
STATUTORY INSTRUMENTS

2012 No. 1867

TRANSPORT AND WORKS, ENGLAND

The Ipswich Barrier Order 2012

Made - - - - - *16th July 2012*

Coming into force - - - - - *7th August 2012*

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006⁽¹⁾ for an Order under sections 3(1)(b) and 5 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”).

The Secretary of State, having considered the objections made and not withdrawn, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964⁽³⁾.

Notice of the Secretary of State’s determination was published in the London Gazette on 2nd July 2012.

The Secretary of State in exercise of the powers conferred by sections 3(1)(b) and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 13 and 15 to 17 of Schedule 1 to, the 1992 Act and by article 2 of the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992⁽⁴⁾ makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Ipswich Barrier Order 2012 and comes into force on 7th August 2012.

(1) S.I. 2006/1466.

(2) 1992 c. 42.

(3) 1964 c. 40.

(4) S.I. 1992/3230 as amended by S.I. 1997/2906.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961⁽⁵⁾;
- “the 1965 Act” means the Compulsory Purchase Act 1965⁽⁶⁾;
- “the 1991 Act” means the New Roads and Street Works Act 1991⁽⁷⁾;
- “A.B. Ports” means Associated British Ports;
- “the Agency” means the Environment Agency;
- “the authorised works” means the scheduled works and any other works authorised by this Order;
- “the barrier” means the barrier comprised in Work No.1;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes structure or any other erection or any part of a building, structure or erection;
- “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 meanings as in the Highways Act 1980⁽⁸⁾;
- “the land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;
- “the level of high water” means the level of mean high water springs;
- “the limits of deviation” means the lateral limits of deviation for the scheduled works shown on the works plans and the land plans;
- “the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the works plans and the land plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” is construed accordingly;
- “owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981⁽⁹⁾;
- “the planning Act” means the Town and Country Planning Act 1990⁽¹⁰⁾;
- “the rights of way maps” means the maps certified by the Secretary of State as the rights of way maps for the purposes of this Order;
- “the river” means the river Orwell including the New Cut;
- “the scheduled works” means the works specified in Schedule 1 (description of the scheduled works) or any part of them;
- “the sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;
- “street” includes part of a street;
- “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 high water;

⁽⁵⁾ 1961 c. 33.

⁽⁶⁾ 1965 c. 56.

⁽⁷⁾ 1991 c. 22.

⁽⁸⁾ 1980 c. 66.

⁽⁹⁾ 1981 c. 67.

⁽¹⁰⁾ 1990 c. 8.

“the tribunal” means the Upper Tribunal;

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

“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⁽¹¹⁾;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified by the Secretary of State as the works plans for the purpose of this Order.

(2) Any reference in this Order to a work identified by a number of the work is a reference to the work of that number referred to in Schedule 1.

(3) References in this Order to reference points are construed as references to Ordnance Survey National Grid Reference points.

(4) All directions, distances and reference points stated in any description of works, powers or lands are approximate.

(5) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) The Agency may—

- (a) construct and maintain the scheduled works; and
- (b) break out and remove such structures that are contained within the limits of deviation as may be necessary or expedient for or in connection with the construction or maintenance of the scheduled works.

(2) Subject to article 4 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), the Agency may carry out and maintain such of the following works as may be necessary or expedient for the purpose of, or for purposes ancillary, to the construction of the scheduled works, namely—

- (a) works for the strengthening, alteration or demolition, in whole or in part, of any building, structure or erection;
- (b) works for the removal or retention, with such modifications as the Agency sees fit, of the existing velocity control structure in the river;

(11) 1968 c. 59.

- (c) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (d) works to alter the course of, or otherwise interfere with, watercourses;
- (e) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (f) facilities and works for the benefit or protection of land or premises affected by the authorised works.

(4) Subject to paragraph (6) the Agency may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(5) Where the Agency lays down conduits for the accommodation of cables or other apparatus for the purposes of or associated with the authorised works it may provide in, or in connection with, such conduits, accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.

(6) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works within the limits of deviation.

(7) Section 9 of the Salmon and Freshwater Fisheries Act 1975(12) does not apply to the construction of the authorised works or to their alteration.

Power to deviate

4.—(1) Subject to paragraph (2), in constructing or maintaining any of the scheduled works the Agency may modify the design, as shown on the works plans and sections, of the scheduled works and deviate—

- (a) laterally from the lines or situations shown on the works plans to any extent within the limits of deviation; and
- (b) vertically from the levels shown on the sections to any extent upwards or downwards.

(2) The scheduled works must be so constructed that the unobstructed opening between the walls of the barrier, as shown on the works plans and sections, is not less than 20 metres wide.

(3) Nothing in paragraph (3) or paragraph (4) of article 3 (power to construct and maintain works) authorises the Agency to execute any works in contravention of the restrictions imposed by paragraph (2) of this article.

Streets and rights of way

Power to execute street works

5.—(1) The Agency may, for purposes ancillary to the authorised works, enter upon so much of any existing path or street as is within the limits of deviation and may—

- (a) break up or open the path or street, or any sewer, drain, or tunnel under it, or tunnel or bore under the path or street;
- (b) place apparatus in the path or street;
- (c) maintain apparatus in the path or street or change its position; and
- (d) execute works required for or incidental to any works referred to in sub-paragraph (a), (b) or (c).

(2) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Extinguishment and diversion of rights of way

6.—(1) On the completion and coming into operation of the barrier, whichever is the later, any existing or alleged path or street within the limits of deviation is stopped up and all rights of way then existing within the limits of deviation, including unless otherwise agreed to by the Agency any private right of way but excluding any right of navigation along the river or through the Wet Dock Lock, are extinguished.

(2) Paragraph (1) does not apply to so much of Ship Launch Road as is a public highway.

(3) Paragraph (1) does not apply to the proposed public footpath 40, to the restricted byway 36, proposed restricted byway 37 or to byway 38 shown between the points marked K and N on the rights of way maps but the Agency may—

- (a) stop up that part of byway 38 hatched blue on the rights of way maps; and
- (b) divert byway 38 as shown on the rights of way maps through the proposed flood gate as built (and shown between the points marked D1 and D2 on those maps), in consequence of which the restricted byway will be narrower than otherwise provided for between those points.

(4) Paragraph (1) does not apply to any alleged right of way which is both shown on the rights of way maps and referred to in column 1 of Part 1 of Schedule 2 if the alleged right of way has been dedicated, prior to the completion and coming into operation of the barrier, whichever is the later, as a right of way but the Agency may then stop up and divert it as described in column 2 of Part 1 of Schedule 2 and shown on the rights of way maps.

(5) Any stopping up or diversion authorised by paragraph (3) or (4) has no effect until the highway authority is satisfied that the diversion has been completed in accordance with its reasonable requirements and is open for public use or, in the case of any difference between the Agency and the highway authority as to whether the highway authority’s requirements are reasonable, until the matter in dispute has been determined by arbitration.

(6) If byway 38 or any other right of way is diverted through the flood gate as shown on the rights of way maps, the Agency may from time to time close the floodgate across such rights of way.

(7) Where a path or street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the Agency may appropriate and use for the purposes of the authorised works so much of the site of the path or street as is bounded on both sides by land owned by the Agency.

(8) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Temporary stopping up of streets

7.—(1) The Agency, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any existing or alleged path or street and may for any reasonable time—

- (a) divert the traffic from the path or street;
- (b) subject to paragraph (2), prevent all persons from passing along the path or street; and
- (c) use the stopped up parts of the path or street as a temporary working site.

(2) The Agency must provide—

- (a) reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access; and
 - (b) such reasonable access for A.B. Ports as may be required for the purposes of its dock undertaking as may be agreed with the Agency, such agreement not to be unreasonably withheld.
- (3) Without limitation on the scope of paragraph (1), the Agency may exercise the powers conferred by this article in relation to the existing or alleged paths or streets specified in columns (1) and (2) of Part 2 of Schedule 2 (diversion of possible rights of way) to the extent specified, by reference to the letters and numbers shown on the rights of way maps.
- (4) The Agency must not exercise the powers conferred by this article—
- (a) in relation to byway 38 without providing for the duration of the temporary stopping up and to the reasonable satisfaction of the highway authority a 3 metre wide path between the point marked K on the rights of way maps and Bath Street;
 - (b) in relation to any other path or street specified as mentioned in paragraph (3) without first consulting the highway authority and where a temporary diversion is specified in column (3) of Part 2 of Schedule 2, without the diversion being first completed to the reasonable satisfaction of the highway authority and opened for use; and
 - (c) in relation to any other path or street without the consent of the street authority (within the meaning given in Part 3 of the 1991 Act) which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.
- (5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Supplementary powers and provisions

Power to dredge etc.

- 8.**—(1) The Agency may deepen, dredge and remove obstructions from the bed, foreshore and banks of, the river—
- (a) for the purposes of the construction, operation or maintenance, of the scheduled works; or
 - (b) for the purpose of facilitating the navigation of vessels.
- (2) The powers conferred by this article are only exercisable with the prior written consent of A.B. Ports, such consent not to be unreasonably withheld.
- (3) The Agency must pay compensation to all persons for any damage sustained by them by reason of the exercise by the Agency of its powers under paragraph (1) and the amount of the compensation to be paid, where not agreed, is to be determined by the tribunal.
- (4) The Agency may use, appropriate or sell or otherwise dispose of anything (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995⁽¹³⁾) removed in exercise of the power conferred in paragraph (1).

River not to be a reservoir

- 9.** Regardless of the provisions of subsection (2) of section 1 of the Reservoirs Act 1975⁽¹⁴⁾, no part of the river as is impounded by the scheduled works is, by virtue of the retention of water by means of the scheduled works, to be taken to be a reservoir for the purposes of that Act.

⁽¹³⁾ 1995 c. 21.

⁽¹⁴⁾ 1975 c. 23.

Agreements with owners of land and others for construction of works

10.—(1) The Agency may enter into and carry into effect agreements or arrangements with A.B. Ports and 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 necessary in order to carry out, or in consequence of, the authorised works.

(2) Without limitation on the scope of paragraph (1), any such agreement may provide for—

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

Temporary closing of river in connection with works

11.—(1) Regardless of anything in any other enactment or in any rule of law, the Agency may temporarily close the river or any part of it within the limits of deviation, to navigation during or for the purposes of executing any works or doing anything authorised by or under this Order.

(2) In exercising the powers conferred by this article, the Agency must seek to minimise interference with navigation on the river so far as is reasonably practicable and consistent with the efficient and economical execution of the works.

(3) The Agency must not exercise the powers conferred by paragraph (1) so as to preclude access from the river to the Wet Dock without the consent of A.B. Ports (such consent not to be unreasonably withheld).

(4) Subject to paragraph 10 of Schedule 7 (protection of A.B. Ports) neither the Agency nor A.B. Ports is to be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the river under paragraph (1).

Diversion of flow of water

12. The Agency 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.

Power to take, pump, impound and discharge water

13.—(1) The Agency may take, impound and use water from, and discharge water into, the river, and may pump any water required by it from or into the river or pump any water found by it into the river or into any watercourse, public sewer, or drain in connection with the construction or maintenance of the authorised works and for those purposes may lay down, take up and alter conduits, pipes and other works and conveniences and may, on any land within the limits of deviation, make openings into, and connections with, the river, or any watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(15).

(3) The Agency must not, in exercise of the powers conferred by this article—

- (a) discharge any water into any public sewer or drain except with the consent (which is not to be unreasonably withheld) of the person to whom it belongs and subject to such terms and conditions as that person may reasonably impose; and
 - (b) make any opening into any public sewer or drain except in accordance with plans reasonably approved by and under the superintendence (if provided) of the person to whom the sewer or drain belongs.
- (4) Nothing in this articles obviates the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010⁽¹⁶⁾.
- (5) The Agency must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain in exercise of the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.
- (6) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Agency, a harbour authority within the meaning of the Harbours Act 1964⁽¹⁷⁾, an internal drainage board, a local authority, or a joint planning board; and
 - (b) other expressions except “watercourse” used both in this article and in the Water Resources Act 1991⁽¹⁸⁾ have the same meaning as in that Act.

Application of docks legislation

14. Section 32 of the Ipswich Dock Act 1852⁽¹⁹⁾ (obligations in respect of works authorised by the Ipswich Dock Act 1837) has effect subject to the provisions of this Part.

PART 3

PROVISIONS RELATING TO TIDAL WORKS

Tidal works not to be executed without approval of Secretary of State

15.—(1) Unless its construction has commenced within five years of the coming into force of this Order, a tidal work must not be constructed, altered or replaced except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, altered, replaced or re-laid in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the Agency at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and if, on the expiration of a period of 30 days from the date on which the notice is served, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing is recoverable from the Agency.

⁽¹⁶⁾ S.I. 2010/675.

⁽¹⁷⁾ 1964 c. 40.

⁽¹⁸⁾ 1991 c. 57.

⁽¹⁹⁾ 1852 c. cxvi.

Lights on tidal works during construction

16.—(1) The Agency must at or near a tidal work during the whole time of its construction, alteration or replacement, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and A.B. Ports or (failing agreement between them) the Secretary of State may from time to time direct.

(2) If the Agency fails to comply with any requirement of a direction reasonably given under paragraph (1), it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provisions against danger to navigation

17.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it the Agency must as soon as reasonably practicable notify Trinity House and A.B. Ports and lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House and A.B. Ports or (failing agreement between them) Trinity House may from time to time direct.

(2) If the Agency fails to notify Trinity House and A.B. Ports as required by paragraph (1) or to comply with any requirement of a direction under it, the Agency is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Abatement of works abandoned or decayed

18.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or A.B. Ports may by notice in writing require the Agency at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State and A.B. Ports or (failing agreement between them) the Secretary of State, thinks fit.

(2) Where—

- (a) a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay; and
- (b) that part of the work on or over land above the level of high water is in such a condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore,

the Secretary of State or A.B. Ports may include that part of the work, or any portion of it, in any notice under paragraph (1).

(3) If, on the expiration of a period of 30 days from the date on which a notice under this article is served, the Agency has failed to comply with the requirements of the notice, the Secretary of State or A.B. Ports may execute the work specified in the notice and any expenditure incurred by the Secretary of State or A.B. Ports in so doing is recoverable from the Agency.

Survey of tidal works

19. If the Secretary of State or A.B. Ports deems it expedient, the Secretary of State or A.B. Ports may at any time order a survey and examination of a tidal work or of the site upon which it is proposed to construct the tidal work, and any expenditure reasonably incurred by the Secretary of State or A.B. Ports in relation to any such survey and examination is recoverable from the Agency.

Permanent lights on tidal works

20.—(1) After the completion of a tidal work the Agency must at its outer extremity exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention

of danger to navigation as Trinity House and A.B. Ports or (failing agreement between them) Trinity House may from time to time direct.

(2) If the Agency fails to comply in any respect with a direction reasonably given under this article, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 4

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

21. The Agency may acquire compulsorily so much of the land shown on the land plans as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the scheduled works and may use any land so acquired for those purposes or for any other purposes that are ancillary to the scheduled works.

Application of Part 1 of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽²⁰⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has 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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

23.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²¹⁾ applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

- (3) In section 3 (preliminary notices), for subsection (1) there is substituted—

⁽²⁰⁾ 1981 c. 67.

⁽²¹⁾ 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.

(8) References to the 1965 Act is to be construed as references to that Act as applied to the acquisition of land under article 21 (power to acquire land).

Power to acquire new rights

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

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the Agency acquires a right over land under paragraph (1) the Agency cannot be required to acquire a greater interest in that land.

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

(4) In relation to land to which this paragraph applies, article 21, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1) is to be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives consent in writing.

(5) Paragraph (4) applies to land to which article 21 applies and which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works.

Power to acquire subsoil only

25.—(1) The Agency may compulsorily acquire so much of, or such rights in, the subsoil of the land referred to in article 21 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Agency acquires any part of, or such rights in, the subsoil of land under paragraph (1) it cannot be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 31 (acquisition of part of certain properties) from applying where the Agency acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

New rights only to be acquired in certain lands

26. In the case of the land specified in columns (1) and (2) of Schedule 4 (acquisition of new rights only), the Agency's powers of compulsory acquisition under article 21 (power to acquire land) are limited to the acquisition of such easements or other new rights in the land as it may require for the purposes specified in relation to that land in column (3) of that Schedule.

*Temporary possession of land***Temporary possession of land for construction purposes**

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

- (a) enter upon and take temporary possession of the land specified in column (1) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) 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 14 days before entering upon and taking temporary possession of land under this article the Agency must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Agency 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 2 years beginning with the date of completion of the works.

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

(5) The Agency must 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 conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Without affecting article 55 (no double recovery), nothing in this article affects 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 conferred by this Order do not apply in relation to land referred to in paragraph (1) except that the Agency is not precluded from—

- (a) acquiring new rights over any part of that land under article 24 (power to acquire new rights) or article 26 (new rights only to be acquired in certain lands); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 25 (power to acquire subsoil only).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 22(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the Agency may—

- (a) enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and
- (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) does not authorise the Agency 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 Agency must serve notice of the intended entry on the owners and occupiers of the land.

(4) The Agency 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 Agency must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Agency must 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 conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 55 (no double recovery), nothing in this article affects 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 (6) of this article.

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

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 22(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article, “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use.

*Compensation***Disregard of certain interests and improvements**

29.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must 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 the intention of 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.

Set-off for enhancement in value of retained land

30.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set-off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 24 (power to acquire new rights) or 26 (new rights only to be acquired in certain lands), the tribunal must set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
 - (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,
- (3) which will accrue to that person by reason of the construction of the authorised works.

(4) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

*Supplementary***Acquisition of part of certain properties**

31.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 22 (application of Part 1 of the Compulsory Purchase Act 1965)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as applied) in respect of land forming only part of a house, building or manufactory 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 Agency a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is 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 is required to sell only the land subject to the notice to treat is, unless the Agency agrees to take the land subject to the counter-notice, to 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 the 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 is 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 the 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 is to 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 is to 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 Agency is authorised to acquire compulsorily under this Order.

(8) If the Agency 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) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to 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 Agency 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 Agency 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 it must pay the owner compensation for any loss or expense occasioned to the owner 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 manufactory or of land consisting of a house with a park or garden, the Agency must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way etc. over land

32.—(1) All private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the acquisition of the land by the Agency, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Agency under section 11(1) of the 1965 Act, whichever is sooner.

(2) Unless otherwise agreed with the Agency, all private rights of way over land owned by the Agency which, being within the limits of land to be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Agency.

(3) All private rights of way over land of which the Agency takes temporary possession under this Order are suspended and unenforceable for as long as the Agency remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the planning Act (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

33.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 22 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 27 (temporary possession of land for construction purposes) cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the Agency remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 5**OPERATION OF SCHEDULED WORKS ETC.****Power to operate scheduled works**

34.—(1) The Agency may operate the barrier and among other things may—

- (a) open or close the barrier; and
- (b) regulate water levels in the river by means of the scheduled works.

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

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

- (a) to prevent or alleviate any emergency;

- (b) to release flood water;
 - (c) to ascertain the safest and most effective ways of using the scheduled works, to test its working or to train staff in its operation;
 - (d) to facilitate the construction, maintenance or re-laying of any works in or beside the river; or
 - (e) to secure and maintain satisfactory navigation in the vicinity of the scheduled works and the river.
- (4) When operating the barrier the Agency must have regard to—
- (a) the safety of vessels in the river;
 - (b) the requirements of vessels in the river (including the need to have freedom of access to moorings and berths in the river upstream of the barrier);
 - (c) the desirability of developing and conserving flora and fauna in the river; and
 - (d) any reasonable request of—
 - (i) A.B. Ports or other navigation authority for the time being for or in connection with their functions; and
 - (ii) the police or other emergency services.
- (5) Subject as otherwise expressly provided in this Order, no liability arises 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 river,
- occasioned by the operation of the scheduled works unless the costs, damages, losses or expenses are incurred by reason of negligence in their operation.

Misuse of scheduled works, etc.

- 35.** Any person who without lawful authority or reasonable excuse—
- (a) closes or opens the barrier; or
 - (b) in any other way interferes with the scheduled works or their operation,
- is guilty of an offence and for every such offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Navigation

Navigation etc. in vicinity of barrier

- 36.**—(1) In this article, “in the vicinity of the barrier” means on or in the area of water between—
- (a) a point 20 metres upstream (along the centre line of the navigable river) from the northernmost point of the movable gate comprised in the barrier; and
 - (b) a point 20 metres downstream (along the centre line of the navigable river) from the southernmost point of the movable gate comprised in the barrier.
- (2) Any person who, other than in an emergency or with some other reasonable cause—
- (a) moors a vessel to any part of Work No.1 without the consent of the Agency;
 - (b) allows any vessel to drift in the vicinity of the barrier, except for the purpose of passing through the barrier or waiting to do so; or

(c) moors a vessel in the vicinity of the barrier so as to cause an obstruction to the access to or egress from the moveable barrier gate,
is guilty of an offence and 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 river lying within the limits of deviation, or without lawful authority left or moored in that part of the river, the Agency may, after giving (except in an emergency) not less than 21 days' written notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise, remove, store or otherwise dispose of the vessel.

(2) Subject to article 41 (emergency powers and consents), the power conferred by paragraph (1) is not exercisable by the Agency if—

- (a) it is within the powers of A.B. Ports to deal with the vessel and A.B. Ports decide to do so; and
- (b) if the Agency, having given not less than one month's notice to A.B. Ports, is informed by A.B. Ports within that time that A.B. Ports intends to act and it does act within a reasonable time after that.

(3) Where a vessel is left or moored adjoining riparian property the Agency must give not less than one month's notice to the owner or occupier of that property and such owner or occupier may make representations to the Agency as to the proposed raising, removal, storage, or disposal of the vessel.

(4) Any notice given by the Agency under paragraph (1) must—

- (a) identify the vessel in respect of which the notice is served and its approximate location;
- (b) state that if the owner fails to raise and remove the vessel before the expiry of the period specified in the notice, the Agency may raise and remove the vessel and recover all expenses reasonably incurred in doing so; and
- (c) indicate that there is a right to refer the matter to arbitration under article 38 (arbitration in respect of removal of vessels).

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

(6) In any proceedings by the Agency against a person served with a notice under paragraph (1) for the recovery of any expenses which the Agency is entitled to recover from that person under paragraph (5), it is not open to that person to raise any question which could have been raised on a referral to arbitration under article 38.

(7) Subject to paragraph (8), if any vessel to which paragraph (1) applies is not within 6 weeks of its removal by the Agency, proved to the Agency's satisfaction to belong to any claimant, the vessel (together with any such furniture, tackle and apparel) vests in the Agency.

(8) 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 Agency that that person was the owner of the vessel, or has become the owner since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), then the Agency must—

- (a) if the vessel is unsold, permit that person to retake it with any furniture, tackle, apparel, goods, chattels and effects on the vessel upon payment of the expenses referred to in paragraph (5); or

- (b) if the vessel and the furniture, tackle and apparel on the vessel have been sold, pay to that person the amount of the proceeds of such sale after deducting those expenses, and in case such proceeds are insufficient to reimburse the Agency those expenses the deficiency may be recovered from that person by the Agency.

(9) In this article—

“owner”, in relation to any vessel sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), means the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring; and

“vessel” includes any part of a vessel.

Arbitration in respect of removal of vessels

38.—(1) Any person served with a notice by the Agency under article 37(1) (removal of vessels) may, within 21 days of service of the notice, serve a counter-notice on the Agency disputing the notice and stating that—

- (a) the vessel is not sunk, stranded or abandoned in the river lying within the limits of deviation or without lawful authority left or moored in that part of the river; or

- (b) there has been some informality, defect or error in, or in connection with, the notice,

and any dispute under this article is to be determined in accordance with article 54 (arbitration).

(2) If and in so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator must dismiss the dispute if the arbitrator is satisfied that the informality, defect or error was not a material one.

(3) On the hearing of the dispute the arbitrator may confirm or set aside the notice.

Removal of obstructions other than vessels

39.—(1) This article applies to anything, other than a vessel, causing an obstruction or impediment to the navigation or use of the river lying within the limits of deviation (in this article and article 40 referred to as an “obstruction”) and which the owner of the obstruction, or the owner or occupier of the land, as the case may be, caused or knowingly permitted to become or remain an obstruction.

(2) Subject to paragraph (3), the Agency may after giving not less than 21 days’ written notice to the owner of an obstruction or, if the owner is not known, the owner or occupier of any land on which the obstruction is situated, requiring the owner or occupier to mark, modify or remove the obstruction.

(3) Subject to article 41 (emergency powers and consents), the power conferred by paragraph (2) is not exercisable—

- (a) if it is within the powers of A.B. Ports to deal with such obstruction and A.B. Ports decide to do so; and

- (b) if the Agency, having given not less than one month’s notice to A.B. Ports, is informed by A.B. Ports within that time that A.B. Ports intends to act and it does act within a reasonable time after that.

(4) If the owner of the obstruction, or the owner or occupier of the land, fails to take any action specified by the Agency in a notice pursuant to paragraph (2), the Agency may take that action and recover the reasonable costs of doing so from that person.

(5) In any proceedings by the Agency against any person required to modify, remove or mark an obstruction under paragraph (2) for the recovery of costs which the Agency is entitled to recover under paragraph (4), it is not open to that person to raise any question which could have been raised

on a referral to arbitration under article 40 (arbitration in respect of removal of obstructions other than vessels).

(6) The Agency may—

- (a) mark an obstruction; or
- (b) modify or remove it,

in such circumstances as it considers fit.

(7) Before exercising its powers under paragraph (6), the Agency must, if it is reasonably practicable to do so, give not less than 21 days' written notice of its intention to the owner or occupier of any land on which the obstruction is situated.

(8) If an obstruction removed by the Agency under this article is so marked as to be readily identifiable as the property of any person, the Agency must within one month of its coming into the Agency's custody give written notice, in accordance with paragraph (12), 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 vests in the Agency at the end of that period.

(9) If an obstruction removed by the Agency under this article, which is not marked as described in paragraph (8), is not within 3 months of its coming into the custody of the Agency proved to the Agency's reasonable satisfaction to belong to any person, it vests in the Agency.

(10) The Agency may at such time and in such manner as it thinks fit dispose of anything referred to in paragraph (9) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that at the time it has not vested in the Agency under this article, and if it is sold the proceeds of sale must be applied by the Agency in payment of the expenses incurred by it under this article in relation to the thing, and any balance is—

- (a) to be paid to any person who, within 3 months from the time when the thing came into the custody of the Agency, proves to the reasonable satisfaction of the Agency that the person was the owner of the thing at that time; or
- (b) if within the period referred to in sub-paragraph (a) no person proves that person's ownership at that time, to vest in the Agency.

(11) If an obstruction removed by the Agency under this article—

- (a) is sold by the Agency 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 Agency 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 Agency or who was the owner at the time of its abandonment or loss, if that person caused or knowingly permitted the obstruction to be there.

(12) A notice given under paragraph (8) must specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction of the Agency and payment of the reasonable costs of the raising, removal and storage of the thing, possession may be retaken at the 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.

(13) In paragraph (1), reference to anything causing an obstruction or impediment to the navigation or use of the part of the river lying within the limits of deviation is a reference to anything causing an obstruction or impediment to a vessel of a size customarily navigated or used on that part of the river.

Arbitration in respect of removal of obstructions other than vessels

40.—(1) Any person required by the Agency to modify, remove or mark an obstruction under article 39(2) (removal of obstructions other than vessels) may within 21 days of being so required serve a counter-notice on the Agency disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the thing required to be marked, removed or modified is not an obstruction;
- (b) that the thing required to be marked, removed or modified is an obstruction which has occurred naturally and that to require its marking, removal or modification is unreasonable;
- (c) where the requirement is to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the requirement is to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction,

and any dispute under this article is to be determined in accordance with article 54 (arbitration).

(2) Any person served with a notice under article 39(7) may within 21 days of service of the notice serve a counter-notice on the Agency disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the thing the Agency intends to mark, remove or modify is not an obstruction;
- (b) that the thing the Agency intends to mark, remove or modify is an obstruction which has occurred naturally and that to mark, remove or modify it is unreasonable;
- (c) where the Agency intends to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the Agency intends to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction,

and any dispute under this article is to be determined in accordance with article 54 (arbitration).

(3) On the hearing of a dispute under this article the arbitrator may confirm, vary or set aside the requirement of the notice, as the case may be.

Emergency powers and consents

41. The Agency's powers under articles 37 (removal of vessels) and 39 (removal of obstructions other than vessels) may be exercised by the Agency in an emergency without prior notice to A.B. Ports provided that A.B. Ports are informed of the action as soon as possible afterwards.

Byelaws

Byelaws

42.—(1) In addition to its powers to make byelaws under any other enactment, the Agency may make byelaws in relation to the navigation and use of those parts of the river which fall within the limits of deviation, and for its good management in connection with such navigation and use.

(2) In particular, byelaws under paragraph (1) may be made for all or any of the following purposes—

- (a) for prohibiting or regulating recreational activities;
- (b) for regulating navigation and for the prevention of obstruction to navigation;
- (c) for regulating the speed and movement of vessels;

- (d) for securing the safety of vessels and persons using the scheduled works and of their property, and any property situated within the limits of deviation;
 - (e) for regulating the passage of vessels, or any class of vessels, through the moveable barrier gate or over or through other structures, works or apparatus, either generally or in circumstances prescribed by the byelaws; or
 - (f) for preventing swimming.
- (3) The Agency must not make any byelaws under this article without the consent of A.B. Ports.
- (4) A.B. Ports must not withhold its consent to the making of any byelaw except on the ground that it conflicts with or duplicates a byelaw of A.B. Ports or interferes with the exercise of their statutory functions; and any unresolved question whether there is any such conflict or duplication or interference is to be determined in accordance with article 54 (arbitration).
- (5) Nothing in any byelaw made under this article apply to anything done by A.B. Ports in the exercise of any of its statutory functions and the byelaws of A.B. Ports are unaffected by any byelaw made under this article.
- (6) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972⁽²²⁾ (which relates to the procedure for making, and evidence of, byelaws) apply to any byelaws made by the Agency under this article.
- (8) In its application to byelaws made under this article by the Agency, section 236 of the Local Government Act 1972 has effect as if in subsection (7), after the word “confirm” where it first occurs, the words “with or without modification” were inserted.
- (9) The confirming authority for the purposes of section 236 of the Local Government Act 1972 in its application to byelaws made under this article is the Secretary of State.
- (10) The Secretary of State may charge the Agency a reasonable fee for the purpose of defraying any administrative expenses incurred by the Secretary of State in respect of byelaws made under this article which are submitted to the Secretary of State for confirmation.
- (11) Where in relation to any byelaws submitted to the Secretary of State for confirmation the Secretary of State proposes to make a modification which appears to the Secretary of State to be substantial the Secretary of State must inform the Agency and require it to take any steps the Secretary of State considers necessary for informing persons likely to be concerned with the modification and must not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification by the Agency and by other persons who have been informed of it.

PART 6

PROTECTIVE PROVISIONS

Protection of certain persons

43. Schedule 6 (provisions relating to statutory undertakers etc.) has effect.

(22) 1972 c. 70.

Protection of A.B. Ports

44. Schedule 7 (protection of A.B. Ports) has effect.

Protection of Network Rail

45. Schedule 8 (protection of Network Rail) has effect.

Saving for Trinity House

46. Nothing in this Order prejudices or derogates from any of the powers, rights or privileges, or the jurisdiction or authority, of Trinity House.

Crown rights

47.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular, and without limitation on the scope of this saving, nothing in this Order authorises the Agency 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) Consent under this article may be given unconditionally or subject to such terms or conditions as are considered necessary or appropriate.

Minerals

48. Nothing in this Order affects the rights of any person entitled to any mine or minerals of any description whatsoever under a street or other land in, on, or adjacent to which the authorised works are constructed to work the mine or get the minerals but this does not affect any liability (whether civil or criminal) of the person so entitled in respect of any damage to the authorised works resulting from the exercise of any such rights.

PART 7

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

49.—(1) The Agency may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the Agency and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Agency and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Agency include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Agency.

(4) The Agency must not under this article transfer or lease any rights conferred by article 42 (byelaws).

Obstructing execution of Order

50. Any person who, without reasonable excuse, obstructs any person acting under the authority of the Agency in setting out the lines of the scheduled works, or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Defence of due diligence

51.—(1) In proceedings for an offence under Part 3 (provisions relating to tidal works), it is a defence for the Agency to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) 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 Agency must 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.

Defence to proceedings in respect of statutory nuisance

52.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²³⁾ (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works; and
- (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽²⁴⁾.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

do not apply where the consent relates to the use of premises by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works.

Certification of plans etc.

53. The Agency must, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plans and the works plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and plans

⁽²³⁾ 1990 c. 43.

⁽²⁴⁾ 1974 c. 40.

referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

54. Unless otherwise provided in this Order, any difference under any provision of this Order is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

No double recovery

55. Compensation is not payable in respect of the same matter both under this Order and any other enactment, any contract or any rule of law.

Service of notices

56.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(25) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, that person's last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to the person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is fulfilled where the recipient of the notice or other document has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) A person may revoke that person's consent to the use of electronic transmission in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article is not to be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article, "electronic transmission" means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but in electronic form.

Signed by authority of the Secretary of State

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

16th July 2012

SCHEDULES

SCHEDULE 1

Article 2

DESCRIPTION OF THE SCHEDULED WORKS

Work No.1 A barrier across the mouth of the New Cut on the river Orwell, with a moveable gate providing a channel width when open of 20 metres together with piers, a stilling basin, piling, scour protection, flood defence walls linking to other flood defences and other associated structures.

Work No.2 A building for control and associated purposes in relation to the barrier.

Work No.3 A new underground electricity cable and conduit being a replacement for part of an existing 132 KV cable between TM1686343408 and TM1705243383.

SCHEDULE 2

Articles 6 and 7

DIVERSION OF POSSIBLE RIGHTS OF WAY

PART 1

SUBSTITUTED WAYS FOR ALLEGED RIGHTS OF WAY IF SUCH RIGHTS ARE ESTABLISHED

<i>Alleged Rights of Way</i>	<i>Possible diversion or substitute Rights of Way</i>
Alleged footpath (Claim A) between points D3, D4, D5, D6, D7 and D8	Footpath between points D3, D4, D6, D7 and D8
Alleged byway (Claim G) between D9 and D10	Byway between D9 and D10
Alleged footpath (West Bank Claim A to B to C)	Footpath diverted through the flood gate between the points marked D1 and D2
Alleged byway (West Bank Claim A to B)	Byway between A and B diverted through the flood gate between points marked D1 and D2 and narrower than otherwise provided for between those points

PART 2

PATHS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Path or street affected</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>Specified temporary diversion</i>
Proposed restricted byway 37	Between E and H and between I and J	Between E,G and H and between I and J
Byway 38	Within the limits of deviation	—
Proposed public footpath 40	Within the limits of deviation	None, but without prejudice to provision made for proposed restricted byway 37
Alleged footpath (Claim A)	Within the limits of deviation	—
Alleged byway (Claim B)	Within the limits of deviation	—
Alleged footpath (Claim C)	Within the limits of deviation	—
Alleged footbath (Claim D)	Within the limits of deviation	—
Alleged byway (Claim E)	Within the limits of deviation	—
Alleged footpath (Claim F)	Within the limits of deviation	—
Alleged byway (Claim G)	Within the limits of deviation	—
Alleged byway (West Bank Claim byway A to B)	Within the limits of deviation	—
Alleged footpaths (West Bank Claim footpaths A to B to C)	Within the limits of deviation	—

SCHEDULE 3

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽²⁶⁾ has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44 (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) in subsection (1), for the words “land is acquired or taken” there is substituted the words “a right over land is purchased”; and

⁽²⁶⁾ 1973 c. 26.

(b) in subsection (1), for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over land consisting”;
- (b) for the word “severance” there is substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there is substituted the words “right proposed”; and
- (d) for the words “part is” there is substituted the words “right is”.

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation), there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land), there is substituted the following

“**8.—(1)** Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (‘the relevant land’)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (‘the tribunal’); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Ipswich Barrier Order 2012 (“the Order”) in relation to that person, ceases to authorise the purchase of the right and is to be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraph 2(3) and 7(2) of Schedule 4 (common land),

are to be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which is to be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 26

ACQUISITION OF NEW RIGHTS ONLY

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which new rights may be acquired</i>
1b, 2aa, 2af, 2b, 4a, 4b and 5a.	Flood wall and gate
2ah, 2al, 2ad, 2m, 2n, 2t, 2w and 6b.	Diversion of existing 132kV electricity cable (Work No.3)
2e and 4e.	Landscaping
2j, 2k and 2l.	Access, maintenance and crane oversailing
2q	Access to new control building (Work No. 2)

SCHEDULE 5

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
1a, 1c, 1e, 1f, 2a, 2ab, 2ac, 2ae, 2ag, 2ai, 2aj, 2ak, 2c, 2f, 2g, 2h, 2i, 2o, 2p, 2r, 2s, 2u, 2v, 2x, 2y, 2z, 4c, 4d, 4f, 4g, 4h, 5b and 6a.	Construction working area

SCHEDULE 6

Article 43

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1. Sections 271 to 274 of the planning Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) applies in relation to any land acquired or appropriated by the Agency under this Order subject to the following provisions of this Schedule; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) have effect accordingly.

2. In the provisions of the planning Act, as applied by paragraph 1, references to the appropriate Minister are references to the Secretary of State.

3. Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the planning Act, as applied by paragraph 1, any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Agency compensation

in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

4. Paragraph 3 does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is be entitled to recover from the Agency compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

5. The provisions of the planning Act mentioned in paragraph 1, as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

6. In this Schedule—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽²⁷⁾; and

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽²⁸⁾.

SCHEDULE 7

Article 44

PROTECTION OF A.B. PORTS

1. The following provisions of this Schedule have effect unless otherwise agreed in writing between the Agency and A.B. Ports.

2. In this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and “construct” and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature owned or occupied by A.B. Ports;

“harbour property” means any land or works owned or administered by A.B. Ports as part of its harbour undertaking at Ipswich;

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

“specified work” means so much of any permanent or temporary work authorised by this Order (which includes, for the avoidance of doubt, any removal of gravel or other material, any dredging or similar work and any geotechnical investigations that may be undertaken) as is on, in, under or over—

- (a) the surface of land below the level of mean high water springs forming part of the river; or
- (b) any other harbour property.

⁽²⁷⁾ 2003 c. 21.

⁽²⁸⁾ 1980 c. 66.

3.—(1) The Agency must not under the powers conferred by this Order acquire or use or acquire new rights over any harbour property except with the consent of A.B. Ports.

(2) The Agency must not exercise the powers conferred by article 5 (power to execute street works) of this Order in relation to any street which is under the control or management of A.B. Ports except with the consent of A.B. Ports.

(3) The consent of A.B. Ports under this paragraph must not be unreasonably withheld but may be given subject to reasonable requirements as A.B. Ports may make for the purposes of performing its statutory functions.

4.—(1) Before beginning any operations for the construction of any specified work (but this requirement does not apply to minor works or maintenance or repair), the Agency must submit to A.B. Ports plans of the work and such further particulars available to it as A.B. Ports may within 14 days of the submission of the Plans reasonably require.

(2) Any specified work must not be constructed except in accordance with such plans as may be approved in writing by A.B. Ports or determined to be in accordance with article 54 (arbitration) of this Order.

(3) Any approval of A.B. Ports required under this paragraph must not be unreasonably withheld and—

- (a) shall be deemed to be given if it is neither given or refused (with an indication of the grounds for refusal) within 28 days of the submission of the plans or where further particulars are submitted under sub-paragraph (1), within 28 days of the submission of those particulars; and
- (b) may be given subject to such reasonable requirements as A.B. Ports may make for the protection of—
 - (i) navigation in, or the flow or regime of, the river; or
 - (ii) the use of its land for the purposes of performing its statutory functions.

5. The Agency must give to A.B. Ports not less than 14 days' written notice of its intention to commence the construction of a specified work (but this requirement does not apply to minor works of maintenance or repair) and, not more than 14 days after completion of such construction, must give to A.B. Ports written notice of such completion.

6. The Agency must carry out all operations for the construction of any specified works with all reasonable dispatch to the reasonable satisfaction of A.B. Ports so that navigation in, or the flow or regime of, the river and the exercise of A.B. Ports' statutory functions do not suffer more interference than is reasonably practicable and A.B. Ports shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

7. After the purpose of any temporary works has been accomplished the Agency must with all reasonable dispatch, or after a reasonable period of notice in writing from A.B. Ports requiring the Agency so to do, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the Agency; and, on failing to so do within a reasonable period after receiving such notice, A.B. Ports may remove the same and may recover the reasonable costs of so doing from the Agency.

8.—(1) If—

- (a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction; or
- (b) during the exercise of the powers conferred by article 8 (power to dredge) of this Order or within 10 years after and wholly or partly in consequence of the exercise of those powers,

there is caused or created an accumulation or erosion which results or is likely to result in interference with navigation or damage to the harbour property, the Agency must, if so requested by A.B. Ports acting reasonably and having regard in particular to its and the Agency's statutory functions, remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers in the manner specified in sub-paragraph (3) and, if it refuses or fails to do so, A.B. Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the Agency.

(2) If any such accumulation or erosion in consequence of such construction or exercise of the powers conferred under article 8 arises within the said period of 10 years and is remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion must, from time to time, if reasonably so required to do by A.B. Ports after notice in writing to it from the Agency and having regard in particular to its and the Agency's statutory functions, be so remedied by the Agency during the said period of 10 years and at any time thereafter, save that the Agency's obligation under this paragraph shall cease if, following the remedying of any accumulation or erosion, a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

(3) For the purposes of sub-paragraph (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that any surveys, inspection, tests or sampling establish that such accumulation or erosion may have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by article 8, the Agency is liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) the date of completion of a work is the date on which it is brought into use.

9. The Agency must pay to A.B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or within five years of the completion of and in consequence of the construction of a tidal work and afford to A.B. Ports such facilities as it may reasonably require for the placing and maintenance on any tidal work of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

10. Without prejudice to the other provisions of this Schedule, the Agency shall be responsible for, and make good to A. B. Ports, all costs which may reasonably be incurred by or occasioned to A.B. Ports by reason of or arising from or in connection with—

- (a) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) where A.B. Ports has reasonable cause to believe that the construction of any of the tidal works or the exercise of the powers conferred by article 8 is causing or has caused any such accumulation or erosion;
- (b) the surveillance, co-ordination and regulation of traffic within the Port of Ipswich which becomes reasonably necessary by reason of the exercise or the prospective exercise by the Agency of its powers to close the river or any part of the river to navigation under article 11 of this Order.

11.—(1) The Agency must indemnify A.B. Ports from all claims, demands, proceedings or damages, which may be made or given against, or recovered from A.B. Ports and any costs or expense reasonably incurred by A.B. Ports by reason of any damage to the bed or banks of the river or other harbour property which is caused by the construction, maintenance or failure of any specified work or any act or omission of the Agency, its contractors, agents or employees whilst engaged upon the work.

(2) A.B. Ports shall give to the Agency reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand shall be made without the consent of the Agency, which, if it notifies A.B. Ports that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

12. Nothing in paragraph 11 imposes any liability on the Agency with respect to any damage to the extent that it is attributable to any prior defect, want of maintenance or want of repair to the beds or banks of the river or other harbour property or to the act, neglect or default of A.B. Ports, its officers, servants, contractors or agents but the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by A.B. Ports, or to its satisfaction, or in accordance with a determination under article 54 (arbitration) of the Order, does not (in the absence of negligence on the part of A.B. Ports, its officers, servants, contractors or agents) relieve the Agency from any liability under the provisions of this Schedule.

SCHEDULE 8

Article 45

PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the Agency and Network Rail and, in the case of paragraph 14, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985⁽²⁹⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993);

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

(29) 1985 c. 6.

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the Agency with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4.—(1) The Agency shall not exercise the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Agency shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Agency shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 6 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Agency shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The Agency shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of his disapproval the Agency may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Agency. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Agency that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Agency desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Agency in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Agency.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the Agency, if Network Rail so desires, and such protective works shall be carried out at the expense of the Agency in either case with all reasonable dispatch and the Agency shall not commence the construction of the specified works until the engineer has notified the Agency that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the Agency shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the Agency with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Agency or its servants, contractors or agents.

7. The Agency shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the Agency and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the Agency with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations (or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Agency reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the Agency shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such

alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Agency, Network Rail gives notice to the Agency that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Agency decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the Agency shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the Agency may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the Agency to Network Rail under this paragraph.

10. The Agency shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Agency as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Agency and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Agency informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Agency shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

12. The Agency shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

13. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Agency, be repaid by the Agency to Network Rail.

14.—(1) The Agency shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the Agency or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the Agency shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the Agency or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Agency from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the Agency reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Agency.

(3) The sums payable by the Agency under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

15. Network Rail shall, on receipt of a request from the Agency, from time to time provide the Agency free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Agency is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 14) and with such information as may reasonably enable the Agency to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

16. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary

and was taken or entered into with a view to obtaining the payment of those sums by the Agency under this Schedule or increasing the sums so payable.

17. The Agency and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Agency of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

18. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

19. The Agency shall give written notice to Network Rail if any application is proposed to be made by the Agency for the Secretary of State's consent, under article 53 (certification of plans etc.) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

20. The Agency shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 53 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under section 3(1)(b) of the Transport and Works Act 1992, empowers the Environment Agency to construct a tidal barrier with a moveable gate across the river Orwell and to execute ancillary works, including dredging of the river. The Order confers the necessary powers on the Agency, including powers to acquire the requisite land and rights by agreement or compulsorily.

A copy of the works plans, the land plans, the sections and the book of reference referred to in this Order may be inspected at the offices of the Environment Agency, Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, Cambridgeshire PE2 5ZR.