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STATUTORY INSTRUMENTS

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**2002 No. 1998**

**The Wye Navigation Order 2002**

**PART IV**

**SUPPLEMENTARY PROVISIONS IN RELATION TO THE PRINCIPAL RIVERS**

**Charges**

**24.**—(1) The application of section 43 of the Environment Act 1995<sup>(1)</sup> (which gives the Agency power to fix and recover charges for services and facilities provided in the course of carrying out its functions) to the functions of the Agency under Part III of this Order shall be subject to the provisions of this article.

(2) No charges shall be payable in respect of the navigation or use of the principal rivers by a vessel belonging to or employed in the service of any statutory undertaker, highway authority, police authority or fire authority for the purpose of the exercise of its functions.

(3) No charges shall be payable in respect of the navigation or use of the principal rivers by a riparian owner for the purpose of going from one part of his land to another part and in respect of which no payment or other benefit is made or conferred by a third party.

**List of charges**

**25.** A list showing the charges for the time being in force pursuant to article 24 shall be displayed at convenient places on or adjacent to the principal rivers and a copy of the list shall be supplied by the Agency on request to any person appearing to have an interest.

**Provision for charitable or other bodies**

**26.** The Agency may at its discretion remit or reduce any charge shown in the list referred to in article 25 in respect of any vessel used for charitable or other purposes which the Agency considers merits remission or reduction of the charge.

**For protection of statutory undertakers**

**27.**—(1) The provisions of this article shall apply unless provision to the contrary is made by agreement in writing between the Agency and the statutory undertaker in question.

(2) The powers conferred on the Agency by articles 6, 12 and 14—

(a) shall not apply in relation to any property of a statutory undertaker; and

(b) shall not be exercised so as to damage, adversely affect or obstruct access to any such property.

(3) The power conferred on the Agency by article 21 to dredge and dispose of dredged material shall not be exercised—

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(1) 1995 c. 25.

- (a) within 50 metres of any property of Railtrack without Railtrack’s approval of the work which the Agency proposes to carry out;
  - (b) within 50 metres of any property of any other statutory undertaker without reasonable prior notice; or
  - (c) so as to damage or adversely affect any property of any other statutory undertaker.
- (4) Before exercising its power under article 10 in relation to any vessel which is within 150 metres of any property of a statutory undertaker, the Agency shall give the undertaker reasonable notice of its intention to do so.
- (5) Paragraph (4) shall not apply in any case which is (in the opinion of the Agency) an emergency.
- (6) Any dispute between the Agency and a statutory undertaker as to the application of any provision made by this article shall be determined by a person appointed for the purpose—
- (a) by agreement between the Agency and the statutory undertaker; or
  - (b) failing such agreement, by the appropriate national authority.

#### **For protection of highway authorities**

- 28.**—(1) The provisions of this article shall apply unless provision to the contrary is made by agreement in writing between the Agency and the highway authority in question.
- (2) The powers conferred on the Agency by article 6—
- (a) shall not apply in relation to any works of a highway authority; and
  - (b) shall not be exercised so as to damage, adversely affect or obstruct access to any such works.
- (3) The power conferred on the Agency by article 21 to dredge and dispose of dredged material shall not be exercised—
- (a) within 50 metres of any works of a highway authority without the authority’s approval of the work which the Agency proposes to carry out; or
  - (b) so as to damage or adversely affect any works of a highway authority.
- (4) Any dispute between the Agency and a highway authority as to the application of any provision made by this article shall be determined in the manner provided by article 27(6) as though it were a dispute between the Agency and a statutory undertaker.
- (5) In this article—
- (a) references to any works of a highway authority are references to any bridge, highway or public quay mentioned in article 29(4) (other than any railway bridge belonging to Railtrack); and
  - (b) references to a highway authority shall be construed in accordance with the Highways Act 1980(2).

#### **For protection of bridges, highways, railways, etc.**

- 29.**—(1) Subject to paragraph (2), nothing in Part III of this Order or any byelaw made under or by virtue of that Part shall prejudice the exercise of any power of a highway authority or Railtrack to enter upon, use or interfere with the principal rivers for the purpose of inspecting, maintaining, repairing, improving, widening or reconstructing any bridge, highway, railway or public quay to which this article applies.

(2) In exercising any power referred to in paragraph (1), a highway authority or Railtrack (as the case may be) shall comply with any reasonable direction given by the Agency for the purpose of protecting the navigation and use of the principal rivers, whether in the form of modifications to the plans, sections and particulars of the proposed work, in relation to the manner in which the work is to be carried out, or otherwise.

(3) Any dispute between the Agency and a highway authority or Railtrack as to the reasonableness of any direction given by the Agency under paragraph (2) shall be determined by a person appointed for the purpose—

- (a) by agreement between the Agency and the highway authority or Railtrack (as the case may be); and
- (b) failing such agreement, by the appropriate national authority.

(4) This article applies to—

- (a) any bridge over the principal rivers, being—
  - (i) a highway maintainable at the public expense; or
  - (ii) a bridge maintained by the highway authority in pursuance of any agreement, and includes the highway carried by that bridge;
- (b) any railway bridge over the principal rivers belonging to Railtrack, including the railway carried by that bridge;
- (c) any highway, or railway belonging to Railtrack, abutting on, adjacent to or contiguous with the principal rivers and any retaining wall between them and any such highway or railway; and
- (d) any public quay situated in or by the principal rivers.

(5) In this article expressions to which meanings are assigned by the Highways Act 1980 have the same respective meanings.

### **For protection of Dŵr Cymru Cyfyngedig**

**30.**—(1) For the protection of Dŵr Cymru the following provisions, unless otherwise agreed in writing between the Agency and Dŵr Cymru, apply and have effect.

(2) The Agency shall, except in a case of urgency where it is not reasonably practicable to do so, consult Dŵr Cymru in relation to the discharge of the functions of the Agency under this Order which may substantially affect the functions of Dŵr Cymru.

(3) The Agency shall in particular consult Dŵr Cymru on—

- (a) proposals—
  - (i) to construct or license works in the principal rivers;
  - (ii) to lay down, alter or interfere with moorings in those rivers;
  - (iii) to make byelaws under article 17; or
  - (iv) to make byelaws in relation to the upper rivers and the tributaries pursuant to its powers under paragraph 1 of Schedule 25 to the Water Resources Act 1991, as modified by article 32,

where they may have such a substantial effect; and

- (b) proposals to prepare, publish or vary the Wye Navigation Plan under article 4.

(4) The Agency shall take into consideration any matter, recommendation or representation relating to the discharge of its functions under this Order which may from time to time be referred or made to it by Dŵr Cymru, whether or not Dŵr Cymru has been consulted on the matter, recommendation or representation.

(5) In consulting Dŵr Cymru on any proposal the Agency shall allow a reasonable time (being not less than 28 days) for Dŵr Cymru to meet and report back to it.

(6) When so requested by Dŵr Cymru, the Agency shall give its reasons in writing to Dŵr Cymru for disagreeing with any recommendation or representation of Dŵr Cymru.

**Additional consultation with local authorities**

**31.** The Agency shall consult the county and district councils referred to in article 3(2) on the following matters—

- (a) the preparation and publication of the Wye Navigation Plan under article 4 and any subsequent review and variation of that plan;
- (b) any proposals to make byelaws in relation to the principal rivers under article 17;
- (c) any proposals to impose or vary any charges or fees relating to the navigation and use of the principal rivers; and
- (d) any proposals by the Agency to construct works under article 6 for which planning consent is granted by a general development order.