

SCHEDULES

SCHEDULE 10

Article 55

FOR THE PROTECTION OF THE CANAL AND RIVER TRUST

1. For the protection of the Canal & River Trust the following provisions of this Schedule, unless otherwise agreed in writing between the Authority and CRT, have effect.

Interpretation

2. In this Schedule—

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“CRT Property” means any waterway belonging to CRT and any land structure works apparatus and equipment belonging to CRT and any land held or used by CRT for the purposes of such waterway, structure, works, apparatus or equipment;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
 - (b) any relaying, renewal, alteration reconstruction or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and
- “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of CRT and, without limitation on the scope of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) 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;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network); and
- (g) any interference with the exercise by any person of rights over CRT’s network;

“the engineer” means an engineer appointed by CRT for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, vibration monitoring reports, calculations, descriptions (including descriptions of methods of construction) and programmes and details of the extent timing and duration of any proposed occupation of CRT Property and stoppages of the CRT network;

“practical completion” means practical completion of all of the specified work regardless of any items which would ordinarily be considered snagging items that remain outstanding, and the expression “practically complete” and “practically completed” are construed accordingly;

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“protective work” means a work constructed under paragraph 8(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect, the waterway;

“towing path” means the towing path forming part of the waterway; and

“waterway” means the Birmingham Canal, and includes the towpath tunnel, and any works, land or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with a canal or inland navigation.

Powers requiring CRT’s consent

3.—(1) The Authority must not under the powers conferred by this Order acquire compulsorily any CRT Property.

(2) The Authority must not under the powers conferred by this Order acquire any easement or other right over CRT Property, or use CRT Property or divert the waterway or stop navigation of the waterway or use the towing path except where such acquisition or use is with the consent of CRT.

(3) The Authority must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to a waterway unless such obstruction or interference with such access is with the consent of CRT.

(4) The Authority must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to, or the drainage of water from or into, a waterway unless such exercise is with the consent of CRT.

(5) The Authority must not exercise the powers conferred by article 12 (temporary stopping up of streets) in relation to any way over land comprised in a waterway, unless such exercise is with the consent of CRT.

(6) The Authority must not exercise the powers conferred by article 26 (temporary interference with waterways) in relation to any moorings or rights over land comprised in a waterway unless such exercise is with the consent of CRT.

(7) The Authority must not exercise the powers conferred by article 22 (authority to survey and investigate land) or section 11(3) of the 1965 Act (power of entry for surveying land) in relation to a waterway unless such exercise is with the consent of CRT.

(8) The Authority must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers, etc.), so as to divert any right of access to a waterway, but such right of access may be diverted with the consent of CRT.

(9) Nothing in article 20 (discharge of water) authorises the Authority to—

(a) discharge any water directly or indirectly into a waterway; or

(b) carry out any works to, or make any opening in, or otherwise interfere with, a waterway (including the banks and bed of a waterway),

except with the consent of CRT and on terms that CRT may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(10) The consent of CRT under sub-paragraphs (1) to (9) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 20 (discharge of water) may include conditions—

(a) specifying the location, maximum volume and velocity of water which may be discharged in any period; and

(b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to the Authority to require the Authority to suspend the

discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT.

Vehicles, plant and machinery

4.—(1) The Authority must not use any land or property of CRT forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to CRT, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by CRT under paragraph 8.

Closure of towing paths, etc.

5. If in consequence of or in connection with the exercise of the powers conferred by this Order any part of a towing path or any public right of way giving access to a towing path (“the closed section”) is temporarily closed to persons on foot on cycles or in a wheelchair and there is no way which provides a reasonable alternative, the Authority must to the reasonable satisfaction of CRT provide in substitution a sufficient and convenient way for such persons between the points of commencement and termination of the closed section for such time as the closure continues.

Fencing

6. Where so required by the engineer the Authority 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 a waterway, whether on a temporary or permanent basis or both.

Survey of waterway

7.—(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 Authority must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by CRT and the Authority, and who may be an engineer employed by CRT, 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 Authority 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 Authority must—
 - (a) on being given reasonable notice (except 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 Authority 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 the surveyor may reasonably require with regard to such existing works of the Authority and to the specified works or the method of their construction.

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(3) The reasonable costs of the survey 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 of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both CRT and the Authority at no cost to CRT.

Approval of plans, protective works etc.

8.—(1) The Authority must before commencing construction of any specified work comprising part of the authorised works including any temporary works supply to CRT proper and sufficient plans of that work and such further particulars available to it as CRT may within 28 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work 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 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1) above) have been supplied to CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of the construction of a specified work to prevent detriment and to ensure the safety and stability of CRT Property and safe operation of the waterway; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the Authority or by CRT at the Authority's request with all reasonable dispatch and the Authority must not commence the construction of a specified work until the engineer has notified the Authority that the protective works have been completed to the engineer's reasonable satisfaction, which is not to be unreasonably withheld or delayed.

(4) The Authority must pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers conferred by this Order but 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 must be set off against any sum payable by the Authority to CRT under this paragraph.

(5) In the event that the Authority fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the Authority must reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works within 28 days of receipt of an invoice together with appropriate evidence of the costs or expenses incurred.

Design of works

9. Without affecting its obligations under the provisions of this Schedule the Authority must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of that work,

and must have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular (but without limitation) to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(1) and to the interest of CRT in preserving and enhancing the environment of its waterways.

Notice of works

10. The Authority must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified 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, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

Lighting

11. The Authority must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

- 12.—(1) Any specified or protective works must, when commenced, be constructed—
- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under the provisions in paragraph 8 and with any requirements made under paragraph 8(5) and paragraph 9;
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
 - (c) in such manner as to cause as little detriment as is reasonably practicable; and
 - (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT.

(2) Nothing in this Order authorises the Authority to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width or navigation headroom of the waterway) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) (maintenance of waterways) of the Transport Act 1968(2) to maintain the waterway.

(3) Following the completion of the construction of the specified works the Authority must restore the waterway to a condition in the reasonable opinion of CRT no less satisfactory than its condition immediately prior to the commencement of those works.

Prevention of pollution

13. The Authority must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of

(1) 1995 c. i.

(2) 1968 c. 73. This is amended by Schedule 2 of S.I. 2012/1659.

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the waterway or the deposit of materials in it 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

- 14.**—(1) The Authority on being given reasonable notice must—
- (a) at all reasonable times and subject to any operational or safety requirements 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) CRT on being given reasonable notice must—
- (a) at all times afford reasonable facilities to the Authority and its agents for access to any works carried out by CRT under this part of this Schedule during their construction; and
 - (b) supply the Authority with such information as it may reasonably require with regard to such works or the method of constructing them and the Authority must reimburse CRT's reasonable costs in relation to the supply of such information.

Alterations to waterway

15.—(1) If during the construction of a specified work or a protective work (or during a period of 24 months after the completion of those works) any alterations or additions, either permanent or temporary, to a waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and CRT gives to the Authority reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Authority must pay to CRT the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT 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 must be set off against any sum payable by the Authority to CRT under this paragraph.

Maintenance of works

16. If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to the Authority informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the Authority 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 CRT's fees, etc.

17. The Authority must repay to CRT all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 8(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the Authority 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, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting 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; and
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network.

Cost of alterations

18. Any additional expenses which CRT may reasonably incur in altering, reconstructing or maintaining a waterway under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Authority, be repaid by the Authority to CRT.

Making good of detriment; compensation and indemnity, etc.

19.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the Authority, the Authority (if so required by CRT) must make good such detriment and must pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The Authority is responsible for and must make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by CRT—

- (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 Authority or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work,

and subject to sub-paragraph (4) the Authority must fully and effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

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

(4) CRT must give the Authority reasonable notice of any such claim or demand as referred to in sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed).

Details of capitalised sums to be provided

20. If CRT and the Authority cannot jointly agree the formula by which the capitalised sum is calculated it must be settled by arbitration in accordance with article 53 (arbitration).

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Arbitration

21. Any difference arising between the Authority and CRT under this Schedule (other than a difference as to the meaning or construction of this Schedule) must be referred to and settled by arbitration in accordance with article 53 (arbitration).

Statutory powers

22. Except as provided by this Order nothing in this Order is to prejudice or derogate from the estate, rights, interests, privileges, liberties or franchises of CRT or alter or diminish any power authority or jurisdiction vested in CRT at the making of this Order.