



# Avon Weir Act 1992

## 1992 CHAPTER v

### PART V

#### THE IMPOUNDED RIVER

#### **37 Commencement of Part V**

- (1) The provisions of this Part shall come into operation on such day or days, not earlier than the commencement of impoundment by means of the weir, as may be fixed for the purpose in accordance with subsections (2) and (3) below by resolution of the Corporation, and different days may be fixed for different provisions of this Part and for different parts of the impounded river.
- (2) The Corporation shall not without the consent of the port authority pass a resolution under this section as respects any part of the impounded river outwith the urban development area.
- (3) The Corporation shall publish in a newspaper circulating in the city notice—
  - (a) of the passing of each resolution under this section and of the day fixed thereby; and
  - (b) of the general effect of the resolution and of the provisions of this Part to which it relates;and the day so fixed shall not be earlier than the expiration of 28 days from the date of publication of the notice.
- (4) A photostatic or other reproduction certified by an officer of the Corporation designated by it for the purposes of this subsection to be a true reproduction of a page, or part of a page, of any newspaper, being a page or part of a page bearing the date of its publication and containing the notice mentioned in subsection (3) above, shall be evidence of the publication of the notice and of the date of publication.

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### **38 Jurisdiction of port authority**

The impounded river shall continue to form part of the port and nothing in this Act shall affect the operation of any other enactment relating to the port or to any function of the port authority.

### **39 Extinguishment of navigation, etc., rights in impounded river**

- (1) All such rights of navigation or access over or along the impounded river as may exist immediately before this section comes into operation, whether public or private and howsoever arising, shall be extinguished to the extent that such rights are adversely affected by reason of the construction or operation of the works.
- (2) The Corporation shall pay compensation to any person who suffers damage by reason of the extinguishment effected by this section; and any question as to the amount of compensation so paid shall be determined by the tribunal.
- (3) In assessing any compensation payable under subsection (2) above the tribunal shall take account of—
  - (a) the extent to which the rights mentioned in subsection (1) above have been exercised; and
  - (b) the availability of the impounded river for navigation as provided in this Act.

### **40 Works in impounded river**

- (1) Subject to the provisions of this Act, the Corporation may from time to time in or on the impounded river erect, construct and maintain, whether temporarily or permanently, all such works and conveniences as may be requisite or expedient for the purposes of, or in connection with, the development, management or control of the impounded river or any land abutting on the impounded river.
- (2) The powers of subsection (1) above may be exercised notwithstanding interference by such works as erected, constructed or maintained with such rights of navigation as are referred to in section 39 (Extinguishment of navigation, etc., rights in impounded river) and are not extinguished by that section.
- (3) Nothing in subsection (1) above authorises the Corporation to carry out works on any land without the consent of the owner of that land.
- (4) Subject to subsections (5) and (6) below the Corporation may, for the purposes of, or in connection with, the development, management or control of the impounded river or any land abutting on the impounded river, execute or do on any such land by agreement with the owner and occupier of such land, any of the works or things referred to in subsection (1) above and any works requisite or expedient for the purpose of providing or facilitating access to or from the said lands or for preserving the amenities thereof.
- (5) The works authorised by this section shall not be development which is permitted development for any purpose of Part 17 of Schedule 2 to the Town and Country Planning General Development Order 1988.
- (6)
  - (a) The powers of this section shall not be exercised without the consent of the highway authority and the port authority which shall not be unreasonably withheld.
  - (b) The port authority shall not withhold consent for works in respect of which planning permission has been granted except for the purposes of—

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- (i) protecting the navigation in the impounded river or any adjoining waters of the port; or
  - (ii) preventing pollution or otherwise protecting the quality of water in the port.
- (c) Any difference as to the withholding of consent under this subsection (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.

#### **41 Licensing of works**

- (1) (a) The Corporation may, upon such terms and conditions as it thinks fit and upon payment of such reasonable fee as may from time to time be prescribed by the Corporation, grant to any person a licence (in this Part referred to as a “works licence”) to construct, alter, renew, extend or maintain any such works as are described in section 40 (Works in impounded river) of this Act or any other works in or on the impounded river or involving the cutting of any of the banks of the impounded river.
- (b) The powers of subsection (1) (a) above may be exercised notwithstanding interference by such works as constructed, altered, renewed, extended or maintained with such rights of navigation as are referred to in section 39 (Extinguishment of navigation, etc., rights in impounded river) and are not extinguished by that section.
- (2) Application for a works licence shall be made in writing to the Corporation and shall be accompanied by plans, sections and particulars of the works to which the application relates, and in granting any such licence the Corporation may require modifications in the plans, sections and particulars so submitted.
- (3) If within three months from the date of the making of an application under subsection (2) above the Corporation does not grant a works licence in accordance with the application, it shall be deemed to have refused the application.
- (4) Where, on an application for a works licence, the Corporation refuses to grant the licence, or grants it upon terms or conditions, or requires any modifications in the plans, sections and particulars, the notice in which the Corporation’s decision is conveyed to the applicant shall state clearly and precisely the reasons for the refusal or, as the case may be, for the terms or conditions imposed or the modifications required.
- (5) Any applicant for a works licence who is aggrieved by—
- (a) the refusal of the Corporation to grant the licence;
  - (b) any terms or conditions upon which the licence is granted;
  - (c) any modifications required by the Corporation in the plans, sections and particulars submitted by the applicant;
- may, within 28 days after whichever is the later of the dates on which—
- (i) the local planning authority gives him notice of a decision on any necessary application for planning permission in respect of the proposed works; or
  - (ii) the Corporation gives him notice of the decision;
- appeal to the Secretary of State, whose decision shall be binding upon the parties.
- (6) A person who appeals to the Secretary of State under this section shall give to the Corporation and the port authority notice of his appeal accompanied by a copy of his statement of appeal and the Corporation and the port authority shall within 28 days

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from the giving of such notice be entitled to give in writing to the Secretary of State its observations on the appeal.

- (7) On an appeal under this section the Secretary of State may—
- (a) dismiss the appeal; or
  - (b) require the Corporation either—
    - (i) to grant the licence upon such terms and conditions as the Secretary of State may determine; or
    - (ii) to approve the plans, sections and particulars without modifications or subject to such modifications as the Secretary of State may determine; not being terms, conditions or modifications more onerous than those imposed by the Corporation; and the Corporation shall give effect to any requirement made by the Secretary of State under this subsection.
- (8) Nothing in any licence under this section shall entitle a person to carry out works on any land in which he has no appropriate interest without the consent of any person having such an interest.
- (9) (a) The Corporation shall not grant a works licence, except in accordance with a requirement of the Secretary of State under subsection (7) above, without the consent of the port authority which shall not be unreasonably withheld.
- (b) The port authority shall not withhold consent for works in respect of which planning permission has been granted except for the purposes of—
- (i) protecting the navigation in the impounded river or any adjoining waters of the port; or
  - (ii) preventing pollution or otherwise protecting the quality of water in the port.

## **42 Restriction on construction of works**

- (1) No person other than the Corporation shall construct, alter, renew or extend any works in or on the impounded river or involving the cutting of any of the banks of the impounded river (other than moorings laid down for vessels) unless he is licensed so to do by a works licence and except upon the terms and conditions (if any) upon which the licence is granted and in accordance with the plans, sections and particulars prescribed by the licence; but this subsection shall not apply to—
- (a) the construction, alteration, renewal or extension of any works specifically authorised by any enactment or of any works executed by a highway authority under any enactment;
  - (b) the renewal of any work in existence at the date of the coming into operation of this Part.
- (2) Any person who knowingly contravenes this section or who knowingly contravenes or fails to comply with any term or condition upon which a works licence is granted by the Corporation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) The Corporation may by notice require a person who contravenes this section to remove or abate within a reasonable time specified in the notice any works to which the contravention relates and to restore the site thereof to its former condition and, if the person to whom the notice is given fails to comply with the notice, the Corporation may carry out the work required by the notice and recover the cost of so doing from that person.

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- (4) A works licence shall not be required under this section for the construction, alteration, renewal or extension of any work by either the rivers authority or the water company in the exercise of any of their functions.

#### **43 Powers as to moorings, etc**

- (1) Subject to subsection (10) below, the Corporation may provide, lay down, maintain and use moorings in the impounded river or on the banks adjoining the impounded river, on land owned or leased by the Corporation or in which it holds an appropriate interest or on any other land with the consent in writing of the owner and lessee thereof.
- (2) The Corporation may recover in respect of any vessel using any of the moorings provided under this section or moored to land owned or leased by the Corporation in or adjoining the impounded river such reasonable charges as it may from time to time prescribe.
- (3) The Corporation may compound with any person with respect to the payment of the charges prescribed under this section.
- (4) Subject to subsection (9) below the Corporation may, having regard to the requirements of safe and unobstructed navigation, grant licences (which may be given on such terms or conditions or subject to compliance with such requirements as the Corporation thinks fit) to any person to lay down, maintain and use existing and future moorings in the impounded river or on the banks thereof; but
- (a) nothing in any such licence shall entitle a person to place, lay down, maintain or use any mooring on land not owned or leased by him or by the Corporation or in which he has no appropriate interest;
  - (b) the Corporation shall not unreasonably refuse to grant a licence or grant it on unreasonable terms or conditions or subject to unreasonable requirements—
    - (i) to an owner or lessee of any land not leased by the Corporation with respect to a mooring on that land; or
    - (ii) with respect to a mooring on the banks of the impounded river which is positioned above the mean normal level of impounded water in the impounded river and exists at the date of the coming into operation of this Part;and any question whether the grant of a licence has been unreasonably refused or whether the terms or conditions of the licence or the requirements subject to which it is granted are unreasonable shall be referred to and determined by the Secretary of State.
- (5) Any licence granted under subsection (4) above shall be valid only for such period not exceeding three years commencing with its date as may be specified in the licence.
- (6) The Corporation may charge a reasonable fee for granting a licence under subsection (4) above.
- (7) Any person who—
- (a) without reasonable excuse causes a vessel to be moored except at a mooring provided or licensed by the Corporation under this section; or
  - (b) lays down, maintains, or, without reasonable excuse, uses any mooring not so provided or licensed;

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- (8) If any person lays down or maintains a mooring contrary to subsection (7) (b) above the Corporation may remove the mooring in question and recover from that person the expenses incurred in doing so.
- (9) (a) The powers of the Corporation under this section shall not be exercised without the consent of the port authority, which shall not be unreasonably withheld.
- (b) The port authority shall not withhold consent for works in respect of which planning permission has been granted except for the purposes of—
- (i) protecting the navigation in the impounded river or any adjoining waters of the port; or
  - (ii) preventing pollution or otherwise protecting the quality of water in the port.
- (10) The powers of the Corporation under this section shall not be exercised without the consent of the rivers authority, whose consent shall not be unreasonably withheld, and any question whether such consent is unreasonably withheld (other than a difference as to construction or meaning) shall be referred to and settled by arbitration.

#### **44 Navigation, etc., in vicinity of weir**

- (1) Any person who, without reasonable excuse navigates or moors a vessel within the prescribed area shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) In this section “the prescribed area” means the area of water between the downstream limit of the impounded river and a line drawn across the impounded river 70 metres upstream of the weir, or such part of that area as may be prescribed for the purposes of this section by the Corporation.
- (3) The Corporation shall give notice of its prescription of such part of the area as is referred to in subsection (2) above by causing a notice stating the extent of the area so prescribed to be displayed in a prominent position in the vicinity thereof.

#### **45 Restriction on size of vessels permitted to navigate**

- (1) Any person who without reasonable excuse navigates or attempts to navigate any vessel which exceeds the prescribed dimensions—
- (a) within the limits of deviation for Work No. 2;
  - (b) within so much of the limits of deviation for Work No. 3 as lies within the impounded river; or
  - (c) in that part of the impounded river lying between New Brislington Bridge and a line drawn across the impounded river 200 metres downstream of that bridge;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (2) In this section “the prescribed dimensions” means a length of 25 metres, a width of 5 metres, an overall height of 2.75 metres measured from water level and a draught of 1.4 metres, or such greater dimensions as the Corporation may from time to time

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by resolution prescribe; and the Corporation may prescribe different dimensions for different parts of the impounded river.

- (3) The Corporation shall give notice of its prescription of such greater dimensions as are referred to in subsection (2) above by causing a notice stating the dimensions so prescribed to be displayed in a prominent position in the vicinity of that part of the river to which they relate.