



Transport Act 1968

1968 CHAPTER 73

PART VII

INLAND WATERWAYS

The Board's waterways

105 Maintenance of ^{F1}... 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 [^{F2}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.
- (2) Neither paragraph (a) nor paragraph (b) of subsection (1) of this section shall impose on the Board [^{F3}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.

Changes to legislation: Transport Act 1968, Section 105 is up to date with all changes known to be in force on or before 17 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

- (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, [^{F4}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 [^{F5}Canal & River Trust]) by order substitute for the duty imposed on [^{F5}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.
- [^{F6}(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.]
- [^{F7}(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) [^{F8}or (3A)] of this section, and any such order [^{F9}made by the Minister under subsection (3)] shall be subject to annulment in pursuance of a resolution of either House of Parliament [^{F10}, 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
 - (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 [^{F11}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 [^{F12}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

Changes to legislation: Transport Act 1968, Section 105 is up to date with all changes known to be in force on or before 17 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

Board [^{F12}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 [^{F13}or, as the case may be, Canal & River Trust] are not the owner, the Board [^{F13}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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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)

Modifications etc. (not altering text)

- C1** 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**
- C2** 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.

Changes to legislation:

Transport Act 1968, Section 105 is up to date with all changes known to be in force on or before 17 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.

[View outstanding changes](#)

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))