

Middle Level Bill

EXPLANATORY MEMORANDUM

This Bill is promoted by the Middle Level Commissioners (“the Commissioners”), who are responsible for both flood risk management and the regulation of navigation in the Middle Level of the Fens. The purpose of the Bill is to amend and update the Commissioners’ powers to regulate navigation on the Middle Level.

In particular, the Bill would allow the Commissioners to levy charges in respect of vessels using the Middle Level waterways, and give them powers to introduce a registration scheme for vessels using the waterways. Similar powers are exercised by the Environment Agency, Canal & River Trust and the Broads Authority in respect of their own navigations.

The Middle Level is the central and largest section of the Great Level of the Fens, which was reclaimed by drainage in the mid-17th Century. The Middle Level covers parts of the City of Peterborough, the districts of Fenland and Huntingdonshire in Cambridgeshire, and the borough of King’s Lynn and West Norfolk in Norfolk. It is bounded by the river Nene to the northwest, the river Great Ouse to the east, and by low hills to the south and west.

Virtually all of the fen land within the Middle Level lies below mean sea level, and relies on a complex flood protection and water level management system to alleviate the risk of flooding. This is carried out by the Commissioners, who manage a system of natural and artificial watercourses, extending for over 190 kilometres (120 miles), with a catchment of just over 70,000 hectares (170,000 acres). But for the operation of the Commissioners and the local internal drainage boards, much of this fen land would be under water, jeopardising the safety and prosperity of over 100,000 people who live and work in the area.

Over 160 kilometres (100 miles) of the watercourses managed by the Commissioners are waterways subject to a statutory right of navigation. The Commissioners are the navigation authority for these waterways, under a range of local Acts passed between 1663 and 1874. This makes them the fourth largest inland navigation authority in the country by length of navigable waterway. A map showing the Middle Level’s waterways may be found on the Commissioners’ website at: <http://middlelevel.gov.uk/map.aspx>.

The Commissioners themselves are a statutory corporation established by an Act of 1810 as a drainage body. They were reconstituted as both a drainage and navigation authority by the Middle Level Act 1862.

The existing legal framework which governs the Commissioners’ navigation function is now considerably out of date and does not align with either modern requirements or the statutory framework applicable to other navigation authorities, including in particular, the Commissioners’ neighbouring navigation authority, the Environment Agency, which is responsible for navigation on the river Nene and the river Great Ouse.

The Commissioners have been considering updating their powers since the early 2000s, and have consulted interested parties, the substantial majority of which were in favour of the proposed changes. The Commissioners have also explored with the Department for Environment, Food and Rural Affairs (“Defra”) (which has responsibility for inland waterways) whether it would be possible to achieve the aims of this Bill by means of an order under the Transport and Works Act 1992. Defra’s view is that it would not, and an Act of Parliament would be a more appropriate route.

PART 1

PRELIMINARY

Clause 1 gives the Bill’s short title, and provides for it to come into force 28 days after Royal Assent.

Clause 2 defines certain expressions used in the Bill. Among other things, this clause defines “the waterways” for which the Commissioners are the navigation authority, namely those set out in *Schedule 1*, together with adjoining water control structures, and any water course in the Middle Level, or any lake, pit, pond, marina or other substantially enclosed waters, adjacent to those waterways and from which any vessel may be navigated into the waterways.

PART 2

REGULATION OF NAVIGATION

Clause 3 provides that the Commissioners may fix and recover charges for the use of any waterway by a vessel or for the provision of services and facilities in respect of the waterways and banks. It also enables the Commissioners to charge for the registration of vessels if a registration scheme has been introduced in byelaws made under *clauses 9 and 10*.

This will enable the Commissioners to receive a navigation income that can be used to fund navigation on the waterways and their maintenance. At present, the Commissioners have no direct source of income for their navigation function, which is effectively subsidised by their funds held for flood risk management purposes.

The Commissioners will be required to publish details of the charges fixed under this clause, in the same way that they publish details of the drainage rates that they levy.

Clause 4 provides that the Commissioners may enter into arrangements with other authorities who may require registration of vessels navigating on waterways. This would enable reciprocal arrangements with the Environment Agency, to reduce costs and ensure the recognition of each other’s licences and registration. This will also help vessels to move more easily through the different waterways in this area.

Clause 5 provides that the Commissioners may temporarily close, restrict or regulate the use of a waterway or water control structure for specified purposes. It is otherwise an offence to temporarily close waterways and interfere with public right of navigation.

Subsection (1)(a) enables the Commissioners to carry out essential maintenance of the waterways and undertake improvements to them in order to enhance navigation in

the waterways. *Subsection (1)(b)* enables waterways to be closed for short periods for recreational purposes, and *subsection (1)(c)* allows the Commissioners to close the waterway known as Well Creek between 1 December and 1 March, to enable the traditional Fenland pursuit of ice skating to take place, if the weather permits it.

Subsections (2) and (3) impose restrictions on the Commissioners' ability to exercise the power to temporarily close the waterways for example when such closure may take place, the specific lengths of time for any such closure and the frequency of any such closures or restrictions.

Clause 6 similarly provides that the Commissioners may direct that Stanground Lock, Salters Lode Lock or both to be closed to navigation on Christmas Day, at night or on any one day each week (not Saturday or Sunday) between 1 October and 31 March. This allows lock keepers a day off each week during low season, and has been agreed with boaters.

Clause 7 provides that where any building or structure on, under or over a waterway is considered to be in such disrepair that it is or is in imminent danger of causing an obstruction the Commissioners may serve notice on the owner of the building or structure to carry out the works specified in the notice within such reasonable time as is specified in the notice. Under *subsection (3)*, if the owners do not do so, the Commissioners can carry out the works themselves and recover the expenses incurred.

If the owners do not agree that the works are necessary, *subsection (4)* enables them to serve a counter notice within 14 days objecting to the works. In these circumstances, the notice is suspended, and *subsection (5)* provides for arbitration if the owner and the Commissioners cannot agree on the need for the works.

This clause ensures the Commissioners have power to keep the waterways open to vessels and their safe navigation without interference or harm.

Clause 8 deals with stranded, grounded and sunken vessels and vehicles, causing an obstruction to the waterways. Because of the narrowness of the waterways, if a vessel or vehicle sinks, it is imperative for it to be removed immediately. *Subsection (1)* therefore imposes a duty on the owner of the vessel or vehicle to remove it as soon as may be, and provides the Commissioners with a power to remove the vessel or vehicle in default.

Stranded or abandoned vehicles and vessels, or vessels that are left or moored without authority, are more likely to be left at the side of the waterway. *Subsections (2) and (3)* therefore gives the Commissioners powers to serve a notice requiring removal, and giving the owner 14 days (if stranded or abandoned) or 28 days (if lost or moored) in which to comply. If the vehicle or vessel is not removed by the owner, the Commissioners may remove it, and if they do so *subsection (5)* permits them to recover their expenses from the owner of the vessel or vehicle for removing or storing such vessel, vehicle or its contents.

Under *subsection (6)* any vessel, vehicle or their contents removed by the Commissioners will, following 6 weeks of its removal, vest in the Commissioners if no owner comes forward. However, under *subsection (7)*, if within 6 months of its removal an owner does subsequently come forward then the owner is entitled to reclaim the vessel, vehicle or its contents, or, if sold, the proceeds of sale, less any expenses incurred by the Commissioners.

Clause 9 updates the Commissioners' powers to make byelaws regulating navigation. They already have powers under section 51 of the Middle Level Act 1874, but these do not cover the full range of activities that take place in and around the waterways. The power is needed to enable the Commissioners effectively to regulate and manage the use of the waterways for the safety of all those using the waterways and their banks. For example byelaws would enable the Commissioners to impose standards for the construction, equipment and condition of vessels, to impose navigation rules, and to require vessels using the waterways to be insured. *Schedule 2* sets out the insurance standards that can be required by byelaws.

Subsection (6) enables any byelaws made under this provision to make it an offence for any person to contravene or fail to comply with a byelaw to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Subsection (9) applies the confirmation procedure set out in section 236 of the Local Government Act 1972 to byelaws made under this clause or under section 51 of the Middle Level Act 1874, and provides that new byelaws do not have effect until confirmed by the Secretary of State.

PART 3

REGISTRATION

Clause 10 enables the Commissioners to use their byelaw-making power under *clause 9* to introduce a registration scheme for vessels on the waterways, in line with other navigation authorities. As there is a public right of navigation, statutory authority is needed to limit it in this way.

If a registration scheme is in place, then *clause 9(6)* would make it an offence to navigate the waterways in an unregistered vessel.

In addition, *subsection (2)* would require the Commissioners to keep and maintain the register. The registration byelaws can set different requirements for different types of vessels, and in particular may require a registration plate to be displayed on the registered vessel. The registration byelaws may also require vessels to be insured in accordance with *Schedule 2*, and require an application to contain the information described in *Schedule 3*. Under *subsection (4)* the Commissioners may impose an application fee for processing an application.

If a valid application for registration is submitted, then *subsection (5)* requires the Commissioners to approve it, unless they are not satisfied that the requirements of the registration byelaws have been met, or they have previously revoked the registration of the vessel.

Under *subsection (6)* the Commissioners may refuse to register a vessel or revoke its registration on safety grounds, and under *subsection (7)* they may revoke the registration if the information supporting the registration turns out to have been incorrect, or the requirements of the byelaws are broken.

If the Commissioners are considering refusing or revoking a registration, then *subsection (8)* requires them to notify the owner or applicant, and *subsection (9)* requires them to give that person an opportunity to make submissions. If there is an outstanding dispute

about whether registration should be refused or revoked, this can be appealed to the Magistrates' Court under *subsection (10)*, although *subsection (11)* provides that an appeal cannot be made if the reason for refusal or revocation was a missing insurance policy, or a breach of any required safety standards.

Clause 11 gives the Commissioners power to share any information held by them or on their behalf with certain defined authorities, including emergency services, the local authority and navigation authorities. This provision is required to allow the Commissioners to lawfully provide and process information it receives with third parties.

PART 4

MISCELLANEOUS

Clause 12 provides that the Commissioners, in exercise of their function as navigation authority, may develop, improve, preserve or manage the waterways and banks as places for recreation and leisure pursuits. This power is needed to enable these wider public benefits to be pursued even where there is no direct benefit for navigation, notwithstanding any interference with public rights of navigation.

Clause 13 permits the Commissioners to appoint authorised officers for the purpose of enforcing or securing compliance with the provisions of the navigation Acts and any navigation byelaws.

Clause 14 clarifies the arrangements for the audit of the Commissioners' accounts. At present the Commissioners are required to keep two different sets of accounts: one in respect of their navigation functions, and one in respect of their flood risk management functions. The Commissioners appoint an auditor for the navigation accounts, under the Middle Level Act 1862, and have a local auditor appointed for the drainage accounts, under the Local Audit (Smaller Authorities) Regulations 2015 and the Local Audit and Accountability Act 2014. It is presently unclear whether the same person can be appointed to carry out both audits, given the different statutory bases of the two appointments, so this provision makes it clear that they can. This is not expected to have any impact on the auditing process, but will save the Commissioners from having to pay double fees.

Clause 15 sets out the process for serving any notices that may be required under the Bill or byelaws.

Clause 16 amends the Middle Level Act 1874 to bring the level of fines charged in line with modern practice using the standard scale.

Clause 17 makes provision for the repeal of provisions in the old Acts regulating the Middle Level that are superseded by the provisions of this Bill, or otherwise redundant. Those provisions are set out in *Schedule 4*.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of the Middle Level Commissioners the provisions of the Middle Level Bill are compatible with the Convention rights.

Middle Level Bill

CONTENTS

PART 1

INTRODUCTORY

- 1 Citation and commencement
- 2 Interpretation

PART 2

REGULATION OF NAVIGATION

- 3 Charges
- 4 Arrangements with other authorities
- 5 Temporary closure of waterways
- 6 Closure of locks
- 7 Repairs to buildings
- 8 Stranded, grounded and sunken vessels and vehicles
- 9 Byelaws

PART 3

REGISTRATION

- 10 Requirement for registration
- 11 Provision of information

PART 4

MISCELLANEOUS

- 12 Recreation on the waterways

- 13 Authorised officers
- 14 Audit
- 15 Notices
- 16 Amendments of the Middle Level Act 1874
- 17 Repeals

-
- Schedule 1 – The waterways
 - Schedule 2 – Insurance requirements
 - Schedule 3 – Particulars for registration
 - Schedule 4 – Repeals

A

B I L L

To amend and update the powers of the Middle Level Commissioners to regulate navigation on the Middle Level of the Fens in the city of Peterborough and the counties of Cambridgeshire and Norfolk; to make further provision as to the regulation of navigation on those waterways; to make other provision as to the Commissioners; and for connected purposes.

WHEREAS—

- (1) An Act of Parliament passed in the fiftieth year of the reign of his Majesty King George the Third, entitled “An Act for improving the Drainage of certain Lands within the North and South-west Parts of the Middle Level, Part of the Great Level of the Fens commonly called Bedford Level” established a body of Commissioners (“the Middle Level Drainage Commissioners”) with power and jurisdiction to improve the drainage of the rivers, drains, lands and grounds described in that Act: 5
- (2) The functions of the Middle Level Drainage Commissioners were amended by an Act of Parliament passed in the seventh and eighth year of the reign of Her Majesty Queen Victoria, entitled “An Act for improving the Drainage and Navigation of the Middle Level of the Fens”, and by the Middle Level Drainage Amendment Act 1848: 10
- (3) The Middle Level Act 1862 reconstituted the Middle Level Drainage Commissioners as commissioners of drainage and navigation, to be known as the Middle Level Commissioners, and transferred to them various functions relating to navigation in the waterways of the Middle Level to the Middle Level Drainage Commissioners: 15
- (4) Further amendments to the functions of the Middle Level Commissioners were made by the Middle Level Act 1867 and the Middle Level Act 1874:

- (5) It is expedient that provision should now be made for the Middle Level Commissioners’ powers to regulate navigation to be updated:
- (6) It is expedient for further powers to be conferred on the Middle Level Commissioners to regulate other activities affecting the use of the waterways for navigation: 5
- (7) It is expedient that the Middle Level Commissioners should be empowered to levy charges in respect of vessels using the waterways:
- (8) It is expedient that the Middle Level Commissioners should be empowered to make provision requiring the registration of vessels using the waterways:
- (9) It is expedient that revised provision should be made in relation to the auditing of the Middle Level Commissioners’ accounts: 10
- (10) It is expedient that the other provisions contained in this Act should be enacted:
- (11) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:— 15

PART 1

INTRODUCTORY

1 Citation and commencement 20

This Act may be cited as the Middle Level Act 201[7], and comes into force at the end of 28 days beginning with the day on which it is passed.

2 Interpretation

In this Act—

“the 1810 Act” means an Act of the fiftieth year of the reign of His Majesty King George the Third, entitled “An Act for improving the Drainage of certain Lands within the North and South-west Parts of the Middle Level, Part of the Great Level of the Fens commonly called Bedford Level”; 25

“authorised officer” means any person authorised in writing by the Commissioners under **section 13** to carry out the functions of the Commissioners in respect of navigation under the provisions of the navigation Acts; 30

“the Commissioners” means the Middle Level Commissioners constituted under the Middle Level Acts;

“master” means the person taking or having for the time being (whether lawfully or not) the command, charge or management of a vessel; 35

“the Middle Level” means the fen lands and low grounds subject to be taxed by virtue of the 1810 Act;

“the Middle Level Acts” means— 40
the 1810 Act;

- an Act of the seventh and eighth years of the reign of Her Majesty Queen Victoria, entitled “An Act for improving the Drainage and Navigation of the Middle Level of the Fens”;
- the Middle Level Drainage Amendment Act 1848;
- the Middle Level Act 1862; 5
- the Middle Level Act 1867; and
- the Middle Level Act 1874;
- “the navigation Acts” means the Middle Level Acts, the Nene Navigation Act 1753, the Wisbech Canal Act 1794, and this Act;
- “navigation byelaws” means byelaws made under section 51 of the Middle Level Act 1874 (power to make byelaws for navigation) or under **section 9** (byelaws) of this Act; 10
- “the Nene Navigation Act” means the Act of Parliament passed in the twenty-seventh year of the reign of His Majesty King George the Second, entitled “An Act for improving and preserving the Navigation from Salter’s Load Sluice in the County of Norfolk, to Standground Sluice in the County of Huntingdon; and from Flood’s Ferry in the Isle of Ely in the County of Cambridge, to Ramsey High Load in the said County of Huntingdon; and also the Navigation from Old Bedford Sluice in the said County of Norfolk to the River Nene, in the Parish of Ramsey, in the said County of Huntingdon”; 15
- “owner” includes— 20
- (a) in relation to any vessel, the master or hirer of that vessel; and
- (b) in relation to any building or structure— 25
- (i) the tenant;
- (ii) occupier; or
- (iii) any person for the time being who, whether in that person’s own right or as agent or trustee for any other person, is entitled to receive the rack rent of the land, or who would be so entitled if the land were so let; 30
- “personal water craft” means any water craft (not being a structure which, by reason of its concave shape, provides buoyancy for the carriage of persons or goods) propelled by a jet drive 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); 35
- (b) by movement of the body weight of the person or persons riding the craft; or
- (c) by a combination of those methods;
- “polluting matter” means sewage or any other offensive or injurious matter, whether solid or liquid; 40
- “power-driven vessel” means any vessel propelled by machinery, including any vessel propelled by a detachable outboard engine, but does not include any vessel for the time being proceeding solely by or under sail, oar or paddle; 45
- “use” in relation to any vessel on a waterway, includes launching the vessel onto the waterway, keeping or mooring it on the waterway, navigating it on the waterway, and letting it for hire on the waterway;
- “vehicle” includes every description of vehicle, apparatus, machinery or

- equipment capable of being used as a means of transportation on land;
- “vessel” includes every description of craft, including a personal water craft, with or without means of propulsion of any kind, used or capable of being used to carry persons, goods, plant or machinery, or of being propelled or moved, on, in, or by water; 5
- “water control structure” means any structure or appliance for introducing water into or removing water from a waterway or for controlling, regulating or affecting the level of the water or the flow of water in, into or out of a waterway and any aqueduct;
- “the waterways” means the waterways in respect of which the Commissioners are the navigation authority under the navigation Acts, including— 10
- (a) so much of the waterways set out in column 1 of the table in **Schedule 1** as lie between the points set out in column 2 of that table and the points set out in column 3 of that table;
 - (b) all water control structures in, on, or on the banks of, those waterways; and 15
 - (c) any watercourse in the Middle Level, or any lake, pit, pond, marina or other substantially enclosed water, adjacent to those waterways and from which any vessel may be navigated (whether or not through a lock or other similar work) into the waterways; and 20
- “the Wisbech Canal Act” means the Act of Parliament passed in the thirty-fourth year of the reign of His Majesty King George the Third, entitled “An Act for making and maintaining a Navigable Canal from Wisbech River, at or near a Place called the Old Sluice, in the Town of Wisbech in the Isle of Ely and County of Cambridge, to join the River Nene in the Parish of Outwell, in the said Isle of Ely, and in the County of Norfolk, and for improving and maintaining the Navigation of the said River from Outwell Church to Salters Load Sluice”. 25

PART 2

REGULATION OF NAVIGATION 30

3 Charges

- (1) The Commissioners may fix and recover reasonable charges for— 35
 - (a) the use of any waterway by any vessel;
 - (b) the provision of services and facilities in respect of the waterways and their banks; and
 - (c) the registration of any vessel under navigation byelaws.
- (2) The Commissioners may revise, waive or remove any charge fixed under subsection (1), and different charges may be fixed for different cases or classes of case.
- (3) The Commissioners may make the use of the services and facilities referred in subsection (1)(b) subject to such terms and conditions as the Commissioners may specify in writing. 40
- (4) Within 28 days of fixing or revising charges under this section, the Commissioners must publish notice of—

- (a) the amounts of the charges;
 - (b) the date on which they were fixed or revised; and
 - (c) the period in respect of which they are in force (which may not commence before the date of publication).
- (5) The notice required by subsection (4) must be— 5
- (a) displayed at one or more convenient places on or adjacent to the waterway;
 - (b) made available by the Commissioners free of charge on request; and
 - (c) published in some other way.
- (6) No charge shall be payable in respect of the use of a waterway by a vessel belonging to or employed in the service of any public authority or body for the purpose of the exercise of any functions conferred upon that authority or body by statute. 10

4 Arrangements with other authorities

- (1) The Commissioners may enter into arrangements with any other authority which is authorised to require registration of vessels navigating any waterway under the jurisdiction of that authority for the purpose of coordinating— 15
- (a) the exercise of the functions conferred under this Act and under any navigation byelaws regarding the registration of vessels or the collection of charges; and 20
 - (b) the exercise by that authority of any functions conferred on them regarding the registration of vessels or the collection of charges in respect of vessels of the same or a similar class or description.
- (2) Without prejudice to the generality of the foregoing any such arrangements may provide— 25
- (a) for treating registration certificates issued by one of the parties to the arrangements as registration certificates issued by the other and a vessel registered by one of the parties to the arrangements as registered by the other; 30
 - (b) for treating distinguishing marks or numbers assigned to a vessel registered by one party to the arrangements as having been assigned to that vessel by the other; and
 - (c) for apportioning any charges between the parties to the arrangements.

5 Temporary closure of waterways 35

- (1) Without prejudice to the provisions of **section 6** the Commissioners may temporarily prohibit, restrict or regulate the use of a waterway for any of the following purposes—
- (a) the construction, improvement, maintenance or alteration of any waterway or water control structure or other work in, on, under, over or adjoining the waterway; 40
 - (b) subject to subsection (2), to facilitate the holding of functions in connection with the use of the waterway as a place of recreation and for leisure pursuits;

- (c) subject to subsection (3), in the case of the waterway known as Well Creek, for the purposes of allowing ice to form and remain for the purposes of facilitating ice skating on any part of that waterway.
- (2) The Commissioners may not prohibit, restrict or regulate the use of a waterway under subsection (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. 5
- (3) The Commissioners may only prohibit the use of Well Creek under subsection (1)(c) between 1 December in any year and 1 March in the following year.
- (4) Before exercising their powers under subsection (1) the Commissioners must, except in an emergency, publish a notice in one or more local newspapers circulating in the Middle Level. 10
- (5) The notice must—
 - (a) be published not less than 28 days (or, in the case of subsection (1)(c), 7 days) before the powers are to be exercised; and 15
 - (b) state the extent to which, the period during which, and the purpose for which, the use of the waterway is to be prohibited, restricted or regulated.
- (6) A copy of the notice must be conspicuously displayed—
 - (a) in one or more places on or adjacent to the waterway to which it relates; and 20
 - (b) in such other place or places as the Commissioners consider appropriate for bringing its contents to the notice of persons using the waterway.

6 Closure of locks

- (1) Notwithstanding the provisions of **section 5** the Commissioners may direct that Stanground Lock, Salters Lode Lock, or both of them may be closed to navigation—
 - (a) on Christmas Day;
 - (b) between sunset and sunrise; or
 - (c) on any one day each week (not being a Saturday or a Sunday and not including Maundy Thursday, Good Friday and Easter Monday) between 1 October in one year and 31 March in the following year, as the Commissioners may determine. 30
- (2) No person may use, interfere with, open or close any lock or its mechanism when the lock is closed to navigation under subsection (1). 35

7 Repairs to buildings

- (1) This section applies where any building or structure in, on, under or over a waterway or its banks is, because of its state of disrepair, causing or in imminent danger of causing an obstruction to the passage of vessels on that waterway.
- (2) Where this section applies, the Commissioners may serve notice on the owner of the building or structure requiring the owner to carry out such reasonable and practicable works as are specified in the notice for the purpose of remedying or preventing the obstruction within such reasonable time as is specified in the notice. 40

- (3) Subject to subsection (4), if the owner does not carry out the works specified in the notice, the Commissioners may proceed to carry out those works and recover the expenses reasonably incurred in so doing from the owner as a civil debt.
- (4) Any person on whom notice is served under subsection (2) may within 14 days serve on the Commissioners a counter notice objecting to the necessity for such works. 5
- (5) Where a counter-notice is served under subsection (4)—
 - (a) the operation of the notice is suspended until—
 - (i) agreement has been reached as to the necessity of the works; or
 - (ii) the dispute has been determined in accordance with paragraph (b); and 10
 - (b) if that person and the Commissioners cannot reach agreement the dispute is to be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party. 15

8 Stranded, grounded and sunken vessels and vehicles

- (1) Whenever any vessel or vehicle is sunk in any waterway—
 - (a) the owner of the vessel or vehicle must as soon as may be—
 - (i) raise and remove it; and
 - (ii) remove any obstructions caused by the sinking and raising of the vessel or vehicle; and 20
 - (b) if the owner of the vessel or vehicle fails to comply with paragraph (a), the Commissioners may raise and remove the vessel or vehicle, and any such obstructions.
- (2) Whenever any vessel is stranded or abandoned in any waterway the Commissioners may after serving not less than 14 days' notice on 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. 25
- (3) Whenever any vessel is, without lawful authority, left or moored in any waterway the Commissioners may after serving not less than 28 days' notice on 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. 30
- (4) Subsections (2) and (3) do not require notice to be served in the case of emergency.
- (5) The Commissioners may recover from the owner of any vessel or vehicle to which subsection (1), (2) or (3) applies all expenses reasonably incurred by the Commissioners in respect of the raising, removal and storage of the vessel or vehicle or in raising, removing or storing any furniture, tackle and apparel from such vessel or vehicle or any goods, chattels and effects raised or removed from the vessel or vehicle, or in removing any obstructions. 40
- (6) If any vessel or vehicle to which subsection (1), (2) or (3) applies is not within six weeks of its removal by the Commissioners proved to the reasonable satisfaction of the Commissioners to belong to any claimant, the vessel or vehicle (together with any furniture, tackle, apparel, goods, chattels and effects) shall vest in the Commissioners. 45

- (7) If within six months of its removal, a claim is made to the vessel or vehicle by a person who subsequently proves to the reasonable satisfaction of the Commissioners that he is the owner of such vessel or vehicle, then the Commissioners must—
- (a) if the vessel or vehicle is unsold, permit the owner to retake it together with any furniture, tackle, apparel, goods, chattels and effects belonging to such vessel or vehicle upon payment of the expenses referred to in subsection (4); or 5
 - (b) if the vessel or vehicle and such furniture, tackle, apparel, goods, chattels and effects have been sold, pay to such owner the amount of the proceeds of such sale after deducting those expenses, and where the proceeds are insufficient to reimburse the Commissioners those expenses, the deficiency may be recovered by the Commissioners from that person. 10
- (8) For the purposes of this section—
- “owner” means— 15
- (a) in relation to any vessel or vehicle aground, sunk, stranded, abandoned, left or moored as described in subsection (1), (2) or (3), the owner of the vessel or vehicle at the time of its grounding, sinking, stranding, abandonment, leaving or mooring; and
 - (b) in relation to a vessel any person registered or deemed to be registered with the Commissioners as the owner of the vessel under the provisions of **section 4** or of any navigation byelaws is to be conclusively deemed to be the owner of such vessel or vehicle; 20
- “vehicle” includes any part of a vehicle; and
- “vessel” includes any part of a vessel. 25

9 Byelaws

- (1) Without prejudice to section 51 of the Middle Level Act 1874 (power to make byelaws for navigation), but subject to the provisions of this section, the Commissioners may make byelaws in relation to the waterways and their banks for maintaining and improving those waterways and banks, for the purposes of recreation and leisure pursuits, for controlling the navigation of those waterways and regulating the conduct and activities of persons using those waterways or banks. 30
- (2) In particular, but without prejudice to the generality of subsection (1), the Commissioners may make byelaws for the purposes of— 35
- (a) regulating the use of the waterways by vessels, and the use of the banks of the waterways and any works, water control structures, facilities or services in or adjoining the waterways, including rules prescribing which class of vessels may enter which waterways;
 - (b) prescribing rules for navigation in the waterways, including rules regulating the speed of vessels and rules prescribing a minimum age for persons to be in control of or navigating a power-driven vessel; 40
 - (c) regulating the placing, maintenance and use of moorings in the waterways;
 - (d) prescribing standards for the construction, equipment and condition of vessels or categories of vessels using the waterway, including in particular standards for any engines, appliances (including sanitary 45

- appliances), fittings or equipment in such vessels, and authorising the Commissioners to inspect vessels to confirm compliance with those standards;
- (e) prescribing additional standards to be met by commercial vessels or categories of commercial vessels; 5
 - (f) requiring vessels or categories of vessels not to be used on the waterway unless there is in force in relation to the vessel a policy of insurance complying with the requirements of **Schedule 2**;
 - (g) requiring notification to be given to the Commissioners of serious incidents involving vessels on a waterway, and— 10
 - (i) that any vessel involved in such an incident be made open for inspection by the Commissioners; and
 - (ii) where an incident involves a vessel slipping, parting from or losing any anchor, cable, propeller or other object, requiring the master to recover that anchor, cable, propeller or object, or providing for the Commissioners to do so, and to recover their expenses of so doing from the owner of the vessel as a civil debt; 15
 - (h) requiring vessels navigating a waterway at night or in restricted visibility to show lights;
 - (i) regulating the loading or unloading of vessels in a waterway; 20
 - (j) prohibiting or regulating the discharge from vessels into the waterways of any poisonous, noxious or polluting substances;
 - (k) prescribing the person to be deemed to be in charge of a vessel on a waterway, providing for that person to be responsible for ensuring that the conduct of all other persons on board the vessel complies with the byelaws, and for requiring the name and address of such persons to be provided to the Commissioners on request; 25
 - (l) regulating the erection of structures or the installation of works, apparatus, plant or equipment in, on, over, through, under or across a waterway or its banks; 30
 - (m) preventing obstructions to navigation in a waterway, requiring the cutting, pruning, lopping or topping of any tree, bush, shrub or other projection that obstructs navigation in a waterway, and providing for the Commissioners to cut, prune, lop or top any such tree, bush, shrub or other projection and recover the costs of doing so from the owner of the tree, bush, shrub or projection concerned; and 35
 - (n) preventing unauthorised entry onto water control structures;
- (3) Different byelaws may be made under this section in relation to different waterways and to different classes of vessels using any such waterway and any byelaws made under this section may come into force on such different dates as the Commissioners may determine. 40
- (4) A byelaw made by the Commissioners in exercise of the power conferred upon them by this section shall be made under the common seal of the Commissioners and may revoke or vary a byelaw made by them either pursuant to section 51 of the Middle Level Act 1874 or in the exercise of that power. 45
- (5) No byelaw made under the provisions of this section shall render unlawful the doing on private land outside a waterway or its banks of any act by, or with the lawful authority of, the owner or occupier of that land which does

not obstruct the use of a waterway, or injure or endanger any person lawfully using a waterway or its banks or enjoying its amenities.

- (6) Byelaws made under this section may make it an offence for any person to contravene, or fail to comply with, the provisions of the byelaws, and for such person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale. 5
- (7) In any proceedings for such an offence it shall be a defence for the person charged to prove—
- (a) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or 10
 - (b) that the person had a reasonable excuse for the action or failure to act.
- (8) In this section “private land” means any land other than land to which the public has access (whether as of right or by express or implied permission).
- (9) Byelaws made by the Commissioners under this section, or under section 51 of the Middle Level Act 1874, do not have effect until they are confirmed by the Secretary of State, and section 236 of the Local Government Act 1972 (procedure for byelaws) applies to their confirmation, as if the Commissioners were a local authority. 15

PART 3

REGISTRATION 20

10 Requirement for registration

- (1) Without prejudice to **section 9**, byelaws under that section may also make provision for the purpose of providing for the registration of vessels on the waterways.
- (2) Where such byelaws are in force, the Commissioners must set up and maintain the register of vessels. 25
- (3) The byelaws may in particular—
- (a) provide for the registration of vessels under different categories;
 - (b) authorise the Commissioners to impose a charge for registration of the vessel, and different charges may be imposed for different categories of vessel; 30
 - (c) make provision as to the display on registered vessels of registration plates, documents or numbers;
 - (d) provide for the exemption of prescribed vessels or categories of vessels from the requirement to register; 35
 - (e) prescribe the period for which any registration is to be effective;
 - (f) determine the procedure to be followed in registering;
 - (g) requiring a vessel to be constructed and equipped in accordance with specified standards;
 - (h) require the applicant to submit with an application, evidence of— 40
 - (i) the particulars set out in **Schedule 3**; and
 - (ii) such other information as the Commissioners may require; and

- (i) authorise the Commissioners to impose conditions on the registration, including conditions—
 - (i) requiring a policy of insurance that complies with **Schedule 2** to be in force;
 - (ii) limiting the use of the vessel on the waterways to specified categories; 5
 - (iii) requiring any change in ownership of the vessel to be notified to the Commissioners;
 - (iv) providing for the owner of the vessel to be deemed to remain the owner of the vessel for the purposes of enforcing any obligations that apply by virtue of the registration until that notification has been received; and 10
 - (v) requiring any registration certificate or plate issued by the Commissioners to be surrendered at the end of the registration period. 15
- (4) The Commissioners may require the applicant to pay a reasonable application fee for the processing of an application, and different fees may be prescribed for different cases or classes of case.
- (5) Where any person tenders the appropriate fee for registering a vessel under the byelaws, the Commissioners must register the vessel in accordance with the byelaws, unless— 20
 - (a) they are not satisfied at the time when they determine the application that any requirement imposed by or under the byelaws has been met; or
 - (b) the Commissioners have previously revoked the registration of the vessel under subsection (6) or (7). 25
- (6) Following receipt of any representation concerning a vessel (including any representation from an officer of the Commissioners), the Commissioners may refuse to register the vessel and they may revoke an existing registration of a vessel if, in their reasonable opinion and having regard to the representation, it is in the interest of safety. 30
- (7) The Commissioners may revoke the registration of a vessel if it appears to them that—
 - (a) the basis upon which the vessel was registered was or has become incorrect in any material respect; and
 - (b) any requirements imposed in respect of the vessel under the byelaws have not been complied with. 35
- (8) The Commissioners must give notice to the owner, and, if different, the person who applied for registration, of a vessel of any refusal or revocation of registration in relation to it and in doing so must give their reasons.
- (9) Before refusing or revoking a registration under subsection (6) or (7) the Commissioners must provide the owner of the vessel with an opportunity to make oral or written representations. 40
- (10) Subject to subsection (11), an owner or another person with the owner’s consent may complain to a magistrates’ court under Part 2 of the Magistrates’ Courts Act 1980 (civil jurisdiction and procedure) against the refusal or revocation 45

of a registration under subsection (6) or (7) and, if the court decides that such refusal or revocation is unreasonable, the Commissioners must register the vessel without delay.

- (11) The imposition of any requirement for insurance under the byelaws, or any question concerning the imposition of a standard or specification for a vessel under the byelaws, may not be the subject of complaint under subsection (10). 5

11 Provision of information

- (1) This section applies to information which is held by or on behalf of the Commissioners for the purposes of this Act (including information obtained by or on behalf of the Commissioners before the coming into force of this Act). 10
- (2) Information may be supplied to a responsible authority for the purposes of facilitating the exercise of the Commissioners' functions under the navigation Acts or any functions of that authority.
- (3) Information may be supplied to any person who can show to the satisfaction of the Commissioners reasonable cause for wanting the particulars to be made available to that person. 15
- (4) Information obtained by virtue of this section must not be further disclosed except to a responsible authority for the purposes mentioned in subsections (2) and (3).
- (5) In this section, “responsible authority” means any of the following— 20
- (a) the chief officer of police for any police area in which the waterways are situated;
 - (b) the fire authority for any area in which the waterways are situated;
 - (c) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 (authorities responsible for the enforcement of the relevant statutory provisions) for any area in which the waterways are situated; 25
 - (d) the local planning authority within the meaning given by the Town and Country Planning Act 1990 for any area in which the waterways are situated;
 - (e) the local authority by which statutory functions are exercisable in any area in which the waterways are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health; 30
 - (f) the Environment Agency; and
 - (g) in relation to a vessel— 35
 - (i) a navigation authority within the meaning of section 221(1) of the Water Resources Act 1991 (general interpretation); or
 - (ii) the Secretary of State.
- (6) In this section, “statutory function” means a function conferred by or under any enactment. 40

PART 4

MISCELLANEOUS

12 Recreation on the waterways

- (1) In the exercise of their functions as navigation authority under the navigation Acts, the Commissioners may develop, improve, preserve and manage the waterways and their banks as places for recreation and leisure pursuits. 5
- (2) Subsection (1) includes, but is not limited to, the power to maintain and improve existing works, buildings and other facilities and construct, lay out, equip and maintain all such further works, buildings and facilities, provide all such facilities, equipment and services and provide or do all such other acts or things as they may think necessary or expedient for that purpose. 10
- (3) Without prejudice to the generality of subsections (1) and (2) the Commissioners may place, lay down, maintain and use moorings in the waterways or on their banks, on land owned by or leased to the Commissioners or in which they have a sufficient interest and on any other land with the consent of the owner or lessee of such land. 15
- (4) The powers conferred upon the Commissioners by subsection (3) may be exercised notwithstanding interference with public rights of navigation.

13 Authorised officers

The Commissioners may appoint persons (whether employees of the Commissioners or not) to act as authorised officers for the purpose of enforcing or securing compliance with the provisions of the navigation Acts and of any navigation byelaws. 20

14 Audit

- (1) Nothing contained in, or done under or by virtue of, the Middle Level Acts or the Local Audit and Accountability Act 2014 is to be taken to prevent the same person from being appointed—
 - (a) by the Commissioners to audit the navigation account for any financial year; and
 - (b) by the specified person to audit the general account for that financial year. 30
- (2) In this section—
 - “general account” means the accounts the Commissioners are required by section 30 of the Middle Level Act 1844 to produce;
 - “navigation account” has the same meaning that it does in the Middle Level Act 1862; and
 - “specified person” means any person specified under regulations made under section 17 of the Local Audit and Accountability 2014 (appointment of auditor by specified person) to appoint a local auditor to audit the general account of the Commissioners. 35 40

15 Notices

- (1) A notice or other document required or authorised to be served for the purposes of the navigation Acts or of any navigation byelaws may be served by post.
- (2) A notice or other document to be served by the Commissioners may be served by the chief executive or any other duly authorised employee of the Commissioners. 5
- (3) Where the person on whom a notice or other document to be served is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.
- (4) For the purposes of section 7 of the Interpretation Act 1978 (references to service by post) as it applies for the purposes of this section, the proper address of any person in relation to the service on the person of a notice or document under subsection (1) is, if the person has given an address for service, that address, or otherwise— 10
- (a) in the case of service on a body corporate or its secretary or clerk, the registered or principal office of the body; and 15
- (b) in any other case, that person’s last known address at the time of service.
- (5) Where for the purposes of the navigation Acts or the navigation byelaws, any notice or document is required to be served on a person having any interest in, or the occupier of, any premises, or the owner of any vessel, and that person’s name or address cannot after reasonable inquiry be ascertained, the notice or document may be served by— 20
- (a) addressing it to the person by name or by the description of “owner” or “occupier”, as the case may be, of the land or vessel (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on that land or vessel or by leaving it conspicuously affixed to the vessel or some building or object on or near the land. 25
- (6) This section is not to be taken to exclude the employment of any method of service not expressly provided for by it.

16 Amendments of the Middle Level Act 1874 30

- (1) The Middle Level Act 1874 is amended as follows.
- (2) In section 67, substitute the words “a fine not exceeding level 3 on the standard scale” for the words “five pounds”.
- (3) In section 68, substitute the words “a fine not exceeding level 3 on the standard scale” for the words “five pounds”. 35

17 Repeals

The enactments mentioned in the first and second columns of the table in Schedule 4 are repealed to the extent specified in the third column of that table.

SCHEDULE 1

Section 2

THE WATERWAYS

(1) Name	(2) From	(3) To	
Well Creek	Salters Lode Lock	Marmont Priory Lock	5
River Nene (old course) east	Marmont Priory Lock	Lodes End Lock	
River Nene (old course) west	Lodes End Lock	Its confluence with Black Ham and Bevills Leam	
Kings Dyke	Ashline Lock	Stanground Lock	
Whittlesey Dyke	Its confluence with River Nene (Old Course)	Ashline Lock	10
Old Pophams Eau	Its confluence with Well Creek	Its confluence with Main Drain	
New Pophams Eau	Its confluence with Main Drain	Its confluence with River Nene (old course)	
Sixteen Foot Drain	Its confluence with Main Drain	Its confluence with Forty Foot Drain	15
Forty Foot Drain	Horseway Lock	Its confluence with River Nene (old course)	
Ramsey High Lode	Its confluence with River Nene (old course)	The downstream entrance to the Ramsey tunnel at grid reference TL 2846 8565	20
Bevills Leam (east of pumping station)	Its confluence with Twenty Foot River and Whittlesey Dyke	Bevills Leam Pumping Station	
Bevills Leam (west of pumping station)	Bevills Leam Pumping Station	Its confluence with Black Ham and River Nene (old course)	25
Twenty Foot River	Its confluence with River Nene (old course)	Its confluence with Whittlesey Dyke and Bevills Leam	
Yaxley Lode and Black Ham	Its confluence with Bevills Leam and River Nene (old course)	Its confluence with Pigwater and Yards End Dyke	30
New Dyke	Its confluence with River Nene (old course)	Holme at grid reference TL 1983 8771	
Monks Lode	Its confluence with New Dyke	Conington Fen Bridge.	
Great Raveley	Its confluence with New Dyke	The control sluice at grid reference TL 2350 8505.	35
Main Drain	Its confluence with Sixteen Foot Drain	An imaginary line across the watercourse at grid reference TF 5309 0293 to the north east of Mullicourt aqueduct.	

SCHEDULE 2

Section 9

INSURANCE REQUIREMENTS

- 1 An insurance policy must be issued by an insurer authorised under the Financial Services and Markets Act 2000 to carry on in Great Britain or in Northern Ireland insurance business of a relevant class or who has corresponding permission under the law of another member state of the European Union. 5
- 2 Subject to paragraph 3, the policy must insure the owner of the vessel and any other person, persons or classes of persons (if any) who is or are 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 a waterway in respect of the death of or bodily injury to any person or any damage to property. 10
- 3 The policy is not by virtue of this Act 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; 15
 - (b) to cover liability in respect of damage 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; 20
 - (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 Commissioners for the purposes of this paragraph. 25

SCHEDULE 3

Section 10

PARTICULARS FOR REGISTRATION

- 1 The name of the vessel.
- 2 The name and address of the owner of the vessel.
- 3 The name and address of the applicant if not the owner. 5
- 4 The size and dimensions of the vessel.
- 5 In which of the categories, designated for the time being by the Commissioners for the purposes of registration, the vessel falls.
- 6 Whether the application is for renewal of a registration or for a new registration.
- 7 The period of registration applied for. 10
- 8 In the case of a vessel which is subject to a requirement for insurance under the byelaws, a copy of a certificate of insurance for the vessel or other evidence that there is in force a policy of insurance in relation to it.
- 9 In the case of a vessel which is subject to any requirement under the byelaws—
 - (a) a certificate that the applicant has read the current specification applicable to the vessel under those byelaws and that the vessel complies in every respect with that specification; and
 - (b) such additional information as the Commissioners may require concerning compliance with that specification. 15

SCHEDULE 4

Section 17

REPEALS

<i>Chapter</i>	<i>Title or short title</i>	<i>Extent of repeal</i>	
27 Geo. 2 c.12. (1753)	An Act for improving and preserving the Navigation from Salter’s Load Sluice in the County of Norfolk, to Standground Sluice in the County of Huntingdon; and from Flood's Ferry in the Isle of Ely in the County of Cambridge, to Ramsey High Load in the said County of Huntingdon; and also the Navigation from Old Bedford Sluice in the said County of Norfolk to the River Nene, in the Parish of Ramsey, in the said County of Huntingdon	Sections 12 to 15. Section 19.	5 10
34 Geo. 3 c.92. (1794)	An Act for making and maintaining a Navigable Canal from Wisbech River, at or near a Place called the Old Sluice, in the Town of Wisbech in the Isle of Ely and County of Cambridge, to join the River Nene in the Parish of Outwell, in the said Isle of Ely, and in the County of Norfolk, and for improving and maintaining the Navigation of the said River from Outwell Church to Salters Load Sluice	Sections 86 to 88. Sections 90 to 91.	15 20
7 & 8 Vict. c.cvi. (1844)	An Act for improving the Drainage and Navigation of the Middle Level of the Fens	Sections 204 to 206. Sections 220 to 221. Sections 225 to 230. Sections 234 to 236. Section 242.	25
11 & 12 Vict. c.civ	Middle Level Drainage Amendment Act 1848	Section 17	30
25 & 26 Vict. c.clxxxviii	Middle Level Act 1862	In section 37, the words from “, and shall yearly” to the end of that section. In section 38 — (a) the words from “shall yearly pay one half” to “continue and”, (b) “the residue or” and (c) “(as the case may be)”. Section 110.	35 40
30 & 31 Vict. c.lxv	Middle Level Act 1867	Sections 57 and 58. Section 60.	

<i>Chapter</i>	<i>Title or short title</i>	<i>Extent of repeal</i>
37 & 38 Vict. c.cl	Middle Level Act 1874	Section 53. In section 64 — (a) in subsection (1) the words “not exceeding forty shillings for each offence”, and (b) in subsection (2), the words “not exceeding sixpence for each copy”.

5

10

Middle Level Bill

A

B I L L

To amend and update the powers of the Middle Level Commissioners to regulate navigation on the Middle Level of the Fens in the city of Peterborough and the counties of Cambridgeshire and Norfolk; to make further provision as to the regulation of navigation on those waterways; to make other provision as to the Commissioners; and for connected purposes.

SESSION 2016-17

IAIN SMITH
Middle Level Commissioners
Middle Level Offices
85 Whittlesey Road
March
Cambridgeshire PE15 0AH
Clerk to the Commissioners

BIRCHAM DYSON BELL LLP
50 Broadway
London SW1H 0BL
Parliamentary Agents

28.11.16

56/2