



British Waterways Act 1995

1995 CHAPTER i

PART II

ENTRY ON LAND

5 Notice of entry, etc

- (1) Where the Board have reasonable cause to believe that—
- the carrying out of relevant operations other than emergency operations is necessary; and
 - 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—
- on the owner of the land;
 - on the occupier of the land, if not the owner; and
 - 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—
- shall specify—
 - the land on which entry is proposed to be made;
 - 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;

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- (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 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

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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—
- (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.