



British Waterways Act 1995

1995 CHAPTER i

PART II

ENTRY ON LAND

3 Interpretation of Part II

(1) In this Part—

“emergency operations” means relevant operations carried out pursuant to section 4 (Entry on to land in cases of emergency) of this Act;

“land”, in relation to Scotland, includes an interest in land and references to entry on to land shall be construed accordingly; and any reference to land shall include a reference to salmon fishings;

“on”, in relation to the carrying out of relevant operations on land, includes in, under or over;

“owner” means—

(a) in relation to any land in England or Wales, a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack-rent of the land or, where the land is not let at a rack-rent, would be entitled if it were so let; and

(b) in relation to any land in Scotland, the person (other than a heritable creditor not in possession) for the time being entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the land, and includes a trustee, factor, tutor or curator;

“relevant operations” means—

(a) the repair, maintenance, alteration, renewal, protection or demolition of any inland waterway;

(b) the repair, maintenance, alteration, renewal or protection of any works (not forming part of any inland waterway) for the drainage of, or supply of water to, any inland waterway;

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(c) any inspection, survey or investigation of any inland waterway or adjoining land, or any works such as are referred to in paragraph (b) above, for the purpose of ascertaining whether any such repair, maintenance, alteration, renewal, protection or demolition is required; “relevant undertaker” means any of the following—

- (a) the National Rivers Authority or, in Scotland, the river purification authority in whose area the land on which relevant operations are carried out or proposed to be carried out is situated;
- (b) the British Coal Corporation;
- (c) any of the following undertakers, that is, any—
 - (i) water undertaker or water authority within the meaning of the Water (Scotland) Act 1980;
 - (ii) sewerage undertaker or local authority within the meaning of the Sewerage (Scotland) Act 1968;
 - (iii) internal drainage board; or
 - (iv) supplier of electricity within the meaning of Part I of the Electricity Act 1989;

which has apparatus in the area where the land upon which relevant operations are carried out or proposed to be carried out is situated;

- (d) any of the following undertakers, that is, any—
 - (i) public gas supplier within the meaning of Part I of the Gas Act 1986; or
 - (ii) generator or transmitter of electricity within the meaning of Part I of the Electricity Act 1989;

which has apparatus on, under or over land upon or immediately adjacent to which relevant operations are carried out or proposed to be carried out;

- (e) any undertakers authorised by any enactment to carry on any water transport, canal, inland navigation, dock, harbour or pier undertaking if in any case the land on which relevant operations are carried out or proposed to be carried out is in the ownership or occupation of any such undertakers, or is immediately adjacent to any land in the ownership or occupation of any such undertakers;
- (f) any telecommunications operator within the meaning of the Telecommunications Act 1984 having any telecommunication apparatus (as defined in that Act) in the area where relevant operations are carried out or proposed to be carried out; and

“road”, in relation to Scotland, means any public or private road within the meaning of the Roads (Scotland) Act 1984.

- (2) For the purposes of subsection (1) above, “maintenance” includes the removal, felling, cutting back or treating of any tree or other vegetation.

4 Entry on to land in cases of emergency

- (1) Where the Board have reasonable cause to believe that—
 - (a) the carrying out of relevant operations is necessary; and
 - (b) the relevant operations are required to be carried out without delay—
 - (i) in the case of any relevant operations consisting of any inspection, survey or investigation, for the purpose of confirming that there exists

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an immediate danger to persons or property and, if so, establishing the nature of the repair, maintenance, alteration, protection or demolition required to remove the danger;

(ii) in the case of any other relevant operations, for the purpose of removing or facilitating the removal of any immediate danger to persons or property; and

(c) it would not be reasonably practicable for the operations to be carried out without entry on to land (other than a highway or, in Scotland, a road) adjoining or in the vicinity of an inland waterway;

any person authorised in writing in that behalf by the Board may enter the land and carry out the operations on that land or on any adjoining land of the Board.

(2) The Board shall inform the owner and occupier of the land as soon as possible of the carrying out of emergency operations and, not more than 7 days after the entry on that land, they shall serve on such owner and occupier a notice—

(a) specifying the land upon which entry has been made and the nature of the emergency operations; and

(b) containing details of the right of the occupier to claim payment for such entry and the right of the owner and occupier to claim compensation under this Part.

5 Notice of entry, etc

(1) Where the Board have reasonable cause to believe that—

(a) the carrying out of relevant operations other than emergency operations is necessary; and

(b) it would not be reasonably practicable for the operations to be carried out without entry on to land (other than a highway or, in Scotland, a road) adjoining or in the vicinity of an inland waterway;

the Board may serve a notice (in this Part called “a notice of entry”) in the terms prescribed in subsection (4) below.

(2) A notice of entry shall be served—

(a) on the owner of the land;

(b) on the occupier of the land, if not the owner; and

(c) on every relevant undertaker.

(3) A copy of every notice of entry shall be posted in some conspicuous place on or near the land specified in the notice not less than 28 days before entry is proposed to be made.

(4) A notice of entry—

(a) shall specify—

(i) the land on which entry is proposed to be made;

(ii) the nature of the relevant operations, the manner in which it is proposed they should be carried out and the nature of any apparatus to be placed and left on the land in connection with the relevant operations;

(iii) the date upon which it is intended that the relevant operations will commence (which shall not be earlier than the day after the last date upon which a counter-notice under subsection (5) below may be

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- served in respect of the notice of entry) and their maximum duration;
and
- (iv) the hours during which the relevant operations are to be carried out;
- (b) shall contain details of the rights to object to the notice (including a form of counter-notice for use by the recipient pursuant to the following provisions of this section) and to claim payment for such entry together with compensation under this Part; and
- (c) shall state that it would not be reasonably practicable for the operations to be carried out without entry on the land specified in the notice.
- (5) (a) A person served with a notice of entry may, within 28 days from the date on which the notice is served on him, serve on the Board a counter-notice (in this Part called “a counter-notice”) stating that—
- (i) he consents unconditionally to the entry by the Board on the land described in the notice and to the carrying out of the relevant operations specified in the notice, in the manner so specified (“the proposals of the notice of entry”); or
- (ii) he objects to the proposals of the notice of entry on any one or more of the grounds mentioned in subsection (6) below, which shall be specified in the counter-notice.
- (b) If the recipient of a notice of entry does not within 28 days serve a counter-notice on the Board, he shall be deemed to have granted his consent unconditionally to the proposals of the notice of entry.
- (6) The grounds upon which objection may be made to a notice of entry are—
- (a) that it would be reasonably practicable for the operations mentioned in the notice to be carried out in some other way not involving entry on to the land specified in the notice;
- (b) that the carrying out of the relevant operations is unnecessary;
- (c) that the maximum duration of the relevant operations, as stated in the notice of entry, is excessive, having regard to the nature of the relevant operations;
- (d) that there has been some informality, defect or error in, or in connection with, the notice;
- (e) that the notice should lawfully have been served on another person;
- (f) that the proposals of the notice of entry will interfere unreasonably with the use and enjoyment of the land by the recipient of the notice of entry and that the Board should be required to comply with the conditions specified in the counter-notice with respect to those proposals, or that the proposals should be modified in the manner specified in the counter-notice for the purpose of reducing or preventing such interference;
- (g) (where the recipient is a relevant undertaker) that the proposals of the notice of entry would be detrimental to the carrying on by the recipient of its undertaking and that—
- (i) having regard to the detriment entry by the Board should not be permitted; or
- (ii) the Board should be required to comply with the conditions specified in the counter-notice with respect to those proposals, or that the proposals should be modified in the manner specified in the counter-notice, for the purpose of reducing or preventing such detriment.
- (7) Upon receipt of a counter-notice the Board shall within 28 days—

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- (a) inform the recipient of the notice of entry in writing that—
 - (i) the notice of entry has been withdrawn (without prejudice to the right of the Board to serve a further notice of entry on the recipient or on any other person); or
 - (ii) the Board will accept and comply with the conditions with respect to matters such as are mentioned in subsection (6) (f) or (g) above and specified in the counter-notice or modify the proposals of the notice of entry; or
 - (b) where the person is a relevant undertaker, refer the counter-notice to arbitration; or
 - (c) in any other case, appeal against the counter-notice to a magistrates' court or, in Scotland, to the sheriff having jurisdiction over the area where the land to which the notice of entry relates is situated.
- (8) On any reference to arbitration under subsection (7) (b) above the arbitrator or, in Scotland, the arbiter may have regard to any court order made on any appeal under subsection (7) (c) above relating to the proposals of the notice of entry which is the subject of the reference.
- (9) On any appeal under subsection (7) (c) above, the court or the sheriff may have regard to any award of an arbitrator or, in Scotland, an arbiter made following a reference under subsection (7) (b) above relating to the proposals of the notice of entry which is the subject of the appeal.
- (10) An appeal under this section shall be by way of complaint for an order or, in Scotland, by way of summary application.
- (11) For the purposes of the time limit for bringing an appeal under this section, the making of the complaint or, in Scotland, the lodging of the initial writ shall be treated as the bringing of the appeal.
- (12) In so far as a counter-notice is based on the ground of some informality, defect or error in or in connection with the notice of entry the court or, as the case may be, the sheriff, arbitrator or arbiter shall uphold the notice of entry if it or he is satisfied that the informality, defect or error was not a material one.
- (13) On the hearing of the appeal the court or, in Scotland, the sheriff may make such order as it or he thinks fit.
- (14) A person aggrieved by an order of a magistrates' court or the sheriff under this section may appeal to the Crown Court or to the sheriff principal, as the case may be.

6 Power to enter land and carry out relevant operations pursuant to notice of entry

On or after the date mentioned in the notice of entry, or, if a notice of entry is upheld on appeal (with or without modification) after service of a counter-notice, after the notice of entry has been upheld, any person authorised in writing in that behalf by the Board may enter on the land and carry out on that land or on any adjoining land of the Board the relevant operations of the nature specified in the notice during the hours and in the manner so specified.

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7 Saving in cases of emergency

Nothing contained in or done under section 5 (Notice of entry, etc.) or section 6 (Power to enter land and carry out relevant operations pursuant to notice of entry) of this Act shall affect the powers of the Board under section 4 (Entry on to land in cases of emergency) of this Act to enter land and carry out emergency operations at any time.

8 Further provisions as to entry

- (1) (a) The power to carry out relevant operations includes power—
 - (i) to place and leave on the land apparatus for use in connection with the relevant operations in question, and to remove such apparatus; and
 - (ii) to carry out excavations.
 - (b) The nature of any apparatus and of any proposed excavations such as are referred to in paragraph (a) above shall be specified in the notice of entry in the case of relevant operations which are not emergency operations.
 - (c) If the Board carry out any excavation under the powers of paragraph (a) (ii) above they shall make good the surface of the land as soon as reasonably practicable after the completion of the relevant operations.
- (2) In carrying out any relevant operations in pursuance of section 4 (Entry on to land in cases of emergency) of this Act, the Board shall secure that as little damage as may be is done.
 - (3) A person authorised by the Board to enter on land in pursuance of section 4 (Entry on to land in cases of emergency) or section 6 (Power to enter land and carry out relevant operations pursuant to notice of entry) of this Act—
 - (a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;
 - (b) may take with him on to the land such other persons and such vehicles, materials and equipment as are necessary for the relevant operations;
 - (c) shall leave the land as effectually secured against trespassers as he found it unless the occupier of the land or his agent indicates that he does not wish the land to be so secured.
 - (4) As soon as reasonably practicable after the completion of any relevant operations and any making good carried out under subsection (1) (c) above the Board shall remove any apparatus, vehicles and equipment and any unused materials from the land.
 - (5) Nothing in this Part shall authorise the Board to—
 - (a) enter any building or any operational railway, tramroad or any part of a tramway laid otherwise than in a highway or, in Scotland, a road; or
 - (b) use or interfere with any apparatus of a relevant undertaker, unless the Board are entitled to do so otherwise than by virtue of this Part; or
 - (c) construct any permanent works on any land unless the Board have a sufficient right or interest in the land apart from this Part.
 - (6) The Board when they have entered any land pursuant to this Part shall commence the relevant operations for the purposes of which entry was made as soon as is reasonably practicable and shall complete them with all reasonable dispatch.
 - (7) Nothing in this Part shall authorise the Board to enter any land for the purposes of or in connection with the development of any land, being land not forming part of

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any inland waterway or of any works such as are mentioned in paragraph (b) of the definition of relevant operations in section 3 of this Act.

9 Payment for entry

- (1) The Board shall pay to the occupier of any land upon which entry is made in accordance with this Part a sum in respect of such entry which shall be assessed in accordance with subsections (2) and (3) below.
- (2) The sum payable under subsection (1) above shall be such sum as would have been paid if the occupier had entered into an agreement with the Board granting to them rights to enter the land for such period and for such purposes as entry has been made in accordance with this Part and (where entry is made pursuant to a notice of entry) on such conditions as are specified in any counter-notice and accepted by the Board or imposed—
 - (a) on any reference to arbitration of a counter-notice, by an arbitrator or arbiter;
 - (b) on any appeal against a counter-notice, by a court or the sheriff.
- (3) Part II of the Land Compensation Act 1961 or, in Scotland, Part III of the Land Compensation (Scotland) Act 1963, so far as material, shall apply to the assessment of the sum payable under subsection (1) above as though the rights deemed by subsection (2) above to be granted to the Board had been acquired by them compulsorily and in assessing that sum regard shall be had to the degree of inconvenience caused to the occupier by the entry.
- (4) Nothing in this section shall require the Board to defer or suspend entry on land or the carrying out of relevant operations while any dispute as to the sum payable under subsection (1) above is determined.
- (5) The rights of any person to a payment under subsection (1) above shall be without prejudice to the rights of that or any other person to recover compensation under section 10 (Compensation) of this Act.

10 Compensation

If a person suffers loss or damage in consequence of—

- (a) entry on to land in accordance with this Part; or
- (b) the carrying out of relevant operations in accordance with this Part; or
- (c) the failure by the Board to comply with any condition—
 - (i) specified in a counter-notice and accepted by the Board; or
 - (ii) imposed—
 - (A) on any reference to arbitration of a counter-notice, by an arbitrator or arbiter;
 - (B) on any appeal against a counter-notice, by a court or the sheriff;

he shall be entitled to recover compensation for the loss or damage from the Board.

11 Disputes as to payments, etc

Any dispute as to a person's entitlement to—

- (a) a payment under section 9 (Payment for entry) of this Act; or

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- (b) compensation in pursuance of section 10 (Compensation) of this Act;
 - or as to the amount of the payment or compensation shall be determined—
 - (i) where the person is a relevant undertaker, and the dispute does not relate to the meaning or construction of either of the said sections of this Act, by arbitration;
 - (ii) in any other case, by the tribunal, and the specified provisions (which relate to the conduct of certain proceedings before the tribunal and costs) shall with necessary modifications apply in relation to the determination by the tribunal of such a dispute.

12 Offences under Part II

- (1) If a person—
 - (a) intentionally obstructs another person in the exercise of any power of entry conferred on the other person by this Part; or
 - (b) while another person is on any land in pursuance of this Part intentionally obstructs him in carrying out any emergency operations or any relevant operations specified in a notice of entry (and not superseded by any conditions accepted or modifications made under subsection (7) (a) (ii) of section 5 (Notice of entry, etc.) of this Act, or by the order of any court or the sheriff or the award of an arbitrator or arbiter), as the case may be; or
 - (c) without reasonable excuse removes or otherwise interferes with apparatus left on or in land in pursuance of subsection (1) of section 8 (Further provisions as to entry) of this Act;
 he shall be guilty of an offence and liable, on summary conviction, to a fine—
 - (i) in the case of an offence of obstructing another person in the exercise of a power conferred by section 4 (Entry on to land in cases of emergency) of this Act, not exceeding level 4 on the standard scale; and
 - (ii) in the case of any other offence, not exceeding level 2 on the standard scale.
- (2) It shall be a defence in any prosecution for an offence under subsection (1) (a) or (b) above that the person obstructed could not reasonably be identified as a person entitled to exercise powers under this Part.
- (3) If a person who has entered on any land in pursuance of this Part discloses to another person information obtained by him there about a manufacturing process or trade secret, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

13 For protection of relevant undertakers

- (1) The Board shall as soon as possible inform all relevant undertakers of the carrying out of emergency operations likely to affect them and shall thereafter give notice as soon as possible to the relevant undertakers of any such operations.
- (2) A person authorised by the Board to enter on land in pursuance of section 6 (Power to enter land and carry out relevant operations pursuant to notice of entry) of this Act shall not exercise any of the powers of that section unless notice of his intention to do so has been served by the Board, not less than 28 days before he does so, on any relevant undertakers.

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(3) This section shall have effect subject to any agreement between the Board and any relevant undertakers.

14 For protection of Port of London Authority

Nothing in this Part affects the obligation of the Board to obtain a works licence under section 66 of the Port of London Act 1968 (which relates to the licensing of works in the river Thames and adjoining waters) in respect of any operation constituting works to which that section relates.

15 Saving for Thames Conservancy Act 1932

Nothing in this Part affects the obligation of the Board to obtain a licence under Part III of the Thames Conservancy Act 1932 in respect of any operation requiring a licence under that Part.