

SCHEDULES

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 5

PROTECTION FOR THE CANAL & RIVER TRUST

Interpretation

54.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the Trust.

(2) In this Part of this Schedule—

“the Trust’s network” means the Trust’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 the waterway or any other property of the Trust and, without limitation on the scope of that meaning, includes—

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

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

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

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

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“protective work” means a work constructed under paragraph 59(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 the waterway, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the waterway” means the Grand Union Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with that canal.

Powers requiring the Trust’s consent

55.—(1) The Council must not under the powers conferred by this Order acquire compulsorily any land of the Trust 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 Trust.

(2) The Council must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(3) The Council must not exercise the powers conferred by article 9(1) (temporary stopping up of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(4) Nothing in article 15 (temporary interference with waterways) authorises the Council—

(a) to discharge any water directly or indirectly into the waterway; or

(b) to carry out any works to, or make any opening in, or otherwise interfere with, the waterway (including its banks and bed),

except with the consent of the Trust and on terms that the Trust may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(5) The Council must 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 the waterway unless such exercise is with the consent of the Trust.

(6) The Council must not exercise the powers conferred by article 14 (power to survey and investigate land) and the powers conferred by article 15, or section 11(3) of the 1965 Act (power of entry for surveying land), in relation to the waterway unless such exercise is with the consent of the Trust.

(7) The Council must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers etc.), so as to divert any right of access to the waterway, but such right of access may be diverted with the consent of the Trust.

(8) The consent of the Trust under sub-paragraphs (1) to (7) and the approval of plans under sub-paragraph (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 13 (discharge of water) may include conditions—

(a) specifying the maximum volume of water which may be discharged in any period; and

(b) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the Council to require the Council to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.

Vehicles, plant and machinery

56. The Council must not use any land or property of the Trust forming part of the 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 must 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 Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 59.

Fencing

57. Where required by the engineer the Council must 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 the waterway, whether on a temporary or permanent basis.

Survey of waterway

58.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the Council must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and the Council, of a survey (including a dip-survey to measure the depth of the waterway) (“the survey”) of so much of the waterway and of any land and existing works of the Council which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the Council must—

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

(3) The reasonable costs of the survey must 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 survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though these were specified works.

(4) Copies of the report of the survey must be provided to both the Trust and the Council at no cost to the Trust.

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Approval of plans, protective works etc.

59.—(1) The Council must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must 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) must 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 Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

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

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works must be constructed by the Council or by the Trust at the Council's request with all reasonable dispatch and the Council must not commence the construction of a specified work until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

(4) The Council must pay to the Trust 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 must be set off against any sum payable by the Council to the Trust under this paragraph.

(5) In the event that the Council fails to complete the construction of, or part of, the specified works the Trust may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works and the Council must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

60. Without affecting its obligations under the provisions of this Part of this Schedule the Council must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Trust 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 must have regard to such views as may be expressed by the Trust 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 Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽¹⁾ and to the interest of the Trust in preserving and enhancing the environment of its waterways.

(1) 1995 c. i.

Notice of works

61. The Council must 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 Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

Lighting

62. The Council must 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

63.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph 59(3) and paragraph 60;
- (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;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, 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 Trust.

(2) Nothing in this Order authorises the Council to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any relevant vessel.

(3) For the purpose of sub-paragraph (2) a relevant vessel is a vessel of a kind and dimensions for the use of which the Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(2) (maintenance of waterways) to maintain the waterway.

(4) Following the completion of the construction of the specified works the Council must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

Prevention of pollution

64. The Council must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must 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

65.—(1) The Council on being given reasonable notice must—

- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and

(2) 1968 c. 73. This is amended by Schedule 2 of S.I. 2012/1659.

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- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Trust on being given reasonable notice must—
 - (a) at all times afford reasonable facilities to the Council and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
 - (b) supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them and the Council must reimburse the Trust's reasonable costs in relation to the supply of such information.

Alterations to waterway

66.—(1) If during the construction of a specified work or a protective work or during a period of 24 months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Trust gives to the Council reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Council must pay to the Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Council to the Trust under this paragraph.

Maintenance of works

67. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to the Council informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the Council must, 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 Trust's fees, etc.

68. The Council must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under the provisions of paragraph 59(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by the engineer 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, watchkeepers and other persons whom it is 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 Trust's network.

Costs of alterations, etc.

69. Any additional expenses which the Trust may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, are to be repaid by the Council to the Trust.

Making good of detriment; compensation and indemnity, etc.

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

(2) The Council is responsible for and must make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the Council 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) the Council must effectively indemnify and hold harmless the Trust 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 Trust on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator does not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this paragraph.

(4) The Trust must give the Council reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Council.

Details of capitalised sums to be provided

71. If the Trust or the Council cannot jointly agree the formula by which the capitalised sum (referred to in paragraphs 59(4) and 66) is calculated it is to be settled by arbitration in accordance with article 47 (arbitration).

Arbitration

72. Any difference arising between the Council and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 47 (arbitration).