after giving the Board any such notification as is mentioned in subsection (5), the Scottish Ministers shall give notice of that notification in the Edinburgh Gazette.
- (7) For the purposes of this section enforcement proceedings shall be treated as instituted at the time when the summons beginning the proceedings is served on the Board.

Textual Amendments

F23 Ss. 106, 106A substituted for s. 106 (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 40** (with arts. 4-6)

106A. Enforcement of maintenance duty – Canal & River Trust

- (1) If, on an application by any person under this section to the High Court, the court determines that there has been, in respect of any waterway, a serious and persistent failure by Canal & River Trust to discharge the duty imposed on it by—
 - (a) section 105(1), or
 - (b) an order made under section 105(3),
 the court may, subject to the provisions of this section, require Canal & River Trust to remedy that failure; but, save as aforesaid, neither subsection (1) of section 105 nor any order under subsection (3) of that section shall be construed as imposing any duty or liability enforceable by proceedings before any court to which Canal & River Trust would not otherwise be subject.
- (2) The fact that proceedings on an application under subsection (1) (referred to in this section as “enforcement proceedings”) are in progress in respect of any waterway or any part of a waterway, or that the court has in any such proceedings imposed any requirement on Canal & River Trust, shall not prevent the Minister from making an order in respect of that waterway or part under section 104(3) or 105(3); but—
 - (a) except as provided in subsection (3) of this section, where such an order is made while enforcement proceedings are in progress, the court shall nevertheless determine those proceedings on the basis of the duty of Canal & River Trust as it stood when the proceedings were instituted; and
 - (b) the making of such an order shall in no case absolve Canal & River Trust from complying with any requirement which is imposed by the court in any enforcement proceedings.
- (3) If a relevant order is pending at the time when enforcement proceedings are instituted, or if, at any time after enforcement proceedings have been instituted and before the court has imposed any requirement on Canal & River Trust in the proceedings, the

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- Minister notifies Canal & River Trust that the Minister is considering the making of a relevant order and gives the court such a certificate as is mentioned in subsection (4)—
- (a) the court shall not, so long as the order is pending, impose any requirement on Canal & River Trust in those proceedings; and
 - (b) if the order is made, the court shall, in determining in those proceedings whether there has been a failure by Canal & River Trust to discharge its duty, have regard only to the duty (if any) to which Canal & River Trust is subject in consequence of the making of the order.
- (4) The certificate referred to in subsection (3) is a certificate in writing to the effect that it appears to the Minister that the imposition of any requirement on Canal & River Trust on the basis of its existing duty would result in its incurring substantial expense and that, having regard to its financial position, it would be unreasonable for it to bear that expense without a grant or further grant under section 43A of this Act.
- (5) In subsection (3) “relevant order” means, in relation to any enforcement proceedings, an order under section 104(3) or 105(3) of this Act in relation to the waterway or part of a waterway which is the subject of the proceedings; and for the purposes of that subsection an order is pending during the period of three months beginning with the day on which the Minister notifies Canal & River Trust that the Minister is considering the making of the order and, if before the expiration of that period notice of the proposed order is published under Schedule 13 to this Act, during any further period until the order is made or the Minister notifies Canal & River Trust that it will not be made.
- (6) As soon as may be after giving Canal & River Trust any such notification as is mentioned in subsection (5), the Minister shall give notice of the notification in the London Gazette.
- (7) For the purposes of this section enforcement proceedings shall be treated as instituted at the time when the claim form beginning the proceedings is served on Canal & River Trust.]

Textual Amendments

F23 Ss. 106, 106A substituted for s. 106 (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 40** (with arts. 4-6)

107 Amendments as to general duties of Board.

- (1) The duty of the Waterways Board under subsection (1) of section 10 of the Act of 1962 to provide services and facilities on the inland waterways owned or managed by them shall extend only to the commercial waterways and cruising waterways.
- (2) It shall be the duty of the Board—
 - (a) to secure that each of the inland waterways comprised in their undertaking which is not a commercial waterway or cruising waterway is dealt with in the most economical manner possible (consistent, in the case of a waterway which is retained, with the requirements of public health and the preservation of amenity and safety), whether by retaining and managing the waterway, by developing or eliminating it, or by disposing of it; and
 - (b) to secure that the best possible financial return is obtained from any asset of the Board which is not an inland waterway or harbour and is not required in

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connection with the provision of services and facilities by the Board, whether by exploiting it, by developing it, or by disposing of it.

- (3) Subsection (4) of the said section 10 (which provides that the duties of the Board under that section are not to be legally enforceable) shall apply also to the duty imposed on the Board by subsection (2) of this section.

(4)^{F24}

Textual Amendments
F24 Ss. 107(4), 112(7) repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), [Sch. Pt. VI](#)

108 Prevention of nuisance as respects certain waterways.

- (1) Subject to subsection (3) of this section, any inland waterway in England or Wales comprised in the undertaking of [^{F25}Canal & River Trust] which is not a commercial waterway or cruising waterway shall be deemed to be—

- (a) a watercourse for the purposes of section 259 of the ^{M2}Public Health Act 1936; and

- [^{F26}(b) land to which section 215 of the Town and Country Planning Act 1990 applies;]

and the provisions of Part III of the [^{F27}Environmental Protection Act 1990], as they apply by virtue of this subsection, may be enforced by a county council as well as by a local authority as defined in that Act, and any local authority within the meaning of [^{F28}the said Act of 1990] (and not only the local planning authority) shall be entitled to enforce the provisions of [^{F28}the said section 215] as it applies by virtue of this subsection.

- (2) Subject to subsection (3) of this section, any inland waterway in Scotland comprised in the undertaking of the Board which is not a commercial waterway or cruising waterway shall be deemed to be—

- ^{F29}(a)

- [^{F30}(b) land to which section 179 of the Town and Country Planning (Scotland) Act 1997 applies;]

and any local authority within the meaning of [^{F31}the said Act of 1997] (and not only the local planning authority) shall be entitled to enforce the provisions of [^{F32}the said section 179] as it applies by virtue of this subsection.

- (3) This section shall not apply to any waterway which has been closed to navigation under any local enactment before the date on which this section comes into force if the use of the waterway has been changed between the passing of that enactment and that date in pursuance of planning permission granted under [^{F33}Part III of the Town and Country Planning Act 1962 or][^{F34}Part II of the Town and Country Planning (Scotland) Act 1947; and] and this section shall cease to apply to any waterway if the use thereof is changed after that date in pursuance of such permission as aforesaid.

- (4) This section shall have effect to the exclusion of any provision for similar purposes in any local enactment passed before the date on which this section comes into force in relation to any waterway to which this section applies.

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Textual Amendments

- F25** Words in s. 108(1) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 2 para. 41](#) (with arts. 4-6)
- F26** S. 108(1)(b) substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, [Sch. 2 para. 22\(2\)\(a\)](#)
- F27** Words substituted by [Environmental Protection Act 1990](#) (c. 43, SIF 46:4), s. 162(1), [Sch. 15 para. 10\(3\)](#)
- F28** Words substituted by virtue of [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, [Sch. 2 para. 22\(2\)\(a\)](#)
- F29** S. 108(2)(a) repealed (S.) (1.10.2009) by [Public Health etc. \(Scotland\) Act 2008](#) (asp 5), s. 128(2), [sch. 3 Pt. 1](#) (with s. 127); S.S.I. 2009/319, art. 2(a), sch. 1
- F30** S. 108(2)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 17\(1\)\(a\)\(i\)](#)
- F31** Words in s. 108(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(5), [Sch. 2 para. 17\(1\)\(a\)\(ii\)](#)
- F32** Words in s. 108(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 17\(1\)\(a\)\(ii\)](#)
- F33** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, [Sch. 2 para. 22\(2\)\(b\)](#)
- F34** By 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 17\(1\)\(b\)](#) it is provided (27.5.1997) that the words “Part II of the Town and Country Planning (Scotland) Act 1947; and” are substituted for the words from “Part II” to “1947; and”

Marginal Citations

- M2** 1936 c. 49.

109 Power of certain bodies to maintain or take over waterways and connected works [^{F35}in Scotland]. **E+W**

(1) Without prejudice to their powers apart from this section, but subject to subsection (3) of this section, the Waterways Board shall have power—

- (a) to enter into an agreement with any body to which this section applies for the maintenance by that body of any inland waterway comprised in the undertaking of the Board which is not a commercial waterway or cruising waterway, or of any part of, or of any works connected with, any such waterway;
- (b) by agreement with any such body, to transfer to it any such waterway, part of a waterway or works as aforesaid belonging to the Board, together with any powers or obligations (whether statutory or otherwise) of the Board in respect thereof;

and any body to which this section applies shall have all such powers as are required to enable it to enter into and carry out any such agreement as aforesaid or as are required to be exercised by it in consequence of any such transfer as is mentioned in this subsection.

(2) The bodies to which this section applies are as follows—

- (a) a local authority;
- ^{F36}(b)
- ^{F37}(c)
- [^{F38}(d) a public gas supplier within the meaning of Part I of the Gas Act 1986;]
- [^{F39}(e) a public electricity supplier within the meaning of Part I of the Electricity Act 1989;]

Changes to legislation: Transport Act 1968, Cross Heading: The Board's waterways is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- ^{F37}(h)
- ^{F40}(j)
- ^{F41}(k)

and, as respects any particular agreement or transfer, any other body having public or charitable objects which is certified by [^{F42}the Scottish Ministers as a body appearing to]^{F43}them] to be capable of discharging the responsibilities falling on the body in consequence of that agreement or transfer.

- (3) Subject to subsection (5) of this section, no such agreement or transfer as is mentioned in subsection (1) of this section shall be made with or to—
- (a) any local authority unless what is to be maintained or transferred—
- (i) is situated in the area of the authority; or
- (ii) though not situated in that area, is so situated that persons residing in that area have convenient access to it;
- ^{F44}(b) Scottish Water unless the Scottish Ministers have consented to the agreement or transfer;

and the powers under this section of Scottish Water shall be exercisable only for the purposes of their water undertaking and with the consent of the Scottish Ministers.]

- (4) Any agreement under this section whereby a waterway or part of a waterway is to be maintained by, or transferred to, a body to which this section applies may include provision for securing that the body in question makes the waterway or part available for public use.
- ^{F45}(5) The Board may make an agreement for maintenance or transfer under this section with two or more bodies jointly on such terms as to the sharing of expenses between those bodies and otherwise as those bodies may agree; and, notwithstanding subsection (3) (a)(i) of this section (but without prejudice to subsection (3)(a)(ii) of this section), a local authority may be a party to such an agreement if part of what is to be maintained or transferred is situated in their area and the remainder in the area or areas of one or more other authorities (whether or not local authorities) who are also parties to the agreement.]

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

Textual Amendments

- F35** Words in s. 109 heading inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(2)** (with arts. 4-6)
- F36** S. 109(2)(b) omitted (E.W.) (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(3)(a)** (with arts. 4-6)
- F37** S. 109(2)(c)(h) omitted (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(3)(b)** (with arts. 4-6)
- F38** S. 109(2)(d) substituted by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1), **Sch. 7 para. 9**
- F39** S. 109(2)(e) substituted for paragraphs (e), (f) and (g) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 14** (with [Sch. 17 paras. 33, 35\(1\)](#))
- F40** S. 109(2)(j) omitted (E.W.) (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(3)(c)** (with arts. 4-6)
- F41** S. 109(2)(k) omitted (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(3)(d)** (with arts. 4-6)

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- F42** Words in s. 109(2) substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 2 para. 42(3)(e)** (with arts. 4-6)
- F43** Words in s. 109(2) inserted (1.4.2001) by S.I. 2000/3251, arts. 1(2)(b), 2, **Sch. 2 Pt. II para. 3(27)(a)(b)** (with art. 4)
- F44** S. 109(3)(b) and words substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 2 para. 42(4)** (with arts. 4-6)
- F45** S. 109(5) substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 2 para. 42(5)** (with arts. 4-6)

Modifications etc. (not altering text)

- C4** S. 109(2)(d) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(d)**; S.I. 1996/218, **art. 2**

109 Power of certain bodies to maintain or take over waterways and connected works ^{F35} **in Scotland]. S**

(1) Without prejudice to their powers apart from this section, but subject to subsection (3) of this section, the Waterways Board shall have power—

- (a) to enter into an agreement with any body to which this section applies for the maintenance by that body of any inland waterway comprised in the undertaking of the Board which is not a commercial waterway or cruising waterway, or of any part of, or of any works connected with, any such waterway;
- (b) by agreement with any such body, to transfer to it any such waterway, part of a waterway or works as aforesaid belonging to the Board, together with any powers or obligations (whether statutory or otherwise) of the Board in respect thereof;

and any body to which this section applies shall have all such powers as are required to enable it to enter into and carry out any such agreement as aforesaid or as are required to be exercised by it in consequence of any such transfer as is mentioned in this subsection.

(2) The bodies to which this section applies are as follows—

- (a) a local authority;
- ^{F48}(b) Scottish Water;
- ^{F37}(c)
- ^{F49}(d) a public gas supplier within the meaning of Part I of the Gas Act 1986;
- ^{F50}(e) a public electricity supplier within the meaning of Part I of the Electricity Act 1989;
- ^{F37}(h)
- ^{F51}(j)
- ^{F41}(k)

and, as respects any particular agreement or transfer, any other body having public or charitable objects which is certified by ^{F42}the Scottish Ministers as a body appearing to ^{F52}them] to be capable of discharging the responsibilities falling on the body in consequence of that agreement or transfer.

(3) Subject to subsection (5) of this section, no such agreement or transfer as is mentioned in subsection (1) of this section shall be made with or to—

- (a) any local authority unless what is to be maintained or transferred—
 - (i) is situated in the area of the authority; or

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- (ii) though not situated in that area, is so situated that persons residing in that area have convenient access to it;
- [^{F44}(b) Scottish Water unless the Scottish Ministers have consented to the agreement or transfer;
- and the powers under this section of Scottish Water shall be exercisable only for the purposes of their water undertaking and with the consent of the Scottish Ministers.]
- (4) Any agreement under this section whereby a waterway or part of a waterway is to be maintained by, or transferred to, a body to which this section applies may include provision for securing that the body in question makes the waterway or part available for public use.
- [^{F45}(5) The Board may make an agreement for maintenance or transfer under this section with two or more bodies jointly on such terms as to the sharing of expenses between those bodies and otherwise as those bodies may agree; and, notwithstanding subsection (3)(a)(i) of this section (but without prejudice to subsection (3)(a)(ii) of this section), a local authority may be a party to such an agreement if part of what is to be maintained or transferred is situated in their area and the remainder in the area or areas of one or more other authorities (whether or not local authorities) who are also parties to the agreement.]

Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

- F35** Words in s. 109 heading inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(2)** (with arts. 4-6)
- F37** S. 109(2)(c)(h) omitted (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(3)(b)** (with arts. 4-6)
- F41** S. 109(2)(k) omitted (2.7.2012) by virtue of [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(3)(d)** (with arts. 4-6)
- F42** Words in s. 109(2) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(3)(e)** (with arts. 4-6)
- F44** S. 109(3)(b) and words substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(4)** (with arts. 4-6)
- F45** S. 109(5) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 42(5)** (with arts. 4-6)
- F48** S. 109(2)(b) substituted (S.) (14.7.2004) by [The Water Industry \(Scotland\) Act 2002 \(Consequential Modifications\) Order 2004 \(S.I. 2004/1822\)](#), art. 1(1), **Sch. para. 7(2)(a)(i)**
- F49** S. 109(2)(d) substituted by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1), **Sch. 7 para. 9**
- F50** S. 109(2)(e) substituted for paragraphs (e), (f) and (g) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 14** (with [Sch. 17 paras. 33, 35\(1\)](#))
- F51** S. 109(2)(j) repealed (S.) (14.7.2004) by [The Water Industry \(Scotland\) Act 2002 \(Consequential Modifications\) Order 2004 \(S.I. 2004/1822\)](#), art. 1(1), **Sch. para. 7(2)(a)(ii)**
- F52** Words in s. 109(2) inserted (1.4.2001) by [S.I. 2000/3251](#), arts. 1(2)(b), 2, **Sch. 2 Pt. II**, art. 3(27)(a) (with art. 4)

Modifications etc. (not altering text)

- C5** S. 109(2)(d) amended (1.3.1996) by [1995 c. 45, s. 16\(1\)](#), **Sch. 4 para. 2(2)(d)**; [S.I. 1996/218](#), **art. 2**

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F46 110 The Inland Waterways Advisory Council

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Textual Amendments

F46 Ss. 110-110C repealed (2.7.2012) by [The Inland Waterways Advisory Council \(Abolition\) Order 2012 \(S.I. 2012/1658\)](#), arts. 1(b), 5, [Sch.](#)

F46 110A Term of office, procedure etc.

.....

Textual Amendments

F46 Ss. 110-110C repealed (2.7.2012) by [The Inland Waterways Advisory Council \(Abolition\) Order 2012 \(S.I. 2012/1658\)](#), arts. 1(b), 5, [Sch.](#)

F46 110B Functions of Council: England and Wales

.....

Textual Amendments

F46 Ss. 110-110C repealed (2.7.2012) by [The Inland Waterways Advisory Council \(Abolition\) Order 2012 \(S.I. 2012/1658\)](#), arts. 1(b), 5, [Sch.](#)

F46 110C Functions of Council: Scotland

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Textual Amendments

F46 Ss. 110-110C repealed (2.7.2012) by [The Inland Waterways Advisory Council \(Abolition\) Order 2012 \(S.I. 2012/1658\)](#), arts. 1(b), 5, [Sch.](#)

111 Access agreements and orders as respects canals other than commercial waterways and cruising waterways.

Subsections (2) and (3) of section 16 of the ^{M3}Countryside Act 1968 (which enable access agreements and access orders to be made under Part V of the National Parks and Access to the ^{M4}Countryside Act 1949 in respect of canals and of certain land held therewith) shall apply as respects, and as respects land held with, any canal or part of a canal owned or managed by [^{F47}Canal & River Trust] which is not for the time being a commercial waterway or a cruising waterway; and accordingly in subsection (6)(c) of that section (which prevents the said subsections (2) and (3) from applying where the canal or part of a canal is owned or managed by the Board) there shall be added at the end the words “ which is for the time being a commercial waterway of a cruising waterway within the meaning of section 104 of the Transport Act 1968 ”.

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Textual Amendments

F47 Words in s. 111 substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 2 para. 43** (with arts. 4-6)

Marginal Citations

M3 1968 c. 41.

M4 1949 c. 97.

Changes to legislation:

Transport Act 1968, Cross Heading: The Board's waterways is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 9(1)(b)(ib) omitted by [S.I. 2024/402 Sch. 2 para. 1\(b\)](#)
- s. 9(1)(b)(ia) words omitted by [S.I. 2024/402 Sch. 2 para. 1\(a\)](#)
- s. 9(1)(c)(ie) substituted by [S.I. 2024/402 Sch. 2 para. 1\(c\)](#)
- s. 97(1)(a)(i) words inserted by [S.I. 2019/453 reg. 35\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 35(2) substituted (24.10.2019) by S.I. 2019/1379, regs. 1, 8(a))
- s. 97(1)(a)(ii) words substituted by [S.I. 2019/453 reg. 35\(2\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 35(2) substituted (24.10.2019) by S.I. 2019/1379, regs. 1, 8(a))