

2012 No. 1266

TRANSPORT AND WORKS, ENGLAND

CANALS AND INLAND WATERWAYS, ENGLAND

The Bridgewater Canal (Transfer of Undertaking) Order 2012

Made - - - - *1st May 2012*

Coming into force - - *22nd May 2012*

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An application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) (“the Applications Rules”), for an Order under sections 3(1)(a) and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

The Manchester Ship Canal Company Limited as applicant has powers to make the application in accordance with section 20 of the 1992 Act and The Bridgewater Canal Company Limited has agreed to the transfer of the Bridgewater Canal undertaking to it from The Manchester Ship Canal Company Limited.

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(c).

In accordance with section 14 of the 1992 Act notice of the Secretary of State’s determination was published in the London Gazette on 30 April 2012 and notice of determination was given under that section to the applicant.

(a) S.I. 2006/1466 amended by S.I. 2011/1566

(b) 1992 c. 42. Part 1 of this Act is amended by S.I. 1995/1541, 1998/2226, 2003/3199 and 2006/958.

(c) 1964 c. 40.

The Secretary of State, in exercise of the powers conferred by sections 3(1)(a) and 5 of, and paragraphs 5, 7, 8, 12, 13 and 15 of Schedule 1 to, the 1992 Act, makes the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Bridgewater Canal (Transfer of Undertaking) Order 2012 and comes into force on 22nd May 2012.

(2) The Manchester Ship Canal Acts and Orders 1885 to 2009^(a) and this Order may be cited together as the Manchester Ship Canal Acts and Orders 1885 to 2012.

Interpretation

2.—(1) In this Order—

“the Bridgewater Canal” means the Bridgewater Canal as regulated by the Manchester Ship Canal Acts and Orders 1885 to 2009;

“the Company” means The Bridgewater Canal Company Limited;

“MSCC” means The Manchester Ship Canal Company Limited;

“the transfer date” means the day after the day on which expires a period of 4 weeks beginning with the day on which this Order comes into force; and

“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 personal watercraft, a seaplane on or in the water, 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).

(2) In this Order, a reference to the undertaking is a reference to—

(a) all statutory and other powers and duties of MSCC conferred or imposed on MSCC by or under any provision of the Manchester Ship Canal Acts and Orders 1885 to 2009, and

(b) the property, rights, liabilities and obligations, including all lands, works, buildings, machinery, stores and other real and personal property, assets and effects, contractual rights and obligations, and other rights and privileges vested in or enjoyed by MSCC,

in respect of the Bridgewater Canal, and in relation to the transfer of the undertaking, means those statutory and other powers and duties, property, rights, liabilities and obligations of MSCC as they exist immediately before the transfer date in respect of the Bridgewater Canal.

(3) References in this Order to the use of the Bridgewater Canal are construed as meaning such use as is, according to the principles of common law, reasonably incidental to navigation.

(4) References in this Order to any property of a statutory undertaker are references to 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.

Transfer of functions, property, etc.

3.—(1) On the transfer date all statutory and other powers and duties comprised in the undertaking are transferred from MSCC to the Company and from that date MSCC ceases to have any such duties or powers in respect of the undertaking.

(2) On the transfer date, the undertaking is transferred to and vests in the Company and from that date MSCC ceases to have any property, rights, liabilities and obligations in respect of the undertaking.

(3) On and after the transfer date any statutory provision of local application or document (other than a document referred to in article 5 (“Saving of agreements etc.”)) has, so far as it relates to the

(a) See article 1(2) of S.I. 2009/2579.

Bridgewater Canal, effect (except where the context otherwise requires and subject to any necessary modifications) as if any reference however worded and whether express or implied—

- (a) to MSCC, were construed as a reference to the Company; and
- (b) to any officer or employee of MSCC, were construed as a reference to an officer or employee of the Company who corresponds as nearly as may be to the first-mentioned officer or employee.

Byelaws, etc.

4.—(1) On and after the transfer date any byelaw, regulation, licence or consent made, issued or granted by MSCC in relation wholly or partly to the Bridgewater Canal and in force immediately before that date, regardless of the making of this Order, continues to be in force and have effect so far as it relates to the Bridgewater Canal as if made, issued or granted by the Company

(2) In addition to its powers to make byelaws under the Manchester Ship Canal Acts and Orders 1885 to 2009 or any other enactment, the Company may make byelaws in relation to the good management of the Bridgewater Canal and the navigation and use of the Bridgewater Canal.

(3) In particular, byelaws under paragraph (2) 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 Bridgewater Canal;
- (c) for prescribing navigational rules, including rules regulating the speed of vessels on the Bridgewater Canal and rules prohibiting the navigation or use of the Bridgewater Canal by, or the keeping on the Bridgewater Canal 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 Bridgewater Canal 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 Bridgewater Canal;
- (f) for regulating the launching of vessels within the Bridgewater Canal, 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 Bridgewater Canal, either generally or in circumstances prescribed by the byelaws, and for regulating the use of any other works or facilities provided by the Company on the Bridgewater Canal;
- (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 Bridgewater Canal; and
- (i) for requiring the registration of, or of any class of, vessels, 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 Company from being navigated and used on, or kept on, the Bridgewater Canal.

(4) Byelaws made for the purpose of paragraph (3)(b) do not apply in relation to any property of a statutory undertaker or adversely affect or obstruct access to any such property.

(5) Byelaws made for the purpose of paragraph (3)(h) may authorise the Company to specify from time to time the conditions which vessels navigating or using the Bridgewater Canal must satisfy for the purposes of the byelaws.

(6) Byelaws made for the purpose of paragraph 3(i) may authorise the Company—

- (a) to attach conditions to the registration of vessels;

- (b) to grant exemptions (with or without conditions) from the requirements of registration, including exemptions to those vessels used by members of such clubs, bodies or associations as the Company may from time to time determine; and
- (c) to require notice of the sale or transfer of any vessel so registered to be given to the Company.

(7) Byelaws made under this article may relate to the whole of the Bridgewater Canal, or to any part of the Bridgewater Canal, may make different provisions for different parts of the Bridgewater Canal, may relate to different classes of vessel navigating or using the Bridgewater Canal, and may otherwise make different provision for different circumstances.

(8) Byelaws made under this Order 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.

(9) Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972^(a) (which relate to the procedure for making, and evidence of, byelaws) apply to any byelaws made by the Company by virtue of this article as if the Company were a local authority and the secretary of the Company were a proper officer of a local authority; but, subject to paragraph (10), the Secretary of State may confirm the byelaws with such modifications as the Secretary of State thinks fit.

(10) Where the Secretary of State proposes to make a modification which appears to the Secretary of State to be substantial, the Secretary of State must inform the Company and require it to take such steps as the Secretary of State may specify for informing persons likely to be concerned with the modification, and may not confirm the byelaws until a period of 3 months following the taking of those steps has elapsed.

Saving of agreements, etc.

5. All sales, conveyances, leases, grants, assurances, deeds, contracts, bonds, agreements, notices and demands entered into or made by MSCC in relation to the undertaking and in force immediately before the transfer date are, on and after that date, as binding and of as full force and effect in every respect against or in favour of the Company as they have previously been against or in favour of MSCC and may be enforced as fully and effectively as if instead of MSCC the Company had been a party, or otherwise bound by it or entitled to the benefit of it.

Continuance of proceedings

6. Nothing in this Order releases, discharges or suspends any action, arbitration or other proceeding, or any cause of action, arbitration or other proceeding, pending or existing immediately before the transfer date—

- (a) by or in favour of or against MSCC, or
- (b) by or in favour of or against the Company as agent for MSCC,

in relation to the undertaking, and any such action, arbitration or other proceeding or cause of action, arbitration or other proceeding may be maintained, prosecuted or continued by or in favour of or against MSCC or, in the case of paragraph (b), the Company and may be amended in such manner as may be necessary for that purpose.

Charges

7.—(1) On and after the transfer date the Company in the exercise of its statutory powers and duties in the Bridgewater Canal, has power to make reasonable charges in respect of vessels which navigate or use the Bridgewater Canal.

(a) 1972 c. 70.

(2) Nothing in paragraph (1) affects the right of the Company to make charges in respect of other services or facilities provided by the Company in relation to a vessel which navigates or uses the Bridgewater Canal.

(3) This article does not authorise the making of any charge in a case where an enactment relating to the Bridgewater Canal expressly or impliedly provides for freedom from charges or otherwise prohibits the making of any charge.

1st May 2012

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers the Bridgewater Canal from The Manchester Ship Canal Company Limited (“MSCC”) to The Bridgewater Canal Company Limited.

Provision is made for byelaws and agreements made or entered into by MSCC to remain in force as if they had been made or entered into by The Bridgewater Canal Company Limited and for legal and other proceedings to be carried on by or in relation to MSCC.

This Order contains provisions for The Bridgewater Canal Company Limited to make new byelaws in relation to the good management, navigation and use of the Bridgewater Canal.

The Order contains provisions for The Bridgewater Canal Company Limited to make reasonable charges in respect of vessels which use the Bridgewater Canal but does not authorise the making of such a charge where the making of such a charge is prohibited by any previous enactment relating to the Bridgewater Canal. No impact assessment has been carried out as no impact on business is foreseen.

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STATUTORY INSTRUMENTS

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