

IN THE HOUSE OF COMMONS

SESSION 2017-19

MIDDLE LEVEL BILL

STATEMENT

BY THE PROMOTER, THE MIDDLE LEVEL COMMISSIONERS, IN SUPPORT OF THE REVIVAL MOTION FOR THE BILL

1 Background to the Bill

- 1.1 This Bill is being promoted by the Middle Level Commissioners, a statutory corporation constituted under the Middle Level Act 1862. The Commissioners provide flood defence and water level management to the Middle Level of the Fens and are the navigation authority for the Middle Level river and canal system.
- 1.2 The Middle Level is the central and largest section of the Great Level of the Fens, which was reclaimed by drainage during the mid-17th Century. The area is bounded to the north-west and east by the Nene and Ouse Washes, to the north by the previously drained marshland silts and to the south and west by low clay hills.
- 1.3 The Middle Level river and canal system consists of over 120 miles (190 kilometres) of watercourses, approximately 100 miles of which are statutory navigations, and has a catchment of just over 170,000 acres (70,000 hectares). A map of the Middle Level watercourses is included at **Appendix 1**.
- 1.4 Virtually all of the fen land within the Middle Level catchment lies below mean sea level. The Commissioners, together with the local internal drainage boards, therefore operate a highly complex flood protection and water level management system to balance the various water uses and requirements and to alleviate the risk of flooding of land and properties.
- 1.5 The efficient operation of the system is vital to the safety and prosperity of over 100,000 people who live and work in the area and the 26,000 properties that depend on that system. But for the operations of the Commissioners and the local boards, much of the fen land would be under water for much of the year, accesses from higher ground would be cut-off and many of the present land uses would be impossible.

2 Need for the Bill

- 2.1 The legal framework which governs the Commissioners' navigation function is made up of a number of 18th and 19th Century Acts. These Acts are now considerably out of date and do not align with either modern requirements or the statutory framework applicable to other navigation authorities.

- 2.2 In particular, the current legal framework which governs the Commissioners does not include adequate provision for the registration of vessels using the waterways or the levying of charges for the use of the waterways and associated facilities.
- 2.3 As a result, the Commissioners currently do not receive any income from navigation of the waterways. This has meant that monies raised through drainage rates and levies have had to be used to fund navigation rather than be used for flood defence purposes, contrary to government policy.
- 2.4 The Commissioners are therefore seeking to update and clarify their powers to enable them to properly regulate and fund their waterways. The powers sought are similar to those already used by other large inland navigation authorities. For example, the Canal & River Trust, the Environment Agency and the Broads Authority.
- 2.5 The Commissioners originally proposed to update their governing legislation in the 2000s using a Transport and Works Act Order (“TWAO”) and approached Defra to do this. However, Defra considered that the introduction of the proposed registration and charging schemes would be outside the powers of a TWAO and the Commissioners’ proposals did not proceed any further.
- 2.6 Having consulted on updated proposals, the Commissioners approached Defra again in 2016. In October 2016 Defra confirmed that its position had not changed and that a TWAO could not be used in this instance. A private bill was therefore the only recourse for the Commissioners.

3 Summary of provisions

- 3.1 A detailed explanation and justification of the clauses of the Bill is set out in the Explanatory Memorandum which accompanies the Bill. However, for ease a brief summary of the clauses of the Bill is set out below.
- 3.2 *Part 1* of the Bill contains standard preliminary provisions including its short title, commencement, and interpretation provisions.
- 3.3 *Part 2* contains provisions for the proper regulation of the Commissioners’ waterways including provisions enabling the Commissioners to:
 - 3.3.1 charge for the use of the waterways or for the registration of vessels (Clause 3). This will enable the Commissioners to receive a navigation income that can be used to fund navigation on the waterways and their maintenance. The Commissioners will be required to publish details of the charges fixed under this power;
 - 3.3.2 enter into arrangements with other licencing authorities (e.g. the Environment Agency) to reduce costs and ensure recognition of each other’s licences and registration (Clause 4). This will enable vessels to move through the different waterways in this area with a single registration;

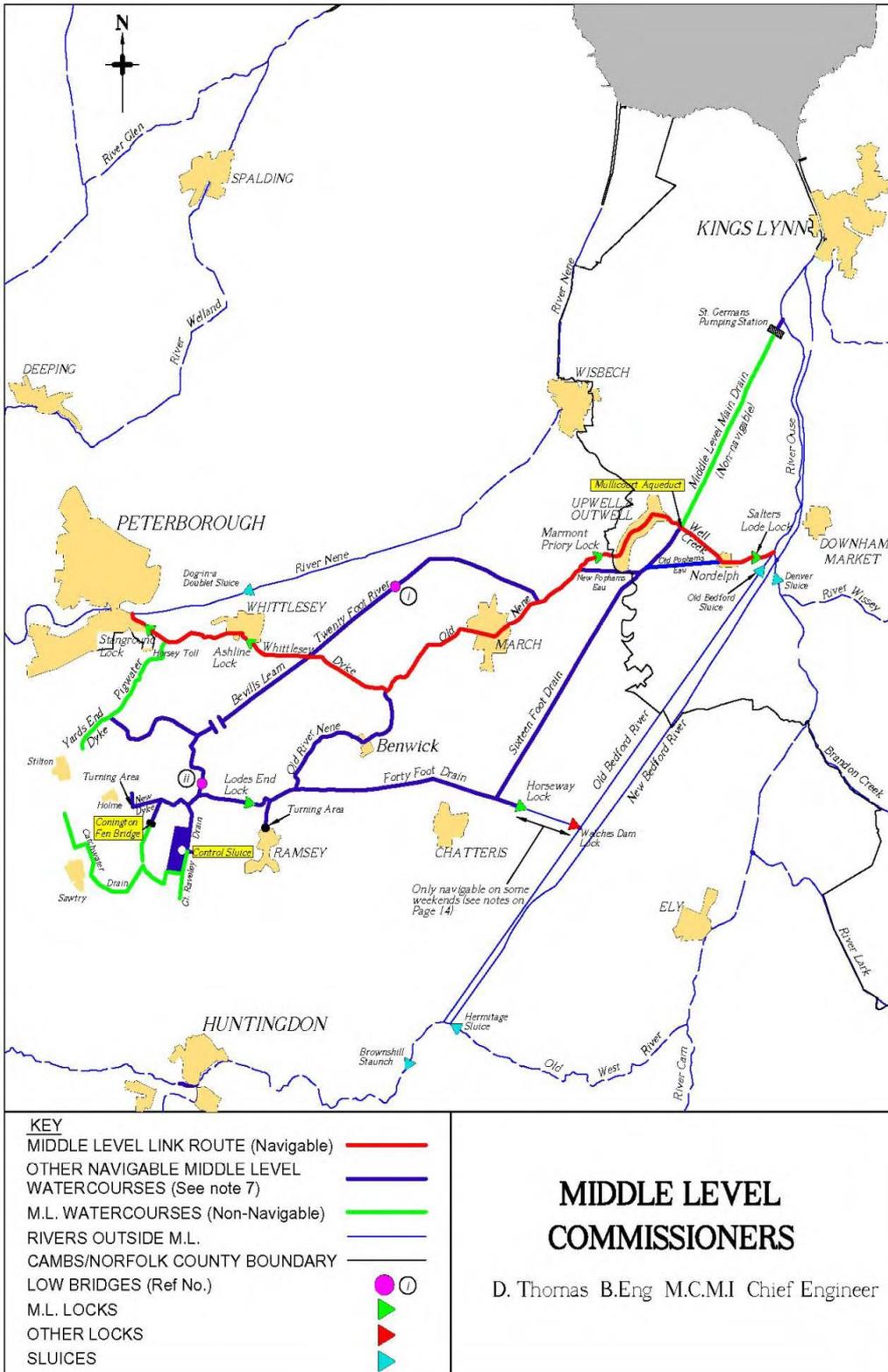
- 3.3.3 temporarily close waterways and locks (Clauses 5 & 6) for various purposes, including maintenance, recreation and traditional ice skating, as well as to enable lock keepers a day off each week during low season. Clause 5(2) and (3) impose restrictions on the ability to timing, duration and frequency of closures of the waterways;
 - 3.3.4 require owners of buildings or structures on, under or over a waterway which are or may cause an obstruction in the waterways to remedy the obstruction and, if the owners do not remedy the obstruction, remedy the obstruction themselves and recover their expenses (Clause 7);
 - 3.3.5 require owners of stranded, grounded or sunken vessels or vehicles to remove them and if they do not, remove the vessel themselves (Clause 8). Because of the narrowness of the waterways, sunken vessels or vehicles may be removed immediately. 14 days' notice must be given before stranded or abandoned vehicles and vessels may be removed by the Commissioners, and 28 days' notice must be given for vessels left or moored without authority. In all cases, the Commissioners would have the power to recover costs from the vessel owner, including through the sale of the vessel if no owner comes forward; and
 - 3.3.6 make byelaws regulating navigation (Clause 9). The Commissioners do already have byelaw-making powers under section 51 of the Middle Level Act 1874, but clause 9 updates this power, for instance adding powers 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.
- 3.4 *Part 3* deals with the registration of vessels which use the waterways. It enables the Commissioners to use their byelaw-making power under Clause 9 to introduce a registration scheme for vessels on the Commissioners' waterways, and share any information collected by the Commissioners with certain defined authorities including the emergency services, the local authority and other navigation authorities.
- 3.5 *Part 4* contains a number of miscellaneous and administrative provisions:
- 3.5.1 allowing the Commissioners to develop, improve, preserve and manage the waterways and banks as places for recreation and leisure pursuits (Clause 12);
 - 3.5.2 permitting the Commissioners to appoint authorised officers to enforce or secure compliance with the provisions of their enabling Acts (including this Bill) and any navigation byelaws (Clause 13);
 - 3.5.3 clarifying arrangements for the audit of the Commissioners' accounts (Clause 14). Currently, the Commissioners are required to keep separate accounts for their navigation functions and their flood risk management functions, and it is unclear whether the same person may audit both;

- 3.5.4 setting out the process for serving notices required by the Bill or byelaws made under it (Clause 15);
- 3.5.5 amending the Middle Level Act 1874 to bring the level of fines in line with modern practice; and
- 3.5.6 repealing redundant or superseded provisions of the old Middle Level Acts (Clause 17).

4 Progress of the Bill

- 4.1 The Bill was deposited on 29 November 2016, and compliance with the Standing Orders was proved on 19 December 2016. The Bill received its formal First Reading on 24 January 2017, and the Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs gave a statement confirming the Bill's compatibility with the Convention rights on 26 January 2017.
- 4.2 Six petitions were deposited against the Bill: from individuals with varying interests in the navigation of the waterways, from the March Cruising Club, and from the National Association of Barge Travellers.
- 4.3 The Bill was given a Second Reading by the House of Commons following a debate on 29 March 2017, and was committed to an Opposed Bill Committee. Both the Government and Opposition front benches gave the Bill their support. A number of concerns were raised by Members and the Commissioners were encouraged to engage with the petitioners against the Bill to try to resolve their issues before going before the Opposed Bill Committee. However, there was not time for the Committee to be convened before Parliament was dissolved for the General Election.
- 4.4 Since the Second Reading, the Commissioners have met with all of the Petitioners, in June and July, and responded to each of their petitions in writing in September. As a result of these discussions, one of the Petitioners has indicated that he is now willing to withdraw his petition – although he cannot do so until the Bill is revived. The Commissioners have also agreed to put forward a number of amendments to the Bill at the Committee stage, if the Bill is revived.
- 4.5 The Commissioners have not received any further comments from petitioners since they responded to the petitions in writing in September. Accordingly the Commissioners do not know which issues remain in dispute. If the Bill is revived, any remaining issues could be considered by the Opposed Bill Committee. Both the Commissioners and the Petitioners would have the opportunity to give evidence supporting their cases, before the Committee determines whether the principle of the Bill has been proved.
- 4.6 The Commissioners therefore respectfully request that the House revive the Bill so that the case for the Bill, and any remaining petitions against it, can be considered by the Committee to which the Bill would be referred.

Appendix 1



IN PARLIAMENT

SESSION 2017–19

MIDDLE LEVEL BILL

STATEMENT

by the Promoter,

The Middle Level Commissioners,

in support of the

Revival Motion for the Bill

The Revival Motion stands for

Tuesday 17th October 2017

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Parliamentary Agents

17 October 2017