



Aire and Calder Navigation Act 1992

1992 CHAPTER iv

PART IV

PROTECTIVE PROVISIONS

33 For protection of National Rivers Authority

For the protection of the Rivers Authority the following provisions shall, unless otherwise agreed in writing between the Corporation and the Rivers Authority, have effect:—

(1) In this section—

“construction” includes execution, placing, altering, replacing and relaying and, in relation to temporary works, includes removal; and “construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water;

“the fishery” means the river Aire and includes fish in, or migrating to or from the river and the spawn, habitat and food of such fish;

“plans” includes sections, drawings, specifications, method statements and other such particulars;

“specified work” means so much of any work or operation authorised by this Act as is likely to—

- (a) affect any drainage work or the volumetric flow rate of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse; or
- (d) affect the conservation, distribution or use of water resources;

“watercourse” has the meaning given in section 72 of the Land Drainage Act 1991:

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- (2) The Corporation shall not acquire compulsorily under the powers of this Act any land or other property of the Rivers Authority but they may subject to the consent of the Rivers Authority (which consent shall not unreasonably be withheld) in accordance with the provisions of section 21 (Purchase of rights over land) of this Act acquire such easements and rights as they may reasonably require for the purposes of the works in any such land or property delineated on the deposited plans:
- (3) In the event that the Corporation commence to construct Work No. 1 or 2 or any other specified work the Rivers Authority may so far as is reasonably necessary for the protection of any drainage work or the fishery or water resources or for the prevention of flooding and pollution require the Corporation to construct and complete the whole of that work and any other work required in the approval of that work under paragraph (4) below:
- (4) (a) Before beginning to construct any specified work, the Corporation shall submit to the Rivers Authority plans of the work and such further particulars available to them as the Rivers Authority may reasonably require;
- (b) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Rivers Authority, or settled by arbitration;
- (c) Any approval of the Rivers Authority required under this paragraph—
- (i) shall not be unreasonably withheld;
 - (ii) shall be deemed to have been given if it is neither given nor refused within two months of the submission of plans for approval;
 - (iii) may be given subject to such reasonable requirements as the Rivers Authority may impose for the protection of any drainage work or the fishery or water resources and for the prevention of flooding and pollution:
- (5) Without prejudice to the generality of sub-paragraph (iii) of paragraph (c) of paragraph (4) above, but subject always to the provision of that sub-paragraph as to reasonableness, the requirements which the Rivers Authority may impose under that paragraph include—
- (a) requirements as to the levels of the specified works and their alignments within the limits of deviation;
 - (b) requirements as to fish pass and other fisheries facilities, sluices, gauges and other monitoring devices to be constructed as part of or in connection with the works;
 - (c) conditions requiring the Corporation at their own expense—
 - (i) to provide or maintain means of access for the Rivers Authority;
 - (ii) to undertake landscaping;
 - (iii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments and other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work:
- (6) Any specified work, and all protective works required by the Rivers Authority under paragraph (4) above, shall be constructed to the reasonable satisfaction of the Rivers

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Authority and the Rivers Authority shall be entitled by its officer to watch and inspect the construction of such works:

- (7) If by reason of the construction of any specified work the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Corporation to the reasonable satisfaction of the Rivers Authority and, if the Corporation fail to do so, the Rivers Authority may make good the same and recover from the Corporation the expense reasonably incurred by them in so doing:
- (8) Without prejudice to the other provisions of this section, the Corporation shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish during the construction of the works and shall not exercise the powers of section 8 (Power to improve and regulate flow of watercourses) of this Act in such a manner as is likely to affect prejudicially the operation of any fish pass facilities or other work provided to help secure or monitor the passage of fish:
- (9)
 - (a) Plans of any specified work shall not be submitted by the Corporation to the Minister for his approval pursuant to section 9 of the Salmon and Freshwater Fisheries Act 1975 until plans of that work have been approved or are deemed to have been approved by the Rivers Authority or submitted for settlement under paragraph (13)(a) below, and, if, on the submission of plans to the Minister, he requires any alteration of the plans so approved or settled under this section, or of any such requirement relating thereto, the Corporation shall, not less than 28 days before commencing the work, inform the Rivers Authority of any such alteration;
 - (b) Subject to compliance with sub-paragraph (a) above, if there shall be any inconsistency between any plans approved or deemed to be approved by the Rivers Authority or settled under paragraph (4) above or any requirement relating thereto, and the plans approved by the Minister or any conditions or restrictions imposed by him under that section, the specified work shall be constructed in accordance with the plans approved by the Minister and subject to the conditions or restrictions imposed by him:
- (10)
 - (a) Without prejudice to the other provisions of this section the Corporation shall indemnify the Rivers Authority against all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Rivers Authority in consequence of—
 - (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
 - (ii) any damage to the fishery; or
 - (iii) any raising of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses; or
 - (iv) any flooding or increased flooding of any such land;which may be caused by, or result from, the construction of the works or any act or omission of the Corporation, their contractors, agents, workmen or servants whilst engaged upon the works;
 - (b) The Rivers Authority shall give to the Corporation reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Corporation:
- (11) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Rivers Authority, or to its satisfaction,

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or in accordance with any directions or award of an arbitrator, shall not relieve the Corporation from any liability under the provisions of this section:

- (12) For the purposes of section 109 of the Act of 1991 (as to structures in, over or under a main river) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Rivers Authority under this section with respect to the erection of any structure shall be deemed also to constitute a consent or approval under the said section 109 as respects the erection of that structure:
- (13) (a) Any difference arising between the Corporation and the Rivers Authority under paragraph (4) above if the parties agree to arbitration shall be determined by arbitration, or if the parties do not agree to arbitration shall be settled by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly on a reference to them by the Corporation or the Rivers Authority after notice by one to the other;
- (b) Subject to sub-paragraph (a) above, any difference arising between the Corporation and the Rivers Authority under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.