

2002 No. 1998

**TRANSPORT AND WORKS, ENGLAND AND WALES
CANALS AND INLAND WATERWAYS, ENGLAND
AND WALES**

The Wye Navigation Order 2002

Made - - - - - *25th July 2002*

Coming into force - - - *15th August 2002*

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Whereas an application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992^(a) made under sections 6, 7 and 10 of the Transport and Works Act 1992^(b) (“the Act”) for an Order under sections 3 and 5 of the Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of that Act;

(a) S.I. 1992/2902.

(b) 1992 c. 42.

And whereas the Secretary of State, having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in her opinion do not make any substantial change in the proposals;

And whereas the Secretary of State has obtained the agreement of the National Assembly for Wales in accordance with Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 1999();

And whereas the Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an order under the Harbours Act 1964();

And whereas notice of the Secretary of State's determination was published in the London Gazette on 12th July 2002;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 3 and 5 of, and paragraphs 1, 2, 4, 7, 8, 12, 13 and 16 of Schedule 1 to, the Act and of all other powers enabling her in that behalf, with the agreement of the National Assembly for Wales, hereby makes the following Order:

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wye Navigation Order 2002 and shall come into force on 15th August 2002.

Interpretation

2.—(1) In this Order—

“the Agency” means the Environment Agency;

“the appropriate national authority” means—

(a) in relation to works or property in England, the Secretary of State;

(b) in relation to works or property in Wales, the National Assembly for Wales; and

(c) in relation to works or property in both England and Wales, the Secretary of State and the National Assembly for Wales, acting jointly;

“bank” means so much of any bank, wall, embankment, fence, wharf, quay or other feature (whether natural or artificial) as confines the waters of the rivers up to the level and the point of their overspill into the flood plain of the rivers;

“Dŵr Cymru” means Dŵr Cymru Cyfyngedig, and references to the functions of Dŵr Cymru are references to its functions as sewerage undertaker and as water undertaker;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“master” means, in relation to any vessel, the person (whether or not the owner) for the time being having command or charge of the vessel;

“mooring” includes any buoy, pile, post, chain, pillar or like apparatus or convenience used for the mooring of vessels;

“notice” means notice in writing;

“officer” means an officer or agent of the Agency duly authorised by the Agency to exercise the powers conferred by this Order or to secure compliance with its provisions and with any byelaws made under this Order or under Schedule 25 to the Water Resources Act 1991();

(a) S.I. 1999/672.

(b) 1964 c. 40.

(c) 1991 c. 57.

“personal watercraft” means any watercraft (not normally used in navigation and not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

- (a) by means of a handlebar operated linkage system (with or without a rudder at the stern);
- (b) by the person riding the craft using his body weight for the purpose; or
- (c) by a combination of the methods referred to respectively in sub-paragraphs (a) and (b);

“the principal rivers” means—

- (a) that part of the river Wye from the downstream face of Bigsweir Bridge (reference point SO 538051) to Hay Town Bridge (reference point SO 228426); and
- (b) that part of the river Lugg from its confluence with the river Wye to Presteigne Town Bridge (reference point SO 316646),

and includes their beds and banks;

“Railtrack” means Railtrack PLC, a public limited company registered under the Companies Act 1985() to which there was transferred on 1st April 1994, under a scheme made on 30th March 1994, pursuant to section 85(1) of the Railways Act 1993() and by direction of the Secretary of State pursuant to section 85(4) of that Act, that part of the undertaking of the British Railways Board which consisted of the management of the railway network in Great Britain and related property, rights and liabilities;

“reference point” refers to the map co-ordinates on the National Grid used by the Ordnance Survey and shall be construed as if the words “or thereabouts” were inserted after each such reference point;

“the rivers” means the principal rivers, the upper rivers and the tributaries;

“seaplane” includes a flying boat and any other aircraft designed to manoeuvre on water;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker within the meaning of section 262(3) of the Town and Country Planning Act 1990();
- (b) any other person who exercises functions under the Land Drainage Act 1991();
- (c) any person to whom the telecommunications code set out in Schedule 2 to the Telecommunications Act 1984() is applied by a licence under section 7 of that Act;
- (d) any person who is a holder of a licence under section 6 of the Electricity Act 1989(); or
- (e) Railtrack (except for the purposes of article 23(3));

“the tributaries” means those tributaries and branches of the principal rivers and the upper rivers which are inland waterways(), and includes their beds and banks;

“the upper rivers” means so much of—

- (a) the river Wye upstream of Hay Town Bridge; and
- (b) the river Lugg upstream of Presteigne Town Bridge,

which are inland waterways, and includes their beds and banks;

“vessel” means every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water, a personal watercraft, a hydrofoil vessel, a hovercraft or any other amphibious vehicle, and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

“works licence” has the meaning given in article 22;

(a) 1985 c. 6.

(b) 1993 c. 43.

(c) 1990 c. 8.

(d) 1991 c. 59.

(e) 1984 c. 12.

(f) 1989 c. 29.

(g) “Inland waterway” is defined in section 67(1) of the Transport and Works Act 1992 (c. 42).

“the Wye Navigation Advisory Committee” means the committee provided for in article 3;

and

“the Wye Navigation Plan” has the meaning given in article 4(1).

(2) References in this Order to the use of the principal rivers shall be construed as meaning such use as is, according to the principles of common law, reasonably incidental to their navigation.

(3) References in this Order to any property of a statutory undertaker are references to any land, works, apparatus and other property which is or are vested in or under the control of that undertaker for the purposes of its functions.

PART II

GENERAL PROVISIONS IN RELATION TO RIVERS

Wye Navigation Advisory Committee

3.—(1) The Agency shall establish a body, to be known as the Wye Navigation Advisory Committee (in this article, referred to as “the Committee”), to advise the Agency on the navigation and use of the rivers.

(2) Subject to paragraph (3), the Committee shall consist of a maximum of 23 persons appointed by the Agency of whom—

- (a) one, to represent the owners and operators of pleasure craft available for hire, shall be nominated by the Symonds Yat Boatman’s Organisation;
- (b) one, to represent outdoor adventure centres, shall be nominated by the Council for Outdoor Education, Training and Recreation;
- (c) one, to represent general recreational motor-boating interests, shall be nominated by the Inland Waterways Association;
- (d) one, to represent canoeists on the upper rivers and their tributaries, shall be nominated by the Welsh Canoeing Association;
- (e) one, to represent canoeists on the principal rivers and their tributaries, shall be nominated by the British Canoe Union;
- (f) one, to represent rafters, shall be nominated by the Committee for Herefordshire Amateur Rafters;
- (g) one, to represent rowers, shall be nominated jointly by the Ross, Monmouth and Hereford Rowing Clubs;
- (h) one, to represent anglers, shall be nominated jointly by the Salmon and Trout Association and the National Federation of Anglers;
- (i) one, to represent fishery owners, shall be nominated by the Wye Salmon Fishery Owners Association;
- (j) one, to represent riparian owners on the principal rivers and their tributaries, shall be nominated by the Country Land and Business Association;
- (k) one, to represent riparian owners on the upper rivers and their tributaries, shall be nominated by the Country Land and Business Association (Wales);
- (l) one, to represent wildlife and conservation groups, shall be nominated jointly by the Radnorshire Wildlife Trust, the Brecknock Wildlife Trust, the Gwent Wildlife Trust, the Herefordshire Nature Trust and the Montgomeryshire Wildlife Trust;
- (m) one, to represent the interests of the Wye Valley Area of Outstanding Natural Beauty, shall be nominated by the Wye Valley Area of Outstanding Natural Beauty Joint Advisory Committee;
- (n) one, to represent local interests, shall be nominated by the County of Herefordshire District Council following consultation with the relevant parish councils within its boundaries;
- (o) one, to represent local interests, shall be nominated by Gloucestershire County Council following consultation with the relevant parish councils within its boundaries;

- (p) one, to represent local interests, shall be nominated by the Forest of Dean District Council following consultation with the relevant parish councils within its boundaries;
- (q) one, to represent local interests, shall be nominated by Monmouthshire County Council following consultation with the relevant community councils within its boundaries;
- (r) one, to represent local interests, shall be nominated by Powys County Council following consultation with the relevant community councils within its boundaries;
- (s) one shall be nominated by the Countryside Council for Wales;
- (t) one shall be nominated by the Nature Conservancy Council for England;
- (u) one shall be nominated jointly by Sport England and the Sports Council for Wales;
- (v) one shall be the Chairman from time to time of the body known as the Wye Management Advisory Group; and
- (w) one shall be a person independent of the Agency's interests and appointed on the Agency's own nomination.

(3) If it appears to the Agency in the case of any of the appointments referred to in paragraphs (2)(a) to (u) that the body on whose nomination the appointment is to be made has refused or failed to nominate a member within a reasonable time after being requested by the Agency to do so or if the body on whose nomination any of the said appointments is to be made has ceased to have an identifiable existence, the appointment in question shall be made by the Agency as it considers appropriate after consultation with such persons (if any) appearing to the Agency to be representative of the interests represented, or formerly represented, by the nominating body specified in the relevant sub-paragraph.

(4) If it appears to the Agency following consultation pursuant to paragraph (3) that the interest formerly represented by the nominating body specified in the relevant sub-paragraph has ceased to have an interest in the navigation or use of—

- (a) the rivers, or
- (b) where the relevant sub-paragraph specifies part only of the rivers, that part of the rivers,

the Agency shall not be obliged to make any appointment under that sub-paragraph.

(5) The Agency shall, except in a case of special urgency where it is not reasonably practicable to do so, consult the Committee on all matters substantially affecting the navigation and use of the rivers and particularly—

- (a) on proposals—
 - (i) to construct or license works in the principal rivers; or
 - (ii) to lay down, alter or interfere with moorings in those rivers, where they may have such a substantial effect;
- (b) on proposals to impose or vary any charges or fees relating to the principal rivers; and
- (c) on proposals to make byelaws relating to the rivers.

(6) In consulting the Committee pursuant to paragraph (5) the Agency shall allow a reasonable time (being not less than 28 days) for the Committee to meet and report back to it.

(7) The Agency shall seek advice from the Committee in relation to the preparation and publication of the Wye Navigation Plan under article 4 and any subsequent review and variation of that plan.

(8) The Committee shall provide the Agency with the advice sought in connection with the Wye Navigation Plan within a reasonable period of the request for the advice in question being made.

(9) The Committee may at any time make representations or recommendations in relation to, or refer to the Agency, any matter affecting the navigation or use of the rivers whether or not the Committee has been consulted on the matter.

(10) The Agency shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to it by the Committee, whether or not the Committee has been consulted on the matter, recommendation or representation so referred or made.

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

(12) The Agency shall provide the Committee with accommodation and pay all its reasonable secretarial and administration costs.

(13) Schedule 1 shall have effect in relation to terms of office of members of the Committee, its meetings and proceedings, and casual vacancies in its membership.

(14) References in paragraph (2) to the relevant parish councils and the relevant community councils are references to those parish and community councils through whose areas, or along whose boundaries, the rivers flow.

Wye Navigation Plan

4.—(1) The Agency shall, before the end of the period of 3 years beginning with the date of the coming into force of this Order, prepare and publish a plan (to be known as the Wye Navigation Plan) setting out its policy with respect to—

- (a) the exercise of its functions under or by virtue of Parts III and IV of this Order in relation to the principal rivers; and
- (b) the making of any byelaws in relation to the upper rivers and the tributaries under paragraph 1 of Schedule 25 to the Water Resources Act 1991, as modified by article 32.

(2) The Agency shall review the Wye Navigation Plan at least once in every 5 years.

(3) If, as a result of any such review, the Agency is of the opinion that it is appropriate to vary the Wye Navigation Plan, it may do so in such manner as it thinks fit.

(4) The Agency shall publish a report on the result of any review carried out under this article and the report shall set out the variations (if any) which the Agency has made following the review.

(5) Before preparing or varying the Wye Navigation Plan the Agency shall—

- (a) publish a draft of its proposals; and
- (b) consult the Wye Navigation Advisory Committee and such persons and other bodies as appear to it to represent interests likely to be concerned.

(6) The Wye Navigation Plan may form a part of any other plan or similar document which is from time to time prepared and published by the Agency pursuant to its functions under any other enactment.

PART III

ADDITIONAL FUNCTIONS OF THE AGENCY IN RELATION TO THE PRINCIPAL RIVERS

General duties of the Agency under this Part

5. It shall be the duty of the Agency to exercise the powers of this Part—

- (a) to manage the principal rivers for the purposes of—
 - (i) protecting the interests of those navigating and using them, and
 - (ii) promoting, to such extent as it considers desirable, their navigation and use;
- (b) to maintain the principal rivers for the purposes of their navigation and use to such standard as appears to it to be reasonably practicable, and to take such steps to improve them as it thinks fit; and
- (c) for such purposes relating to any of its other functions as it considers necessary.

General powers of the Agency in relation to navigation and use of the principal rivers

6.—(1) The Agency may preserve, manage and improve the principal rivers for their navigation and use.

(2) In exercise of its powers under paragraph (1) the Agency may maintain and improve existing works, buildings and other facilities and construct, erect, lay out, equip and maintain all such further works, buildings, conveniences and facilities, provide all such facilities, equipment and services and provide or do all the other acts or things it thinks necessary or expedient for that purpose.

(3) The Agency may, for the purposes of, or in connection with, the management or control of navigation and use of the principal rivers, execute or do on any lands abutting on the principal rivers, by agreement with the owners and occupiers of the lands, any of the works or things referred to in paragraph (2) and any works requisite or expedient for the purpose of providing or facilitating access to or from, or for preserving the amenities of, those lands.

(4) The powers conferred upon the Agency by this article may be exercised notwithstanding interference with the right of navigation referred to in article 7(2).

(5) Nothing in this article confers on the Agency power to construct any lock or weir.

Rights of navigation over the principal rivers

7.—(1) All public rights of navigation and use over or along the principal rivers that exist immediately before the coming into force of this Order, however arising, shall be extinguished and replaced by the public right referred to in paragraph (2).

(2) Members of the public shall have the right to navigate and use the principal rivers.

General rules for navigation

8.—(1) A master who navigates or uses the principal rivers—

- (a) without due care and attention;
- (b) in a manner liable to injure or endanger persons, other vessels, the bed or banks of the principal rivers or any structure or installation in or beside the principal rivers; or
- (c) in a manner which does not show reasonable consideration for persons and property in, upon or about the principal rivers and their banks,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In any proceedings under paragraph (1)(b), it shall be a defence for the person charged to prove that the action complained of was done in an emergency and that in all the circumstances the course of action taken was reasonable.

Vessels adrift

9. If, due to neglect on the part of the owner or master in mooring a vessel, any vessel is adrift in the principal rivers, the owner or, as the case may be, the master, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of vessels

10.—(1) Whenever any vessel is sunk, stranded or abandoned in the principal rivers, or without lawful authority left or moored in the principal rivers, the Agency may, after giving (except in an emergency) not less than 21 days' notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise and remove the vessel.

(2) Any notice given by the Agency under paragraph (1) shall—

- (a) identify the vessel in respect of which the notice is served and its approximate location;
- (b) state that if the owner fails to raise and remove the vessel before the expiry of the period specified in the notice, the Agency may raise and remove the vessel and recover all expenses reasonably incurred in so doing; and
- (c) indicate that there is a right of appeal under article 11.

(3) The Agency may recover from the owner of any such vessel all expenses reasonably incurred by the Agency in respect of the raising, removal and storage of the vessel or in raising, removing or storing any furniture, tackle and apparel of the vessel or any goods, chattels and effects raised or removed from the vessel.

(4) In any proceedings by the Agency against a person served with a notice under paragraph (1) for the recovery of any expenses which the Agency is entitled to recover from that person under paragraph (3), it shall not be open to that person to raise any question which could have been raised on an appeal under article 11.

(5) Subject to paragraph (6), if any vessel to which paragraph (1) applies is not, within 6 weeks of its removal by the Agency, proved to the Agency's satisfaction to belong to any claimant, the vessel (together with any such furniture, tackle and apparel) shall vest in the Agency.

(6) If within 12 months of its removal a claim is made to a vessel by a person who subsequently proves to the satisfaction of the Agency that he was the owner of the vessel, or has become the owner since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), then the Agency shall—

- (a) if the vessel is unsold, permit that person to retake it with any furniture, tackle, apparel, goods, chattels and effects on the vessel upon payment of the expenses referred to in paragraph (3); or
- (b) if the vessel and the furniture, tackle and apparel on the vessel have been sold, pay to that person the amount of the proceeds of such sale after deducting the said expenses, and in case those proceeds are insufficient to reimburse the Agency those expenses, the deficiency may be recovered from that person by the Agency.

(7) In this article—

- (a) “owner” in relation to any vessel sunk, stranded, abandoned, left or moored as mentioned in paragraph (1) means the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring; and
- (b) “vessel” includes any part of the vessel.

Appeals in respect of removal of vessels

11.—(1) Any person served with a notice by the Agency under article 10(1) may, within 21 days of service of the notice, appeal to a magistrates' court on the grounds that—

- (a) the vessel is not sunk, stranded or abandoned in the principal rivers or without lawful authority left or moored in the principal rivers; or
- (b) that there has been some informality, defect or error in, or in connection with, the notice.

(2) If and in so far as an appeal under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(3) On the hearing of the appeal the court may confirm or set aside the notice.

Obstructions

12.—(1) This article applies to anything, other than a vessel, causing an obstruction or impediment to the navigation or use of the principal rivers (in this article and article 13 referred to as an “obstruction”).

(2) Subject to paragraph (12), the Agency may—

- (a) require the owner of an obstruction or, if he is not known, the owner or occupier of any land on which the obstruction is situated, to mark the obstruction in a manner specified by the Agency; or
- (b) require the owner of the obstruction or, if he is not known, the owner or occupier of the land, as the case may be, to modify or remove the obstruction in a manner specified by the Agency,

if the owner of the obstruction, or the owner or occupier of the land, as the case may be, caused or knowingly permitted it to become or remain an obstruction.

(3) If the owner of the obstruction, or the owner or occupier of the land, fails to take any action specified by the Agency pursuant to paragraph (2), the Agency may take that action and recover the reasonable costs of doing so from that person.

(4) In any proceedings by the Agency against any person required to modify, remove or mark an obstruction under paragraph (2) for the recovery of costs which the Agency is entitled to recover under paragraph (3), it shall not be open to that person to raise any question which could have been raised on an appeal under article 13.

(5) Subject to paragraph (12), the Agency may—

- (a) mark an obstruction, or
- (b) modify or remove it,

in such circumstances as it considers fit.

(6) Before exercising its powers under paragraph (5), the Agency shall, if it is reasonably practicable to do so, give notice of its intention to the owner or occupier of any land on which the obstruction is situated.

(7) If an obstruction removed by the Agency under this article is so marked as to be readily identifiable as the property of any person, the Agency shall within one month of its coming into the Agency's custody give notice, as required by paragraph (11), to that person and, if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice, it shall vest in the Agency at the end of that period.

(8) If an obstruction removed by the Agency under this article, which is not marked as described in paragraph (7), is not within 3 months of its coming into the custody of the Agency proved to the Agency's reasonable satisfaction to belong to any person, it shall vest in the Agency.

(9) The Agency may at such time and in such manner as it thinks fit dispose of anything referred to in paragraph (8) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that at the time it has not vested in the Agency under this article, and if it is sold the proceeds of sale shall be applied by the Agency in payment of the expenses incurred by it under this article in relation to the thing, and any balance shall—

- (a) be paid to any person who, within 3 months from the time when the thing came into the custody of the Agency, proves to the reasonable satisfaction of the Agency that he was the owner of the thing at that time; or
- (b) if within the said period no person proves his ownership at the same time, vest in the Agency.

(10) If an obstruction removed by the Agency under this article—

- (a) is sold by the Agency and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred by it in the exercise of its powers of removal; or
- (b) is unsaleable,

the Agency may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time when the thing removed came into the custody of the Agency or who was the owner at the time of its abandonment or loss, if that person caused or knowingly permitted the obstruction to be there.

(11) A notice given under paragraph (7) shall specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction of the Agency and payment of the reasonable costs of the raising, removal and storage of the thing, possession may be retaken at the place named in the notice within the time specified in the notice, being not less than 14 days after the date when the notice is served.

(12) The Agency shall not under the powers of this article remove, or require the removal of, or modify, or require the modification of, any obstruction specifically authorised by any enactment or by a works licence granted by the Agency under article 22.

(13) In paragraph (1), reference to anything causing an obstruction or impediment to the navigation or use of the principal rivers is a reference to anything causing an obstruction or impediment to a vessel of a size customarily navigated or used on that part of the principal rivers concerned.

Appeals in respect of obstructions

13.—(1) Any person required by the Agency to modify, remove or mark an obstruction under article 12(2) may within 21 days of being so required appeal to a magistrates' court on any of the following grounds which are justified by the circumstances of the particular case—

- (a) that the thing required to be marked, removed or modified is not an obstruction, or is specifically authorised by any enactment or by a works licence granted by the Agency under article 22;
- (b) that the thing required to be marked, removed or modified is an obstruction which has occurred naturally and that to require its marking, removal or modification is unreasonable;
- (c) where the requirement is to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the requirement is to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction.

(2) Any person served with a notice under article 12(6) may within 21 days of service of the notice appeal to a magistrates' court on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the thing the Agency intends to mark, remove or modify is not an obstruction, or is specifically authorised by any enactment or by a works licence granted by the Agency under article 22;
- (b) that the thing the Agency intends to mark, remove or modify is an obstruction which has occurred naturally and that to mark, remove or modify it is unreasonable;
- (c) where the Agency intends to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the Agency intends to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction.

(3) On the hearing of an appeal under this article the court may confirm, vary or set aside the requirement or the notice, as the case may be.

Repair of structures and embankments

14.—(1) Without prejudice to article 12, the Agency may by notice require the owner or occupier of a structure or embankment which in the opinion of the Agency is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels navigating or using the principal rivers;
- (b) injurious to the condition of the principal rivers as inland waterways; or
- (c) a hindrance to the navigation or use of the principal rivers,

to remedy its condition to the satisfaction of the Agency within a period of time (being not less than one month) specified in the notice.

(2) Any notice served by the Agency under this article shall—

- (a) specify the works or other operations required to be carried out;
- (b) have annexed to it a copy of this article and of article 15; and
- (c) indicate that there is a right of appeal under article 15.

(3) In serving a notice under this article the Agency may impose such terms and conditions as it thinks fit as to how the works or other operations shall be carried out.

(4) In this article and in article 15, “embankment” does not include any naturally occurring embankment.

Appeals against notices under article 14

15.—(1) The following provisions of this article shall apply in relation to any notice served by the Agency under article 14.

(2) A person served with such a notice may, within 21 days of service of the notice, appeal to a magistrates' court on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the notice is not justified by the terms of article 14;

- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the Agency has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time within which the works are to be executed is not reasonably sufficient for the purpose;
- (e) that the notice might lawfully have been served on the occupier of the structure or embankment in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served; and
- (f) where the work is work for the common benefit of the structure or embankment in question and another structure or embankment, that the owner or occupier of the other structure or embankment to be benefited, ought to contribute towards the expenses of executing any works required.

(3) If and in so far as an appeal under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal under this article is brought include a ground specified in paragraph (2)(e) or (f), the appellant shall serve a copy of the notice of appeal on each other person referred to, and in the case of any appeal may serve a copy of the notice of appeal on any other person having an estate or interest in the structure or embankment in question.

(5) On the hearing of the appeal the court may make such order as it thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any other person towards the cost of the work, or as to the proportions in which any expenses which may become recoverable by the Agency are to be borne by the appellant and such other person.

(6) In exercising its powers under paragraph (5), the court shall have regard—

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required; and
- (b) in any case, to the degree of benefit to be derived by the different persons concerned.

(7) Subject to the right of appeal conferred by this article, if the person required by any notice served by the Agency under article 14 to execute works fails to execute the works required within the time specified in the notice, the Agency may itself execute the works and recover from that person the expenses reasonably incurred by it in so doing and, without prejudice to the Agency's right to exercise that power, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) In proceedings by the Agency against the person served with the notice for the recovery of any expenses which the Agency is entitled to recover from that person under paragraph (7), it shall not be open to that person to raise any question which could have been raised on an appeal under this article.

Procedure on appeals

16.—(1) This article applies to appeals under articles 11, 13, 15 and 18(13).

(2) An appeal to which this article applies shall be by way of complaint for an order and the Magistrates' Courts Act 1980 shall apply to the proceedings.

(3) For the purposes of the time limit for bringing an appeal to which this article applies, the making of the complaint shall be treated as the bringing of the appeal.

Byelaws

17.—(1) In addition to its powers to make byelaws under Schedule 25 to the Water Resources Act 1991 or any other enactment, the Agency may make byelaws in relation to the navigation and use of the principal rivers, and for their good management in connection with such navigation and use.

(a) 1980 c. 43.

- (2) In particular, byelaws under paragraph (1) may be made for all or any of the following purposes—
- (a) for regulating or prohibiting races, regattas or any other similar event;
 - (b) for preventing obstructions to the navigation or use of the principal rivers;
 - (c) for prescribing navigational rules, including rules regulating the speed of vessels on the principal rivers and rules prohibiting the navigation or use of the principal rivers by, or the keeping on the principal rivers of, vessels which exceed dimensions (in terms of length, width, height, draught or other criteria) specified in the byelaws;
 - (d) for prescribing precautions for the prevention of fire and precautions to be taken in cases of fire or accident occurring in or to any vessel;
 - (e) for preventing or controlling pollution by prohibiting or regulating the discharge from vessels into the principal rivers of any poisonous, noxious or polluting material or substance, or by requiring the use of effectual silencers and the control of noise generally on vessels on the principal rivers;
 - (f) for regulating the launching of vessels within the principal rivers, the placing, laying down, maintenance, use and removal of existing and future moorings, and the use of pontoons, slipways and landing places;
 - (g) for regulating the passage of vessels over or through any structure, works or apparatus in the principal rivers, either generally or in circumstances prescribed by the byelaws, and for regulating the use of any other works or facilities provided by the Agency on the principal rivers;
 - (h) for prescribing, for purposes of safety, conditions with respect to their construction, equipment and maintenance (including maintenance of equipment) which must be satisfied by vessels navigating, using or kept on the principal rivers;
 - (i) for regulating the display of advertising on any vessel navigating, using or kept on the principal rivers; and
 - (j) for requiring the registration of, or of any class of, vessel, for the renewal of registration, for the revocation of registration in specified circumstances, and for prohibiting vessels which are required to be but which are not registered with the Agency from being navigated and used on, or kept on, the principal rivers.
- (3) Byelaws made for the purpose of paragraph (2)(b) shall not apply in relation to any property of a statutory undertaker or adversely affect or obstruct access to any such property.
- (4) Byelaws made for the purpose of paragraph (2)(h) may authorise the Agency to specify from time to time the conditions which vessels navigating or using the principal rivers must satisfy for the purposes of the byelaws.
- (5) Byelaws made for the purpose of paragraph (2)(j) may authorise the Agency—
- (a) to make reasonable charges in respect of the registration of vessels, including different charges for vessels of different descriptions;
 - (b) to attach conditions to the registration of vessels, including a condition that an insurance policy of the type specified in paragraph (6) shall be in force in respect of the vessel and that a copy of the policy, or evidence that it exists, shall be produced to the Agency;
 - (c) to grant exemptions (with or without conditions) from the requirements of registration, including exemptions to those vessels used by members of such clubs, associations or bodies as the Agency may from time to time determine;
 - (d) to inspect vessels or have them inspected on behalf of the Agency in connection with their registration; and
 - (e) to require notice of the transfer or sale of any vessel so registered to be given to the Agency.
- (6) For the purposes of paragraph (5)(b), an insurance policy is a policy which—
- (a) is issued by an insurer who has permission under Part 4 of the Financial Services and Markets Act 2000() to effect and carry out contracts of insurance of a relevant kind or an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act

(a) 2000 c. 8.

which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect and carry out contracts of insurance of a relevant kind; and

- (b) subject to paragraph (7), insures the owner of the vessel and any other person or class of person (if any) who is authorised by the owner to have control of the vessel in respect of any liability which may be incurred by the owner or any such other person resulting from the presence of the vessel on the principal rivers in respect of the death or bodily injury to any person or any damage to property.

(7) The policy shall not by virtue of paragraph (6)(b) be required—

- (a) to cover liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment;
- (b) to cover liability in respect of damages to the vessel to which the policy relates;
- (c) to cover liability in respect of goods carried on or in the vessel to which the policy relates, or any vessel drawn or propelled by such vessel;
- (d) to cover any liability of a person in respect of damage to property in his custody or under his control;
- (e) to cover any contractual liability; or
- (f) to provide cover in respect of any one accident for a sum in excess of such sum as may for the time being be prescribed by the Agency for the purposes of this paragraph.

(8) The dimensions of vessels specified in byelaws made for the purpose of paragraph (2)(c) shall be determined by having regard to.

- (a) the physical characteristics of the principal rivers and their resulting unsuitability for navigation and use by vessels exceeding those dimensions; or
- (b) any significant risk of interference with, or damage to, flora, fauna and geological or physiographical features of special interest due to the navigation and use of the principal rivers by vessels exceeding those dimensions,

and in making any such byelaws the Agency shall wherever practicable specify different dimensions for different parts of the principal rivers and for different flow conditions in order to take into account the different characteristics of those parts and their suitability for navigation and use.

(9) Nothing in any byelaws made for the purpose of paragraph (2)(j) shall require the registration of—

- (a) any newly constructed or newly restored vessel in respect of any trial trip of such vessel on the principal rivers; or
- (b) any vessel in respect of its movement from any boat-builder's yard on the principal rivers to any other place on the principal rivers with a view to its immediate removal from the principal rivers;

Provided that not less than 48 hours' notice shall be given to the Agency of the intention to make such a trip or move such a vessel, and any conditions specified by the Agency in that behalf shall be complied with.

(10) Any charge payable in respect of a certificate of registration issued under byelaws made under this article shall be recoverable by the Agency from the owner of the vessel so registered or other person who has applied for its registration.

(11) Byelaws made under this article may relate to the whole of the principal rivers, or to any part of the principal rivers, may make different provision for different parts of the principal rivers, may relate to different classes of vessel navigating, using or kept on the principal rivers, and may otherwise make different provision for different circumstances.

(12) Byelaws made under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) Any person offending against any byelaw made under this article may be required by the Court, in addition to any fine incurred by the commission of the offence, to pay to the Agency a sum in respect of the cost of repairing or making good any damage occasioned to the property of the Agency by the commission of the offence; and the provisions of section 41 of the Administration of Justice Act 1970^(a) (recovery of compensation awarded) shall apply to any sum required to be paid pursuant to this article as they would apply in the cases specified in Part I of Schedule 9 to that Act.

(14) Byelaws made under this article shall be subject to confirmation by—

- (a) the Secretary of State (as respects byelaws that relate to an area in England);
- (b) the National Assembly for Wales (as respects byelaws that relate to an area in Wales);
- (c) the Secretary of State and the National Assembly for Wales (as respects byelaws that relate to an area in both England and Wales),

in accordance with the procedure laid down by section 210 of, and Schedule 26 to, the Water Resources Act 1991.

Control of unsafe vessels

18.—(1) For the purposes of this article—

- (a) a vessel is unsafe if its condition constitutes a danger to persons on board the vessel, to other persons or to any property;
- (b) references to the condition of a vessel include references to the condition of the engines, appliances, fittings and equipment of the vessel; and;
- (c) "defect" means any defect by reason of which a vessel is unsafe.

(2) An officer acting in exercise of the powers of this article shall produce written evidence of his authority if required to do so.

(3) An officer may at any reasonable time enter upon any vessel on the principal rivers for the purpose of inspecting the condition of the vessel so as to ascertain whether the vessel is unsafe.

(4) An officer shall not enter upon any vessel in accordance with paragraph (3) unless—

- (a) not less than 24 hours' notice of the intention to enter has been given to the master of the vessel; or
- (b) the officer has reason to believe that the vessel may be unsafe and that an immediate inspection is required.

(5) Where in the opinion of an officer who inspects a vessel under the powers of this article the vessel is unsafe, he shall give to the master of the vessel and to the owner (if different) a notice—

- (a) containing details of the defects and of the measures required to remedy them;
- (b) stating that, except in any case where the defects are, immediately following the inspection, remedied to the reasonable satisfaction of the officer who has inspected the vessel, the further movement or use of the vessel otherwise than in accordance with any requirement of the notice, or with the consent or under the direction of an officer, shall be prohibited until a statement has been issued by the Agency that the vessel is no longer unsafe;
- (c) requiring the owner of the vessel to remedy the defects by a date (which shall be not less than three months from the date of the notice) and to notify the Agency within that period of the steps taken to remedy the defects;
- (d) requiring the recipient of the notice (or, if more than one, any one of them) in any case where it appears appropriate to the Agency to move the vessel within a stated period (being not less than 7 days) to the place and in the manner specified in the notice; and
- (e) stating the effects of paragraphs (6) to (14).

(6) Any person who without reasonable excuse—

- (a) moves or uses a vessel in respect of which a notice has been given under paragraph (5), while the notice is in force, otherwise than in accordance with any requirement of the notice or with the consent, or under the direction, of an officer; or

(a) 1970 c. 31.

(b) fails to move the vessel if so required by the notice, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Consent shall not be unreasonably withheld under this article to the movement or use of a vessel for the purpose of taking it to a place where the defects specified in the notice may conveniently be remedied or for the purpose of taking the vessel to be destroyed.

(8) Consent under this article to the movement or use of a vessel may be given subject to any reasonable conditions necessary for the prevention of danger to those on board the vessel, to other persons or to any property.

(9) Where a notice given under paragraph (5) is in force, the Agency may at any time move the vessel or take such other steps as may be necessary to remove or abate any source of danger on board or arising from the vessel.

(10) If on the expiry of the period specified under paragraph (5)(c) the vessel is still on the principal rivers and it appears to the Agency that the defects specified in the notice, or any of them, have not been remedied or that adequate arrangements for their being remedied have not been made and are unlikely to be made within a reasonable time, the Agency may give to the owner 21 days' notice that, on the expiry of the notice, it proposes to deal with the vessel as a vessel which is abandoned under article 10.

(11) A copy of every notice given under paragraph (10) shall be given to the master of the vessel for the time being, if different from the owner.

(12) If on the expiry of the period of 21 days referred to in paragraph (10) it appears to the Agency that the defects specified in the notice, or any of them, have not been remedied or that adequate arrangements for their being remedied have not been made and are unlikely to be made within a reasonable time, article 10 shall apply as if the vessel were a vessel which had been left on the principal rivers without lawful authority and the Agency may deal with the vessel accordingly.

(13) Any person aggrieved by a notice under paragraph (5) or by the refusal of the Agency to issue a statement under that paragraph that the vessel is no longer unsafe may appeal to a magistrates' court; and on any such appeal the court may confirm, vary or set aside the notice and may order the Agency to issue a statement under that paragraph that the vessel is no longer unsafe.

(14) An appeal under paragraph (13) may be brought—

(a) at any time until the expiry of the period specified under paragraph (5)(c); or

(b) at any time after that period if—

(i) a statement has not been issued under paragraph (5) that the vessel is no longer unsafe; or

(ii) the Agency have not dealt with the vessel under article 10, as applied by paragraph (10) or (12) of this article.

(15) Until the time for appealing has expired or, if an appeal is lodged, until the proceedings have been concluded by the disposal or withdrawal of the appeal or its failure for want of prosecution, the notice shall continue in force but the Agency shall not deal with the vessel under article 10, as applied by paragraph (10) or (12) of this article, after the lodging of an appeal until the proceedings have been concluded.

Temporary closure of principal rivers

19.—(1) Subject to the provisions of this article, the Agency may temporarily prohibit, restrict or regulate the navigation and use of any part of the principal rivers for any of the following purposes—

(a) to facilitate the construction, maintenance or alteration of any work in or adjoining the principal rivers;

(b) to facilitate the holding of any race or regatta or of any other event or function in connection with the navigation and use of the principal rivers;

(c) to conserve the natural beauty of the principal rivers and their flora, fauna and geological or physiographical features of special interest; and

(d) to further the safety of those navigating and using the principal rivers.

(2) The Agency shall not prohibit the navigation or use of any part of the principal rivers for a purpose specified in paragraph (1)(b) for more than one half-hour in any period of one hour or for more than eight periods each of one half-hour in any period of twenty-four hours.

(3) Before exercising its powers under paragraph (1)(a) or (b) the Agency shall, except in an emergency, give notice of the proposal to exercise the powers by advertisement in one or more local newspapers circulating in the area concerned.

(4) The notice shall be published not less than 28 days before the powers are to be exercised and shall state the extent to which, the period during which and the purpose for which, the navigation and use of the principal rivers is to be prohibited, restricted or regulated.

(5) A copy of the notice shall be conspicuously displayed in any place or places on or adjacent to the part of the principal rivers to which it relates that the Agency considers appropriate for bringing its contents to the notice of persons navigating and using that part of the principal rivers.

(6) The Agency shall not exercise the powers of this article so as to prevent any riparian owner from having access to his land by water or so as unreasonably to prevent Dŵr Cymru from having access by water to any of its property.

(7) The Agency shall not exercise its powers under paragraph (1)(c) so as to create a serious obstruction to the navigation or use of the principal rivers.

(8) The Agency may exercise the powers of this article in relation to all classes of vessel navigating and using the principal rivers, or in relation to such class of vessel as it thinks fit.

Directions for regulating vessels

20.—(1) An officer may give directions for all or any of the following purposes—

- (a) for regulating the time at which and the manner in which any vessel may enter, leave or lie on the principal rivers;
- (b) for regulating the position, mooring, unmooring, placing or removing of any vessel while it is on the principal rivers;
- (c) for regulating the position in which any vessel may, while on the principal rivers, take in or discharge cargo or ballast or take in or land passengers;
- (d) for regulating the manner in which any vessel on the principal rivers may be dismantled, either for the safety of the vessel or for preventing injury to other vessels or property or to any part of the principal rivers;
- (e) for removing unserviceable vessels from the principal rivers and keeping them clear;
- (f) for prohibiting the mooring or anchoring of any vessel in any particular part or parts of the principal rivers; and
- (g) for regulating the manner in which vessels are to navigate or be used while on the principal rivers.

(2) In any case which appears to an officer to be an emergency, general directions given under this article may be expressed to be applicable to all vessels or to all vessels of a particular class.

(3) Directions under this article shall be communicated to the person having charge of the vessel concerned by being given to him unless it is not reasonably practicable to do so, in which case they shall be communicated to him in such manner as the officer considers appropriate.

(4) In exercising the powers of this article an officer shall have due regard to the desirability of not interfering with the exercise by any person of a right of navigation and use enjoyed as an incident of an interest in land, where no payment or other benefit is made to or conferred on that person by a third party in respect of the exercise of that right.

(5) The master of a vessel shall comply with any direction given under this article which—

- (a) applies in relation to his vessel; and
- (b) has been communicated to him by or on behalf of the officer giving it,

and any master who fails (without reasonable excuse) to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) No direction shall be given under this article so as unreasonably to hinder or prevent the use of any vessel by or on behalf of Dŵr Cymru in connection with any of its functions.

Dredging

21.—(1) The Agency may—

- (a) deepen, dredge, scour, improve or excavate any part of the principal rivers; and
- (b) subject to paragraph (4), sell, or otherwise dispose of as it thinks fit, any material removed from any part of the principal rivers in exercise of its powers under this article.

(2) Before exercising its powers under paragraph (1)(a) the Agency shall, unless it is not reasonably practicable to do so, consult every owner and occupier of land, and every owner and occupier of any fishery, which in the opinion of the Agency is likely to be affected by the proposed exercise of those powers.

(3) The Agency shall pay compensation to all persons for any damage sustained by them by reason of the exercise by the Agency of its powers under paragraph (1)(a) and the amount of the compensation to be paid, where not agreed, shall be determined by the Lands Tribunal.

(4) The powers conferred by paragraph (1)(b) shall be subject to the rights and interests of the owners of the bed and banks of the principal rivers.

(5) Before exercising the powers of this article the Agency shall give notice to Dŵr Cymru and in exercising those powers shall observe such reasonable conditions as Dŵr Cymru may impose for the protection of its property and for the protection of water abstracted by Dŵr Cymru.

(6) Any dispute between the Agency and Dŵr Cymru as to the reasonableness of any condition imposed by Dŵr Cymru under paragraph (5) shall be determined in the manner provided by article 27(6).

Licensing of works

22.—(1) The Agency may, upon such terms and conditions as it thinks fit and upon payment of any fee required pursuant to paragraph (9), grant to any person a licence (in this Order referred to as a “works licence”) to undertake any dredging or to construct, alter, renew, extend or maintain any works in or on the principal rivers or involving the cutting of any of the banks of the principal rivers notwithstanding interference by such works as constructed, altered, renewed, extended or maintained with the right of navigation referred to in article 7(2).

(2) Application for a works licence shall be made in writing to the Agency and shall be accompanied by plans, sections and particulars of the works to which the application relates, and in granting any such licence the Agency may require modifications in those plans, sections and particulars.

(3) If within three months from the date of the making of an application under paragraph (2), the Agency does not grant a works licence in accordance with the application, it shall be deemed to have refused the application.

(4) Where, on an application for a works licence, the Agency refuses to grant the licence, or grants it upon terms and conditions, or requires any modifications in the plans, sections and particulars, the notice in which its decision is conveyed to the applicant shall state clearly and precisely the reasons for its refusal or, as the case may be, for the terms or conditions imposed or the modifications required.

(5) Any applicant for a works licence who is aggrieved by—

- (a) the refusal or deemed refusal of the Agency to grant the licence;
- (b) any terms or conditions upon which the licence is granted; or
- (c) any modifications required by the Agency in the plans, sections and particulars submitted by the applicant,

may, within 28 days after the date on which the Agency gives him notice of the decision, or after the date of any deemed refusal, appeal to the appropriate national authority, whose decision shall be binding upon the parties.

(6) A person who appeals to the appropriate national authority under this article shall give the Agency notice of his appeal accompanied by a copy of his statement of appeal and the Agency shall within 28 days from the giving of such notice be entitled to give in writing to the appropriate national authority its observations on the appeal.

- (7) On an appeal under this article the appropriate national authority may—
- (a) dismiss the appeal; or
 - (b) require the Agency either—
 - (i) to grant the licence upon such terms and conditions as the appropriate national authority may determine; or
 - (ii) to approve the plans, sections and particulars without modifications or subject to such modifications as the appropriate national authority may determine, not being terms, conditions or modifications more onerous than those imposed by the Agency; and the Agency shall give effect to any requirement made by the appropriate national authority under this paragraph.

(8) Nothing in any licence under this article shall entitle a person to carry out works on any land in which he has no appropriate interest without the consent of any person having such an interest.

(9) The Agency may require an applicant for a works licence, on making his application, to pay a reasonable fee in respect of the administrative expenses of dealing with the application; and different fees may be specified in relation to different cases or classes of case.

(10) A list showing the fees for the time being payable by applicants for works licences shall be kept by the Agency and a copy of the list shall be supplied by the Agency on request to any person appearing to have an interest.

(11) In carrying out any works or undertaking any dredging pursuant to a works licence the holder of the licence shall not damage, adversely affect or obstruct access to any property of a statutory undertaker without the consent of the statutory undertaker concerned.

(12) No dredging or deposit of dredged material shall be carried out pursuant to a works licence within 50 metres of any property of Railtrack without Railtrack's approval of the proposed operation but no further consent shall be required under paragraph (11) for an operation which has been approved under this paragraph.

(13) Before undertaking any dredging in accordance with a works licence granted under this article the holder of the licence shall give notice to Dŵr Cymru and in carrying out such dredging shall observe such reasonable conditions as Dŵr Cymru may impose for the protection of its property and for the protection of water abstracted by Dŵr Cymru, but no consent shall be required under paragraph (11) for dredging carried out in accordance with conditions imposed by Dŵr Cymru under this paragraph.

(14) Any dispute between the holder of a works licence and Dŵr Cymru as to the reasonableness of any condition imposed by Dŵr Cymru under paragraph (13) shall be determined in the manner provided by article 27(6) as though it were a dispute between the Agency and a statutory undertaker.

(15) Every works licence shall have attached to it a copy of paragraphs (11) to (14).

(16) A works licence granted under this article shall have effect for a period of 5 years from the date of its issue whereupon it lapses if the works to which it relates have not by then been carried out.

Restriction on construction of works

23.—(1) Subject to the provisions of this article, no person other than the Agency shall construct, alter, renew or extend any works, or undertake any dredging, in or on the principal rivers or involving the cutting of any of the banks of the principal rivers (other than moorings laid down for vessels) unless he is licensed so to do by a works licence and except upon the terms and conditions (if any) upon which the licence is granted and in accordance with the plans, sections and particulars prescribed by the licence.

- (2) Paragraph (1) shall not apply to—
- (a) any works carried out pursuant to and in accordance with a notice served by the Agency under article 14;
 - (b) any works of construction, alteration, renewal or extension specifically authorised by any enactment;
 - (c) any works or operations by a statutory undertaker in exercise of its functions.

(3) In formulating and carrying out any work or operation in or on the principal rivers a statutory undertaker 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 work or operation, in relation to the manner in which the work or operation is to be carried out, or otherwise.

(4) Any person who knowingly contravenes this article or who knowingly contravenes or fails to comply with any term or condition upon which a works licence is granted by the Agency shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) The Agency may by notice require a person who contravenes this article to remove or abate within a reasonable time specified in the notice any works to which the contravention relates and to restore the site of the works to its former condition and, if the person to whom the notice is given fails to comply with the notice, the Agency may carry out the work required by the notice and recover the cost of doing so from that person.

(6) Any dispute between the Agency and a statutory undertaker as to the reasonableness of any direction given by the Agency under paragraph (3) shall be determined in the manner provided by article 27(6).

PART IV

SUPPLEMENTARY PROVISIONS IN RELATION TO THE PRINCIPAL RIVERS

Charges

24.—(1) The application of section 43 of the Environment Act 1995^(a) (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.

(a) 1995 c. 25.

(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 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).

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.

(a) 1980 c. 66.

(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.

PART V

THE UPPER RIVERS AND THE TRIBUTARIES

Byelaws in relation to the upper rivers and the tributaries

32.—(1) In its application to the upper rivers and the tributaries, the power of the Agency to make byelaws under paragraph 1 of Schedule 25 to the Water Resources Act 1991 (Byelaws for regulating use of inland waters) shall have effect with the modifications set out in paragraphs (2) and (3).

(2) In paragraph 1(1) of that Schedule, the words “for the purposes of any of the functions specified in sub-paragraphs (i), (iii) and (v) of section 2(1)(a) of the 1995 Act” and the words “(whether with mechanically propelled boats or otherwise)” shall be omitted.

(3) Paragraph 1(3) of that Schedule shall be replaced by the following—

- “(3) Byelaws made in respect of any inland waters by virtue of this paragraph may—
- (a) prescribe navigational rules, including rules regulating the speed of boats on the inland waters and rules prohibiting the use of the inland waters by boats which exceed dimensions (in terms of length, width, height, draught or other criteria) specified in the byelaws;
 - (b) prescribe days, periods or water levels during which boats of a specified class or description may not use the inland waters;
 - (c) require persons using the inland waters to behave so as to avoid undue interference with the use of the waters by others;
 - (d) require the registration of, or of any class of, boats, require the renewal of registration, provide for the revocation of registration in specified circumstances and prohibit the use of the inland waters by boats which are required to be but which are not registered with the Agency;
 - (e) authorise the Agency to make reasonable charges in respect of the registration of boats in pursuance of the byelaws, including different charges for boats of different descriptions;
 - (f) authorise the Agency to attach conditions to the registration of boats and to grant exemptions (with or without conditions) from the requirements of registration, including exemptions to those vessels used by members of such clubs, associations or bodies as the Agency may from time to time determine;
 - (g) authorise the Agency to inspect boats or have them inspected on behalf of the Agency in connection with their registration; and
 - (h) require notice of the transfer or sale of any boat so registered to be given to the Agency.

(4) Any charge payable in respect of a certificate of registration issued in pursuance of the byelaws shall be recoverable by the Agency from the owner of the boat so registered or other person who has applied for its registration.

(5) In this paragraph, “boat” includes a vessel of any description, whether mechanically propelled or otherwise, and “boating” shall be construed accordingly.”

(6) Notwithstanding section 211(1) of the Water Resources Act 1991, any person contravening byelaws made by virtue of paragraph 1 of Schedule 25 to that Act in relation to the upper rivers and the tributaries shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Without prejudice to article 3(6), before making any byelaws under paragraph 1 of Schedule 25 to that Act in relation to the upper rivers and the tributaries, the Agency shall consult such persons and bodies as it considers necessary and appropriate.

Saving

33. Nothing in this Order shall be construed as implying that there is, or that there is not, a public right of navigation over the upper rivers and the tributaries, or any part of those rivers and tributaries.

PART VI MISCELLANEOUS

Agreements with other authorities

34.—(1) The Agency may enter into agreements with any other authority which is authorised to—

- (a) require registration of vessels navigating any waterway under the jurisdiction of that authority; or
- (b) prescribe conditions with respect to their construction, equipment or maintenance which must be satisfied by vessels,

for the purpose of integrating the administration of provisions of any byelaws made to establish a registration scheme under this Order or under Schedule 25 to the Water Resources Act 1991 or in relation to the construction, equipment or maintenance of vessels pursuant to article 17(2)(h) with the administration by that authority of its provisions regarding the registration of vessels or their construction, equipment or maintenance.

(2) In particular, any such agreement may provide—

- (a) for treating registration or safety certificates issued by one of the parties to the agreement as registration or safety certificates issued by the other;
- (b) for treating distinguishing marks or numbers assigned to vessels registered or certified by one party to the agreement as having been assigned to that vessel by the other; and
- (c) for apportioning any registration fees or other charges between the parties to the agreement.

(3) Any certificate issued by an authority who is a party to such an agreement shall be deemed for the purposes of the byelaws referred to in paragraph (1) to have been issued by the Agency under those byelaws, and any mark, number or other distinguishing sign displayed on a vessel in accordance with the requirements of an authority who is a party to such an agreement shall be treated as complying with the requirements of those byelaws.

Power to require information, etc.

35.—(1) On demand by any officer on producing written evidence of his authority—

- (a) the master of any vessel on the rivers shall give the officer particulars of his own name and address, and (if known to him) the name and address of the owner of the vessel; and
- (b) the owner of any vessel on the rivers shall give the officer particulars of the name and address of any person at any time specified by the officer as acting as master of the vessel,

being particulars or information needed for the purposes of any function conferred on the Agency by or under this Order.

(2) A person who fails without reasonable excuse to give information demanded under paragraph (1), or in giving it makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Obstruction of officers

36. Any person who intentionally obstructs an officer duly acting for the purposes for which he was appointed shall be guilty of an offence and liable on summary conviction for each offence to a fine not exceeding level 3 on the standard scale.

Protection of Crown interests

37.—(1) No power conferred on the Agency by this Order may be exercised in any way likely to affect prejudicially any interest which—

- (a) belongs to Her Majesty in right of the Crown; or
- (b) belongs to any government department or is held in trust for Her Majesty for the purposes of a government department,

unless the appropriate authority's consent to the proposed exercise of the power has been obtained by the Agency in writing.

(2) In giving any such consent the appropriate authority may impose such terms and conditions as it considers appropriate.

(3) In this article—

“the appropriate authority” means—

- (a) in relation to an interest belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in relation to any interest belonging to Her Majesty in right of the Crown but not forming part of the Crown Estate, the government department having the management of that interest; and
- (c) in relation to an interest belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, that department; and

“interest” means any estate, interest or right in or over land.

Repeal of enactments

38.—(1) The enactments specified in Schedule 2 are repealed to the extent specified.

(2) The portion of the first enactment referred to in Schedule 2 (which is saved from repeal to the extent, if any, that it applies to the upper rivers and the tributaries) is the following portion contained on the eighth membrane of the original Act (numbered V.T. 47) kept in the House of Lords Record Office—

“PROVIDED also that it shall and may be lawful to and for any person or persons, to use occupy or employ any boat, barge, leightor or other Vessell upon the said River of Wye for the carrying transporting or conveying of any passengers goods or any other things whatsoever, as freely to all intents and purposes as is or hath been used or accustomed.”

(3) The portion of the second enactment referred to in Schedule 2 (which is saved from repeal to the extent, if any, that it applies to the upper rivers and the tributaries) is the following portion of that Act appearing in the edition prepared under the direction of the Record Commission and dated 12th March 1831 immediately following the enacting formula and preceding the section numbered II, and which is given the marginal note “The said Rivers declared free and common Rivers”—

“That the said Rivers of Wye and Lugg be and from henceforth be accounted deemed and taken to be free and Common Rivers and Streams to and for all His Majesties Subjects freely to make use of for the carrying and conveying of all Passengers Goods Wares and Commodities by Boats Barges Lighters and other Vessells whatsoever.”

(4) Nothing in paragraph (1) shall affect any public right of way over land conferred by or acquired under the enactments specified in Schedule 2.

(5) For the avoidance of doubt, in construing the enactments mentioned in paragraphs (2) and (3) a court may have regard to the repealed provisions of the Acts in which those enactments are contained.

Signed by authority of the Secretary of State

25th July 2002

Whitty
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Article 3

WYE NAVIGATION ADVISORY COMMITTEE

1. The term of office of a member of the Wye Navigation Advisory Committee shall be specified by the Agency but may not exceed 4 years from the date of his appointment and, on the expiry of his term, he shall be eligible for re-appointment.
2. A member of the Committee may at any time by notice to the Agency resign his office.
3. Every member of the Committee shall hold and vacate office in accordance with the terms of his appointment.
4. The Committee may determine its own quorum and procedure subject to the provisions of this Schedule, article 3 and to any directions given to it by the Agency.
5. On a casual vacancy occurring on the Committee by reason of death, resignation or otherwise the vacancy shall be filled by the appointment of a new member in the same manner as the member in whose place he is appointed and he shall hold office during the remainder of the term of office of the member in whose place he is appointed.
6. The first meeting of the Committee shall be held as soon as reasonably practicable after this Order comes into force and on a day and at a time and place to be appointed by the Agency who shall make arrangements for notice of the meeting to be sent by post to each member of the Committee not less than 14 days before the day so appointed.
7. The member of the Committee appointed by the Agency under article 3(2)(w) shall be the chairman of the Committee.
8. The Committee may, if it thinks fit, appoint one of its members to be vice-chairman.
9. Following its first meeting, meetings of the Committee shall be held not less than once every 6 months and take place on the days and at the times that it shall determine or which are requested by the Agency or by not less than 5 members of the Committee in writing to the Agency.
10. With the Agency's prior written approval, which may be given subject to such terms and conditions as the Agency thinks fit, the Committee may co-opt any person onto the Committee for the purposes of providing the Committee with such advice and assistance as the Committee considers appropriate.
11. Subject to any terms and conditions imposed by the Agency, a person co-opted onto the Committee pursuant to paragraph 10 shall be entitled to attend and take part in all meetings and proceedings of the Committee but shall not be entitled to vote on any resolution.

SCHEDULE 2

Article 38

ENACTMENTS REPEALED

<i>Chapter</i>	<i>Title of Act</i>	<i>Extent of repeal</i>
13 & 14 Cha. 2 c. xiv. (1662)	An Act for the making navigable the Rivers Wye and Lugg, and the Rivers and Brooks running into the same, in the Counties of Hereford, Gloucester and Monmouth.	The whole Act (except to the extent, if any, that it applies within the jurisdiction of the Gloucester Harbour Trustees), but not the portion of the Act set out in article 38(2) of this order to the extent (if any) that it applies to the upper rivers and the tributaries.
7 & 8 Will. 3 c. 14. (1695)	An Act for making navigable the Rivers of Wye and Lugg in the County of Hereford.	The whole Act (except to the extent, if any, that it applies within the jurisdiction of the Gloucester Harbour Trustees), but not the portion of the Act set out in article 38(3) of this order to the extent (if any) that it applies to the upper rivers and the tributaries.

<i>Chapter</i>	<i>Title of Act</i>	<i>Extent of repeal</i>
13 Geo. 1 c. 34. (1727)	An Act for explaining and amending an act passed in the Seventh and Eighth years of the Reign of His late Majesty King William the Third, intituled, An Act for making navigable the Rivers Wye and Lugg, in the County of Hereford, and for making the same more effectual.	The whole Act save to the extent, if any, that it applies within the jurisdiction of the Gloucester Harbour Trustees.
49 Geo. 3 c. lxxviii. 1809)	An Act for amending several Acts for making navigable the Rivers Wye and Lugg, in the County of Hereford; and for making a Horse Towing-path on certain Parts of the Banks of the said River Wye.	The whole Act save to the extent, if any, that it applies within the jurisdiction of the Gloucester Harbour Trustees.
1985 c. xlii.	Hereford City Council Act 1985	Section 20.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 3 and 5 of the Transport and Works Act 1992, and it relates to those rivers in the Wye Catchment which are “inland waterways” (a term defined in that Act). An illustrative map of the Wye Catchment is attached to this Explanatory Note.

Part II provides for there to be a statutory advisory committee, which must be consulted by the Environment Agency on all matters substantially affecting the operation of the rivers as inland waterways. It also provides for the Agency to prepare and publish a plan setting out its policy regarding the exercise of its functions with respect to those waterways under, or as a result of, the Order.

Parts III and IV confer on the Agency certain additional functions in relation to the navigation and use of the river Wye between Bigsweir Bridge (the tidal limit) and Hay Town Bridge and the river Lugg between its confluence with the river Wye and Presteigne Town Bridge. These functions are in addition to the Agency’s general functions, exercisable in England and Wales, with respect to—

- (a) water resources and water pollution, by virtue of the Water Resources Act 1991 and the Environment Act 1995;
- (b) flood defence and land drainage, by virtue of the Water Resources Act 1991, the Land Drainage Act 1991 and the Environment Act 1995;
- (c) fisheries, by virtue of the Salmon and Freshwater Fisheries Act 1975, the Environment Act 1995 and other enactments; and
- (d) conservation and recreation, by virtue of the Environment Act 1995.

In carrying out these additional functions the Agency will be subject to those general provisions of the Environment Act 1995 and other enactments which apply to all of its functions, such as its general environmental and recreational duties under section 7 of that Act.

Part V modifies the Agency’s existing power to make byelaws under paragraph 1 of Schedule 25 to the Water Resources Act 1991 (Byelaws for regulating use of inland waters) in relation to those parts of the rivers Wye and Lugg upstream of Hay Town Bridge and Presteigne Town Bridge respectively, and the tributaries of both rivers, which are inland waterways.

Part VI contains a number of miscellaneous provisions, including the repeal of some local Acts of Parliament, or parts of them. The repeal of the two oldest Acts set out in Schedule 2 (ie those enacted in 1662 and 1695) is subject to two savings in relation to the upper rivers and the tributaries; the saved text is set out in article 38(2) (in relation to the 1662 Act) and 38(3) (in relation to the 1695 Act).