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STATUTORY INSTRUMENTS

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**2012 No. 1867**

**The Ipswich Barrier Order 2012**

**PART 5**

**OPERATION OF SCHEDULED WORKS ETC.**

*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.