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STATUTORY INSTRUMENTS

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**2017 No. 1329**

**The Boston Barrier Order 2017**

**PART 4**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

**31.**—(1) The Agency may acquire compulsorily so much of the land shown on the land plans as lying within the limits of deviation as may be required for the purposes of constructing, operating or maintaining the scheduled works and any other purposes that are ancillary to the scheduled works and may use any land so acquired for those purposes or for any other ancillary purposes.

(2) This article is subject to article 36 (new rights only to be acquired in certain lands) and article 38 (temporary possession of land for construction purposes).

**Application of Part 1 of the 1965 Act**

**32.**—(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(1) 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 with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land)(2).

(4) In section 4A(1) (extension of time limit during challenge)(3)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)(4)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(5) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

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(1) 1981 c. 67.

(2) Section 4 was substituted by section 182(1) of the Housing and Planning Act 2016 (c. 22).

(3) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(4) Section 22 was amended by Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(6) In Schedule 2A(5) (counter-notice requiring purchase of land not in notice to treat) after Part 3 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works), 38 (temporary possession of land for construction purposes) or 39 (temporary possession of land for maintenance of works) of the Boston Barrier Order 2017.”.

#### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**33.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(6) 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) Omit section 5 (earliest date for execution of declaration)(7) and 5A (time limit for general vesting declaration)(8).

(4) In section 5B(1) (extension of time limit during challenge)(9)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(5) In section 7 (constructive notice to treat), in subsection (1)(a)(10), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(6) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 32 (application of Part 1 of the 1965 Act).

#### **Power to acquire new rights**

**34.**—(1) The Agency may compulsorily acquire such easements or other rights over any land referred to in article 31 (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 (other provisions as to divided land) of the 1965 Act (as modified by 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

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(5) Schedule 2A was inserted by paragraph 3 of Part 1 to Schedule 17 of the Housing and Planning Act 2016 (c. 22).

(6) 1981 c. 66.

(7) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(8) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(9) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(10) Section 7(1) was substituted by Schedule 18 of the Housing and Planning Act 2016 (c. 22).

this article or article 36 (new rights only to be acquired under or in certain lands) of a right over land by the creation of a new right.

(4) Paragraph (5) applies to land to which this article applies and which is used for the relocation of any apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works.

(5) In relation to the land to which this paragraph applies, the power to acquire or create easements or other rights under paragraph (1) is to be treated as also authorising the acquisition or creation by a statutory undertaker in any case where the Secretary of State gives consent in writing for that acquisition or creation.

(6) The reference in paragraph (5) to a “statutory undertaker” means a licence holder within the meaning of Part 1 of the Electricity Act 1989(11), a gas transporter within the meaning of Part 1 of the Gas Act 1986(12), a water undertaker within the meaning of the Water Industry Act 1991(13), a sewerage undertaker, any local authority which is a relevant local authority for the purposes of section 97 (performance of sewerage undertaker’s functions by local authorities, etc.)(14) of that Act and a public communications provider within the meaning of section 151 (interpretation of Chapter 1) of the Communications Act 2003(15).

#### **Power to acquire subsoil only**

**35.**—(1) The Agency may compulsorily acquire so much of, or such rights in, the subsoil of the land referred to in article 31 (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) the Agency is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 32 (application of Part 1 of the 1965 Act)) 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**

**36.**—(1) This article applies to the land specified in Schedule 4 (acquisition of new rights only).

(2) In the case of the land specified in columns (1) and (2) of Schedule 4 (acquisition of new rights only), the Agency’s power of compulsory acquisition under article 31 (power to acquire land) is 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.

(3) Where the Agency acquires easements or other new rights specified in Schedule 4 (acquisition of new rights only), article 34 (power to acquire new rights) applies to the same extent as it applies to the acquisition of a new right under that article.

(4) Nothing in this article precludes the Agency from exercising its powers under article 38 (temporary possession of land for construction purposes) in the case of land specified in Schedule 4 (acquisition of new rights only).

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(11) 1989 c. 29.

(12) 1986 c. 44, as amended by section 76(2) of the Utilities Act 2000 (c. 27).

(13) 1991 c. 56, as amended by section 36(2) of the Water Act 2003 (c. 37)..

(14) Section 97 was amended by Schedule 22 to the Localism Act 2011 (c. 20), Schedule 8 to the Housing and Regeneration Act 2008 (c. 17) and Schedule 15 to the Government of Wales Act 1998 (c. 38).

(15) 2003 c. 21.

**Rights under or over streets**

**37.**—(1) The Agency may enter upon and appropriate so much of the surface or subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the surface, subsoil or airspace for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Agency being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Agency acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

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

**38.**—(1) Subject to paragraph (2), the Agency may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) so specified in column (3) of that Schedule; and
  - (ii) any other land within Order limits in respect of which no notice of entry has been served under section 11 (powers of entry)<sup>(16)</sup> of the 1965 Act (other than in connection with the acquisition of new rights only) or no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(17)</sup>;
- (b) remove any buildings, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land; and
- (d) construct any scheduled works in relation to that land and any other works that are required.

(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.

<sup>(16)</sup> Section 11 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to, the Housing and Planning Act 2016 (c. 22), Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

<sup>(17)</sup> Section 4 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to, the Housing and Planning Act 2016 (c. 22).

(3) The Agency may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken), after the end of the period of 2 years beginning with the date of completion of the works specified in relation to that land in column (3) of that Schedule; or
- (b) in the case of any other land within Order limits, after the end of the period of 2 years beginning with the date of completion of the works for which temporary possession of the land was taken unless the Agency has, before the end of that period, served a notice of entry under section 11(18) of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(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 or restore land on which any permanent works have been constructed under paragraph (1)(d).

(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 68 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) 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).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to land referred to in sub-paragraph (1)(a)(i) except that the Agency is not precluded from—

- (a) acquiring new rights over any part of that land under article 34 (power to acquire new rights) or article 36 (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 35 (power to acquire subsoil only).

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

(10) Section 13 (refusal to give possession to acquiring authority)(19) of the 1965 Act applies to the temporary possession 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 32(1) (application of Part 1 of the 1965 Act).

### **Temporary possession of land for maintenance of works**

**39.**—(1) Subject to paragraphs (2) and (3), 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 Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and

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(18) Section 11 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to the Housing and Planning Act 2016 (c. 22), section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(19) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (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 affecting article 68 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(20) (further provision as to compensation for injurious affection) 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, the Agency is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary possession 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 32(1) (application of Part 1 of the 1965 Act).
- (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**

**40.**—(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.

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(20) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.



(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**

**41.**—(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 under this Order of any new rights over land (including the subsoil) under article 34 (power to acquire new rights) or 36 (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,

which will accrue to that person by reason of the construction of the authorised works.

(3) 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*

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

**42.**—(1) Subject to paragraph (6), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of 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) (powers of entry)(**21**) of the 1965 Act,

whichever is sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by the Agency which, being within the Order limits, is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by the Agency.

(3) Subject to paragraph (6), 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 1990 Act (extinguishment of rights of statutory undertakers etc.)(**22**) applies.

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(21) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(22) Section 272 was amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

- (6) Paragraphs (1), (2) and (3) have effect subject to—
- (a) any notice given by the Agency before—
    - (i) the completion of the acquisition of;
    - (ii) the Agency's appropriation of;
    - (iii) the Agency's entry onto; or
    - (iv) the Agency's taking temporary possession of,the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
  - (b) any agreement which makes reference to this article made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) between the Agency and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

#### **Time limit for exercise of powers of acquisition**

**43.**—(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 32 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 33 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 38 (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.