
STATUTORY INSTRUMENTS

1978 No. 1125

LAND DRAINAGE

The Dartford Creek (Barrier) Order 1978

Made - - - - - *2nd August 1978*

Coming into Operation *4th August 1978*

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The Minister of Agriculture, Fisheries and Food and the Secretary of State for Trade, in exercise of their powers under section 56 of the Thames Barrier and Flood Prevention Act 1972(a) and of all other powers enabling them in that behalf, hereby order as follows: —

Citation and commencement

1. This Order may be cited as the Dartford Creek (Barrier) Order 1978 and shall come into operation on 4th August 1978.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the Act of 1965” means the Compulsory Purchase Act 1965(b);

“the Act of 1968” means the Port of London Act 1968(c);

“the barrier” means Work No. 1 or any part thereof and includes any other works, conveniences and other things connected therewith or incidental thereto provided under this Order;

“the barrier gate” means the two leaf drop gate forming part of Work No. 1;

“the Commissioners” means the Dartford and Crayford Navigation Commissioners;

“the Council” means the Greater London Council;

“the creek” means Dartford Creek and includes Crayford Creek and the bed, banks and foreshore of each of these creeks;

“the deposited plans” and “the deposited sections” mean the plans and sections prepared in quadruplicate signed by an Assistant Secretary in the Ministry of Agriculture, Fisheries and Food and marked “Plans and sections referred to in the Dartford Creek (Barrier) Order 1978”, of which one set is deposited and available for inspection at the office of the Chief Executive of the Water Authority, one set at the office of the Director-General and Clerk to the Council and one set each at the offices of the Minister and of the Secretary of State for Trade respectively;

“enactment” means any enactment, whether public general or local, and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“land” or “lands” includes land covered by water and any interest in land and any easement or right in, to, over or under land;

“London excluded area” has the same meaning as in the Land Drainage Act 1976(d);

“the Minister” means the Minister of Agriculture, Fisheries and Food and “the Ministers” means the Minister and the Secretary of State for Trade acting jointly;

“the Port Authority” means the Port of London Authority;

“the river” means the river Thames and includes the bed, banks and foreshore of that river, but does not include the creek;

“tidal work” means so much of any work authorised by this Order as is in, on, under or over tidal waters or tidal lands below the level of mean high-water springs;

(a) 1972 c. xlv.
(c) 1968 c. xxxii.

(b) 1965 c. 56.
(d) 1976 c. 70.

“the tribunal” means the Lands Tribunal;

“vessel” means every description of vessel, whether 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 and a hovercraft within the meaning of the Hovercraft Act 1968(a);

“the Water Authority” means the Southern Water Authority;

“watercourse” has the same meaning as in the Land Drainage Act 1976;

“the works” means Works Nos. 1, 2, 3 and 4 and any works, apparatus or conveniences (whether temporary or permanent) constructed, provided or installed by the Water Authority as part of, or in connection with, or for the purposes of, those works or any of them.

(2) References in this Order to reference points shall be construed as references to National Grid reference points.

(3) Any reference in this Order to a work identified by a number shall be construed as a reference to the work of that number authorised by this Order.

(4) Unless the subject or context otherwise requires, references in this Order to any enactment shall be construed as references to that enactment as applied, extended, amended or varied by, or by virtue of, any subsequent enactment, including this Order.

(5) The Interpretation Act 1889(b) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Application of Act of 1965

3. (1) Part I of the Act of 1965, in so far as it is applicable for the purposes of this Order and is not inconsistent with the provisions thereof, shall apply to the compulsory purchase of land under this Order as it applies to a compulsory purchase to which the provisions of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946(c) apply and as if this Order were a compulsory purchase order under the said Act of 1946.

(2) The provisions of the Act of 1965, as so applied, shall have effect subject to the following exceptions and modifications:—

(a) at the end of section 4 there shall be added the following proviso:—

“Provided that such powers shall in relation to any of the land be deemed to have been exercised if before the expiration of the said three years notice to treat has been served in respect of that land”;

(b) in subsection (1) of section 11 for the words “fourteen days” there shall be substituted the words “one month”;

(c) in subsection (3) of section 11 for the words “not less than three nor more than fourteen days’ notice” there shall be substituted the words “not less than seven days’ notice in the case of the first entry and not less than twenty-four hours’ notice in the case of a subsequent entry”;

(d) subsection (5) of section 24, section 27 and sub-paragraph (3) of paragraph 3 of Schedule 3 shall not apply.

(a) 1968 c. 59.

(b) 1889 c. 63.

(c) 1946 c. 49.

Power to acquire lands

4. Subject to the provisions of this Order the Water Authority may purchase compulsorily such of the lands delineated on the deposited plans and shown on those plans as being within the limit of land to be acquired as they may require for the construction, security, maintenance and operation of the works or other purposes connected therewith, including (without prejudice to the generality of the foregoing) for the purpose of obtaining access thereto, obtaining materials for the construction thereof, depositing spoil or other material excavated during the construction thereof, or otherwise for the purposes of this Order or other purposes connected therewith.

Power to acquire easements only

5.—(1) (a) The Water Authority may, instead of acquiring any land which they are authorised to acquire compulsorily under this Order, acquire compulsorily such easements and rights in, to, over or under the land as they may require for the purposes of or in connection with the exercise of any of their powers under this Order.

(b) The power conferred by this subsection to acquire compulsorily easements and rights shall include a power to acquire compulsorily such easement or right by way of the creation of a new easement or right.

(2) Accordingly the Water Authority may give notice to treat in respect of any such easement or right describing the nature thereof; and the provisions of Part I of the Act of 1965 as applied for the purposes of this Order shall apply in relation to the acquisition of such easements and rights as if they were land within the meaning of the Act of 1965.

(3) Where the Water Authority have acquired an easement or right only in, to, over or under any land under this Article—

(a) they shall not be required or, except by agreement or during the execution of the works, entitled to fence off or sever that land from the adjoining land;

(b) the owner or occupier of the land for the time being shall, subject to the easement or right, have the same right to use the land as if this Article had not been enacted.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for an easement or right is given under this Article requires the Water Authority to acquire the land, the Water Authority shall not be entitled under this Article to acquire the easement or right unless the tribunal determines that the easement or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house; and, if the tribunal does not so determine, the Water Authority may acquire the land compulsorily notwithstanding that the period mentioned in section 4 of the Act of 1965 has expired, but not later than one year after the determination of the tribunal:

Provided that nothing in this paragraph shall apply to land forming part of a street.

(5) A notice to treat given under this Article shall be endorsed with notice of the effect of paragraph (4) of this Article.

Construction of works

6.—(1) Subject to the provisions of this Order, for the purposes of flood prevention upstream of the barrier on lands within the London excluded area

and on lands within the area of the Water Authority the Water Authority may, in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections and in accordance with such plans and specifications as may be agreed by the Council, or, in the event of disagreement, determined by the Minister, execute the works described in paragraph (2) of this Article, together with all necessary and proper works and conveniences connected therewith or incidental thereto.

(2) The works referred to in paragraph (1) of this Article are the following works:—

In the District of Dartford in the County of Kent and in the London Borough of Bexley—

Work No. 1. A flood barrier incorporating a two leaf drop gate supported between twin towers each tower having a ramped access over the adjacent bank of the creek and connected below the bed of the creek by a sill, the work commencing on the east side of the creek at reference point TQ5421577822 and terminating on the west side of the creek at reference point TQ5388477853;

Work No. 2. Approach works to the south of Work No. 1 comprising lead-in jetties on each side of the creek and scour revetment on the bed commencing at reference point TQ5403577806 and terminating at reference point TQ5403977699;

Work No. 3. Approach works to the north of Work No. 1 comprising lead-in jetties on each side of the creek and scour revetment on the bed commencing at reference point TQ5403577974 and terminating at reference point TQ5403077817;

In the District of Dartford in the County of Kent—

Work No. 4. A slipway and other facilities for servicing the barrier and for the storage of a spare gate leaf with pontoons commencing at reference point TQ5403277904 and terminating at reference point TQ5408677916;

Work No. 5. The improvement of an existing access road on the east side of the creek commencing at reference point TQ5421577822 and terminating at reference point TQ5403076620;

In the London Borough of Bexley—

Work No. 6. The improvement of an existing access road on the west side of the creek commencing at reference point TQ5388477853 and terminating at reference point TQ5280977140.

(3) Notwithstanding anything to the contrary in this Order or shown on the deposited plans or the deposited sections, but without prejudice to the provisions of the next following Article the Water Authority may, if they think fit, subject to the approval of the Ministers execute the whole or any part of the works within the limits of deviation shown on the deposited plans in accordance with dimensions and descriptions other than the dimensions and descriptions shown on the deposited plans and the deposited sections or set out in the last foregoing paragraph.

(4) Without prejudice to the provisions of the last foregoing paragraph, the Water Authority may maintain and may from time to time alter, extend, enlarge, replace, repair or renew—

(a) the works, or any part thereof, within the limits of deviation;

(b) any other works, conveniences, or other things, provided by or belonging to them in connection with the works,
or may remove all or any of the works or any part of a work.

(5) The construction of all tidal works shall when commenced be proceeded with and completed as soon as practicable.

(6) When Works Nos. 1 to 3 are completed and the barrier gate is capable of being closed, a certificate thereof shall be issued under the seal of the Water Authority and any duly authenticated copy of such certificate shall, in all proceedings and for all purposes, be admissible and received as evidence that such certificate has been duly made, that Works Nos. 1 to 3 are completed and that the barrier gate is capable of being closed.

Power to deviate

7.—(1) In the execution of the works, or any part thereof, the Water Authority may deviate from the lines or situations thereof shown on the deposited plans to any extent within the limits of deviation shown on those plans, and may deviate vertically from the levels shown on the deposited sections to any extent upwards or downwards:

Provided that notwithstanding anything in this Article the barrier shall be so constructed that—

- (a) the width of the navigable channel of the creek is not less than 30 metres;
- (b) the underside of the barrier gate, when in the normal raised position, shall not be lower than 15.70 metres above Ordnance Datum (Newlyn) which level at present is approximately 12 metres above mean high-water springs; and
- (c) the sill between the two towers on either side of the navigable channel of the creek is at a level of not less than 3 metres below Ordnance Datum (Newlyn).

(2) Nothing in paragraph (3) or paragraph (4) of the last foregoing Article shall authorise the Water Authority to execute any part of the works in contravention of the restrictions imposed by the proviso to the foregoing paragraph of this Article.

Subsidiary powers to Water Authority

8.—(1) Subject to the provisions of this Order and within the limits of deviation shown on the deposited plans or on any land acquired by the Water Authority under the powers of this Order the Water Authority, in connection with and for the purposes of the works, may—

- (a) make junctions and communications between any of those works and any watercourses and any existing streets, roads, ways, bridges and footpaths;
- (b) make, provide and maintain all necessary or convenient buildings, walls, banks, revetments, embankments, borrow pits, quays, slipways, pavings, hards, moorings, boat-hoists, rollers and other facilities for transporting boats, fish ladders or passes or other apparatus for facilitating the passage of fish, piling, fences, culverts, drains, intakes, syphons, watercourses, weirs, sluices, wharves, mattresses, pitching, gabions, roads, bridges, towing paths, footpaths and landscaping works

and all such mains, pipes, cables, wires, machinery, works and appliances as may be required;

- (c) dispose of spoil or other material excavated in the execution of the works;
 - (d) execute any works for the protection of any adjoining lands or buildings;
 - (e) remove, alter, divert or stop up any watercourse (except the creek) or sewer (not being a watercourse), the Water Authority providing a proper substitute before interrupting the flow of water or sewage in any such watercourse or sewer;
 - (f) alter any mains, pipes, wires and other works and apparatus for conveying or transmitting water, sludge, gas, electricity or petroleum (as defined in the Petroleum (Consolidation) Act 1928(a)).
- (2) In the exercise of the powers conferred by this Article the Water Authority shall cause as little detriment and inconvenience to any person as circumstances admit.

Temporary closing of creek in connection with works

9.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, but without prejudice to any requirement imposed on the Water Authority under the provisions of this Order the Water Authority may, in executing or doing in, on, under or over the creek any works or things authorised by or under the foregoing provisions of this Order, close the creek or any part thereof to navigation:

Provided that the Water Authority shall so execute or do such works or things as to ensure that at any time no more of the creek is so closed than is reasonably necessary in all the circumstances and, if it becomes necessary to close the creek completely to navigation, the Water Authority shall use their best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the creek.

(2) Without prejudice to the provisions of Article 3 (Application of Act of 1965), paragraph (8) of Article 21 (For protection of Commissioners and creek users) or paragraph (7) of Article 22 (For protection of Port Authority) of this Order the Water Authority, the Council, the Commissioners and the Port Authority shall not be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the creek under the foregoing paragraph.

Power to Water Authority to dredge

10. Subject to the provisions of this Order, the Water Authority may from time to time both during and after the construction of the works, deepen, dredge and improve, and remove obstructions from so much of the creek as is between the low water mark at the confluence with the river Thames and an imaginary line joining reference points TQ5388677620 and TQ5390977549—

- (a) for the purposes of or in connection with the construction, operation, maintenance, alteration, extension, enlargement, replacement, repair, renewal or removal of the works;
- (b) for the purpose of facilitating the navigation of vessels.

(a) 1928 c. 32.

Removal of vessels

11.—(1) Where any vessel is sunk, stranded or abandoned in any part of the creek within 250 metres of the barrier gate or without lawful authority left or moored in any such part, the Water Authority, after consultation with the Commissioners, may take all such action as may be necessary to remove the vessel.

(2) The Water Authority may recover from the owner of any vessel removed by them under the foregoing paragraph all expenses reasonably incurred by them in respect of the removal and storage of the vessel and of any furniture and tackle thereof or any cargo, goods, chattels and effects removed therefrom.

(3) If any such vessel be not within six weeks of its removal by the Water Authority proved to their satisfaction to belong to any claimant it shall together with any furniture, tackle, cargo, goods, chattels and effects thereupon vest in the Water Authority:

Provided that if within six months of its removal by the Water Authority a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Water Authority that he is the owner thereof then they shall, if the vessel is unsold, permit the owner to retake it with any furniture, tackle, cargo, goods, chattels and effects thereupon upon payment of the expenses referred to in paragraph (2) of this Article or, if the vessel, furniture, tackle, cargo, goods, chattels and effects have been sold, the Water Authority shall pay to such owner the amount of the proceeds of such sale after deducting the said expenses, and in case such proceeds shall be insufficient to reimburse the Water Authority such expenses, the deficiency may be recovered by the Water Authority as a simple contract debt.

(4) (a) Except where there is, in the Water Authority's opinion, an emergency, paragraph (1) of this Article shall not authorise the removal of any vessel by the Water Authority unless the Water Authority have given to the owner of the vessel not less than forty-eight hours' notice of their intention to remove the vessel, and if before the notice expires the Water Authority receive from the owner a counter-notice in writing that he desires to remove the vessel himself he shall be at liberty to do so and the Water Authority shall not take any action to remove the vessel themselves until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the removal thereof with reasonable diligence and in compliance with any directions given to him by the Water Authority for the protection of the barrier or by the Commissioners for the prevention of interference with navigation.

(b) If the owner of a vessel to whom notice is to be given under this Article is not known to the Water Authority or if his place of business or abode is not known to the Water Authority or is outside the United Kingdom, the notice may be given by affixing it to the vessel in a conspicuous position.

(5) In this Article "owner" in relation to any vessel sunk, stranded, abandoned, left or moored as aforesaid means the owner of the vessel at the time of the sinking, stranding, abandonment, leaving or mooring thereof.

As to operation of barrier

12.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, the Water Authority may use and operate the barrier,

and, in particular, the barrier gate may be closed by the Water Authority for such periods as they consider necessary or desirable—

- (a) at any time when it appears to the Water Authority that there is reason to believe that unless the barrier gate is closed floods or inundations may be caused upstream of the barrier, or in any other case of emergency;
- (b) for the purpose of enabling experiments to be carried out for or in connection with the development of the most effective use of the barrier for defence against floods or inundations;
- (c) for the purpose of testing the barrier;
- (d) for the purpose of exercising and instructing staff in the operation and control of the barrier;
- (e) for the purpose of maintaining, extending, enlarging, altering, replacing, repairing or renewing the barrier, on such occasions as may be reasonably necessary, or for the purpose of removing the barrier,

and for no other purpose and may be so closed notwithstanding that the creek or any part thereof will thereby be closed to navigation and that the passage of vessels in the creek may thereby be obstructed, delayed or interfered with, and the Water Authority, the Council, the Commissioners and the Port Authority shall not, as a result of such closure, be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of such obstruction, delay or interference.

(2) In and for the purpose of determining in any case when or at what state of the tide, and for how long, the barrier gate is to be closed, and when or at what state of the tide it is to be re-opened after any such closure, the Water Authority shall, subject to the provisions of sub-paragraph (a) of the foregoing paragraph, use their best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the creek.

- (3) (a) The barrier gate shall not be closed for any of the purposes mentioned in sub-paragraphs (b) to (e) of paragraph (1) of this Article without the consent of the Commissioners and of the Port Authority except that such consent shall not be required when the barrier gate is closed at low tide if the operation of closing the barrier gate is not commenced until ninety minutes before the predicted time for low tide as recorded for Tilbury in the Handbook of Tide Tables published by the Port Authority from time to time and the operation of opening the barrier gate is completed not later than ninety minutes after low tide.
- (b) A consent of the Commissioners and of the Port Authority which is required under sub-paragraph (a) of this paragraph shall not be unreasonably withheld and may be given subject to reasonable terms and conditions; any question as to whether the consent is unreasonably withheld or whether or not any terms or conditions are unreasonable shall in default of agreement be referred to and determined by the Ministers after affording to the Commissioners or the Port Authority (as the case may be) and the Water Authority an opportunity of appearing before and being heard by a person appointed for that purpose.
- (4) (a) The Water Authority shall give to the Commissioners, the Council and the Port Authority the required notice of their intention to close the barrier gate and of their intention to reopen it after such closure.

- (b) The required notice shall be—
- (i) in the case of a closure under sub-paragraph (a) of paragraph (1) of this Article such notice as is reasonably practicable but it need not be in writing;
 - (ii) in the case of a closure for any of the purposes mentioned in sub-paragraphs (b) to (e) of the said paragraph (1) not requiring the consent of the Commissioners and the Port Authority notice given not less than 24 hours before the closure operation commences and such notice need not be in writing; and
 - (iii) in the case of a closure under the said sub-paragraphs (b) to (e) requiring the consent of the Commissioners and the Port Authority notice given not less than fourteen days before the closure operation commences and such notice shall be in writing,

and the Commissioners shall be under a duty to take such steps to regulate the movement of vessels using the creek as they may consider necessary or desirable in the light of such notice.

(5) Subject to the provisions of the preceding paragraphs of this Article, the barrier shall be operated and maintained by the Water Authority in accordance with such arrangements and subject to such terms and conditions as may be agreed between the Water Authority and the Council.

Misuse of barrier, etc.

13. Any person who without lawful authority or excuse—

- (a) closes or opens, or attempts to close or open, the barrier gate; or
- (b) in any other way interferes, or attempts to interfere, with the barrier or the operation thereof,

shall be guilty of an offence and shall for every such offence be liable on summary conviction to a fine not exceeding one hundred pounds, or on conviction on indictment to a term of imprisonment not exceeding six months or to a fine or both.

Power to Council to contribute to cost of works

14. The Council may make such contributions to the Water Authority towards meeting any expenditure incurred by the Water Authority in constructing, maintaining and obtaining access to the works and in operating the barrier gate as may be agreed between the Water Authority and the Council and such expenditure may include expenditure incurred in acquiring any land or any easement or right in or over any land which is required for constructing, maintaining or obtaining access to the works.

Power to Council to act as agent

15. The Water Authority and the Council may make such arrangements as may be agreed between them for the carrying out by the Council as agent of the Water Authority of any of the functions of the Water Authority under this Order.

Cables, pipes or wires under or over tidal waters or tidal lands

16. Notwithstanding anything in this Order any cables, pipes or wires to be laid or placed by the Water Authority under the powers contained in this Order (other than those laid or placed within or attached to the structure of

the barrier) under or over any tidal waters or tidal lands below the level of mean high-water springs shall be laid or placed at such depth under, or such height over, tidal waters or tidal lands as the Secretary of State for Trade, after consultation with the Commissioners may require.

Marking of tidal works

17.—(1) The Water Authority shall—

- (a) at or near the mouth of the creek or at or near every tidal work exhibit such lights and lay down such buoys and take such other steps for preventing danger to navigation as the Commissioners may from time to time reasonably direct;
- (b) in the case of injury to, or destruction or decay of, a tidal work or any part thereof immediately notify the Commissioners and the Commissioners may thereupon give to the Water Authority reasonable directions as to the steps to be taken for preventing danger to navigation.

(2) If the Water Authority fail to comply with any provision of or direction given under this Article they shall be liable on summary conviction to a fine not exceeding one hundred pounds or on conviction on indictment to a fine.

Survey of tidal works

18. The Secretary of State for Trade may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Water Authority as a simple contract debt.

Exemption from requirements as to works and dredging licences

19. The works shall for the purposes of subsection (7) of section 66 (Licensing of Works) of the Act of 1968, and any dredging or other operations carried out under Article 10 (Power to Water Authority to dredge) of this Order shall for the purposes of subsection (6) of section 73 (Licensing of dredging etc.) of that Act, be deemed to have been constructed or carried out, as the case may be, in the exercise by the Water Authority of their functions under the Land Drainage Act 1976.

Approval by Secretary of State to tidal works and deposit of spoil

20.—(1) (a) A tidal work shall not be constructed, renewed or altered except in accordance with plans and sections approved by the Secretary of State for Trade and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(b) If a tidal work is constructed, renewed or altered in contravention of this section or of any condition or restriction imposed under this section—

- (i) the Secretary of State for Trade may by notice in writing require the Water Authority at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of thirty days from the date when the notice is served upon the Water Authority, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or

(ii) if it appears to the Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State for Trade in so doing shall be recoverable from the Water Authority as a simple contract debt.

(2) No spoil or other material excavated during the construction of the works or dredged in the exercise of the powers of Article 10 (Power to Water Authority to dredge) of this Order shall be deposited in any place below the level of mean high-water springs otherwise than in such a position and subject to such conditions and restrictions as may be fixed by the Secretary of State for Trade.

For protection of Commissioners and creek users

21. For the protection of the Commissioners and users of the creek the following provisions shall, unless otherwise agreed in writing between the Water Authority and the Commissioners, apply and have effect:—

(1) In this Article, except where the context otherwise requires—

“controlled access” means access on the terms that a person to whom access is afforded shall comply with any requirements which may be notified to him for the purposes of ensuring that there is no interference with safe and proper working at the barrier or at any other tidal work;

“functions” includes powers and duties;

“plans” means outline design and construction drawings and such specifications and other appropriate documents (including so far as is reasonably practicable a programme of the times at which it is intended that significant operations will be carried out) as may be reasonably necessary to give the Commissioners an understanding of the Water Authority’s intentions in connection with constructional operations which will or may have a significant effect on navigation in, or the flow or regime of, the creek;

“scouring” includes disturbance or collapse of the foreshore or bed of the creek.

(2) Not later than twenty-eight days before—

(i) starting to carry out any tidal work; or

(ii) exercising any of the powers of Article 10 (Power to Water Authority to dredge) of this Order,

the Water Authority shall submit to the Commissioners plans of the proposed work and such further particulars thereof as may be available to the Water Authority and as the Commissioners may reasonably require and, in carrying out such works or in exercising such powers, the Water Authority shall comply with all reasonable modifications and conditions (not involving alteration to the basic design of any tidal work), including the carrying out of works by the Water Authority at their own expense, as may be specified by the Commissioners for the protection of traffic in, or the flow or regime of, the creek:

Provided that any such modifications or conditions as aforesaid shall be notified by the Commissioners to the Water Authority within twenty-eight days of the receipt by the Commissioners of the plans or particulars to which such modifications or conditions relate.

(3) For the purpose of securing that traffic in, and the flow or regime of, the creek shall not be interfered with more than is reasonably necessary tidal works shall be maintained to the reasonable satisfaction of the Commissioners.

(4) The Water Authority shall, upon completion of any part of a tidal work, remove as soon as is practicable any temporary works and materials for temporary works carried out or placed only for the purposes of that part of the tidal work, and shall make good the site thereof to the reasonable satisfaction of the Commissioners.

(5) The Water Authority shall at all reasonable times, upon receipt on each occasion of not less than forty-eight hours' written notice, afford to any duly authorised representative of the Commissioners controlled access, without payment or charge, to the barrier or to any other tidal work for the purposes of inspection and survey in connection with the exercise of the functions of the Commissioners and shall provide reasonable facilities therefor.

(6) Except so far as may be unavoidable in the construction of the works, the Water Authority shall not, without the consent of the Commissioners (which shall not be unreasonably withheld) deposit in or allow to fall or be washed into the creek any gravel, soil or other materials (including in particular any spoil or material excavated, whether or not from the creek in the carrying out of the works).

(7) (a) Any pile, stump or other obstruction which becomes exposed in consequence of a tidal work (other than a pile, stump or other obstruction situated on the site of any permanent works) shall be removed from the creek by the Water Authority or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of the creek as the Commissioners may reasonably direct;

(b) If the Water Authority fail to remove from the creek or to cut off, as aforesaid, any such pile, stump or other obstruction within twenty-eight days after receipt of written notice from the Commissioners requiring its removal or cutting off the Commissioners may carry out the removal or cutting off and recover the cost of so doing from the Water Authority.

(8) (a) The Water Authority shall be responsible for and make good to the Commissioners all costs, charges, damages and expenses which may be occasioned to or reasonably incurred by the Commissioners by reason of any negligent or wilful act or omission of the Water Authority or of any officer, servant or agent of the Water Authority in relation to the exercise or purported exercise of any of their functions under this Order;

(b) The fact that any act or thing may have been done by the Water Authority or any officer, servant or agent of the Water Authority under this Order in accordance with plans or particulars submitted to or modifications or conditions specified by the Commissioners or in a manner approved by the Commissioners or under their supervision or the supervision of their duly authorised representative shall not excuse the Water Authority from any liability under the provisions of this paragraph, and the Water Authority shall effectively indemnify and hold harmless the Commissioners from and against all claims and demands arising out of or in connection with any act or thing which may have been done as aforesaid;

- (c) Nothing in this paragraph shall impose any liability on the Water Authority with respect to costs, charges, damages or expenses so far as they may be attributable to any negligent or wilful act or omission of the Commissioners, their servants or agents;
- (d) The Commissioners shall give to the Water Authority reasonable notice of any claim or demand as aforesaid, and no settlement or compromise thereof shall be made without the prior consent of the Water Authority.

(9) Without prejudice to the provisions of Article 17 (Marking of tidal works) of this Order, the Water Authority shall provide at the barrier, or afford reasonable facilities thereat for the Commissioners to provide, navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the Commissioners may deem necessary by reason of the construction and use of the works, and the Water Authority shall repay to the Commissioners the costs reasonably incurred by the Commissioners in connection therewith or in connection with any surveillance, co-ordination and regulation of river traffic which becomes reasonably necessary by reason of the construction of a tidal work or of the exercise or prospective exercise by the Water Authority of their powers to close the creek or any part thereof to navigation under Article 9 (Temporary closing of creek in connection with works) of this Order or to close the barrier gate under Article 12 (As to operation of barrier) of this Order.

(10) On completion of the construction of the works the Water Authority shall supply to the Commissioners a plan on a scale of not less than 1 in 2500 and sections and cross-sections on scales of not less than 1 in 100 showing the situation and levels of the works.

- (11) (a) Before the construction of the works is commenced the Water Authority in conjunction with the Commissioners will carry out a survey of such parts of the creek as are relevant for the purpose of establishing the condition of the creek at that time.
- (b) After the construction of the works has been completed the Water Authority will in conjunction with the Commissioners carry out such surveys of the creek as are required to ascertain the effect of the works on the creek.
- (c) The Water Authority will make available to the Commissioners the results of the surveys carried out under this paragraph and will pay to the Commissioners any reasonable costs they may incur in connection with the surveys of the creek under this paragraph.

(12) (a) If it is agreed between the Water Authority and the Commissioners after taking into account any relevant data or circumstances, or, in default of agreement, it is determined in pursuance of a reference by the Commissioners to arbitration in the same manner as is provided for under sub-paragraph (c) of this paragraph, that—

- (i) any part of the creek has silted up or has been subjected to scouring; and
- (ii) such silting up or scouring is silting up or scouring to which the provisions of this paragraph apply; and
- (iii) for the safety of navigation or in the interests of persons using the creek or for the protection of works in the creek, such silting

up or scouring should be removed or, as the case may be, made good,

the Water Authority shall pay to the Commissioners (in the manner set out in sub-paragraph (c) of this paragraph) any additional expense to which the Commissioners may reasonably be put in dredging the creek to remove the silting up, or in making good the scouring, in so far as it is attributable to a tidal work.

(b) The provisions of this paragraph apply in relation to any silting up or scouring of the creek which is wholly or partly attributable to Works Nos. 1, 2, 3 and 4 and any other tidal work executed in connection therewith or incidental thereto or to any other tidal work which may affect materially traffic in or the flow or regime of the creek carried out under paragraph (4) of Article 6 (Construction of works) of this Order, during the period of the execution of those works and thereafter for a period of ten years from the relevant date and shall then cease to apply in relation to any silting up or scouring which is wholly or partly attributable to the tidal work in question. In this paragraph "the relevant date" means, in relation to—

(i) Works Nos. 1, 2, 3 and 4 and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Engineer of the Water Authority that Works Nos. 1, 2, 3 and 4 are completed and the barrier gate is capable of being closed; and

(ii) any other tidal work (not being a tidal work to which sub-paragraph (i) of this definition applies), the date on which it is so certified that the tidal work is completed.

(c) The Water Authority shall, if so required by the Commissioners, make payments to the Commissioners on account of any sum required to be paid in pursuance of sub-paragraph (a) of this paragraph, being payments of such amounts and made at such times as may be agreed between the Water Authority and the Commissioners, or in default of agreement as may be determined by an arbitrator to be appointed by agreement between the parties (or in default of agreement by the President of the Institution of Civil Engineers on the application of either party after giving notice to the other) to be reasonable for meeting so much of the current cost to the Commissioners in dredging the creek or causing the creek to be dredged or in making good or in causing to be made good scouring to which the creek has been subjected, as is required to be paid as aforesaid.

(13) If it is reasonably necessary as a result directly or indirectly of a tidal work—

(a) to alter, remove, resite or reinstate any existing moorings; or

(b) to lay down and maintain or remove any new moorings; or

(c) to construct and maintain a lay-by berth for vessels,

the Commissioners may recover from the Water Authority the reasonable cost to the Commissioners of carrying out those operations.

(14) (a) If a tidal work is abandoned or suffered to fall into decay, the Commissioners may by notice in writing require the Water Authority at their own expense to exercise the option either of repairing and restoring the work or any part thereof, or of removing the work and

restoring the site thereof to its former condition, to such an extent and within such limits as the Commissioners may reasonably require;

- (b) Where a work consisting partly of a tidal work and partly of works on land above the level of mean high-water springs is abandoned or suffered to fall into decay and that part of the work on land above the level of mean high-water springs is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Commissioners may include that part of the work, or any portion thereof, in any notice under this paragraph;
- (c) If on the expiration of such reasonable period as may be specified in a notice served under this paragraph upon the Water Authority they have failed to comply with the requirements of the notice, the Commissioners may themselves exercise the option and execute the appropriate works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Water Authority as a simple contract debt.

(15) Any consent given by the Commissioners under this Order and any conditions attached to that consent shall have effect also as a consent or conditions attached thereto (as the case may be) given by the Commissioners under section 112 of the Land Drainage Act 1976.

(16) Except as otherwise expressly provided in this Order and except so far as may be necessary to enable the objects of this Order to be effected, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Commissioners or alter or diminish any power, authority or jurisdiction vested in the Commissioners at the commencement of this Order.

(17) Any question or difference arising between the Water Authority and the Commissioners under this Article, other than a question or difference arising under paragraph (12) of this Article or to which the provisions of the Land Compensation Act 1961(a), the Act of 1965 or the Land Compensation Act 1973(b) apply, or as to the meaning or construction of this Article, may be referred by either of the parties (after giving notice in writing to the other of them) for determination by the Ministers and their decision shall be final.

For protection of Port Authority

22. For the protection of the Port Authority the following provisions shall, unless otherwise agreed in writing between the Water Authority and the Port Authority, apply and have effect: —

- (1) In this Article, except where the context otherwise requires—

“controlled access” means access on the terms that a person to whom access is afforded shall comply with any requirements which may be notified to him for the purposes of ensuring that there is no interference with safe and proper working at the barrier or at any other tidal work;

“functions” includes powers and duties;

“plans” means outline design and construction drawings and such specifications and other appropriate documents (including so far as is

(a) 1961 c. 33.

(b) 1973 c. 26.

reasonably practicable a programme of the times at which it is intended that significant operations will be carried out) as may be reasonably necessary to give the Port Authority an understanding of the Water Authority's intentions in connection with constructional operations which will or may have a significant effect on the flow or regime of the creek or the river (or both) and on navigation in the river;

“scouring” includes disturbance or collapse of the foreshore or bed of the river.

(2) Not later than twenty-eight days before—

(i) starting to carry out any tidal work; or

(ii) exercising any of the powers of Article 10 (Power to Water Authority to dredge) of this Order,

the Water Authority shall submit to the Port Authority plans of the proposed work and such further particulars thereof as may be available to the Water Authority and as the Port Authority may reasonably require and, in carrying out such works or in exercising such powers, the Water Authority shall comply with all reasonable modifications and conditions (not involving alteration to the basic design of any tidal work), including the carrying out of works by the Water Authority at their own expense, as may be specified by the Port Authority for the protection of the flow or regime of the creek or the river (or both) and of traffic in the river:

Provided that any such modifications or conditions as aforesaid shall be notified by the Port Authority to the Water Authority within twenty-eight days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

(3) For the purpose of securing that the flow or regime of the creek or the river (or both) and traffic in the river shall not be interfered with more than is reasonably necessary tidal works shall be maintained to the reasonable satisfaction of the Port Authority.

(4) The Water Authority shall at all reasonable times, upon receipt on each occasion of not less than forty-eight hours' written notice, afford to any duly authorised representative of the Port Authority controlled access, without payment or charge, to the barrier or to any other tidal work for the purposes of inspection and survey in connection with the exercise of the functions of the Port Authority and shall provide reasonable facilities therefor.

(5) Except so far as may be unavoidable in the construction of the works, the Water Authority shall not, without the consent of the Port Authority (which shall not be unreasonably withheld), deposit in or allow to fall or be washed into the creek any gravel, soil, or other materials (including in particular any spoil or material excavated, whether or not from the creek, in the carrying out of the works).

(6) (a) The Water Authority shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses which may be occasioned to or reasonably incurred by the Port Authority by reason of any negligent or wilful act or omission of the Water Authority or of any officer, servant or agent of the Water Authority in relation to the exercise or purported exercise of any of their functions under this Order;

- (b) The fact that any act or thing may have been done by the Water Authority or any officer, servant or agent of the Water Authority under this Order in accordance with plans or particulars submitted to or modifications or conditions specified by the Port Authority or in a manner approved by the Port Authority or under their supervision or the supervision of their duly authorised representative shall not excuse the Water Authority from any liability under the provisions of this paragraph, and the Water Authority shall effectively indemnify and hold harmless the Port Authority from and against all claims and demands arising out of or in connection with any act or thing which may have been done as aforesaid;
- (c) Nothing in this paragraph shall impose any liability on the Water Authority with respect to costs, charges, damages or expenses so far as they may be attributable to any negligent or wilful act or omission of the Port Authority, their servants or agents;
- (d) The Port Authority shall give to the Water Authority reasonable notice of any claim or demand as aforesaid, and no settlement or compromise thereof shall be made without the prior consent of the Water Authority.

(7) The Water Authority shall repay to the Port Authority the costs reasonably incurred by the Port Authority in connection with any surveillance, co-ordination and regulation of river traffic which becomes reasonably necessary by reason of the construction of a tidal work or of the exercise or prospective exercise by the Water Authority of their powers to close the creek or any part thereof to navigation under Article 9 (Temporary closing of creek in connection with works) of this Order or to close the barrier gate under Article 12 (As to operation of barrier) of this Order.

(8) On completion of the construction of the works the Water Authority shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and cross-sections on scales of not less than 1 in 100 showing the situation and levels of the works.

- (9) (a) Before the construction of the works is commenced the Water Authority in conjunction with the Port Authority will carry out a survey of such parts of the river as are relevant for the purpose of establishing the condition of the river at that time.
- (b) After the construction of the works has been completed the Water Authority will in conjunction with the Port Authority carry out such surveys of the river as are required to ascertain the effect of the works on the river.
- (c) The Water Authority will make available to the Port Authority the results of the surveys carried out under this paragraph and under paragraph (11) of Article 21 (For protection of Commissioners and creek users) of this Order and will pay to the Port Authority any reasonable costs they may incur in connection with the surveys of the river under this paragraph.

- (10) (a) If it is agreed between the Water Authority and the Port Authority after taking into account any relevant data or circumstances,

or, in default of agreement, it is determined in pursuance of a reference by the Port Authority to arbitration in the same manner as is provided for under sub-paragraph (c) of this paragraph, that—

- (i) any part of the river has silted up or has been subjected to scouring; and
 - (ii) such silting up or scouring is silting up or scouring to which the provisions of this paragraph apply; and
 - (iii) for the safety of navigation or in the interests of persons using the river or for the protection of works in the river, such silting up or scouring should be removed or, as the case may be, made good, the Water Authority shall pay to the Port Authority (in the manner set out in sub-paragraph (c) of this paragraph) any additional expense to which the Port Authority may reasonably be put in dredging the river to remove the silting up, or in making good the scouring, in so far as it is attributable to a tidal work.
- (b) The provisions of this paragraph apply in relation to any silting up or scouring which is wholly or partly attributable to Works Nos. 1, 2, 3 and 4 and any other tidal work executed in connection therewith or incidental thereto or to any other tidal work which may affect materially traffic in or the flow or regime of the river carried out under paragraph (4) of Article 6 (Construction of works) of this Order, during the period of the execution of those works and thereafter for a period of ten years from the relevant date and shall then cease to apply in relation to any silting up or scouring which is wholly or partly attributable to the tidal work in question.

In this paragraph “the relevant date” means, in relation to—

- (i) Works Nos. 1, 2, 3 and 4 and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Engineer of the Water Authority that Works Nos. 1, 2, 3 and 4 are completed and the barrier gate is capable of being closed; and
 - (ii) any other tidal work (not being a tidal work to which sub-paragraph (i) of this definition applies), the date on which it is so certified that the tidal work is completed.
- (c) The Water Authority shall, if so required by the Port Authority, make payments to the Port Authority on account of any sum required to be paid in pursuance of sub-paragraph (a) of this paragraph, being payments of such amounts and made at such times as may be agreed between the Water Authority and the Port Authority, or in default of agreement as may be determined by an arbitrator to be appointed by agreement between the parties (or in default of agreement by the President of the Institution of Civil Engineers on the application of either party after giving notice to the other) to be reasonable for meeting so much of the current cost to the Port Authority in dredging the river or causing the river to be dredged or in making good or in causing to be made good scouring to which the river has been subjected, as is required to be paid as aforesaid.

(11) If it is reasonably necessary as a result directly or indirectly of a tidal work—

- (a) to alter, remove, resite or reinstate any existing moorings; or

(b) to lay down and maintain or remove any new moorings,
the Port Authority may recover from the Water Authority the reasonable cost to the Port Authority of carrying out those operations including the cost of any dredging reasonably required for the purposes of that operation.

(12) (a) If a tidal work is abandoned or suffered to fall into decay, the Port Authority may by notice in writing require the Water Authority at their own expense to exercise the option either of repairing and restoring the work or any part thereof, or of removing the work and restoring the site thereof to its former condition, to such an extent and within such limits as the Port Authority may reasonably require.

(b) Where a work consisting partly of a tidal work and partly of works on land above the level of mean high-water springs is abandoned or suffered to fall into decay and that part of the work on land above the level of mean high-water springs is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the flow or regime of the creek, the Port Authority may include that part of the work, or any portion thereof, in any notice under this paragraph.

(c) If on the expiration of such reasonable period as may be specified in a notice served under this paragraph upon the Water Authority they have failed to comply with the requirements of the notice, the Port Authority may themselves exercise the option and execute the appropriate works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Water Authority as a simple contract debt.

(13) Any consent given by the Port Authority under this Order and any conditions attached to that consent shall have effect also as a consent or conditions attached thereto (as the case may be) given by the Port Authority under section 112 of the Land Drainage Act 1976.

(14) Except as otherwise expressly provided in this Order and except so far as may be necessary to enable the objects of this Order to be effected, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Port Authority or alter or diminish any power, authority or jurisdiction vested in the Port Authority at the commencement of this Order.

(15) Any question or difference arising between the Water Authority and the Port Authority under this Article, other than a question or difference arising under paragraph (10) of this Article or to which the provisions of the Land Compensation Act 1961, the Act of 1965 or the Land Compensation Act 1973 apply, or as to the meaning or construction of this Article, may be referred by either of the parties (after giving notice in writing to the other of them) for determination by the Ministers and their decision shall be final.

Provisions applicable to Articles 21 and 22

23. In any case where under Articles 21 and 22 plans or particulars have been submitted both to the Port Authority and to the Commissioners and either of those bodies requires modifications or conditions in respect thereof

then the other body shall be entitled to submit representations thereon to the Ministers and, in any proceedings which may take place as a result of such requirement, the body which is not a party to those proceedings shall be entitled to be heard in such proceedings and shall be bound by the determination whether or not they have been heard in the proceedings.

For protection of London Electricity Board

24.—(1) In this section “apparatus” means any electric line or works (as respectively defined in the Electric Lighting Act 1882(a)) belonging to or maintained by the London Electricity Board and includes any structure constructed so that apparatus may be lodged in it.

(2) Notwithstanding anything in this Order or shown on the deposited plans, the Water Authority shall not acquire any apparatus under the powers of this Order otherwise than by agreement.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 28th July 1978.

(L.S.)

John Silkin,
Minister of Agriculture, Fisheries
and Food.

Stanley Clinton Davis,
Parliamentary Under Secretary of State,
Department of Trade.

2nd August 1978.

(a) 1882 c. 56.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, made under Section 56 of the Thames Barrier and Flood Prevention Act 1972, empowers the Southern Water Authority to construct a flood barrier incorporating a movable gate across the mouth of Dartford Creek and to execute ancillary works. The powers conferred on the Authority include powers to acquire the requisite land and rights by agreement or compulsorily, to close temporarily the Creek or part thereof to navigation during the execution of any works and, subject (except in emergency and in certain other circumstances) to the consent of the Dartford and Crayford Navigation Commissioners and of the Port of London Authority, to close the barrier and to interfere with the right of navigation into or out of the Creek for certain purposes. These purposes include the prevention of flooding upstream of the barrier, experimenting in order to develop the most effective use of the barrier, testing the barrier, exercising and instructing staff in the operation of the barrier and for maintenance and other work on the barrier.

The Order makes it an offence for a person unlawfully to operate the barrier or interfere with the barrier or its operation. It makes provisions for the prevention of danger to navigation and for the protection of the Dartford and Crayford Navigation Commissioners and Creek users, the Port of London Authority and the London Electricity Board.

Copies of the plans and sections mentioned in this Order are available for inspection during office hours at the office of the Chief Executive of the Southern Water Authority, Guildbourne House, Worthing, Sussex BN11 1LD, at the office of the Director-General and Clerk to the Council, The County Hall, London SE1 7PB, at the offices of the Minister of Agriculture, Fisheries and Food, Great Westminster House, Horseferry Road, London SW1P 2AE and at the offices of the Secretary of State for Trade, Sunley House, 90 High Holborn, London WC1V 6LP.

STATUTORY INSTRUMENTS

1978 No. 1125

LAND DRAINAGE

The Dartford Creek (Barrier) Order 1978

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