



Midland Metro Act 1992

1992 CHAPTER vii

PART IV

PROTECTIVE PROVISIONS

23 For protection of British Waterways Board

For the protection of the British Waterways Board (in this section referred to as “the waterways board”) the following provisions shall, unless otherwise agreed in writing between the Executive and the waterways board, have effect:—

(1) In this section—

“the canal” means any canal or inland waterway owned or managed by the waterways board, and any works connected therewith for the maintenance of which the waterways board are responsible, and includes any lands held or used by the waterways board for the purposes of any canal;

“construction” includes execution, placing and alteration;

“the engineer” means an engineer to be appointed by the waterways board;

“plans” includes sections, drawings and particulars (including descriptions of methods of construction);

“the specified works” means so much of any of the authorised works as may be situated upon, under or over, or may in any way affect, the canal;

“the towing path” means the towing path forming part of the canal:

(2) The Executive shall not under the powers of this Act acquire compulsorily any land or other property of the waterways board but they may acquire such easements and rights in any such land or property delineated on the deposited plans as they may reasonably require for the purposes of the authorised works:

(3) The Executive shall, before commencing the construction of the specified works supply to the waterways board proper and sufficient plans thereof for the approval of the engineer, and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

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Provided that approval of plans supplied under this paragraph shall not be unreasonably withheld and, if within 56 days after such plans have been supplied to the waterways board the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as supplied:

- (4) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of the canal, and such protective works as may be reasonably necessary for those purposes shall be constructed by the Executive with all reasonable dispatch:
- (5) The Executive shall pay to the waterways board a capitalised sum representing the increased or additional cost of maintaining and, when necessary, renewing any permanent works authorised by this Act, including protective works provided under paragraph (4) above, but, if the cost of maintaining the canal, or of works of renewal on the canal, is reduced in consequence of any such protective works, a capitalised sum representing such saving shall be set off against any sum payable by the Executive to the waterways board under this section:
- (6) The Executive shall give to the engineer not less than 28 days' notice of their intention to commence the construction or repair of any of the specified works, or any 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 waterways board may where appropriate arrange for the publication of notices bringing those works to the attention of users of their inland waterways:
- (7) When construction of any specified works is commenced the works shall be carried out—
 - (a) in accordance with the plans approved or deemed to be approved or settled as provided in paragraph (3) above with all reasonable dispatch;
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
 - (c) so as not to interfere with or obstruct the use of the towing path so far as is reasonably practicable; and
 - (d) so as not to interfere with or obstruct the passage of vessels on the canal—
 - (i) at any time in the following periods:—
 - (a) the period beginning on 17th March and ending on 3rd November in each year; and
 - (b) the period beginning on 20th December in each year and ending on 3rd January in the following year;
 except in case of emergency; and
 - (ii) at any other time so far as is reasonably practicable:
- (8) Where work for the repair of the specified works is intended which involves obstruction of the canal or towing path, the Executive shall consult the waterways board upon the steps to be taken for the purposes specified in paragraphs (7) (c) and (d) above:
- (9) Following the completion of the construction of the specified works the Executive shall restore the canal to a condition no less satisfactory than its condition immediately prior to the commencement of those works:

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- (10) In the event of any obstruction of the canal or towing path by reason of the construction or failure of the specified works the Executive shall provide and maintain at their expense such temporary lighting of the canal and signal lights in the vicinity of the specified works as the engineer may reasonably require during such construction or failure:
- (11) The Executive shall not use any land or property of the waterways board (including the towing path) for the passage of vehicles, plant or machinery employed in the construction of the specified works except—
 - (a) in pursuance of such easements or rights as may have been acquired by them; or
 - (b) with the consent in writing of the engineer, which consent shall not be unreasonably withheld, and subject to the compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of damage to such land and property and of danger to persons thereon; and
 - (ii) in order to avoid or reduce any inconvenience to the waterways board, their officers and agents and all other persons lawfully on such land or property:
- (12) Unless agreed by the waterways board, if during the construction of the specified works any part of the towing path is closed to persons on foot or on cycles the Executive shall provide and maintain throughout the period of such closure a sufficient and convenient way in substitution therefor to the reasonable satisfaction of the waterways board:
- (13) The Executive shall not in the course of constructing or repairing the specified works do or permit anything which may result in the pollution of the canal or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid any such pollution:
- (14) Nothing in section 23 (Use of sewers, etc., for removing water) of the Act of 1989, as applied by this Act, shall authorise the Executive—
 - (a) to discharge any water directly or indirectly into the canal except with the consent in writing of the waterways board; or
 - (b) to carry out any works to, or make any opening in, or otherwise interfere with the canal (including the banks and bed thereof) save in accordance with plans approved by, and under the supervision (if given) of, the engineer:
- (15) The consent of the waterways board under sub-paragraph (14) (a) above and the approval of plans under sub-paragraph (14) (b) above shall not be unreasonably withheld but may be given subject to reasonable conditions which, without prejudice to the generality of the foregoing, may include conditions requiring the Executive to make payments to the waterways board for the discharge of water in accordance with the said section 23 to recoup any costs incurred by the board in respect of the said discharge, including payments in respect of the employment of persons in connection with such discharges and the cost to the waterways board of pumping water so discharged:
- (16) The Executive shall repay to the waterways board all costs, charges and expenses reasonably incurred by the waterways board—
 - (a) in respect of the employment of any persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting the canal and for

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preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;

- (b) in respect of the approval by the engineer of plans supplied by the Executive under paragraph (3) or (14) above and the supervision by him of the construction of the specified works or the exercise of the powers of section 23 of the Act of 1989 as those powers have effect in accordance with subparagraphs (14) and (15) above;
 - (c) in bringing the specified works to the notice of users of the canal:
- (17) The Executive shall be responsible for and make good to the waterways board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, the waterways board—
- (a) by reason of the construction of the specified works or the failure thereof; or
 - (b) by reason of any act or omission of the Executive or of any persons in their employ, or of their contractors or others whilst engaged upon the construction of the specified works;

and the Executive shall effectively indemnify and hold harmless the waterways board from and against all claims and demands arising out of, or in connection with, the construction of the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done in accordance with plans approved by the engineer, or in accordance with any requirement of the engineer or under his supervision, shall not (if it was done without negligence on the part of the waterways board or of any person in their employ, or of their contractors or agents) excuse the Executive from any liability under the provisions of this paragraph:

Provided that the waterways board shall give to the Executive reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Executive:

- (18) Any difference arising between the Executive and the waterways board under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.