

## SCHEDULES

### SCHEDULE 13

Article 70

#### FOR PROTECTION OF BRITISH WATERWAYS BOARD

1. For the protection of the British Waterways Board the following provisions shall, unless otherwise agreed in writing between Merseytravel and the British Waterways Board, have effect.

#### *Interpretation*

2. In this Schedule—

“the Board” means the British Waterways Board;

“the Board’s network” means the Board’s network of waterways;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and

“construct” and “constructed” have corresponding meanings;

“detriment” means any damage to a waterway or any other property of the Board and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of a waterway;
- (b) the erosion of the bed or banks of a waterway, or the impairment of the stability of any works, lands or premises forming part of a waterway;
- (c) the siltation of a waterway or the deposit of materials in, so as to materially damage the waterway;
- (d) the pollution of a waterway;
- (e) any material alteration in the water level of a waterway, or material interference with the supply of water thereto, or drainage of water therefrom;
- (f) any material harm to the ecology of a waterway (including any material adverse impact on any site of special scientific interest comprised in the Board’s network); and
- (g) any interference with the exercise by any person of rights over the Board’s network;

“the engineer” means an engineer appointed by the Board for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective work” means a work constructed under paragraph 7(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect a waterway; and

“waterway” means Canning Dock, Salthouse Dock, Wapping Basin and Duke’s Dock in the city of Liverpool and includes any works, lands or premises belonging to the Board, or under

*Status: This is the original version (as it was originally made).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

its management or control, and held or used by the Board in connection with Canning Dock, Salthouse Dock, Wapping Basin and Duke's Dock.

*Powers requiring the Board's consent*

3.—(1) Merseytravel shall not under the powers conferred by this Order acquire, compulsorily any land of the Board relating to the waterway or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of the Board.

(2) Merseytravel shall not in the exercise of the powers conferred by this Order permanently obstruct or interfere with pedestrian or vehicular access to a waterway unless such permanent obstruction or interference with such access is with the consent of the Board.

(3) Nothing in article 21 shall authorise Merseytravel—

- (a) to discharge any water directly or indirectly into a waterway; or
- (b) to carry out any works to, or make any opening in, or otherwise interfere with, a waterway (including the banks and bed thereof),

except with the consent of the Board and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(4) Merseytravel shall not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from a waterway unless such exercise is with the consent of the Board.

(5) Merseytravel shall not exercise the powers conferred by article 25, or the powers conferred by section 11(3) of the 1965 Act, in relation to a waterway unless such exercise is with the consent of the Board.

(6) Merseytravel shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 11 to this Order, so as to divert any right of access to a waterway, but such right of access may be diverted with the consent of the Board.

(7) The consent of the Board pursuant to sub-paragraphs (1) to (6) and the approval of plans under sub-paragraph (3) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which, in the case of article 21, may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising the Board on giving reasonable notice (except in an emergency, when the Board may require immediate suspension) to Merseytravel to require Merseytravel to suspend the discharge of water or reduce the flow thereof where this is necessary by reason of any operational requirement of the Board.

*Vehicles, plant and machinery*

4.—(1) Merseytravel shall not use any land or property of the Board forming part of a waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer, whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
  - (i) for the prevention of detriment; or
  - (ii) in order to avoid or reduce any inconvenience to the Board, its officers and agents and all other persons lawfully on such land or property;

but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by the Board under paragraph 7.

#### *Fencing*

5. Where so required by the engineer Merseytravel shall to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from a waterway, whether on a temporary or permanent basis or both.

#### *Survey of waterway*

6.—(1) Before the commencement of the initial construction of any part of the specified works and again following completion of the specified works Merseytravel shall bear the reasonable cost of the carrying out by a qualified engineer (the “engineer”), to be approved by the Board and Merseytravel, of surveys (“the surveys”) of so much of the waterway and of any land and existing works of Merseytravel which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the surveys Merseytravel shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the engineer for access to the site of the specified works and to any land and existing works of Merseytravel which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the engineer as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of Merseytravel and to the specified works or the method of construction thereof.

(3) The reasonable costs of the surveys shall include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the surveys and the provisions of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the surveys shall be provided to both the Board and Merseytravel.

#### *Approval of plans, protective works, etc.*

7.—(1) Merseytravel shall before commencing construction of any specified work including any temporary works supply to the Board proper and sufficient plans of that work and such further particulars available to it as the Board may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Board the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) When signifying his approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in his reasonable opinion is reasonably necessary to be carried out before the commencement of a specified work to prevent detriment; and

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

(b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works shall be constructed by Merseytravel or by the Board at Merseytravel's request with all reasonable dispatch and Merseytravel shall not commence the construction of a specified work until the engineer has notified Merseytravel that the protective works have been completed to his reasonable satisfaction.

(4) Merseytravel shall pay to the Board a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers of this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving shall be set off against any sum payable by Merseytravel to the Board under this paragraph.

#### *Design of works*

**8.** Without prejudice to its obligations under the foregoing provisions of this Schedule Merseytravel shall consult the Board on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified works;

and shall have regard to such reasonable views as may be expressed by the Board, to the extent that these accord with the requirements of the local planning authority in response to such consultation, pursuant (in particular) to the requirements imposed on the Board by section 22 (General environmental and recreational duties) of the British Waterways Act 1995<sup>(1)</sup> and to the interest of the Board in preserving and enhancing the environment of its waterways.

#### *Notice of works*

**9.** Merseytravel shall give to the engineer 56 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Board may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Board's network.

#### *Lighting*

**10.** Merseytravel shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

#### *Construction of specified works*

**11.—(1)** Any specified or protective works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 7(3)(b);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and

---

(1) 1995 c.i.

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

- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Board, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Board.
- (2) Following the completion of the construction of the specified works Merseytravel shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

*Prevention of pollution*

**12.** Merseytravel shall not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of a waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

*Access to work: provision of information*

- 13.**—(1) Merseytravel, on being given reasonable notice, shall—
- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
  - (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Board, on being given reasonable notice, shall—
- (a) at all times afford reasonable facilities to Merseytravel and its agents for access to any works carried out by the Board under this Schedule during their construction; and
  - (b) supply Merseytravel with such information as it may reasonably require with regard to such works or the method of constructing them.

*Costs of alterations, etc.*

**14.** Any additional expenses which the Board may reasonably incur in altering, reconstructing or maintaining a waterway under any powers in existence at the time of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to Merseytravel, be repaid by Merseytravel to the Board.

*Maintenance of works*

**15.** If at any time after the completion of a specified work or a protective work, not being a work vested in the Board, the Board gives notice to Merseytravel informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Merseytravel shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

*Repayment of the Board's fees, etc.*

- 16.** Merseytravel shall repay to the Board all fees, costs, charges and expenses reasonably and properly incurred by the Board—
- (a) in constructing any protective works under the provisions of paragraph 7(3)(a);

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

- (b) in respect of the approval by the engineer of plans submitted by Merseytravel and the supervision by him of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Board's network.

*Making good of detriment: compensation and indemnity, etc.*

**17.—**(1) If any detriment shall be caused by the construction or failure of the specified works, or the protective works if carried out by Merseytravel, Merseytravel (if so required by the Board) shall make good such detriment and shall pay to the Board all reasonable expenses to which the Board may be put, and compensation for any loss which the Board may sustain, in making good or otherwise by reason of the detriment.

(2) Merseytravel shall be responsible for and make good to the Board all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by the Board—

- (a) by reason of the construction of a specified work or a protective work or the failure thereof; or
- (b) by reason of any act or omission of Merseytravel or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work;

and subject to sub-paragraph (4) Merseytravel shall effectively indemnify and hold harmless the Board from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by the Board on behalf of Merseytravel or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of the Board or of any person in its employ or of its contractors or agents) excuse Merseytravel from any liability under the provisions of this paragraph.

(4) The Board shall give Merseytravel reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of Merseytravel.

*Details of capitalised sums to be provided*

**18.** Where under any provision of this Schedule the Board or Merseytravel (as the case may be) is entitled to a capitalised sum, it shall provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

*Arbitration*

**19.** Any difference arising between Merseytravel and the Board under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 77.

*Document Generated: 2023-10-10*

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