



Greater Nottingham Light Rapid Transit Act 1994

1994 CHAPTER xv

PART IV

PROTECTIVE PROVISIONS

42 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 undertakers 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 placing, alteration and renewal;

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

“plans” includes sections, drawings and particulars;

“the specified works” means so much of any of the authorised works as is situated over or upon or abuts on or in any way affects the canal:

(2) Notwithstanding anything in this Act or shown on the deposited plans, the undertakers shall not acquire compulsorily or occupy any land or other property of the waterways board but they may subject to the consent of the waterways board (which consent shall not unreasonably be withheld) in accordance with the provisions of section 28 (Power to acquire new rights) 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:

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- (3) The undertakers shall not use any land or property of the waterways board (including the towing paths comprised in the canal) for the passage 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 shall not be unreasonably withheld;
 - (b) subject to 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.
- (4) The undertakers 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:
- Provided that approval of plans supplied under this paragraph shall not be unreasonably withheld and, if within 28 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 plan as supplied:
- (5) 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 undertakers with all reasonable dispatch:
- (6) The undertakers shall pay to the waterways board a capitalised sum representing the increased or additional cost of maintaining and, when necessary, renewing any permanent protective works provided under paragraph (5) 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 undertakers to the waterways board under this section:
- (7) The undertakers shall give to the engineer 28 days' notice of their intention to commence the construction or repair of any of the specified works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable:
- (8) The undertakers shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (9) 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 (4) above;
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

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- (c) so as not to interfere with or obstruct the use of the towing paths of the canal so far as is reasonably practicable; and
 - (d) so as not to interfere or obstruct the passage of vessels on the canal—
 - (i) at any time in the period in each year beginning on 17th March and ending on 3rd November except in case of emergency; and
 - (ii) at any other time so far as is reasonably practicable:
- (10) Following the completion of the construction of the specified works the undertakers shall restore the canal to a condition no less satisfactory than its condition immediately prior to the commencement of those works:
- (11) The undertakers 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 such pollution:
- (12) Nothing in section 23 (Use of sewers, etc., for removing water) of this Act shall authorise the undertakers—
- (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:
- (13) The consent of the waterways board under paragraph (12) (a) above and the approval of plans under paragraph (12) (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—
- (a) requiring the undertakers to make payments to the waterways board for the discharge of water in accordance with the said section 23 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;
 - (b) providing for the charges so payable by the undertakers (other than any charge in respect of the employment of persons, or the provision or alteration of works or facilities for the accommodation and disposal of water) to be determined by reference to the volume of such discharges as recorded by metering devices of a design approved by the waterways board and supplied and maintained by them at the expense of the undertakers;
 - (c) specifying the maximum volume of water which may be discharged in any period;
 - (d) authorising the waterways board to require the undertakers to suspend the discharge of water or reduce the flow thereof where this is necessary by reason of any operational requirement of the waterways board.
- (14) The undertakers shall pay to the waterways board all costs, charges and expenses reasonably incurred by them in respect of the approval by the engineer of plans supplied by the undertakers under paragraph (4) above and the supervision by him of the construction of the specified works:
- (15) If any damage to the canal or other land or property of the waterways board, any stoppage of the canal or any interference with the passage of vessels using the canal shall be caused by the carrying out of works for the construction of the specified works, the undertakers shall make good such damage and pay to the waterways board all

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reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, stoppage or interference:

Provided that nothing in this paragraph shall impose any liability on the undertakers with respect to any damage, expenses or loss which is attributable to the act, neglect or default of the waterways board or their servants, contractors or agents:

- (16) Nothing in this Act shall authorise the undertakers to make or maintain any permanent works in or over the canal so as to reduce the width thereof if such reduction in width would impede or prevent the passage of any vessel of a kind (as to its dimensions) for which the waterways board are required by section 105 (1) (b) and (2) of the Transport Act 1968 to maintain the canal:

- (17) (a)

The undertakers 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—

- (i) by reason of the construction or repair of the specified works or the failure thereof; or
- (ii) by reason of any act or omission of the undertakers or of any person in their employ or of their contractors or others whilst engaged upon the construction or repair of the specified works;

and the undertakers shall indemnify the waterways board from and against all claims and demands arising out of, or in connection with, the construction or repair of the specified works or any such failure, act or omission as aforesaid;

- (b) The fact that any act or thing has been done by the waterways board on behalf of the undertakers or 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 neglect or default on the part of the waterways board or of any person in their employ or of their contractors or agents) excuse the undertakers from any liability under this paragraph;
- (c) The waterways board shall give to the undertakers reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertakers:

- (18) (a)

The undertakers shall not exercise the powers of the sections of this Act mentioned in sub-paragraph (b) below in relation to the towing path forming part of the canal without the consent in writing of the waterways board;

- (b) The sections to which sub-paragraph (a) above applies are—
 - section 10 (Subsidiary works),
 - section 18 (Temporary stoppage of highways);
- (c) The consent of the waterways board under paragraph (a) above shall not be unreasonably withheld but may be given subject to reasonable conditions;
- (d) Where the waterways board own the towing path in respect of which consent is given under sub-paragraph (a) above for the exercise of the powers of the said section 10, they may require the payment of such charges as would have been fair and reasonable if that consent had been given willingly;
- (e) Nothing in this paragraph applies to anything done by the undertakers on the existing viaduct referred to in the description of Work No. 1:

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