
STATUTORY INSTRUMENTS

1991 No. 1760

LAND DRAINAGE

The River Colne Barrier (Wivenhoe) Order 1991

Made - - - - - *23rd July 1991*

Coming into force - - - - - *26th July 1991*

The Minister of Agriculture, Fisheries and Food and the Secretary of State for Transport, in exercise of the powers conferred by section 56 of the Thames Barrier and Flood Prevention Act 1972⁽¹⁾ and now vested in them⁽²⁾ and of all other powers enabling them in that behalf, hereby make the following Order—

Title and commencement

1. This Order may be cited as the River Colne Barrier (Wivenhoe) Order 1991 and shall come into force on 26th July 1991.

Interpretation

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

“the Act of 1965” means the Compulsory Purchase Act 1965⁽³⁾;

“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 gates” means all or any of the movable flood gates forming part of Work No. 1;

“the Colchester Port Authority” means the Colchester Borough Council acting as statutory navigation authority and port authority for the river;

“the deposited plans” and “the deposited sections” mean the plans and sections prepared in triplicate signed on behalf of the Ministry of Agriculture, Fisheries and Food and marked “Plans and sections referred to in the River Colne Barrier (Wivenhoe) Order 1991”, of which one set is deposited and available for inspection at the office of the Regional Solicitor of the Rivers Authority and one set each at the offices of the Minister of Agriculture, Fisheries and Food and of the Secretary of State for Transport respectively;

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

(1) 1972 c.xlv. Section 3 defines “the Minister” and “the Ministers”.

(2) In the case of the Secretary of State for Transport, by virtue of S.I.1983/1127.

(3) 1965 c. 56.

- “the river” means the River Colne and includes the bed, banks and foreshore of that river;
- “the Rivers Authority” means the National Rivers Authority;
- “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;
- “the tribunal” means the Lands Tribunal;
- “Trinity House” means the Corporation of Trinity House of Deptford Strond;
- “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(4);
- “watercourse” has the same meaning as in the Land Drainage Act 1976(5);
- “the works” means Works Nos. 1, 2, 3, 4, 5 and 6 and any works, apparatus or conveniences (whether temporary or permanent) constructed, provided or installed 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.

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 Part II of the Acquisition of Land Act 1981(6) apply and as if this Order were a compulsory purchase order under the said Act of 1981.

(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 section 11(1) for the words “fourteen days” there shall be substituted the words “one month's”;
- (c) in section 11(3) 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) section 27 and paragraph 3(3) of Schedule 3 shall not apply.

Power to acquire lands

4. Subject to the provisions of this Order, the Rivers 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, maintenance and operation of the works or other purposes connected therewith, including (without prejudice to the generality of the

(4) 1968 c. 59.

(5) 1976 c. 70.

(6) 1981 c. 67.

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

- (a) 5. (1) (a) The Rivers 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 paragraph 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 Rivers 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 Rivers 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 Rivers Authority to acquire the land, the Rivers 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 Rivers 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.

Temporary use of land

6.—(1) In this Article “the designated lands” means so much of the lands shown on sheets 2, 3 and 4 of the deposited plans in the borough of Colchester and in the district of Tendring as lies within the lines marked “Limit of temporary working site” on the deposited plans.

(2) The Rivers Authority, in connection with the construction of the works and after giving to the owners and occupiers of the designated lands not less than 28 days' previous notice in writing, may—

- (a) enter upon and take possession temporarily of the designated lands or any part thereof for the purpose of temporary working sites;
- (b) construct on the designated lands such temporary works or structures as may be required by them; and
- (c) remove any structures and vegetation on the designated lands.

(3) On the exercise of the powers conferred by paragraph (2) above, the following provisions shall have effect—

- (a) The Rivers Authority shall not for any of the purposes mentioned in paragraph (2) above be empowered to purchase compulsorily or be required to purchase any part of the designated lands which is the subject of the notice:
- (b) The Rivers Authority shall not, without the agreement of the owners and occupiers of the designated lands, remain in possession of any part thereof after a period of one year from the completion of the works for which such possession has been taken:
- (c) Before giving up possession of the designated lands, the Rivers Authority shall remove all temporary works or structures and restore the designated lands to the reasonable satisfaction of the owners and occupiers thereof:
- (d) The Rivers Authority shall compensate the owners and occupiers of the designated lands for any loss or damage which may result to them by reason of the exercise of the powers of the said paragraph (2):
- (e) Nothing in this Article shall relieve the Rivers Authority from liability to compensate under section 10(2) of the Act of 1965, as incorporated with or applied by this Order, or under any other enactment, in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under sub-paragraph (d) above:
- (f) Any dispute as to a person's entitlement to compensation under sub-paragraph (d) above or as to the amount thereof shall be determined by the tribunal.

Construction of works

7.—(1) Subject to the provisions of this Order, the Rivers 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 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 County of Essex—

Partly in the parish of Elmstead in the district of Tendering and partly in the parish of Fingringhoe in the borough of Colchester—

Work No. 1. A flood barrier, incorporating a pair of moveable gates and cill to the navigation channel, piers on either side to support and house the mitre gates, offices and control room and approach structures from abutments on river banks to the gate piers with sluices and vehicle way over and with scour protection to river bed adjacent to sluices and in the navigation channel, the work commencing at reference point TM 60411/22117 and terminating at reference point TM 60421/22133;

In the said parish of Elmstead—

Work No. 2 A closure embankment to high ground on the north side of the river, commencing at reference point TM 60422/22131, proceeding first north-east and then curving north and terminating at reference point TM 60426/22155;

In the said parish of Fingringhoe—

Work No. 3. A closure embankment to high ground, incorporating an access road to the barrier on the south side of the river and alterations to watercourses, commencing at reference point TM 60402/22125, proceeding first south-east along the existing river/flood bank and then curving to the south and terminating by a junction with Ballast Quay Road at reference point TM 60427/22100;

Work No. 4 An improvement of Ballast Quay Road, commencing at reference point TM 60427/22100 and terminating at reference point TM 60408/22087;

In the said borough of Colchester—

Work No. 5 An access road, commencing at reference point TM 60416/22134 and terminating at reference point TM 60408/22149;

Work No. 6 An extension of Anglesea Road consisting of a spur to Brook Street, commencing at reference point TM 60408/22149 and terminating at reference point TM 60408/22153.

(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 Rivers 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 Rivers 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 any of the works.

(5) The extension of Anglesea Road (Work No. 6) shall, when completed in accordance with the reasonable requirements of the highway authority and opened for public use, become a highway for all purposes and shall be maintained and repaired by and at the expense of the Rivers Authority for a period of one year thereafter; and at the expiration of that period the surface of that road as improved shall vest in and be maintainable at the public expense by the highway authority, who for that purpose shall have all such rights in the subsoil and undersurface of the road as improved as may be necessary.

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

(7) When Works Nos. 1 to 3 are completed and the barrier gates are capable of being closed, a certificate thereof shall be issued under the seal of the Rivers 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 gates are capable of being closed.

Power to deviate

8.—(1) In the execution of the works, or any part thereof, the Rivers 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 opening is not less than 30 metres; and
- (b) the cill of the navigable opening shall not be higher than 2.2 metres below Ordnance Datum (Newlyn).

(2) Nothing in paragraph (3) or paragraph (4) of the last foregoing Article shall authorise the Rivers 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 Rivers Authority

9.—(1) Subject to the provisions of this Order, the Rivers Authority may do any of the following things in connection with and for the purposes of the works on land which lies within the limits of deviation shown on the deposited plans, is acquired by them under the powers of this Order or (in the case of the things mentioned in paragraph (g) below) lies anywhere in the river, namely—

- (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, jetties, slipways, pavings, hards, moorings, 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, sewers, wires, machinery, control apparatus 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 river) or sewer (not being a watercourse), the Rivers 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(7));
- (g) after consultation with the Colchester Port Authority, provide and maintain in the river navigation beacons and other navigation aids.

(2) In the exercise of the powers conferred by this Article the Rivers Authority shall cause as little detriment and inconvenience to any person as circumstances admit.

Further works and powers

10.—(1) The Rivers Authority may—

- (a) use for the winning of material required for or in connection with the construction of the works so much of the lands shown on sheet 6 in the borough of Colchester as lies within the lines marked “Limit of land to be acquired for borrow pits”;
- (b) construct and maintain a lagoon for drainage upon so much of the lands shown on sheet 3 of the deposited plans in the parish of Fingringhoe in the borough of Colchester as lies within the enclosure marked “Limit of lagoon”;
- (c) construct and maintain a leading light or lights or navigation beacon or beacons in, on or over, or by attachment to a building upon, so much of the lands shown on sheet 4 of the deposited plans in the parish of Wivenhoe in the borough of Colchester as lies within the enclosure marked “Limit of land to be acquired for beacons”;
- (d) construct and maintain a sailing club house, boat slipway, car park and other facilities upon so much of the lands shown on Sheet 2 of the deposited plans in the parish of Elmstead, in the district of Tendring as lies within the enclosure marked “Limit of land for club house etc.”;
- (e) after consultation with the Colchester Port Authority, carry out such works for the removal of moorings in the river and (as in the light of such consultation appears desirable) the

relaying of moorings in other locations, as in either case may in the opinion of the Rivers Authority be necessary or appropriate consequent upon construction of the barrage.

(f) during the construction of the works carry out street works in respect of so much of Anglesea Road as lies between reference points TM 60408/22153 and TM 60416/22168.

(2) Notwithstanding anything in this Order, the Rivers Authority shall for the purposes of paragraph (1)(c) above acquire only such rights and easements as are reasonably required in, to or over the lands therein mentioned and shall not acquire any greater interest therein.

(3) For the purposes of paragraph (1)(f) above “street works” has the same meaning as in section 203 of the Highways Act 1980(8).

Temporary stoppage of watercourses, roads and footpaths

11.—(1) Subject to the provisions of this Order the Rivers Authority during and for the purpose of the execution of any of the works may temporarily stop up and divert and interfere with any watercourse or any road or footpath and may for any reasonable time divert the traffic from any such road or footpath and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road or footpath from passing along and using the same.

(2) Reasonable access shall be provided for foot-passengers, with or without animals, bona fide going to or from any such land, house or building.

(3) The powers of this Article shall not be exercised with reference to any road or footpath without the consent of the highway authority having powers in relation thereto and, in the case of a road or footpath which is vested in any person other than the highway authority, that person, and any such consent may be given subject to such reasonable conditions (other than a monetary payment as the consideration for the grant of the consent) as the highway authority or other person may think fit to impose but shall not be unreasonably withheld, and any question whether any such consent is unreasonably withheld or whether any conditions are reasonable shall be determined by arbitration.

(4) The exercise of the powers of this Article in relation to a road or footpath shall not affect the rights of the operator of any telecommunications code system for the purposes for which the apparatus is used to keep installed, inspect, maintain, adjust, repair or alter telecommunication apparatus or to break up or open, or tunnel or bore under, that road or footpath for any of those purposes.

Notice to police

12. Before breaking up or otherwise interfering with any road in connection with the construction of any of the works, the Rivers Authority shall (except in a case of emergency) give 14 days' notice to the chief officer of police of their intention so to do.

Stopping up and diversion of footpath

13.—(1) Following completion of Works Nos. 1 to 3 and the provision by the Rivers Authority upon or along the line shown and designated on sheet 2 of the deposited plans as the route of a new footpath between the points A and B marked on that sheet—

(a) the Rivers Authority may stop up so much of the footpath in the parish of Elmstead in the district of Tendring (marked 15 on the definitive map kept under section 53 of the Wildlife and Countryside Act 1981(9)) as lies between the said points A and B and is shown and designated on the said sheet 2 as the existing footpath;

(8) 1980 c. 66.

(9) 1981 c. 69.

(b) the said new footpath lying in the same parish between the points A and B shall become a public footpath.

(2) With the consent in writing of the highway authority the route of the said new footpath to be provided along the line between the points A and B shown and designated on the said sheet 2 may, on the application of the Rivers Authority, be varied to a line appearing to the highway authority to be not less commodious and convenient to persons appearing to the highway authority to be likely to use the footpath.

(3) Upon the stopping up of the part of the existing footpath under the powers of paragraph (1) (a) above, all rights of way over or along that part shall be extinguished and the Rivers Authority may appropriate and use the site and soil thereof so far as they are the owners of the same.

Agreements with highway authorities

14.—(1) Where under this Order the Rivers Authority are authorised to stop up, divert or interfere with a road or footpath, or portion thereof, they may enter into, and carry into effect, agreements with the highway authority or the persons having the charge, management or control of the road or footpath, as the case may be, concerning the construction, or a contribution towards the expense of the construction of any new road or footpath to be made under this Order, and concerning any other matters relating thereto.

(2) The Rivers Authority may, by agreement with the highway authority or such persons, delegate to them the power of constructing and, in any case where the Rivers Authority are responsible for maintaining the same, of maintaining all or any such new road or footpath.

(3) The purposes of this Article shall be purposes for which a highway authority may incur expenditure and borrow money.

Temporary closing of river in connection with works

15.—(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 Rivers Authority under the provisions of this Order, and after consultation with the Colchester Port Authority, the Rivers Authority may, in executing or doing in, on, under or over the river any works or things authorised by or under the foregoing provisions of this Order, close the river or any part thereof to navigation:

Provided that the Rivers Authority shall so execute or do such works or things as to ensure that at any time no more of the river is so closed than is reasonably necessary in all the circumstances and, if it becomes necessary to close the river completely to navigation, the Rivers 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 river.

(2) Without prejudice to Article 3 of this Order, neither the Rivers Authority nor the Colchester Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the river under the foregoing paragraph.

Power to Rivers Authority to dredge

16. Subject to the provisions of this Order, the Rivers Authority may, after consultation with the Colchester Port Authority, from time to time both during and after the construction of the works deepen, dredge and improve, and remove obstructions from the bed, foreshore and banks of the river—

(a) for the purposes of or in connection with the construction, operation, maintenance, alteration, extension, enlargement, replacement, repair, renewal or removal of the works; or

(b) for the purpose of facilitating the navigation of vessels.

Removal of vessels

17.—(1) Where any vessel is sunk, stranded or abandoned in any part of the river within 200 metres of the barrier gates or without lawful authority left or moored in any such part, the Rivers Authority, after consultation with the Colchester Port Authority, may take all such action as may be necessary to remove the vessel.

(2) The Rivers 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 Rivers 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 Rivers Authority:

Provided that if within six months of its removal by the Rivers Authority a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Rivers Authority that he is the owner thereof, then they shall—

- (i) 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
- (ii) if the vessel, furniture, tackle, cargo, goods, chattels and effects have been sold, the Rivers 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 Rivers Authority such expenses, the deficiency may be recovered by the Rivers Authority as a simple contract debt.

(a) (4) (a) Except where there is, in the Rivers Authority's opinion, an emergency, paragraph (1) of this Article shall not authorise the removal of any vessel by the Rivers Authority unless the Rivers Authority have given to the owner of the vessel not less than forty-eight hours' notice of their intention to remove the vessel.

(b) If before such notice expires the Rivers 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 Rivers 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 Rivers Authority for the protection of the barrier or by the Colchester Port Authority for the prevention of interference with navigation.

(c) If the owner of a vessel to whom notice is to be given under this Article is not known to the Rivers Authority or if his place of business or abode is not known to the Rivers 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

18.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, the Rivers Authority may use and operate the barrier, and, in particular, the barrier gates may be closed by the Rivers Authority for such periods as they consider necessary or desirable—

- (a) at any time when it appears to the Rivers Authority that there is reason to believe that unless the barrier gates are 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 river or any part thereof will thereby be closed to navigation and that the passage of vessels in the river may thereby be obstructed, delayed or interfered with, and neither the Rivers Authority nor the Colchester Port Authority shall, as a result of such closures, 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 gates are to be closed, and when or at what state of the tide they are to be reopened after any such closure, the Rivers 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 river.

- (a) (3) (a) The barrier gates shall not be closed for any of the purposes mentioned in subparagraphs (b) to (e) of paragraph (1) of this Article without the consent of the Colchester Port Authority except that such consent shall not be required when the barrier gates are closed at low water if the operation of closing the barrier gates is not commenced until ninety minutes before the predicted time for low water and the operation of opening the barrier gates is completed not later than ninety minutes after low water and for the purposes of this sub-paragraph the predicted time of low water shall be deemed to be six hours after the predicted time for the previous high water at Colchester as given in any official tidal publication.
- (b) A consent to the Colchester Port Authority which is required under subparagraph (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 Colchester Port Authority and the Rivers Authority an opportunity of appearing before and being heard by a person appointed for that purpose.
- (a) (4) (a) The Rivers Authority shall give to the Colchester Port Authority the required notice of their intention to close the barrier gates and of their intention to reopen them 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-paragraph (b) to (e) of the said paragraph (1) not requiring the consent of the Colchester 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 Colchester Port Authority, notice given not less than fourteen days before the closure operation commences and such notice shall be in writing.
- (c) The Colchester Port Authority shall be under a duty to take such steps to regulate the movement of vessels using the river as they may consider necessary or desirable in the light of the required notice.

Misuse of barrier, etc.

- 19.** Any person who without lawful authority or excuse—
- (a) closes or opens, or attempts to close or open, the barrier gates; 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 level 2 on the standard scale or on conviction on indictment to a term of imprisonment not exceeding six months or to a fine or both.

Byelaws of Colchester Port Authority

20. The powers of the Colchester Port Authority under section 33 (Power to make Byelaws) of the Act of 1847 shall be deemed to include a power to make byelaws, after consultation with the Rivers Authority and the Corporation of Trinity House of Deptford Strond, for or in connection with the management, regulation, direction and control of vessels passing or waiting to pass through the barrier:

Provided that in relation to byelaws made by virtue of this Article the confirming authority for the purposes of section 236 of the Local Government Act 1972⁽¹⁰⁾ shall be the Secretary of State for Transport.

In this Article “the Act of 1847” means the local and personal Act 10 and 11 Victoria chapter cclxxxi.

Power to Colchester Borough Council to act as agent

21. The Rivers Authority and the Colchester Borough Council may make such arrangements as may be agreed between them for the carrying out by that council as agent of the Rivers Authority of any of the functions of the Rivers Authority under this Order.

Marking of tidal works

- 22.—**(1) The Rivers Authority shall—
- (a) 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 Trinity House 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 Trinity House who may thereupon give to the Rivers Authority reasonable directions as to the steps to be taken for preventing danger to navigation.
- (a) (2) (a) If the Rivers 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 level 2 on the standard scale or on conviction on indictment to a fine.

(10) 1972 c. 70.

- (b) The Rivers Authority shall not under any of the powers of this Order exhibit any light, buoy or beacon or take other steps for preventing danger to navigation, as mentioned in paragraph (1)(a) above, except with the sanction of Trinity House, nor afterwards alter any such light or other provision directed under the said paragraph (1)(a) except with the like sanction.

Survey of tidal works

23. The Secretary of State for Transport 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 him in any such survey and examination shall be recoverable from the Rivers Authority as a simple contract debt.

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

- (a) **24.** (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 Transport and subject to any conditions and restrictions imposed by him 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 Transport may by notice in writing require the Rivers 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 Rivers 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 Transport in so doing shall be recoverable from the Rivers Authority as a simple contract debt.

(2) Any materials taken up or collected in the course of the construction of the works or of dredging operations in the exercise of the powers of Article 16 of this Order shall be the property of the Rivers Authority and may be used, sold, removed, deposited or otherwise disposed of as the Rivers Authority may think fit:

Provided that no such materials shall be deposited below the level of mean high-water springs except after consultation with the Colchester Port Authority and in accordance with—

- (a) such conditions and restrictions as may be approved by the Secretary of State for Transport; and
- (b) Part II of the Food and Environment Protection Act 1985(11).

Abatement of works abandoned or decayed

25.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State for Transport may by notice in writing require the Rivers Authority at their own expense either to repair and restore the work, or any portion thereof, or to remove the work and restore the site thereof to its former condition to such an extent and within such limits as the Secretary of State for Transport thinks proper.

(2) Where works consisting partly of a tidal work and partly of works on or over land above the level of mean high-water springs are abandoned or suffered to fall into decay and that part of the work on or over 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 Secretary of State for Transport may include that part of the work, or any portion thereof, in any notice under this Article.

(3) If, on the expiration of thirty days from the date when a notice under this Article is served upon the Rivers Authority, they have failed to comply with the requirements of the notice, the Secretary of State for Transport may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Rivers Authority.

For protection of sewers

26. For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between the Rivers Authority and the sewerage undertaker concerned, apply and have effect:—

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

“construction” includes execution, placing and altering and, in relation to temporary works, includes removal; and “constructed” shall be construed accordingly;

“new, altered or substituted works” includes any works required for the protection of any sewer or watercourse;

“sewer” means a public sewer within the meaning of the Water Act 1989(12) and includes a disposal main within the meaning of Schedule 19 to that Act;

“specified work” means so much of the works authorised by Article 7 (Construction of works), Article 9 (Subsidiary powers to River Authority) or Article 10 (Further works and powers) of this Order or any work (whether temporary or permanent) forming part of, or constructed in connection with, those works under the powers of this Order as will or may—

(a) be situated over or within 15 metres measured in any direction of any sewer; or

(b) (wherever situated) impose any load directly upon any sewer;

and includes the construction, maintenance or renewal of any such works:

(2) The Rivers Authority shall not commence any specified work until they shall have given to the sewerage undertaker 56 days' notice in writing of their intention to commence the same by leaving such notice at the principal office of the sewerage undertaker with plans as described in paragraph (7) below (in this section referred to as “the said plans”) and until the sewerage undertaker shall have signified their approval of the said plans:

Provided that such approval shall not be unreasonably withheld and if, within 56 days, after the submission of the said plans, the sewerage undertaker have not signified to the Rivers Authority their approval or disapproval thereof, they shall be deemed to have approved the said plans:

(3) The Rivers Authority shall comply with and conform to all reasonable orders, directions and regulations of the sewerage undertaker in the construction of any specified work and shall provide new, altered or substituted works in such manner as the sewerage undertaker shall reasonably require for the proper protection of, and for preventing injury or impediment to, any sewerage or watercourse by reason of any specified work and shall save harmless the sewerage undertaker against all expenses to be occasioned thereby:

(4) The specified works and any new, altered or substituted works shall be constructed only in accordance with such plans as may be approved or be deemed to be approved by the sewerage undertaker as aforesaid or settled by arbitration, subject however to any modification of those

plans from time to time agreed upon between the Rivers Authority and the sewerage undertaker and be constructed to the reasonable satisfaction of the sewerage undertaker who shall be given reasonable notice of the date and time on and at which any new, altered or substituted works are to be commenced:

(5) All such new, altered or substituted works shall, where so required by the sewerage undertaker, be constructed by or under the direction, superintendence and control of an officer of the sewerage undertaker duly appointed for the purpose at the cost, charge and expense in all respects of the Rivers Authority and all reasonable costs, charges and expenses to which the sewerage undertaker may be put by reason of such works, whether in the execution thereof, or in the preparation or examination of plans or designs or in such direction, superintendence or control as aforesaid, or otherwise, shall be paid to the sewerage undertaker by the Rivers Authority on demand:

(6) When any new, altered or substituted works or any work of defence connected therewith shall be completed under the provisions of this Article, the same shall thereafter be as fully and completely under the direction, jurisdiction and control of the sewerage undertaker as any sewer now or hereafter may be:

(7) Nothing in this Order shall extend to prejudice, diminish, alter or take away any of the rights, powers or authorities vested or to be vested in the sewerage undertaker in relation to any sewer but all such rights, powers and authorities shall be as valid and effectual as if this Order had not been passed:

(8) It shall not be lawful for the Rivers Authority without the consent of the sewerage undertaker, in the exercise of the powers of section 11(3) of the Compulsory Purchase Act 1965(13) as applied by this Order, to make any trial holes which interfere with any sewer:

(9) The plans to be submitted to the sewerage undertaker for the purposes of this article shall be detailed plans, drawings, sections and specifications which shall describe the exact position and manner in which, and the level at which, any specified work is proposed to be constructed and shall as far as reasonably practicable accurately describe the position of all sewers within the limits of deviation (for which purpose the sewerage undertaker shall allow the Rivers Authority access to plans in their possession in order to enable the Rivers Authority to obtain reliable information) and shall comprise detailed drawings of every alteration which the Rivers Authority may propose to make in any sewer:

(10) The sewerage undertaker may require such modifications to be made in the said plans as may be reasonably necessary to secure the sewers against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer:

- (a) (11) (a) If by reason of the construction of a specified work or any new, altered, substituted or protective works provided by the Rivers Authority under this article any injury or impediment is caused to any sewer, the damage shall be made good by the Rivers Authority to the reasonable satisfaction of the sewerage undertaker or, if the sewerage undertaker so decides, they may themselves take such action—
- (i) if the case is one of emergency, as may be specified in a notice in writing given to the Rivers Authority as soon as possible after the injury or impediment is caused;
 - (ii) in any other case, as may be agreed in writing between the Rivers Authority and the sewerage undertaker, or in default of agreement, determined by arbitration;
 - as may be reasonably required to remedy the damage or remove the impediment or impairment;
- (b) The Rivers Authority shall be responsible for and make good to the sewerage undertaker all costs, charges, expenses and losses which may be occasioned to, suffered by or reasonably incurred by the sewerage undertaker in taking action in accordance with this paragraph:

(12) The Rivers Authority shall indemnify the sewerage undertaker against all claims, demands, costs, expenses, damages or loss which may be made on or against the sewerage undertaker or which the sewerage undertaker may incur or have to pay or which they may sustain in consequence of the construction, maintenance or renewal of a specified work or of the failure or want of repair thereof or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Rivers Authority, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered, substituted and protective works:

Provided that—

- (i) the sewerage undertaker shall give to the Rivers Authority reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of the Rivers Authority; and
- (ii) nothing in this paragraph shall impose any liability on the Rivers Authority with respect to any claim, demand, costs, expenses, damage or loss which is attributable to the act, neglect or default of the sewerage undertaker or their servants or agents:

(13) It shall be lawful for an officer of the sewerage undertaker duly appointed for the purpose at any reasonable time and, if required by the Rivers Authority, under their supervision to enter upon and inspect any specified work or any other work constructed under the powers of this Article:

(14) The approval by the sewerage undertaker of any plans or the superintendence by them of any work under the provisions of this Article shall not exonerate the Rivers Authority from any liability or affect any claim for damages under this Article or otherwise:

(15) Notwithstanding the temporary stopping up or diversion of any highway under the powers of Article 11 (Temporary stoppage of watercourses, roads and footpaths) of this Order, the sewerage undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable them to inspect, repair, maintain, renew, alter, protect, remove or use any sewer which at the time of the stopping up or diversion was in that highway:

(16) Where, in consequence of this Order, any part of any footpath in which any sewer is situate ceases to be part of the footpath, the sewerage undertaker may exercise the same rights of access to such sewer as they enjoyed immediately before the passing of this Order, but nothing in this paragraph shall prejudice or affect any right of the Rivers Authority or of the sewerage undertaker to require alteration of such sewer under this Article:

(17) As soon as reasonably practicable after the completion of the construction of a specified work, the Rivers Authority shall deliver to the sewerage undertaker a plan and section showing the position and level of the specified work as constructed and all new, altered or substituted works of the sewerage undertaker provided under this Article:

(18) Any difference arising between the Rivers Authority and the sewerage undertaker under this Article shall be referred to and settled by arbitration.

For protection of gas and water undertakers

27. For the protection of the several undertakers referred to in this Article, the following provisions shall, unless otherwise agreed in writing between the Rivers Authority and the undertakers concerned, apply and have effect:—

(1) In this Article—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by the undertakers (not being apparatus in respect of which the relations between the Rivers Authority and the undertakers are regulated by the provisions of Part II of the Public Utilities Street

Works Act 1950(14) and includes any building, structure or works for the lodging therein of apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“the undertakers” means British Gas plc, Anglian Water Services Limited and the Tendring Hundred Waterworks Company and, in relation to any apparatus, means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained:

(2) Notwithstanding the temporary stopping up, diversion of or interference with any watercourse, road or footpath under the powers of Article 11 (Temporary stoppage of watercourses, roads and footpaths) of this Order, the undertakers shall be at liberty at all times to execute and do all such works and things in, upon or under any such watercourse, road or footpath as may be reasonably necessary or desirable to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up, diversion or interference was in that watercourse, road or footpath:

(3) Notwithstanding anything in this Order or shown on the deposited plans the Rivers Authority shall not acquire any apparatus under the powers of this Order otherwise than by agreement:

(4) If the Rivers Authority in the exercise of the powers of this order acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Article and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus shall have been constructed and be in operation to the reasonable satisfaction of the undertakers:

(5) If the Rivers Authority for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order require the removal of any apparatus in that land, and shall give to the undertakers written notice of such requirement together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, or if, in consequence of the exercise of any of the powers of this Order, the undertakers shall reasonably require to remove any apparatus, the Rivers Authority shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the Rivers Authority and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the Rivers Authority and the Rivers Authority are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or such part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Rivers Authority, forthwith use their best endeavours to obtain the necessary facilities and rights in such last-mentioned land:

(a) (6) (a) Any alternative apparatus to be constructed in land of the Rivers Authority under this Article shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Rivers Authority or in default of agreement settled by arbitration;

(b) The undertakers shall, after the alternative apparatus to be provided or constructed shall have been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (5) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Rivers Authority to be removed under the provisions of this Article:

(7) Notwithstanding anything in paragraph (6) above, if the Rivers Authority give notice in writing to the undertakers that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will be situate in any land of the Rivers Authority, such work, in lieu of being executed by the undertakers, shall be executed by the Rivers Authority with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers:

Provided that nothing in this paragraph shall authorise the Rivers Authority to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around any apparatus extending (where the apparatus is laid in a trench) to 300 millimetres or more above the apparatus:

(8) Where, in accordance with the provisions of this Article, the Rivers Authority afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Rivers Authority of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Rivers Authority and the undertakers or in default of agreement determined by arbitration:

Provided that if the facilities and rights to be afforded by the Rivers Authority in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Rivers Authority to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the particular case:

- (a) (9) (a) Not less than 28 days before commencing to execute any such works as are referred to in paragraph (5) above and are near to or will or may affect any apparatus the removal of which has not been required by the Rivers Authority under the said paragraph (5), the Rivers Authority shall submit to the undertakers a plan, section and description of the works to be executed;
- (b) Such works shall be executed only in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of such works:

Provided that—

- (i) if the undertakers within 14 days after the submission to them of any such plan, section and description shall, in consequence of the works proposed by the Rivers Authority, reasonably require the removal of any apparatus and give written notice to the Rivers Authority of such requirement, the foregoing provisions of this Article shall apply and have effect as if the removal of such apparatus had been required by the Rivers Authority under the said paragraph (5);
- (ii) nothing in this sub-paragraph shall preclude the Rivers Authority from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any such works, a new plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan, section and description;

- (c) The Rivers Authority shall not be required to comply with sub-paragraph (a) above in a case of emergency but in such a case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of the works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) above so far as reasonably practicable in the circumstances:

(10) Where in consequence of this Order any part of any watercourse, street, road or footpath in which any apparatus is situate ceases to be part of a watercourse, street, road or footpath, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Order, but nothing in this paragraph shall prejudice or affect any right of the Rivers Authority or of the undertakers to require removal of such apparatus under this Article or the power of the Rivers Authority to execute works in accordance with paragraph (9) above:

(11) The Rivers Authority shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (5) above, less the value of any apparatus removed under the provisions of this Article (such value being calculated after removal) and shall also make compensation to the undertakers—

- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Article); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

by reason or in consequence of the execution, maintenance, user or failure of any such works or otherwise by reason or in consequence of the exercise by the Rivers Authority of the powers of this Order:

(12) Where, by reason or in consequence of the stopping up of any watercourse, street, road or footpath under the powers of this Order any apparatus belonging to the undertakers and laid or placed in such watercourse, street, road or footpath or elsewhere is rendered derelict or unnecessary, the Rivers Authority shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Rivers Authority) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason or in consequence of such apparatus being so rendered derelict or unnecessary:

Provided that the Rivers Authority shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus shall at the expense of the Rivers Authority have been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:

(13) Any difference arising between the Rivers Authority and the undertakers under this Article shall be referred to and settled by a single arbitrator to be agreed between the Rivers Authority and the undertakers or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

For protection of Colchester Port Authority and river users

28. For the protection of the Colchester Port Authority and users of the river the following provisions shall, unless otherwise agreed in writing between the Rivers Authority and the Colchester 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 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 Colchester Port Authority an understanding of the Rivers Authority’s intentions in connection with constructional operations which will or may have a significant effect on the flow or regime of the river and on navigation in 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 16 of this Order,

the Rivers Authority shall submit to the Colchester Port Authority plans of the proposed work and such further particulars thereof as may be available to the Rivers Authority and as the Colchester Port Authority may reasonably require and, in carrying out such works or in exercising such powers, the Rivers 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 Rivers Authority at their own expense, as may be specified by the Colchester Port Authority for the protection of the flow or regime of the river and of traffic in the river:

Provided that any such modifications or conditions as aforesaid shall be notified by the Colchester Port Authority to the Rivers Authority within twenty-eight days of the receipt by the Colchester 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 river 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 Colchester Port Authority.

(4) The Rivers 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 Colchester Port Authority.

(5) The Rivers 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 Colchester 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 Colchester Port Authority and shall provide reasonable facilities therefor.

(6) 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 provide additional navigation aids or to relocate existing navigation aids,

the Colchester Port Authority may recover from the Rivers Authority the reasonable costs to the Colchester Port Authority of carrying out those operations.

(7) Any consent given by the Colchester 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 Colchester Port Authority under section 112 of the Land Drainage Act 1976.

(8) Any question or difference arising between the Rivers Authority and the Colchester Port Authority under this Article, other than a question or difference to which the provisions of the Land

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Compensation Act 1961⁽¹⁵⁾, the Act of 1965 or the Land Compensation Act 1973⁽¹⁶⁾, 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.

IN WITNESS whereof the official seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 19th July 1991.

L.S.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

Patrick McLoughlin
Parliamentary Under Secretary of State,
Department of Transport

23rd July 1991

⁽¹⁵⁾ 1961 c. 33.
⁽¹⁶⁾ 1973 c. 26.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the National Rivers Authority (“NRA”) to construct a flood barrier at Wivenhoe on the River Colne, Essex, together with ancillary works (Article 7) according to a deposited plan and deposited sections and, in connection with the barrier–

- (a) enables NRA to acquire land and easements compulsorily (Articles 3, 4 and 5);
- (b) provides for deviation from the deposited plans (Article 8);
- (c) bestows subsidiary powers on NRA (Article 9), including power to use certain land for winning materials for the works, construct a drainage lagoon, provide navigation aids and provide facilities for a sailing club;
- (d) provides for temporary stoppage of watercourses, roads and footpaths (Article 11) and for temporary closure of the river (Article 15);
- (e) empowers NRA to dredge the river (Article 16), to remove vessels sunk and abandoned near the barrier gates (Article 17), and to close the barrier gates (Article 18) with the consent of the Colchester Port Authority (“CPA”) (consent not being needed at low water);
- (f) amends the Act passed in 1847 conferring byelaw powers on the predecessors of the CPA, so as to enable byelaws to be made in respect of vessels passing through the barrier (Article 20);
- (g) authorises agency agreements between NRA and Colchester Borough Council (Article 21);
- (h) restricts the construction of tidal works by NRA (Article 24) and provides for their being marked by NRA under direction of Trinity House (Article 22) and surveyed by the Secretary of State for Transport (Article 23); and
- (i) provides for the protection of CPA and river users (Article 28).

The offences under the Order (Articles 19 and 22) are unauthorised operation of barrier gates or interference with the barrier by any person (punishable by a fine of up to level 2 on the standard scale or by a term of imprisonment of up to 6 months or a fine or both on conviction on indictment) and failure on the part of NRA to comply with a direction of CPA on marking tidal works (punishable by a fine limited, if on summary conviction to level 2 on the standard scale).

Copies of the deposited plans and sections are available for inspection during office hours at the offices of the National Rivers Authority (Anglian Region) at Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, Cambridgeshire, PE2 0ZR, of the Ministry of Agriculture, Fisheries and Food, at Eastbury House, 30–34, Albert Embankment, London, SE1 7TL, and of the Department of Transport, at Sunley House, 90, High Holborn, London, WC1V 6LP.