
STATUTORY INSTRUMENTS

1995 No. 519

The Barking Barrage Order 1995

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Barking Barrage Order 1995 and shall come into force on 7th March 1995.

Interpretation

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

“the Act of 1965” means the Compulsory Purchase Act 1965⁽¹⁾;

“the Act of 1968” means the Port of London Act 1968⁽²⁾;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992⁽³⁾;

“the authorised works” means the scheduled works and any other works authorised by this Order together with all necessary works and conveniences connected therewith or incidental thereto;

“the barrage” means work No 1 in Schedule 1 or any part thereof;

“the barrage gates” means all or any of the movable gates or the movable gates support beam forming part of the scheduled works;

“the book of reference” means the book of reference described in rule 7(5) of the Applications Rules prepared in connection with the application for this Order;

“the Borough” means the London Borough of Barking and Dagenham;

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

“highway” and “highway authority” have the same meaning as in the Highways Act 1980⁽⁴⁾;

“the land plan” means the plan or plans described in rule 7(3) of the Applications Rules prepared in connection with the application for this Order and references to land shown on that plan are references to land so shown in pursuance of that rule;

“the limits of deviation” means the lateral limits of deviation of the scheduled works as indicated on the works plan and the land plan;

(1) 1965 c. 56.
(2) 1968 c. xxii.
(3) S. I. 1992/2902.
(4) 1980 c. 66.

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“owner”, in relation to any premises, means the person who—

- (a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or
- (b) would receive the rack-rent if the premises were let at a rack-rent but for the purposes of this Order does not include a mortgagee not in possession, and cognate expressions shall be construed accordingly;

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

“the Port Health Authority” means the Corporation of London in its capacity as health authority for the Port of London;

“the Railway Undertaker” means the body or bodies for the time being providing and maintaining the structure of the railway bridges over the upstream river;

“Redbridge” means the London Borough of Redbridge;

“the river” means the River Roding and includes—

- (a) any tributary or other watercourse or any basin, bay, channel or creek the water in which ultimately flows into, or which is directly or indirectly connected with the River Roding; and
- (b) the bed, banks and foreshore of the River Roding and of any such tributary, watercourse, basin, bay, channel or creek;

“the River Authority” means the National Rivers Authority;

“river wall” means a structure which forms the boundary between the river and the land;

“the scheduled works” means the works specified in Schedule 1;

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

“the sections” means the sections described in rule 7(2) of the Applications Rules prepared in connection with the application for this Order;

“street” means a street within the meaning of section 67(1) of the Act and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part III of the New Roads and Street Works Act 1991⁽⁵⁾;

“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;

“Thames Water” means Thames Water Utilities Limited;

“the tribunal” means the Lands Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“upstream river” means that part of the river lying between the downstream limit of deviation of the scheduled works and Ilford bridge at reference point TQ433863;

“vessel” means every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968⁽⁶⁾;

(5) 1991 c. 22.

(6) 1968 c. 59.

“watercourse” has the same meaning as in the Land Drainage Act 1991(7) but does not include the River Thames; and

“the works plan” means the plan described in rule 7(1)(a) of the Applications Rules prepared in connection with the application for this Order.

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

(3) All directions, distances and reference points stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after such direction, distance and reference point.

(4) In this Order, unless otherwise indicated—

(a) any reference to a numbered Part, article or Schedule is a reference to the Part, article or Schedule bearing that number in the Order; and

(b) any reference to a numbered or lettered paragraph is a reference to the paragraph bearing that number or letter in the article or Schedule in which the reference occurs.

(5) Where the book of reference, the sections, the land plan or the works plan was or were revised before this Order was made, any reference to it or them in this Order is to the latest such version submitted to the Secretary of State.

(6) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air-space over its surface.

PART II

WORKS PROVISIONS

Power to construct works and survey

3.—(1) The Borough may construct and maintain the scheduled works.

(2) Subject to article 4, the scheduled works shall be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections.

(3) In addition to any surveys required or authorised under any other provision of this Order the Borough shall survey and monitor the river in accordance with a scheme established by the Borough following consultation with the Port Authority, the River Authority, the Crown Estate Commissioners, the London Borough of Newham, Redbridge, the Railway Undertaker, English Nature and Thames Water, provided that a copy of such scheme and of the results of any survey or monitoring undertaken in accordance with such scheme shall be sent to those consulted.

(4) The Borough may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of the scheduled works, namely—

(a) works to install or alter the position of apparatus, including mains, sewers, drains and cables;

(b) works to alter the course of, otherwise interfere with, non-navigable rivers, streams or watercourses;

(c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;

(d) works for the benefit or protection of premises affected by the scheduled works, and

(7) 1991 c. 59.

(e) monitoring and surveying the river and works incidental thereto.

(5) Subject to paragraph (6), the Borough may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(6) Paragraph (5) shall only authorise the carrying out or maintenance of works outside the limits of deviation if the works are carried out on land specified in columns (1) and (2) of Schedule 2 for the purpose specified in relation to that land in column (3) of the Schedule.

(7) Subject to section 5 of the Telecommunications Act 1984⁽⁸⁾, the Borough may install and maintain telecommunication apparatus and run telecommunications systems (such apparatus and systems having the meanings given by that Act, including the extended definition of telecommunication apparatus in Schedule 2 thereto) on or over land, whether or not a street, for the purpose of telecommunication or of electrical communication between any place and any part of the authorised works or between different parts of those works.

(8) The Borough may within the limits of deviation alter, replace or re-lay temporarily or permanently any of the authorised works.

(9) Section 109 of the Water Resources Act 1991⁽⁹⁾ shall apply to the construction of the authorised works or the alteration thereof only as provided by Part VII.

(10) Any authorised works constructed in accordance with the provisions of and under the authority of this Order which require a licence under the provisions of section 66(1) of the Act of 1968 shall be deemed to be works licensed by section 66(1) of the Act of 1968.

(11) Section 76 of the Act of 1968 shall not apply to the construction of the authorised works.

(12) Any deepening, dredging, scouring, clearing, improving of the river and removing of obstructions or projections which would require a licence under the provisions of section 73 of the Act of 1968 shall be deemed to be so licensed if undertaken by the Borough in accordance with the provisions of and under the authority of this Order.

(13) Section 9 of the Salmon and Fresh Water Fisheries Act 1975⁽¹⁰⁾ shall not apply to the construction of the authorised works or to the alteration thereof.

(a) (14) (a) In this paragraph the “byelaws” means the Thames Water Land Drainage Byelaws 1981 or any re-enactment or amendment thereof and “byelaw” shall be interpreted accordingly and “operations” shall mean any dredging, clearance, scouring, digging or other works or operation.

(b) Any operations authorised by this Order which would require a licence under the provisions of the byelaws shall be deemed to have received the consent of the River Authority in accordance with those byelaws provided that whenever operations are proposed on the river which apart from byelaw 33 would require the River Authority’s consent under byelaw 6 the person intending such operations shall except in cases of emergency notify the River Authority at least 7 days before such operations of details of the operations concerned.

Power to deviate

4.—(1) In the execution of the scheduled works, or any part thereof, the Borough may deviate laterally from the lines or situations thereof shown on the works plan to any extent within the limits of deviation and may deviate vertically from the levels shown on the sections to any extent upwards or downwards:

Provided that notwithstanding anything in this article the barrage shall be so constructed that—

⁽⁸⁾ 1984 c. 12.

⁽⁹⁾ 1991 c. 57.

⁽¹⁰⁾ 1975 c. 51.

- (a) the unobstructed opening between the 2 piers, as shown on the works plan and sections, on either side of the navigable channel of the river is not less than 9 metres wide;
- (b) the headroom for vessels passing between the said 2 piers is unlimited;
- (c) the cill between the said 2 piers, as shown on the sections, is set at 0.5 metres below Ordnance Datum (Newlyn) or at such other level as may be agreed between the Borough and the Port Authority to be the level of the bed of the river at that point immediately before the construction of the barrage is commenced;
- (d) the level of the crest to the weir, as shown on the works plan and sections, is set at 2 metres above Ordnance Datum (Newlyn) with a tolerance of plus or minus 10 millimetres; and
- (e) the width of the crest of the weir, as shown on the works plan, is not less than 16 metres.

(2) Nothing in paragraph (4) or paragraph (5) of article 3 shall authorise the Borough to execute any part of the scheduled works in contravention of the restrictions imposed by the proviso to the foregoing paragraph of this article.

Power to make subsidiary works

5.—(1) Subject to the provisions of this Order the Borough may from time to time within the limits of deviation or on any land vested in the Borough at the date of this Order or to be acquired or used by the Borough for the purposes of this Order, erect, construct and maintain, whether temporarily or permanently, all such works and conveniences as may be requisite or expedient for the purposes of, or in connection with, the construction, maintenance and use of the works authorised by article 3.

(2) On the completion of any part of the works authorised by article 3 the Borough shall remove all temporary works placed by it under the powers of this article.

(3) The Borough may, on any lands abutting on lands within the limits of deviation, execute or do by agreement with the owners and occupiers of the first mentioned lands any of the works or things referred to in paragraph (1) and any works necessary or convenient for the purpose of providing or facilitating access to or from all the said lands or for preserving the amenities thereof.

(4) In the exercise of the powers contained in this Order, the Borough shall cause as little detriment and inconvenience to any person as circumstances admit and shall pay compensation to all persons for any loss or damage sustained by them by reason of the exercise by the Borough of such powers and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

Subsidiary powers to the Borough

6.—(1) Subject to the provisions of this Order and within the limits of deviation or on any land vested in the Borough at the date this Order comes into force or to be acquired or used by the Borough for the purposes of this Order the Borough, in connection with and for the purposes of the authorised works, may—

- (a) make junctions and communications between any of those works and any watercourses and any existing streets, roads, ways, river walls, bridges and footpaths;
- (b) make, provide and maintain all necessary or convenient—
 - (i) buildings, walls, banks, embankments, borrow pits, quays, slipways, pavings, yards, moorings;
 - (ii) boat-hoists, rollers and other facilities for transporting boats;
 - (iii) fish ladders or passes or other apparatus for facilitating the passage of fish; and

- (iv) piling, fences, culverts, drains, intakes, syphons, watercourses, weirs, sluices, wharves, mattresses, pitching, gabions, roads, bridges, towing paths, footpaths and landscaping works, mains, pipes, cables, wires, machinery works and appliances;
- (c) dispose of spoil or other material excavated in the execution of the authorised 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 Borough 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⁽¹¹⁾).

(2) In the exercise of the powers contained in this Order, the Borough shall cause as little detriment and inconvenience to any person as circumstances admit and shall pay compensation to all persons for any loss or damage sustained by them by reason of the exercise by the Borough of such powers and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

Power to Borough to dredge

7.—(1) Subject to any necessary consents, the Borough may from time to time both during and after the construction of the scheduled works, deepen, dredge and improve, and remove obstructions from the bed, foreshore and banks of the upstream river—

- (a) for the purposes of or in connection with the construction, operation, maintenance, alteration, extension, enlargement, replacement, repair, renewal or removal of the scheduled works; or
- (b) for the purpose of facilitating the navigation of vessels; or
- (c) for the purpose of ensuring the water level, upstream of the barrage, is always higher than the level of the river bed.

(2) The powers granted by this article, in so far as they affect dredging on land within the boundaries of Redbridge, shall only be exercisable with the prior written consent of Redbridge, such consent not to be unreasonably withheld.

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

8. Notwithstanding anything in this Order any cables, pipes or wires to be laid or placed by the Borough under the powers contained in this Order (other than those laid or placed within or attached to the structure of the barrage) under or over any tidal waters or tidal lands below the mean high water level of spring tides shall be laid or placed at such depth under, or such height over, tidal waters or tidal lands as the Port Authority and River Authority may require.

Works deemed to be constructed under an impounding licence

9. The barrage shall be deemed to have been constructed under a licence under Chapter II of Part II of the Water Resources Act 1991 granted by the River Authority and, except as may be otherwise provided by this Order, the provisions of the said Act of 1991 relating to such licences shall apply to the licence deemed by this article to have been granted under that Chapter as they apply to those so granted.

(11) 1928 c. 32.

River not to be a reservoir

10. Notwithstanding the provisions of subsection (2) of section 1 of the Reservoirs Act 1975(12), it is hereby declared that so much of the river as is impounded by the barrage is not, by virtue of the retention of water by means of the barrage, to be taken to be a reservoir for the purposes of that Act or for the purposes of the Reservoirs (Safety Provisions) Act 1930(13).

Agreements with owners of land and others for construction of works

11.—(1) The Borough may enter into and carry into effect agreements or arrangements with the Port Authority and River Authority or the owners of, or other persons interested in, any land in or through which any of the authorised works are or may be constructed, or the drainage of which may be affected by the construction of any of the authorised works, for or with respect to the doing of anything which may be rendered necessary or convenient by reason of the exercise of the powers contained in this Order.

(2) Any such agreement may provide for—

- (a) the payment by the Borough of or the making of contributions by it towards the cost incurred, or to be incurred, by the Port Authority and the River Authority or any such owners or other persons in or in connection with the doing of any such thing; or
- (b) the payment by the Borough of compensation for any injury suffered or loss incurred by the Port Authority or River Authority or any such owners or other persons by reason or in consequence of the execution by the Borough of the authorised works, or entry upon land.

Repair of river walls

12. Any river wall or portion thereof made, diverted or altered under this Order shall, when completed, unless otherwise agreed, be maintained by and at the expense of the Borough.

Temporary closing of River Roding in connection with works

13.—(1) Notwithstanding anything in any other enactment or in any rule of law, the Borough may temporarily close the river between the Northern A13 bridge and Four Gates bridge, or any part thereof, to navigation in the course of executing any works or doing anything authorised by or under this Order.

(2) The Borough shall not exercise the powers conferred by paragraph (1) without the consent of the Port Authority and, in the exercise of those powers—

- (a) the Borough 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
- (b) if it becomes necessary to close the river completely to navigation, the Borough shall use its 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 and that the minimum interference is caused to persons who may be using or intending to use the river for the purposes of trade or business.

(3) Neither the Borough, the Port Authority nor the Crown shall be liable for any costs, damages or expenses whatsoever incurred by any person (save as provided in Part VI) as a result, directly or indirectly, of any closure of the river under paragraph (1).

(12) 1975 c. 23.

(13) 1930 c. 51.

Power to use bed and banks of watercourses

14.—(1) Subject to the provisions of this Order but without prejudice to its powers under article 21, 23, 24 or 25, the Borough may for the purposes of the authorised works enter upon and use so much of the bed or banks of any watercourse as is within the limits of deviation or the limits of land to be acquired under the powers of this Order and as may be required for those purposes, and they may also for the purposes of executing and placing temporary works and conveniences in connection with the works authorised by article 3 or 5 occupy and use temporarily so much of such bed and banks within the said limits as may be required for those purposes or any of them.

(2) The Borough shall, not less than 14 days before entering upon and using the bed or banks of any watercourse, give notice of its intention to the Port Authority, River Authority and the occupier of the land comprising such bed or banks and shall pay compensation to all persons having an interest in that land for any damage sustained by them or liability or loss to which they may become subject in respect of that land by reason of the exercise of the powers conferred by this article, and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

Diversion of flow of water

15. The Borough may by means of the authorised works divert, intercept, stop up or otherwise interfere with the waters of, or the flow of water in, the river which may be intercepted by those works.

Power to take, pump, impound and discharge water

16.—(1) Except as provided in paragraphs (2) and (3), notwithstanding anything contained in any other enactment, the Borough may, for the purposes of or in connection with the exercise of its functions under this Order, take, impound and use water from, and discharge water into, the river, and may pump any water required by them from or into the river or pump any water found by them into the river or into any sewer, drain or watercourse and for any of those purposes may lay down, take up and alter conduits, pipes and other works and conveniences and make any convenient connections with the river or (as the case may be) with a sewer, drain or watercourse.

(2) The Borough shall not, under the powers of this article—

- (a) discharge any water into any sewer or drain except with the consent (which shall not be unreasonably withheld) of Thames Water or (in the case of a private sewer or drain) the owner and subject to such terms and conditions as Thames Water or the owner, as the case may be, may reasonably impose,
- (b) make any opening into such sewer or drain save in accordance with plans reasonably approved by and under the superintendence (if given) of Thames Water or the owner, as the case may be;
- (c) discharge any water into the river except with the consent (which shall not be unreasonably withheld) of the Port Authority and subject to such terms and conditions as the Port Authority may reasonably impose.

(3) Nothing in this article shall exempt the Borough from the provisions of the Prevention of Oil Pollution Act 1971(14).

(4) Nothing in this article shall relieve the Borough from the requirements of the Water Resources Act 1991.

(5) Sections 85, 86 and 87 of the Water Resources Act 1991 shall apply to, or to the consequences of, a discharge under the powers of this article into any controlled waters within the meaning given

(14) 1971 c. 60.

by section 104 of that Act as if this article were excluded from the reference to any local statutory provision mentioned in section 88(1)(f) of that Act.

(6) In this article reference to the taking or discharge of water includes the taking or discharge of water by pumping.

Deposits in river

17. Except so far as may be unavoidable in the construction of the authorised works, or in the exercise of the powers of article 7, the Borough shall not, without the consent of the River Authority and Port Authority (which shall not be unreasonably withheld), deposit in or allow to fall or be washed into the river any gravel, soil or other materials (including in particular any spoil or material excavated whether or not from the river) in the carrying out of the authorised works.

Provision against danger to navigation

18.—(1) In case of injury to, or destruction or decay of, a tidal work, or any part thereof, the Borough shall as soon as reasonably practicable notify the Port Authority and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Port Authority shall from time to time direct.

(2) If the Borough fails to notify the Port Authority as required by this article or to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Survey of tidal works

19. The Port Authority may at any time order a survey and examination of a tidal work constructed by the Borough, or of the site upon which it is proposed to construct the tidal work, and any expenditure incurred by the Port Authority in any such survey and examination shall be recoverable from the Borough.

Lights on tidal works

20.—(1) The Borough shall at or near a tidal work, during the whole of the construction, alteration, replacement or re-laying thereof, exhibit such lights, lay down such buoys and take such other steps for the prevention of danger to navigation as the Port Authority shall from time to time direct.

(2) After the completion of a tidal work, the Borough shall exhibit such lights, lay down such buoys and take such other steps at or near such tidal work for the prevention of danger to navigation as the Port Authority shall from time to time direct.

(3) If the Borough without reasonable excuse fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART III

ACQUISITION AND POSSESSION OF LAND

Power to acquire land

21. The Borough may acquire compulsorily so much of the land as specified in columns (1) and (2) of Schedule 2 (being land shown on the land plan and described in the book of reference) as

may be required for the purposes of the authorised works and in particular (without prejudice to the generality of the foregoing) for the purposes specified in relation to that land in column (3) of that Schedule, and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to this Order.

Application of Part I of Compulsory Purchase Act 1965

22.—(1) Part I of the Act of 1965, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(15) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days notice there were substituted:

- (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
- (ii) in any other case, a reference to notice of 3 months.

- (a) (3) (a) The Compulsory Purchase (Vesting Declarations) Act 1981(16) shall apply to the compulsory acquisition of land under this Order as if the Order were a compulsory purchase order.
- (b) The notice required by section 3(1) of the said Act of 1981 as so applied shall be a notice containing the particulars specified in section 3(3) and given at any time following the coming into force of this Order.
- (c) In section 3(2) of the said Act of 1981, as so applied, for “(1)(b)” there shall be substituted “(1)”.

Powers to acquire new rights

23.—(1) The Borough may compulsorily acquire such easements or other rights over any land referred to in article 21 as may be required for any purpose for which that land may be acquired under that article, by creating as well as by acquiring easements or other rights.

(2) Subject to section 8 of the Act of 1965 (as substituted by paragraph 5 of Schedule 4), where the Borough acquires a right over land under paragraph (1) the Borough shall not be required to acquire a greater interest in it.

(3) Schedule 4 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the Act of 1965 in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Temporary use of land for construction of works

24.—(1) The Borough may, in connection with the carrying out of the authorised works—

(15) 1981 c. 67.

(16) 1981 c. 66.

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 3 for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Borough shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The Borough may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the authorised work or works specified in relation to that land in column (4) of Schedule 3.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Borough shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Borough shall not be required to replace a building removed under this article.

(5) The Borough shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers contained in this Order.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5) or as to the amount of the compensation, shall be determined by the tribunal.

(7) Without prejudice to article 26, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act 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 paragraph (5).

(8) The powers of compulsory acquisition of land contained in this Order shall not apply in relation to the land referred to in paragraph (1) except that the Borough shall not be precluded from acquiring new rights over any part of that land under article 23.

(9) Where the Borough takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article "building" includes structure or any other erection.

Temporary use of land for maintenance of works

25.—(1) The Borough may at any time—

- (a) enter upon and take temporary possession of any land within 5 metres from any of the scheduled works if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the Borough to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Borough shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The Borough may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Borough shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Borough shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers contained in this Order.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961⁽¹⁷⁾.

(8) Without prejudice to article 26 nothing in this article shall affect any liability to pay compensation under section 10(2) of the Act of 1965 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 paragraph (6).

(9) Where the Borough takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article—

- (a) "building" includes structure or any other erection, and
- (b) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Disregard of certain interests and improvements

26.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land or rights under this Order, the tribunal shall not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Acquisition of part of certain properties

27.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22) in any case where—

- (a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Borough a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole ("the land subject to the counter-notice").

(17) 1961 c. 33.

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the Borough agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Borough is authorised to acquire compulsorily under this Order.

(8) If the Borough agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and
- (b) that the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Borough is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than specified in the notice, the Borough may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the Borough shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

28.—(1) All private rights of way, drainage and moorings over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the acquisition of the land by the Borough, whether compulsorily or by agreement; or
- (b) on the entry on the land by the Borough under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way, drainage and moorings over land of which the Borough takes temporary possession under this Order shall be suspended and unenforceable for as long as the Borough remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way drainage and moorings over land under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(18) (extinguishment of rights of statutory undertakers etc.) applies.

(5) Schedule 5 shall have effect for the purpose of modifying the provisions of sections 271 to 274 of the Town and Country Planning Act 1990 (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) in relation to the apparatus of statutory undertakers on land acquired under this Order.

Time limit for exercise of powers of acquisition

29.—(1) The powers contained in this Order to acquire land or rights over land compulsorily, and the power contained in article 24 to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) shall not prevent the Borough remaining in possession of land in accordance with article 24 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(3) The power to acquire compulsorily any land shall for the purposes of this article be deemed to have been exercised if notice to treat has been served or deemed to have been served in respect of that land.

As to certain lands

30. The Borough having acquired the lands referred to in article 21 may hold, use or dispose of those lands for or in connection with the development and improvement of the river and areas adjacent to the river.

Agreements with adjoining owners

31.—(1) The Borough may enter into and carry into effect agreements with any person being the owner of, or having an interest in, either any land adjoining any portion of the authorised works, or any land which may be acquired by the Borough under this Order, with respect to the sale by the Borough to him (subject to such reservations, restrictions or other provisions as the Borough sees fit) of any land not required for the authorised works.

(2) The Borough may accept as satisfaction for the whole or any part of the consideration for any such sale the grant by the purchaser of any land or right required by the Borough by virtue of this Order.

Certification of plans etc.

32. The Borough shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plan and the works plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of its contents.

PART IV

OPERATION OF BARRAGE ETC.

Power to operate barrage

33.—(1) The Borough shall have power to operate the barrage including the power to—

- (a) open or close the barrage gates;
- (b) regulate the water level in so much of the river as is impounded by the barrage;
- (c) control the flow of water in the fish passes in the barrage, or
- (d) manage any bridge or other structure or equipment forming part of the barrage.

(2) The power contained in paragraph (1) shall be exercised so as to safeguard and improve the environment and amenities of the river.

(3) Paragraph (2) shall not prevent the exercise of the power contained in paragraph (1) in order—

- (a) to prevent or alleviate any emergency;
- (b) to ascertain the safest and most effective ways of using the barrage, to test its working or to train staff in its operation;
- (c) to facilitate the construction, maintenance, alteration, replacement or re-laying of any works in or beside the upstream river; or
- (d) to secure and maintain satisfactory navigation in the vicinity of the barrage and the upstream river.

(4) When operating the barrage the Borough shall have regard to—

- (a) the safety of vessels in, or passing to or from, the upstream river or on the river downstream of the barrage;
- (b) the requirements of vessels in, or passing to or from the upstream river (including the need to have freedom of access to moorings and berths in the upstream river);
- (c) the desirability of developing and conserving flora and fauna in the upstream river; and
- (d) any reasonable request of—
 - (i) the Port Authority or other navigation authority for the river for the time being for or in connection with their functions;
 - (ii) the police or other emergency services;
 - (iii) the Port Health Authority;
 - (iv) Redbridge; or

- (v) the Railway Undertaker.
- (5) The Borough shall operate the barrage in accordance with—
- (a) any reasonable request of the River Authority in order—
 - (i) to protect the quality of water in the upstream river;
 - (ii) to protect fish in the upstream river or the river downstream of the barrage, allow the passage of migratory fish to or from the upstream river, or enable trials to be carried out in the upstream river in connection with fishery management; and
 - (b) any reasonable requirement of the Port Authority as to the general programme for the operation of the barrage in order to secure satisfactory navigation in the river.
- (6) Subject to paragraph (7), notice of a request under paragraph (5)(a)—
- (a) shall be given in writing by a duly authorised officer of the River Authority; and
 - (b) shall be given as long as possible, but in case not less than 24 hours, before the request is to be complied with.
- (7) In an emergency—
- (a) upon receipt of a request from either the River Authority or the Port Authority to operate the barrage the Borough shall as soon as practicable operate the barrage in accordance with such request;
 - (b) the request may be given orally by a duly authorised officer of the River Authority or the Port Authority but if so given it shall be confirmed in writing as soon as practicable thereafter.
- (8) The Borough shall consult English Nature to seek their view as to ways in which the barrage may be operated so as to develop and conserve flora and fauna in the upstream river.
- (9) The Borough shall give to the River Authority, the Port Authority and Redbridge as much notice as is reasonably practicable in the circumstances of its intention to operate the control gates for the following purposes—
- (a) enabling experiments to be carried out for or in connection with the development of the most effective use of the barrage;
 - (b) testing the barrage;
 - (c) exercising and instructing staff in the operation and control of the barrage;
 - (d) maintaining, extending, enlarging, altering, replacing, repairing or renewing the barrage, on such occasions as may be reasonably necessary, or removing the barrage;
 - (e) enabling statutory undertakers to place, maintain, alter, replace, repair, remove or renew apparatus in, under or over the river;
 - (f) of removing any debris or deposit of silt which may accumulate in the river;
 - (g) combatting an emergency (including one where a request has been made under paragraph (7),
 - (h) enabling riparian owners and others so entitled to repair walls and carry out other works in the upstream river.
- (10) The Port Authority shall have regard to the notice given under paragraph (9) in exercising its powers to regulate the movement of vessels on the river.
- (11) Subject as otherwise expressly provided in this Order, no liability shall arise in respect of any costs, damages, losses or expenses incurred by any person as a direct or indirect result of—
- (a) any obstruction to, delay of, or other interference with the passage of vessels, or
 - (b) any change in the level of water in the upstream river,

occasioned by the operation of the barrage unless the costs, damages, losses or expenses are incurred by reason of negligence in its operation.

Misuse of barrage, etc.

34. Any person who without lawful authority or excuse—

- (a) closes or opens, or attempts to close or open the barrage gates; or
- (b) in any other way interferes or attempts to interfere with the barrage 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 3 on the standard scale.

PART V

THE UPSTREAM RIVER

Extinguishment of navigation rights etc. in upstream river and repeal of Act of 1737

35.—(1) All rights of navigation or access over and along the upstream river whether public or private and however arising shall be extinguished to the extent that such rights are adversely affected by reason of the construction or operation of the authorised works.

(2) For the avoidance of doubt it is hereby confirmed that all public rights of navigation over and along the upstream river are preserved and continue to be effective, save as expressly extinguished by or in accordance with this Order.

(3) The Borough shall pay compensation to any person who suffers damage by reason of the extinguishment effected by this article and any question as to the amount of compensation so paid shall be determined by the tribunal.

(4) In assessing any compensation payable under paragraph (3) the tribunal shall take account of—

- (a) the extent to which the rights mentioned in paragraph (1) have been exercised; and
- (b) the availability of the upstream river for navigation as provided in this Order.

(5) The Act passed in the year 1737 in the tenth year of the reign of King George II and entitled “An Act for making Navigable the River Roding, from a little below a Mill called Barking Mill in the County of Essex, to Ilford Bridge in the said County” is repealed from the date of the coming into force of this Order.

(6) Notwithstanding the repeal of the Act of 1737 by virtue of paragraph (5)—

- (a) riparian owners on the upstream river shall continue to have the right to keep vessels for non-commercial purposes and pass over the river toll-free with those vessels; and
- (b) the rights of fishing and fowling on the upstream river enjoyed before the Act of 1737 by the Lord or Lords of the Manor or Manors and owners or other persons entitled to such rights are preserved

as if the said Act had not been repealed.

Navigation etc. in vicinity of barrage

36.—(1) In this article—

“in the vicinity of the barrage” means on or in the area of water between a line drawn across the river at a whole circle bearing, to National Grid north, of 254 degrees from the downstream

marker and a line drawn across the river at a whole circle bearing, to National Grid north, of 254 degrees from the upstream marker, and

“the downstream marker” means a physical marker set on or near the eastern bank of the river and indicated on the works plan at reference point 544112E, 183293N and the “upstream marker” means a similar marker at reference point 544097E, 183344N.

(2) Any person who without the consent of the Borough, other than in an emergency or with some other reasonable cause, moors a vessel to any part of the barrage shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Any person who, other than in an emergency or with some other reasonable cause, navigates or allows to drift any vessel in the vicinity of the barrage, except for the purpose of passing through the barrage gates or waiting to do so or negotiating the weir on foot with a canoe or other vessel, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of vessels

37.—(1) Whenever any vessel is sunk, stranded or abandoned in the upstream river, or without lawful authority left or moored therein, the Borough may after giving (except in an emergency) not less than 3 months' notice to the owner or master of the vessel (unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner or master), raise, remove or otherwise dispose of the vessel:

Provided that—

- (a) the above-mentioned power shall not be exercisable by the Borough (subject to article 40)—
 - (i) if it is within the powers of the Port Authority to deal with such vessel and the Port Authority decide to do so; and
 - (ii) if the Borough, having given not less than one month's notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter; and
- (b) where a vessel is left or moored adjoining riparian property the Borough shall give not less than one month's notice to the owner and/or occupier of that property enabling such owner or occupier to make representations to the Borough as to the proposed raising, removal or disposal of the vessel.

(2) The Borough may recover from the owner or master of any such vessel all expenses reasonably incurred by the Borough in respect of the raising, removal, storage or disposal thereof or in raising, removing, storing or disposal of any furniture, tackle and apparel thereof or any goods, chattels and effects raised or removed therefrom.

(3) Subject to paragraph (4), if any vessel to which paragraph (1) applies be not within 6 weeks of its removal by the Borough proved to the satisfaction of the Borough to belong to any claimant, it shall together with any such furniture, tackle and apparel vest in the Borough.

(4) If within 12 months of its removal a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Borough that he was the owner or master thereof, or has become the owner or master since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1) then the Borough shall—

- (a) if the vessel is unsold, permit that person to retake it with any furniture, tackle, apparel, goods, chattels and effects thereon upon payment of the expenses referred to in paragraph (2); or
- (b) if the vessel and the furniture, tackle and apparel thereon have been sold, pay to that person the amount of the proceeds of such sale after deducting the said expenses, and in case such

proceeds shall be insufficient to reimburse the Borough such expenses the deficiency may be recovered from that person by the Borough.

(5) In this article, unless the context otherwise requires—

“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; and

“vessel” includes any part of a vessel.

Removal of obstructions other than vessels

38.—(1) The Borough may remove—

(a) anything, other than a vessel, causing or likely to become an obstruction or impediment to navigation in any part of the upstream river; and

(b) anything causing or likely to become an obstruction or impediment to the proper use of a footpath adjacent to or over the upstream river.

(2) The above-mentioned power shall not be exercisable (subject to article 40)—

(a) if it is within the powers of the Port Authority to deal with such obstruction and the Port Authority decide to do so; and

(b) if the Borough, having given not less than one month’s notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter.

(a) (3) (a) If anything removed by the Borough under paragraph (1) is so marked as to be readily identifiable as the property of any person, the Borough shall within one month of its coming into its custody give notice, as required by paragraph (5), to that person and, if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice, it shall at the end of that period vest in the Borough.

(b) If anything removed by the Borough under paragraph (1) which is not so marked is not within 3 months of its coming into the custody of the Borough proved to its reasonable satisfaction to belong to any person, it shall thereupon vest in the Borough.

(4) The Borough may at such a time and in such manner as it thinks fit dispose of anything referred to in paragraph (3) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Borough under this article, and if it is sold the proceeds of sale shall be applied by the Borough in payment of the expenses incurred by it under this article, and any balance—

(a) shall be paid to any person who, within 3 months from the time when the thing came into the custody of the Borough proves to the reasonable satisfaction of the Borough that he was the owner thereof at that time; or

(b) if within the said period no person proves his ownership at the same time, shall vest in the Borough.

(5) A notice given under paragraph (3)(a) shall specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction to the Borough, possession may be retaken at a place named in the notice within the time specified in the notice, being not less than 14 days after the date when the notice is served.

(6) If anything removed under this article—

(a) is sold by the Borough and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred by it in the exercise of its powers of removal; or

(b) is unsaleable;

the Borough may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time when the thing removed came into the custody of the Borough or who was the owner at the time of its abandonment or loss.

Removal of projections

39.—(1) In this article “projection” means anything which projects over the upstream river or any footpath adjoining the upstream river and includes stairs and any tree, bush or other plant but does not include any such things authorised by or under statute or by a works licence under section 66 of the Act of 1968 to be placed or constructed.

(2) If any projection is a danger to the navigation of the upstream river or to persons using any footpath adjoining the same, the Borough may remove it and recover the expenses of removal from the owner or occupier of the land on which the projection was situated.

(3) The above-mentioned powers shall not be exercisable (subject to article 40) if—

- (a) it is within the powers of the Port Authority to deal with such projection and the Port Authority decide to do so; and
- (b) the Borough, having given not less than one month’s notice to the Port Authority, is informed by the Port Authority within that time that it intends to act and it does act within a reasonable time thereafter.

(4) If any projection is an obstruction or inconvenience to the navigation of the upstream river, but not a danger thereto, the Borough may by notice require the owner or occupier of the land on which the projection is situated to remove the projection within such time, not being less than 7 days, as may be specified in the notice.

Emergency powers and consents

40.—(1) The Borough’s powers under articles 37, 38 and 39 may be exercised by the Borough in an emergency without prior notice to the Port Authority provided that the Port Authority are informed of the action as soon as possible thereafter.

(2) The Borough’s powers under articles 37, 38 and 39 are except in an emergency subject to any necessary consents.

Agency arrangements

41. The Port Authority may at any time after the coming into force of this Order enter into an arrangement with the Borough by which the Borough exercises on behalf of the Port Authority any of its powers or duties in respect of the upstream river, and such arrangement may contain any terms or conditions including any relating to the defraying of or the making of contributions towards the cost thereof that the Borough and the Port Authority may agree to be appropriate.

Byelaws

42.—(1) In this article, the “upstream river” shall mean the whole or any specified part of the upstream river.

(2) The Borough may make byelaws in relation to the upstream river in accordance with section 236 of the Local Government Act 1972(19) in connection with this Part of this Order and its functions as a navigation authority (as defined in section 221 of the Water Resources Act 1991) for all or any of the following purposes—

(19) 1972 c. 70.

- (a) for securing the conservation and improvement of the upstream river and its amenities for the purposes of recreation, for prohibiting or regulating recreational activities and for promoting the ease, convenience and safety of navigation;
 - (b) for regulating the navigation of the upstream river and for the prevention of obstruction to such navigation or a footpath adjoining the upstream river;
 - (c) for regulating the speed and movement of vessels on the upstream river;
 - (d) for requiring the registration of, or of any class of, vessels including houseboats, the renewal and revocation of registration, and for prohibiting the use for navigation of the upstream river by vessels which are required to be but are not registered with the Borough;
 - (e) for prescribing, after consultation with the fire authority, precautions for the prevention of fire and precautions to be taken in cases of fire or accident occurring in or to any vessel;
 - (f) for prescribing the conditions on which vessels providing sleeping accommodation (whether or not being houseboats) shall be allowed on the upstream river and for prohibiting the mooring of such vessels for overnight use on the upstream river except at places approved by the Borough or unless suitable and sufficient sanitary conveniences exist or are provided upon the land adjacent to the point of mooring for the use of the occupants of such vessels;
 - (g) for preventing or controlling pollution, including the provision of sanitary appliances, by vessels on the upstream river;
 - (h) for regulating the launching of vessels within the upstream river, the placing, maintenance and use of mooring and the use of pontoons, slipways and landing places;
 - (i) for securing the safety of vessels and persons using, and of property within, the upstream river;
 - (j) for prohibiting or regulating the discharge into the upstream river of any material or substance;
 - (k) for requiring the use of effectual silencers and the control of noise generally on vessels in the upstream river;
 - (l) for preventing damage to any land or property situated in or about the upstream river;
 - (m) for preserving flora and fauna in, or on the banks of, the upstream river;
 - (n) for regulating the passage of vessels, or any class of vessels, through the barrage gates or over or through other structures, works or apparatus in the upstream river, either generally or in circumstances prescribed by the byelaws;
 - (o) for the licensing of works in the upstream river or related to its banks and prohibiting unlicensed works;
 - (p) for the control and removal of private moorings;
 - (q) for the repair and removal of landing places and embankments;
 - (r) for the removal of projections over the upstream river or any footpath adjoining the upstream river;
 - (s) for the making and recovery of reasonable charges in respect of the use of the upstream river or properties occupied or used by or on behalf of the Borough in connection with the upstream river.
- (a) (3) (a) The Borough shall not make any byelaws under this article without the consent of the River Authority and the Port Health Authority.
- (b) The Borough shall not make any byelaws without the consent of the Port Authority in respect of the whole or any part of the upstream river where it lies within the limits of the Port Authority as defined by the Act of 1968.

- (c) Where a proposed byelaw will affect the upstream river or any footpath adjoining the same within the boundaries of Redbridge, such byelaw shall not be made without the consent of Redbridge, such consent not to be unreasonably withheld.
 - (d) Where a proposed byelaw will affect the railway survey area, as defined in article 74, such byelaw shall not be made without the consent of the Railway Undertaker, such consent not to be unreasonably withheld.
- (4) The River Authority and the Port Health Authority shall not withhold their consent to the making of any byelaw except on the ground that it conflicts with or duplicates a byelaw of that authority; and any unresolved question whether there is any such conflict or duplication shall be determined by the Secretary of State.
- (a) (5) (a) Nothing in any byelaw made under this article shall apply to anything done by the Port Authority in the exercise of any of their statutory functions or be of any effect if and in so far as it affects the operation of, or is inconsistent with, any byelaw of the Port Authority for the time being in force.
 - (b) No byelaw made under this article shall entitle the Borough to charge for the registration of any vessel used for non-commercial purposes and owned by a riparian owner on the river upstream of the barrage within Redbridge nor for the use of the upstream river for navigation by such owner in any such vessel.
 - (c) No byelaw made under paragraph (2)(d) shall apply to boats used by the River Authority, the Port Authority or the Port Health Authority in the exercise of their statutory functions and no byelaw under paragraph (2)(o) shall apply to works executed or authorised by the Port Authority or executed by the River Authority or the Port Health Authority in pursuance of their statutory functions.
 - (d) In making any byelaws under this article the Borough shall take into account matters relating to public safety and any reasonable requirements of the Crown, the River Authority, the Railway Undertaker, the Port Authority and the Port Health Authority.
 - (e) Where a proposed byelaw will affect the upstream river where it is subject to Crown interests such byelaw shall not be made without prior consultation of the Crown.
- (6) Byelaws made under paragraph (2)(d) may authorise the Borough—
- (a) to make reasonable charges in respect of the regulation of vessels, including different charges for the use of the upstream river by vessels of different descriptions;
 - (b) to attach conditions to the registration of vessels, and to make registration revocable in circumstances specified in the byelaws;
 - (c) to grant exemptions from the requirements of registration;
 - (d) to inspect vessels or have them inspected on behalf of the Borough in connection with their registration; and
 - (e) to require notice of the transfer or sale of any vessel so registered to be given to the Borough.
- (a) (7) (a) Nothing in any byelaws made under paragraph (2)(d) shall require the registration of—
- (i) any newly constructed or newly restored vessel in respect of any bona fide trial trip of such vessel on the upstream river;
 - (ii) any vessel in respect of its movement from any boat-builder's yard on the upstream river to any other place thereon with a view to its immediate removal from the upstream river; or
 - (iii) any vessel for the purpose of its participation in any regatta or boat race.

- (b) Not less than 48 hours' notice in writing shall be given to the Borough of the intention to make such trip, move such vessel or use it in such regatta or boat race, and any conditions specified by the Borough in that behalf shall be complied with.
- (8) Any charge payable in respect of a certificate of registration issued under byelaws made under this article shall be recoverable by the Borough from the owner of the vessel so registered or other person who has applied for its registration.
- (9) Byelaws made under this article may relate to the whole of the upstream river and the banks thereof, or to any part thereof, and may make different provisions for different parts.
- (10) Byelaws made under this article may provide for the imposition on any person offending against any byelaws of a fine on summary conviction not exceeding level 3 on the standard scale.
- (11) The Secretary of State may charge the Borough a reasonable fee for the purpose of defraying any administrative expenses incurred by him in respect of byelaws made under this article which are submitted to him for confirmation.

Temporary closure of upstream river

43.—(1) The Borough may temporarily prohibit, restrict or regulate the use and navigation of the upstream river or any part thereof to facilitate the holding of any boat race or regatta or of any other function in connection with the use of the upstream river as a place of recreation.

- (a) (2) (a) Before exercising their powers under paragraph (1) the Borough shall give notice of the proposal to exercise the powers by advertisement in one or more local newspapers circulating in the area of the Borough.
- (b) The notice shall be published not less than 28 days before the powers are to be exercised and shall state the extent to which, the period during and the purpose for which the use and navigation of the upstream river is to be prohibited, restricted or regulated.
- (3) A copy of the notice published under paragraph (2) shall be conspicuously displayed in such one or more places on or adjacent to the upstream river or the part thereof to which it relates as the Borough consider appropriate for bringing its contents to the notice of persons using or navigating the upstream river.
- (4) The powers of this article shall not be exercised without the consent of the Port Authority and Redbridge, whose consent shall not in either case be unreasonably withheld, and any unresolved question whether such consent is unreasonably withheld shall be referred to and settled by arbitration.
- (5) When granting consent under this article the Port Authority or Redbridge may impose reasonable conditions.
- (6) Neither the Borough nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person (save as provided in Part VI) as a result, directly or indirectly, of any temporary prohibition, restriction or regulation on the use and navigation of the upstream river or any part thereof under paragraph (1).

Powers of statutory authorities

44. The powers and duties of the Port Authority, the River Authority and any other statutory authority under this Part of the Order shall only apply while that authority has jurisdiction in respect of the whole or any part of the upstream river.

List of charges

45. A list showing the charges prescribed in accordance with byelaws made under article 42 for the time being in force under this Part shall be displayed at one or more convenient places on or

adjacent to the upstream river and a copy of the list shall be supplied, free of charge, by the Borough on request to any person appearing to have an interest.

Provision for charitable or other bodies

46. The Borough may at its discretion remit or reduce any charge shown in the list referred to in article 45 in respect of any houseboat or other vessel used for charitable purposes or for purposes which the Borough considers merit remission or reduction of the charge.

PART VI

PROVISIONS FOR THE PROTECTION OF THE PORT AUTHORITY

Works in upstream river

47.—(1) For the purposes of this article “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 Port Authority an understanding of the Borough’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 river and, where applicable such relevant hydraulic information about the river, including that obtained from models, as may be available to the Borough and is not already in the possession of the Port Authority.

- (2) Not later than 28 days before—
- (a) starting to carry out any tidal works; or
 - (b) exercising any of the powers of article 7,

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

Provided that any such modifications or conditions as aforesaid shall be notified by the Port Authority to the Borough within 28 days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

(3) The Borough shall pay the Port Authority’s reasonable costs and expenses for examining the plans and for considering the Borough’s proposals prior to the making of this Order.

(4) For the purpose of securing that traffic in, and the flow or regime of, 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.

(5) The Borough 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 Port Authority.

Facilities for navigation

48.—(1) The Borough shall provide at the barrage, or afford reasonable facilities thereat, for the Port Authority to provide thereat, from time to time such navigational lights, signals, or other

apparatus for the benefit, control and direction of navigation as the Port Authority may deem necessary by reason of the construction and use of the scheduled works, and the Borough shall repay to the Port Authority any costs reasonably incurred by the Port Authority in connection therewith or in connection with any information given to, and 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 Borough of their powers to close the river or any part thereof to navigation under article 13 or to close the barrage gates under article 33.

(2) The Borough shall repay to the Port Authority any costs reasonably incurred by the Port Authority in connection with any information given to, and surveillance, co-ordination and regulation of, river traffic which becomes reasonably necessary by reason of the actual or prospective temporary prohibition, restriction or regulation of the use and navigation of the upstream river or any part thereof under article 43.

Details to be submitted to Port Authority

49. On completion of the construction of the scheduled works the Borough shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and cross-sections on a scale of not less than 1 in 100 showing the situation and levels of those works at that time.

Survey of river bed

50.—(1) Before the construction of the scheduled works is commenced, the Port Authority in conjunction with the Borough shall 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.

(2) The Borough shall pay to the Port Authority such reasonable costs incurred by the Port Authority in carrying out—

- (a) the survey under this article; and
- (b) any surveys of the river required after the construction of the scheduled works has been completed to ascertain the effect of the scheduled works on the river,

as would not otherwise have been incurred.

(3) The Port Authority will make available to the Borough, at reasonable charge, the results of the survey carried out under this article.

General protection

51.—(1) 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.

(2) The exercise in under or over the river by the Borough of any function contained in this Order shall be subject to any enactment relating to or made by the Port Authority and the exercise by the Port Authority or its harbour master of any powers and functions conferred on it or him by or under any enactment save as may be specifically provided to the contrary in this Order.

Further protection of Port Authority

52.—(1) Compensation shall be payable to the Port Authority in respect of any authorised works in, under or over land below the mean high water mark and any rights acquired in connection therewith as if the Borough had been required to obtain a licence for those authorised works under section 66 (licensing of works) of the Act of 1968 and to pay consideration therefor determined in

accordance with the provisions of section 67 (consideration for licence) of the Act of 1968 and the Port Authority may recover from the Borough the costs incurred by them in connection with the determination of such compensation.

(2) If it is agreed between the Borough 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 under article 80, that—

- (a) any part of the river has silted up or has been subjected to scouring;
- (b) such silting up or scouring is silting up or scouring to which the provisions of this paragraph apply;
- (c) 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; and
- (d) any other necessary consents have been obtained,

the Borough shall pay to the Port Authority (in the manner set out in paragraph (5)), 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.

(3) The provisions of paragraph (2) apply in relation to any silting up or scouring which is wholly or partly attributable to a tidal work during the period of the execution of those works and thereafter for a period of 10 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.

(4) In paragraph (3) “the relevant date” means, in relation to the scheduled works and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Engineer of the Borough that the works are substantially complete and the barrage gates are capable of being closed.

(5) The Borough 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 paragraph (2), being payments of such amounts and made at such times as may be agreed between the Borough and the Port Authority or in default of agreement as may be determined by an arbitrator to be reasonable for meeting so much of the 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.

Power of the Borough to make good

53.—(1) The Borough shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses not otherwise provided for in this Order and which may be reasonably incurred by or occasioned to the Port Authority—

- (a) by reason of the construction, alteration or repair of the authorised works or the failure thereof; or
- (b) by reason of any act or omission of the Borough or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction, alteration or repair of the authorised works.

and the Borough shall indemnify the Port Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the Port Authority on behalf of the Borough or done by the Borough, any persons in its employ, or of its contractors or agents 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 its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the

Port Authority or its duly authorised representative or of any person in its employ or of its contractors or agents) excuse the Borough from liability under the provisions of this article.

(2) The Port Authority shall give to the Borough reasonable notice of any claim or demand as aforesaid, and no settlement or compromise thereof shall be made without the prior consent of the Borough.

(3) 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;
- (b) to lay down and maintain or remove any new moorings; or
- (c) to construct and maintain a lay-by berth for vessels,

the Port Authority may recover from the Borough the reasonable cost to the Port Authority of carrying out those operations.

- (a) (4) (a) If a tidal work is abandoned or suffered to fall into decay, the Port Authority may by notice in writing require the Borough at its 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 mean high-water level of spring tides is abandoned or suffered to fall into decay and that part of the work on land above the level of mean high-water level of spring tides 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 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 Borough it has failed to comply with the requirements of the notice, the Port Authority may itself exercise the option and execute the works specified in the notice and any expenditure incurred by it so doing shall be recoverable from the Borough as a simple contract debt.

Byelaws of the Port Authority

54. The powers of the Port Authority under section 162 (Thames byelaws) of the Act of 1968 shall be deemed to include a power to make byelaws, after consultation with the Borough, for or in connection with the management, regulation, direction and control of vessels passing or waiting to pass through the barrage:

Provided that for the purposes of byelaws made by virtue of this article the confirming authority under the said section 162 shall be the Secretary of State.

Removal of piles, stumps and other obstructions

55.—(1) 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 or forming part of the railway bridges over the upstream river) shall be removed from the river by the Borough or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of the river as the Port Authority may reasonably direct.

(2) If the Borough fail to remove from the river, or to cut off as aforesaid, any such pile, stump or other obstruction within 28 days of receipt of written notice from the Port Authority requiring its removal or cutting off, the Port Authority may carry out the removal or cutting off and recover the costs of so doing from the Borough.

(3) Paragraphs (1) and (2) shall be subject to the provisions of article 75.

Free access

56. The Port Authority’s vessels and those of its agents shall be entitled to pass through the barrage and use the upstream river free of charge in the exercise of the Port Authority’s powers and duties.

PART VII

PROVISIONS FOR THE PROTECTION OF THE RIVER AUTHORITY

Interpretation

57.—(1) For the protection of the River Authority the provisions of this Part shall, unless otherwise agreed in writing between the Borough and the River Authority, have effect.

(2) In this Part—

“construction” includes execution, placing and altering and in relation to temporary works, includes removal; and “construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water (including sea water);

“the fishery” means fish in, or migrating to or from, the River Thames or the river and the spawn, habitat or food of such fish;

“fish pass” is a fish pass or passes incorporated in the barrage suitable for the upstream and downstream passage of migratory fish and eels;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under or over a watercourse or is otherwise likely to—

- (a) affect any drainage work or the volumetric flow rate of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse;
- (d) affect the conservation, distribution or use of water resources contained in the aquifer lying beneath the Borough; or
- (e) affect the ability of the River Authority to fulfil its statutory duties in relation to the environment or recreation; and “watercourse” has the meaning given to it in section 72 of the Land Drainage Act 1991.

Approval of plans

58.—(1) Before beginning to construct any specified work, the Borough shall submit to the River Authority plans of the work and such further particulars available to them as the River Authority may reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the River Authority, or settled by arbitration.

(3) Any approval of the River Authority required under this article—

- (a) shall not be unreasonably withheld;

- (b) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within 2 months of the submission of plans for approval;
- (c) may be given subject to such reasonable requirements as the River Authority may impose for the protection of any drainage work or the fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.

Conditions relating to works

59.—(1) Without prejudice to the generality of paragraph (3) of article 58, the requirements which the River Authority may impose under that paragraph include conditions requiring the Borough at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work. Such conditions may address amongst other things the matters referred to in byelaw 4 of the Thames Water Authority Land Drainage Byelaws 1981.

(2) Any specified work, and all protective works required by the River Authority under article 58, shall be constructed to the reasonable satisfaction of the River Authority and the River Authority shall be entitled by its officer to watch and inspect the construction of such works.

(3) If by reason of the construction of any specified work the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall, subject to article 75, be made good by the Borough to the reasonable satisfaction of the River Authority and, if the Borough fails to do so, the River Authority may make good the same and, subject to article 75, recover from the Borough the expense reasonably incurred by the River Authority in so doing.

Fish passes

60.—(1) Without prejudice to the other provisions of this Part, the Borough shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish during or after the construction of any specified work, including the construction of a fish pass to the reasonable satisfaction of the River Authority, which the Borough shall maintain and monitor at its own expense and shall keep the same in an efficient state while the barrage is in place and shall ensure that the operation of the barrage facilitates the efficiency of the fish pass.

(2) If by reason of the construction of any specified work the fishery is damaged, such damage shall, subject to article 75, be made good by the Borough to the reasonable satisfaction of the River Authority and, if the Borough fails to do so, the River Authority may make good the same and, subject to article 75, recover from the Borough the expense reasonably incurred by the River Authority in so doing.

Indemnities

61.—(1) The Borough shall indemnify the River Authority in respect of all costs, charges and expenses which the River Authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under article 58, including work on the Borough's proposals prior to the making of this Order; or
- (b) in the inspection of the construction of the specified works or any protective works required by the River Authority under this Part.

(2) Without prejudice to the other provisions of this article, the Borough shall indemnify the River Authority from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the River Authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising of the water table in land adjoining the works authorised by this Order or any sewers, drains and watercourses; or
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in groundwater,

which may wholly or in part be caused by, or result from, or may directly or indirectly result from, the construction of any of the authorised works or any act or omission of the Borough, its contractors, agents, workmen or servants whilst engaged upon any such work:

Provided that the foregoing provisions of this paragraph shall not apply in relation to any injury or detriment sustained after the period of 10 years from the date on which it is certified by the Engineer of the Borough that the scheduled works are substantially complete and the barrage gates are capable of being closed.

(3) The River Authority shall give to the Borough reasonable notice of any such claim or demand and no compromise or settlement thereof shall be made without the agreement of the Borough which agreement shall not be unreasonably withheld.

Liability of the Borough

62. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the River Authority, or to their satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Borough from any liability under the provisions of article 61.

Deemed consents

63. For the purposes of section 5 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879(20) and section 109 of the Water Resources Act 1991 (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the River Authority under this Part with respect to such construction shall be deemed also to constitute a consent or approval under those sections.

Powers of the River Authority

64. Except as otherwise provided by this Order, nothing in this Order shall prejudice or affect in their application to the River Authority the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991, the Salmon and Freshwater Fisheries Act 1975, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the River Authority.

PART VIII

PROVISIONS FOR THE PROTECTION OF THAMES WATER

Outfall surveys

65.—(1) In this Part—

“outfall survey” means a survey conducted by the Borough or Thames Water of—

- (a) the level of siltation within the outlet into the river of a relevant outfall;
- (b) the level of siltation at the point or points on the river bed to be agreed between the Borough and Thames Water in the vicinity of any relevant outfall;
- (c) the condition of the relevant outfall; and

“relevant outfall” means a sewerage outfall system into the river identified by Thames Water as requiring survey on account of existing or likely siltation.

(2) Prior to the commencement of the scheduled works, the Borough shall ask Thames Water to identify relevant outfalls which, following agreement by the Borough, shall be made subject to an outfall survey by Thames Water or the Borough, provided that the party not undertaking the survey shall be consulted as to the method and timing of the survey and shall receive a copy of the survey results within 28 days of the survey being completed.

(3) The Borough shall monitor the level of the river bed in the vicinity of each relevant outfall in accordance with the survey timetable agreed or required by the River Authority in accordance with the Order and shall furnish Thames Water with the results of such monitoring. Should the results of such monitoring reveal siltation in the vicinity of any relevant outfall Thames Water may require an outfall survey of such outfall.

(4) Should any relevant outfall or the river bed in the vicinity of such outfall be subject to siltation to a significantly greater depth than identified in any outfall survey undertaken in accordance with paragraph (2), to the effect that the performance of the outfall is significantly prejudiced and provided that the siltation is largely or completely due to the construction or operation of the barrage, then, subject to any necessary consents and to article 75, Thames Water may either require the Borough to clear the area concerned or undertake the work itself.

(5) The cost of any work done in accordance with paragraph (4) shall be borne by the Borough to the extent that the siltation requiring clearance has been caused by the construction or operation of the barrage but otherwise by Thames Water. Should the said work be required partly on account of the barrage and partly by other causes the costs of such work may be apportioned between the Borough and Thames Water.

Monitoring of chalk aquifer water pressure levels

66.—(1) Prior to the commencement of the scheduled works, the Borough shall ask Thames Water to propose relevant observation boreholes and, upon agreement by the Borough (which may include adding to or varying the list), Thames Water may require the Borough to implement a detailed programme for the monitoring of chalk aquifer water pressure levels in the vicinity of the river, which shall include—

- (a) detailed monitoring by the Borough during the time of construction of the barrage and for a period of not longer than one year after practical completion of construction of the barrage;
- (b) access arrangements to the relevant observation boreholes to be made by Thames Water to enable the Borough to undertake the work;
- (c) the necessary computer facilities and programmes to be provided by the Borough with advice and assistance of Thames Water; and

(d) arrangements for the Borough to circulate to Thames Water the results of monitoring.

Provided that the Borough shall be consulted on the terms of the monitoring programme and shall comment thereon within 28 days of receiving a draft programme and Thames Water shall consider the Borough's comments before implementation of the programme.

(2) Should the results of monitoring indicate that, on account of the existence or operation of the barrage, there is an effect on the said chalk aquifer which is likely to be detrimental to the future operation of the public supply source abstracting ground water at East Ham pumping station at reference point TQ43748424, the Borough shall take steps as may be necessary to rectify the situation or compensate Thames Water for the loss of this source.

Indemnity

67.—(1) The Borough shall be responsible for and make good to Thames Water all reasonable costs, charges, damages and expenses which may be caused to or incurred by Thames Water by reason of the construction or operation of the barrage.

(2) The Borough shall indemnify Thames Water from and against all claims arising out of or in connection with the construction or operation of the barrage.

(3) Thames Water shall give to the Borough reasonable notice of any such claim or demand referred to in paragraph (2) and no settlement or compromise thereof shall be made without the prior consent of the Borough.

PART IX

OTHER PROTECTIVE PROVISIONS

Access to barrage

68. The Borough shall at all reasonable times, upon receipt on each occasion of not less than 48 hours' written notice, afford to any duly authorised representative of the Port Authority or the River Authority or the Port Health Authority access without payment or charge to the barrage or to a tidal work for the purposes of inspection and survey of the barrage or a tidal work in connection with the exercise of the Port Authority's or the River Authority's or the Port Health Authority's functions and shall provide reasonable facilities therefor.

Saving for Trinity House

69. Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of, Trinity House.

For protection of flora and fauna

70. The Borough shall consult English Nature as to measures which may be taken by the Borough to develop and, so far as may be consistent with the purposes of this Order, to conserve flora and fauna within the upstream river.

For protection of the Port Health Authority

71.—(1) Nothing in this Order shall prejudice, alter, affect or interfere with the functions, rights, liabilities, jurisdiction or authority of the Port Health Authority.

(2) Not later than 28 days before—

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

(b) exercising any of the powers of article 7,

the Borough shall submit to the Port Health Authority plans thereof and such further particulars as may be available to the Borough and as the Port Health Authority may reasonably require in respect of carrying out such works or in exercising such powers.

(3) The Port Health Authority's vessels and those of its agents shall be entitled to pass through the barrage and use the upstream river free of charge in the exercise of the Port Health Authority's powers and duties.

For protection of Redbridge

72.—(1) If it appears to Redbridge that wholly or partly on account of the construction or operation of the barrage or the exercise by the Borough of any rights and powers granted by this Order any part of the upstream river within Redbridge has silted up, Redbridge may serve on the Borough a notice in writing requesting the Borough to remove all or any part of the relevant siltation by dredging in accordance with article 7. On receipt of such notice the Borough may either undertake the necessary dredging or dispute the applicability or terms of the notice, in which case if the matter cannot be resolved it shall be referred to arbitration in accordance with article 80.

(2) If the Borough disputes a notice served by Redbridge in accordance with paragraph (1) it shall give written notice of such dispute to Redbridge within 28 days of receipt of the notice from Redbridge. If the Borough does not dispute the notice in such manner within 28 days, the Borough shall apply for any necessary consents in accordance with this Order or other legislation or rule of law within 42 days of the receipt of the notice from Redbridge and shall undertake any necessary consultations within the same time. The Borough shall undertake the work within 56 days of its receipt of all necessary consents provided that if any such consent has not been obtained or includes unreasonable conditions the matter shall be referred to arbitration. Following an arbitrator's ruling requiring the Borough to carry out any dredging, the Borough shall undertake such dredging within 56 days of such ruling. Any time limit indicated in this paragraph may be extended by agreement between the Borough and Redbridge.

(3) If the Borough fails to carry out any dredging which is required by paragraph (2), Redbridge shall be entitled to arrange for the necessary dredging to be carried out and to recover the reasonable cost thereof from the Borough.

(4) The Borough shall provide Redbridge with the results of any survey of the river undertaken by the Borough in accordance with this Order.

(5) The powers in this article are subject to article 74.

- (a) (6) (a) The Borough shall be responsible for and make good to Redbridge all reasonable costs, charges, damages and expenses which may be caused, directly or indirectly to, or incurred by, Redbridge by reason of the construction or operation of the barrage or by reason of the exercise by the Borough of any of the rights and powers granted by this Order.
- (b) The Borough shall indemnify and hold Redbridge harmless from and against all claims arising out of or in connection with the construction or operation of the barrage or by reason of the exercise by the Borough of the rights and powers granted by this Order.
- (c) Redbridge shall give to the Borough reasonable notice of any such claim or demand referred to in paragraph (6)(b) and no settlement or compromise thereof shall be made without the prior consent of the Borough.
- (d) Any unresolved dispute which arises between the Borough and Redbridge in relation to this paragraph or its operation shall be determined by arbitration in accordance with the provisions of article 80.

Crown rights

73.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular, and without prejudice to the generality of the foregoing, nothing in this Order shall authorise the Borough or any other person to take, use, enter upon or in any manner interfere with any land or hereditament or any rights of whatsoever description belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners.

(2) The powers vested in the Borough by articles 7 and 8 shall not be exercised in respect of any land in the upstream river in which there are Crown interests without the consent of the Crown Estate Commissioners.

(3) Consent under this article may be given unconditionally or subject to such terms or conditions as shall be considered necessary or appropriate.

(4) Consent under paragraph (1) or (2) shall be deemed to have been given for any work or operations on the river including surveying or monitoring, provided that:

- (a) any dredging, scouring or clearance of the river does not affect the river bed below levels to be established by survey within 28 days of commencement of the contract for construction of the barrage in accordance with article 3;
- (b) any dredging, scouring or clearance of the river shall not in any case involve the winning and working of minerals; and
- (c) if it appears to the Borough or any other person that either proviso (a) or (b) has been infringed in respect of the upstream river above Barking Millpool, that person shall inform the Crown Estate Commissioners as soon as possible.

For protection of the Railway Undertaker

74.—(1) In this article—

“the railway survey” means a survey of the railway survey area in accordance with paragraph (2);

“the railway bridges” means 2 bridges of the Railway Undertaker (Nos. 11 and 12) over the upstream river at Barking, bridge number 11 comprising 2 spans carrying respectively the London, Tilbury and Southend railway and the District Line railway of London Underground Limited and bridge number 12 carrying the Woodgrange Park to Barking railway; and

“the railway survey area” means that part of the bed of the upstream river lying beneath and between the railway bridges and extending to a distance of 10 metres downstream of the south side of bridge number 11 and 10 metres upstream of the north side of bridge number 12.

- (a) (2) (a) Before the construction of the scheduled works is commenced, the Railway Undertaker upon receipt of not less than 21 days' notice in writing from the Borough shall carry out the railway survey in consultation with the Borough with a view to establishing the levels of the river bed within the railway survey area and shall provide a copy of of the results of that survey to the Borough.
- (b) The reasonable costs of the Railway Undertaker in carrying out the railway survey shall be borne by the Borough.

(3) At any time after the railway survey the Borough may clear or dredge the railway survey area to remove deposited material above the levels of the river bed as established in the railway survey provided that the Railway Undertaker is informed of such clearance or dredging and any other necessary consents are obtained.

(4) The Borough shall not without the written consent of the Railway Undertaker, such consent not to be unreasonably withheld, clear or dredge below the levels of the river bed established by the railway survey.

(5) Any unresolved matter arising from this article shall be referred to arbitration in accordance with article 80, provided that in any such reference, including cases where article 75 also applies, the arbitrator shall be an appointee of the President of the Institution of Civil Engineers.

Requirements and consents

75.—(1) In this Article “operations” means any works or operations and “consent” means any consent, permission or authorisation required in accordance with this Order or otherwise.

(2) Where a requirement for the carrying out of any operations imposed on any person by virtue of this Order cannot be complied with without the consent of any other person—

- (a) the person required to carry out the operations shall use his best endeavours to obtain such consent as soon as reasonably practicable; and
- (b) if the relevant consent is refused or the terms imposed onerous or unreasonable to any party affected by the consent—
 - (i) where such consent is required pursuant to this Order or does not involve an appeal or review procedure, then the matter shall be referred to arbitration under article 80; or
 - (ii) where such consent is not based on this Order, and the procedures governing such consents involve any appeal or review procedure, then the person required to carry out the operations shall initiate such procedures and use his best endeavours to bring about an effective adjudication of the matter including taking legal proceedings if necessary;
- (c) no obligation to carry out any operations for which consent is required or to pay for work done in default by the person who has required operations to be done pursuant to this Order shall arise pending the grant of any necessary consent or adjudication of any relevant appeal, review, arbitration or litigation or if on such adjudication consent is refused.

PART X

MISCELLANEOUS AND GENERAL

Management arrangements

76.—(1) The Borough may enter into and carry into effect agreements with respect to the construction, maintenance, use, management and operation by any other person of all or part of the authorised works, lands, facilities, functions and activities comprising the undertaking of the Borough, including the upstream river as authorised by or established under, or in connection with, this Order, and any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, the cost thereof by the Borough or by any other person.

(2) Any agreement under paragraph (1) may provide (inter alia) for the exercise of the powers of the Borough in respect of the undertaking authorised by this Order or any part or parts thereof.

(3) The Borough may at any time lease any part of the undertaking authorised by this Order on such terms and conditions as may be agreed.

(4) The exercise of the powers of any enactment by any person in pursuance of any agreement under paragraph (1) or any lease under paragraph (3) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the

Borough and in accordance with any restrictions, liabilities and obligations entered into by the Borough in connection with this Order.

- (5) The Borough shall not enter into any agreement or lease under this article—
- (a) without the consent of the Secretary of State; or
 - (b) relating to Part IV or V, in so far as such agreement or lease relates to the upstream river within the limits of the Port Authority as defined in the Act of 1968, without the consent of the Port Authority, such consent not to be unreasonably withheld; or
 - (c) relating to Part IV or V, without informing the River Authority.

Transfer of functions

77.—(1) At any time after the making of this Order the Borough may propose the transfer to any person of all or any part of the undertaking authorised by this Order or all or any of the functions conferred on the Borough by this Order. The proposal for any such transfer shall be made to the Secretary of State.

(2) The Secretary of State shall consider the Borough's proposal and may consent thereto with or without conditions or may refuse the proposal.

(3) Prior to his determination of the proposal the Secretary of State may require the Borough to consult any interested party, in addition to the requirements of paragraph (5), and to undertake any necessary publicity or other reasonable steps.

(4) Should the Secretary of State give his consent under paragraph (2), then thereafter, the person to whom the undertaking or part thereof or any functions are so transferred shall in relation thereto have and may exercise all or any of the powers conferred upon the Borough by this Order, to the extent that they are still subsisting and capable of taking effect, and shall be subject to all the restrictions, liabilities, duties and obligations to which the Borough is subject under this Order or which have been entered into by the Borough in connection with this Order in so far as they relate to the undertaking or part thereof or to the functions so transferred.

- (5) The Borough shall not make a proposal under this article—
- (a) transferring all or any part of the undertaking authorised by this Order or any of its functions under this Order to the Port Authority without the consent of the Port Authority as transferee; or
 - (b) transferring any part of its undertaking relating to Parts II, IV and V of this Order or any of its functions under the said parts to any person other than the River Authority without the consent of the River Authority.

Obstructing execution of Order

78. A person who intentionally obstructs any person acting in the execution of this Order or without reasonable excuse pulls up any peg or stake driven into the ground for the purposes of setting out the line, level or site of any works authorised by this Order or otherwise intentionally or recklessly interferes with equipment or materials used in the construction of those works, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Defence of due diligence

79.—(1) In proceedings for an offence under the provisions of this Order mentioned in paragraph (2) it shall be a defence for the Borough to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

- (2) The provisions referred to in paragraph (1) are the following—

article 18; and
article 20.

(3) If in any case the defence provided under paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Borough shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information as was then in its possession, identifying or assisting in the identification of, that other person.

Arbitration

80.—(1) Unless otherwise provided in this Order and subject to paragraphs (2) and (3), any unresolved differences arising between the Borough and the River Authority, the Port Authority, the Port Health Authority, Redbridge, Thames Water, the Railway Undertaker or any other interested person shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be nominated by the Secretary of State on the application of either party after notice in writing to the other.

(2) Paragraph (1) shall apply subject to article 74(5) and provided that, in respect of matters arising from Part VII, any arbitrator (subject to paragraph (3)) shall be nominated by the Minister of Agriculture, Fisheries and Food.

(3) Where an unresolved difference arises between the Borough and the River Authority, Port Authority, the Port Health Authority, Redbridge, Thames Water, the Railway Undertaker or any other interested person in respect of the meaning or construction of any part of this Order, the same shall be referred to legal Counsel acting as arbitrator to be agreed between the parties or, in default of such agreement, to be appointed by the Chairman for the time being of the Bar Council for England and Wales on the application of either party after notice in writing to the other.

Signed by authority of the Secretary of State

2nd March 1995

Paul Beresford
Parliamentary Under-Secretary of State,
Department of the Environment