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STATUTORY INSTRUMENTS

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**2017 No. 1329**

**The Boston Barrier Order 2017**

**PART 5**

**OPERATION OF SCHEDULED WORKS**

**Power to operate scheduled works**

- 44.**—(1) The Agency may operate the scheduled works and among other things may—
- (a) open or close the barrier and the flood gates; and
  - (b) regulate water levels in the river by means of the barrier and the flood gates.
- (2) Subject to paragraph (3), the power conferred in paragraph (1) is to be exercised to safeguard against flooding.
- (3) Paragraph (2) does not prevent the exercise of the power contained in paragraph (1) in order to—
- (a) prevent or alleviate any emergency;
  - (b) release flood water;
  - (c) ascertain the safest and most effective ways of using the scheduled works, to test their working or to train staff in their operation; or
  - (d) facilitate the construction, maintenance or re-laying of any works in or beside the river.
- (4) Except when required to be closed for the purposes mentioned in paragraphs (2) or (3), the barrier and the flood gates are to remain open.
- (5) When operating the barrier and the flood gates and so far as is consistent with achieving the purpose referred to in paragraph (2), 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) the Harbour Authority or other navigation authority for the time being for or in connection with their functions; and
    - (ii) the police or other emergency services.
- (6) 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.

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**Commencement Information**

**I1** Art. 44 in force at 2.1.2018, see [art. 1](#)

**Misuse of scheduled works, etc.**

**45.** Any person who without lawful authority or reasonable excuse—

- (a) closes or opens the barrier and/or the flood gates; 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.

**Commencement Information**

**I2** Art. 45 in force at 2.1.2018, see [art. 1](#)

*Navigation*

**Navigation etc. in vicinity of barrier**

**46.—(1)** 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 obstruct access to or egress from the moveable gate or cause an obstruction to other vessels,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) 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 moveable 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 moveable gate comprised in the barrier.

**Commencement Information**

**I3** Art. 46 in force at 2.1.2018, see [art. 1](#)

*Obstruction etc.*

**Removal of vessels**

**47.—(1)** Whenever any vessel is sunk, stranded or abandoned in the river area, 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 51 (emergency powers and consents), the power conferred by paragraph (1) is not exercisable by the Agency if—

- (a) it is within the powers of the Harbour Authority to deal with the vessel and the Harbour Authority decides to do so; and
- (b) if the Agency, having given not less than 14 days' notice to the Harbour Authority, is informed by the Harbour Authority within that time that the Harbour Authority intends to act and the Harbour Authority subsequently does act within 14 days of informing the Agency of its intention to do so.

(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 48 (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 48.

(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;

“riparian property” means land (other than the river bed) immediately abutting the river such that the frontage of the land is in physical contact with the river on a daily basis; and

“vessel” includes any part of a vessel.

#### Commencement Information

**I4** Art. 47 in force at 2.1.2018, see [art. 1](#)

### Arbitration in respect of removal of vessels

**48.**—(1) Any person served with a notice by the Agency under article 47(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 67 (arbitration).

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

(3) 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.

#### Commencement Information

**I5** Art. 48 in force at 2.1.2018, see [art. 1](#)

### Removal of obstructions other than vessels

**49.**—(1) This article applies to anything, other than a vessel, causing an obstruction or impediment to the navigation or use of the river area (in this article and article 50 (arbitration in respect of removal of obstructions other than vessels) referred to as an “obstruction”) and which the owner of the obstruction, or the owner or occupier of the land on which the obstruction is situated, 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, require the owner or occupier to mark, modify or remove the obstruction.

(3) Subject to article 51 (emergency powers and consents), the power conferred by paragraph (2) is not exercisable if—

(a) it is within the powers of the Harbour Authority to deal with the obstruction and the Harbour Authority decides to do so; and

(b) if the Agency, having given not less than 14 days’ notice to the Harbour Authority, is informed by the Harbour Authority within that time that the Harbour Authority intends to act and the Harbour Authority subsequently does act within 14 days of informing the Agency of its intention to do so.

(4) If a person to whom a notice was given pursuant to paragraph (2) fails to take any action specified by the Agency in that notice 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 50 (arbitration in respect of removal of obstructions other than vessels).

(6) The Agency may mark, modify or remove an obstruction 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 even if 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 (7) 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 river area 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.

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**Commencement Information**

**I6** Art. 49 in force at 2.1.2018, see [art. 1](#)

### Arbitration in respect of removal of obstructions other than vessels

**50.**—(1) Any person required by the Agency to modify, remove or mark an obstruction under article 49(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 67 (arbitration).

(2) Any person served with a notice under article 49(7) (removal of obstructions other than vessels) 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 67 (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.

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#### Commencement Information

**I7** Art. 50 in force at 2.1.2018, see [art. 1](#)

### Emergency powers and consents

**51.** The Agency's powers under articles 47 (removal of vessels) and 49 (removal of obstructions other than vessels) may be exercised by the Agency in an emergency without prior notice to the Harbour Authority provided that the Harbour Authority is informed of the action as soon as possible afterwards.

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#### Commencement Information

**I8** Art. 51 in force at 2.1.2018, see [art. 1](#)

## Byelaws

### Byelaws

**52.**—(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 the river area, 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 the Harbour Authority.

(4) The Harbour Authority must not withhold its consent to the making of any byelaw except on the ground that it conflicts with or duplicates a byelaw of the Harbour Authority or interferes with the exercise of its statutory functions, and any unresolved question whether there is any such conflict or duplication or interference is to be determined in accordance with article 67 (arbitration).

(5) Nothing in any byelaw made under this article applies to anything done by the Harbour Authority in the exercise of any of its statutory functions and the byelaws of the Harbour Authority 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 (which relates to the procedure for making, and evidence of, byelaws)<sup>(1)</sup> 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

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(1) 1972 c. 70.

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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.

(12) Save where expressly stated otherwise within this Order, “navigation” includes navigation for recreational purposes except that for the purposes of sub-paragraph (2)(a) of this article, “recreational activities” does not include navigation for recreational purposes.

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**Commencement Information**

**19** Art. 52 in force at 2.1.2018, see [art. 1](#)



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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- [Order excluded in part by S.I. 2023/778 art. 41](#)