
STATUTORY INSTRUMENTS

2005 No. 2786

**The Leicestershire County Council (Ashby
de la Zouch Canal Extension) Order 2005**

PART 4

REGULATION AND MANAGEMENT OF THE CANAL

Power to make byelaws

24.—(1) The undertaker may make byelaws regulating the use and operation of the Canal, the maintenance of order on the Canal and on the undertaker's property or other facilities provided in connection with the use of the Canal, the conduct of all persons while on the Canal and for preventing damage to the Canal.

(2) Without prejudice to the generality of paragraph (1), byelaws under this article may—

(a) contain provisions—

- (i) for prohibiting or restricting the use of the Canal either generally or in any manner specified in the byelaws by traffic of any description so specified;
- (ii) with respect to interference with, or obstruction of, the operation of the Canal or other facilities provided in connection with the Canal;
- (iii) which make different provisions for different parts of the Canal;
- (iv) for regulating the operation of the Canal;
- (v) for regulating the movement (including the speed) and use of vessels using the Canal;
- (vi) for regulating or prohibiting the mooring of vessels in the Canal;
- (vii) for authorising the registration of vessels using the Canal including making reasonable charges for such registration; and
- (viii) to exclude any person from the Canal.

(b) may make different provisions for different parts of the Canal.

(3) Byelaws made under this article may provide for it to be an offence for a person to contravene, or fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If the contravention of or failure to comply with any byelaw made under paragraph (3) is attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of the Canal, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

(5) Action taken under paragraph (4) shall not prevent the undertaker from taking proceedings for an offence.

(6) No byelaw made by the undertaker under this article shall have effect until confirmed by the Secretary of State.

(7) At least 28 days before applying for any byelaws to be confirmed under paragraph (6), the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection, and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days from the publication of the notice.

(8) For at least 24 days before an application is made for byelaws to be confirmed under paragraph (6), a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

(9) The undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker may determine.

(10) The Secretary of State may refuse to confirm any byelaw submitted to her by the undertaker for confirmation under this article, or may confirm the byelaw either without or, if the undertaker consents, with modifications.

(11) The Secretary of State may fix the date on which any byelaw confirmed under this article is to come into force.

(12) If no date is so fixed, the byelaw shall come into force at the end of the period of 28 days beginning with the date of confirmation.

(13) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as she may consider appropriate for the purpose of defraying any administrative expenses incurred by her in connection therewith.

(14) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment, and the undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(15) The production of a printed copy of byelaws confirmed under paragraph (6), on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

- (a) that the byelaws were made by the undertaker;
- (b) that the copy is a true copy of the byelaws;
- (c) that on a specified date the byelaws were confirmed by the Secretary of State; and
- (d) the date when the byelaws come or came into force,

shall be prima facie evidence of the facts stated in the certificate.

Operational powers

25.—(1) Subject to the provisions of this Order, the undertaker may manage the Canal and make charges for its use.

(2) Without prejudice to the generality of paragraph (1), the undertaker may—

- (a) control the level of water in and the flow of water into, along or from the Canal;
- (b) open or close any lock gate or other structures belonging to the Canal; or
- (c) take such steps from time to time as may be considered necessary for the development, improvement, regulation, maintenance or management of the Canal and the facilities afforded by the Canal or in connection with it.

(3) Nothing in this Order shall confer any public or private right of navigation over the Canal, or impose any duty on the undertaker to maintain the Canal for the purpose of navigation, or to supply, or maintain a supply of water for the Canal for that purpose.

Limit of jurisdiction

26. The boundary between the jurisdiction of the undertaker in respect of the Canal and the jurisdiction of the Board in respect of the Board's canal shall be a straight line drawn between national grid references 434610E 309982N and 434626E 309970N across the Board's canal 35 metres north of the Board's winding hole, being the existing limit of the Board's canal.

Application of existing enactments

27.—(1) In this article “the original canal” means such part of any canal or former canal as is situated within the limits of deviation in relation to any of the scheduled works, and all works or conveniences connected with any such part, and any lands held for the purpose of such part, but does not include any operational part of the Board's canal, or any works and conveniences connected therewith, or any lands held or used by the Board for the purpose of the operational part of the Board's canal.

(2) Any enactment by which the original canal was authorised shall, as from the date on which this Order comes into force, have effect subject to the provisions of this Order.

(3) Except as may be otherwise provided in this Order, as from the date on which this Order comes into force the undertaker shall, in substitution for the Board, be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations relating to the original canal as are provided in the Act made on 9th May 1794 for making and maintaining a Navigable Canal from the Coventry Canal⁽¹⁾ (in so far as the same are still subsisting and capable of taking effect).

(4) Paragraph (3) shall be subject to any agreement between the undertaker and the Board under article 28 or article 29.

Agreements with British Waterways

28.—(1) The undertaker and the Board may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of the authorised works, or any part of those works, by the Board or by the undertaker, or by the undertaker and the Board jointly.

(2) Any agreement made under paragraph (1) may make provision with respect to any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, costs incurred by either party to the agreement.

(3) Without prejudice to the generality of paragraph (1), any such agreement may provide for the exercise by the Board, or by the undertaker and the Board jointly, of all or any of the powers of the undertaker with respect to any of the authorised works.

(4) The exercise by the Board, or by the undertaker and the Board jointly, under this article, of any powers with respect to the authorised works, or any part of any of those works, shall be subject to the same provisions in relation to those powers as would apply if those powers were exercised by the undertaker alone.

Transfer of the Canal

29.—(1) Except with the consent of the Secretary of State, the undertaker shall not transfer or vest the Canal or any part of it in any person other than the Board.

(2) Except as may be otherwise provided for in this Order or in any agreement under this article, as from the date on which any transfer of the Canal or any part of it by the undertaker comes into force, the transferee shall, in substitution for the undertaker, be entitled to the benefit of, and to

(1) C.A.P. XCIII. Anno Tricesimo Quarto Georgii III Regis.

exercise, all rights and powers and be subject to all obligations, statutory or otherwise, relating to the transferred Canal (in so far as the same are still subsisting and capable of taking effect).

(3) Where the Canal is transferred to the Board under this article, as from the transfer date—

(a) the transferred Canal shall be deemed for the purposes of any enactment to be (as the case may require) an inland waterway owned or managed by the Board or comprised in the undertaking of the Board or a canal or inland navigation belonging to or under the control of the Board; and

(b) any byelaws made under article 24 shall cease to apply to the transferred Canal.

(4) The transitional provisions of Schedule 9 shall have effect in relation to any transfer in accordance with this article, being a transfer to the Board.

(5) In this article—

“the transferee” means the Board or any other person to whom the undertaking or any part thereof is transferred under this article; and

“the transferred Canal” means so much of the Canal as is transferred in accordance with this article.