

SCHEDULE 10

Protective provisions

PART 7

For the protection of the Canal and River Trust

Interpretation

82.—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2022) or any updates or amendments thereto;

“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 and “construct” and “constructed” have corresponding meanings;

“Canal & River Trust’s network” means the Canal & River Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (c) any material obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
 - (i) 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;
 - (ii) the deposit of materials or the siltation of the waterway so as to damage the waterway;
 - (iii) the pollution of the waterway;
 - (iv) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
 - (v) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust’s network); and
 - (vi) any material interference with the exercise by any person of rights over Canal & River Trust’s network;

“the engineer” means an engineer appointed by the Canal & River 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” is to be construed accordingly;

“protective work” means a work constructed under paragraph 86(3)(a);

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“specified work” means so much of any authorised development as defined in article 2(1) of this Order that is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“the waterway” means each and every part of the Shropshire Union Canal within the order limits, and any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with that canal in connection with its statutory functions.

Powers requiring the Canal & River Trust’s consent

83.—(1) The undertaker must not in the exercise of the powers conferred by this Order to materially 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 Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 20 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, and such consent may be given subject to terms and conditions as the Canal & River Trust may reasonably impose, but must not be unreasonably withheld or delayed.

(3) The undertaker must not exercise the powers conferred by article 22 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the Shropshire Union Canal unless such exercise is with the consent of the Canal & River Trust.

(4) Articles 6(a) 6(b) and 6(d)(i) (limits of deviation) shall not apply in relation to the waterway unless in conducting such exercise the crown of any installed pipeline is at least 3.5 metres below the hard bed level of the waterway or otherwise with the consent of the Canal & River Trust.

(5) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed.

(6) This paragraph does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property. In such circumstances the Canal & River Trust must be notified as soon as reasonably practicable.

Fencing

84.—(1) Where so required by the engineer the undertaker 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 or both.

(2) Any fencing constructed under this provision shall not require any other consent from the Canal & River Trust for interferences or obstructions to access to their network under other provisions.

Survey of waterway

85.—(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 undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by the Canal & River Trust and the undertaker, 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 undertaker 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 undertaker 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 undertaker 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 they may reasonably require and which the undertaker holds with regard to such existing works of the undertaker 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 will apply with all necessary
- (4) modifications to any such dewatering or reduction in the water level as though the same were specified works.
- (5) Copies of the survey must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

Approval of plans, protective works etc.

86.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms or as otherwise agreed, having regard to the Canal & River Trust's Code of Practice and such further particulars as the Canal and River Trust may within 10 working days of the initial submission of the plans reasonably require. Construction of a specified work must not commence 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 30 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated their disapproval of those plans and the grounds of their disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify, on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (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.

(4) Any protective works required under this paragraph must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request as soon as practicable and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction with such consent not to be unreasonably withheld or delayed.

(5) The undertaker must pay to the Canal & River Trust a capitalised sum representing the reasonably increased or reasonable additional cost of maintaining and, when necessary, renewing any specified works or permanent protective works provided under sub-paragraph (3) above, for which the Canal & River Trust is liable to maintain, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order. 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 is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

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(6) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal & River Trust may undertake protective works to make safe the area and avoid detriment, excluding any works to the pipeline itself, and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

(7) The undertaker and the Canal & River Trust must engage in good faith to agree the works and timeframe in the notice served under this paragraph prior to its service upon the undertaker.

Design of works

87.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule and subject to safety requirements and compliance with this Order the undertaker must engage in good faith and consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust in respect of works that materially affect the Canal & River Trust's network on—

- (a) the design and appearance of the specified works; and
- (b) the environmental effects of those works, having regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and
- (c) amendments or alterations to the CEMP (as may be approved pursuant to paragraph 5 of Part 1 of Schedule 2) in respect of a specified work or a protective work or otherwise in connection therewith; and
- (d) any draft CTMP and/or any draft LEMP relating to a stage which contains a specified work;

Notice of works

88. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works 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 Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

Construction of specified works

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

- (a) as soon as reasonably practicable in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraphs 86 (approval of plans) and 87 (design of works) of this Part;
- (b) under the supervision (if given) of the engineer;
- (c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River 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 Canal & River Trust; and

- (e) in such a manner as to reasonably ensure that no materials other than water are discharged or deposited into the waterway (subject always to paragraph 83(2) above); and
- (f) in compliance with the Code of Practice where relevant;

(2) Nothing in this Order authorises the undertaker 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 vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(1) (to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 85 (survey of waterway) and any other information agreed between them pursuant to this Part.

Prevention of pollution

90. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which is reasonably foreseeable to result in the pollution of the waterway or the deposit of materials therein 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

91.—(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable 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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

92.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (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

(1) 1968 c. 73, section 105 was amended by the British Waterways Board (Transfer to Functions) Order 2012 (S.I. 2012/1659) and the Transport and Works Applications (Inland Waterways Procedure) Regulations 1993 (S.I. 1993/1119).

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construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or 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 Canal & River 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 is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(3) For the avoidance of doubt, while the Canal & River Trust may undertake works under this paragraph, including works required to make safe the area, the Canal & River Trust may not undertake any works to the pipeline, or works that may endanger the pipeline, itself under this paragraph.

Maintenance of works

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

94. The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any protective works reasonably required under the provisions of paragraph 86(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker 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, watchmen 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;
- (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

Making good of detriment; compensation and indemnity, etc.

95.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable

expenses properly incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment, provided that at all times Canal & River Trust will be under an obligation to take reasonable steps to mitigate its loss, and always excluding any consequential loss or indirect losses.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River 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 undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work;

and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b), provided that at all times Canal & River Trust will be under an obligation to take reasonable steps to mitigate its loss, and always excluding any consequential loss or indirect loss.

(3) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker 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 is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Arbitration

96. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 47 (arbitration) of this Order.

Capitalised sums

97. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the reasonable cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.